

ORDINANCE AMENDMENT NO. 94-04
Effective Date: 04-16-94

HAZARDOUS SPILLS EXPENSE RECOVERY

THE PARADISE TOWNSHIP BOARD ORDAINS:

That the following ordinance be enacted to read in its entirety as follows:

SECTION 1. INTENT

Surface waters, groundwater, soils, vegetation, and atmosphere inside the Township are susceptible to damage from the handling, storage, use, processing and disposal of hazardous material and the expense incurred by the taxpayer as a result of Paradise Township having to respond in an emergency to protect life, property and the environment when there has been a release of hazardous materials should be recovered from the person responsible for the emergency.

SECTION 2. DEFINITIONS

As used in this ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

- (1) "CFR" shall mean the Code of Federal Regulations;
- (2) "Compressed gas" shall mean any material regulated as a compressed gas by the United States Department of Transportation, by regulations found in 49 CFR § 173.300;
- (3) "Designee" shall mean the Northwestern Regional Hazardous Materials Response Team or such other public or private agency authorized in writing by the Township Board to respond to hazardous materials incidents within the Township;
- (4) "Emergency action" shall mean all of the activities conducted in order to prevent or mitigate injury to human health or to the environment inside Paradise Township from a release or threatened release of any material into or upon the environment;
- (5) "Explosive" shall mean any material regulated as a class A or class B explosive by the United States Department of Transportation, by regulations found in 49 CFR §§ 173.53 and 173.88;

(6) "Flammable liquid" shall mean any material regulated as a flammable liquid by the United States Department of Transportation, by regulations found in 49 CFR § 173.115;

(7) "Flammable solid" shall mean any material regulated as a flammable solid by the United States Department of Transportation by regulations found in 49 CFR § 173.150;

(8) "Hazardous material" shall mean any of the following:

(a) Any material listed in the list of toxic pollutants found in 40 CFR § 401.15, as amended;

(b) Any material designated as hazardous material by applicable state law;

(c) Any compressed gas, explosive, flammable liquid, flammable solid, oxidizer, poison or radioactive material.

(9) "Oxidizer" shall mean any material regulated as an oxidizer by the United States Department of Transportation by regulations found in 49 CFR § 173.151;

(10) "Person" shall include any individual, corporation, association, partnership, firm, trustee, or legal representative;

(11) "Poison" shall mean any liquid or gas that is life threatening when mixed with air in small amounts, and shall also include all those materials regulated as poison class A by the United States Department of Transportation by regulations found in 49 CFR § 173.326;

(12) "Radioactive material" shall mean any material required by the United States Department of Transportation to have type A packaging or other special protection or closed transport vehicles, under regulations found in 49 CFR § 173.425;

(13) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into or upon the environment, which causes danger or harm to the public health or to the environment,

including, but not limited to, the release of any material classified as hazardous material by any federal legislation or regulation, by any state legislation or regulation, or by any Paradise Township ordinance;

(14) "Threatened release" shall mean any imminent or impending event potentially causing but not resulting in a release, but causing the Township to undertake an emergency action.

SECTION 3. NOTICE AND RESPONSE

(a) Any person who has damaged the surface waters, groundwater, soils or atmosphere by the handling or storage of hazardous materials, or who have violated any local, state or federal environmental laws with respect to hazardous materials, are required to immediately notify the Battalion No. 2 Fire Chief.

(b) The requirements of this ordinance shall not be construed to forbid or forgive any person from using all diligence necessary to control a hazardous material release prior or subsequent to the notification to the Fire Chief, especially if such efforts may result in the containment of the release or the abatement of extreme hazard to the employees or the general public. Delays in reporting releases due to in-house notification of off-site owners or supervisors shall result in penalties. Nothing in this ordinance shall be construed to exempt or release any person from any other notification or reporting requiring by any state or federal agency.

(c) The Township, Fire Chief, or either's Designee are authorized to direct an emergency action and the clean up and abatement of any release or threatened release within the Township.

SECTION 4. LIABILITY FOR COSTS

(a) Any person causing or contributing to the causing of a release or threatened release shall be liable to the Township for the recoverable costs.

(b) The following described persons shall be jointly and severally liable to the Township for the payment of all costs incurred by the Township as a result of such clean up or abatement activity:

(1) Any person whose negligent or willful act or omission proximately caused such release, discharge or deposit;

(2) The person who owned or had custody or control of the hazardous material or the material at the time of such release,

discharge, or deposit, without regard to fault or proximate cause; and

(3) The person who owned or had custody or control of the container which held such hazardous material at the time of or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

SECTION 5. RECOVERY OF COSTS

(a) The Township, Fire Chief, or either's Designee shall keep an itemized record of recoverable costs resulting from a release or threatened release including an emergency action;

(b) The Township, Fire Chief, or either's Designee shall submit a written itemized claim to the responsible person for the total costs incurred by the Fire Chief or its Designee related to the release or threatened release and any emergency action and a written notice that unless the amounts are paid in full within thirty (30) days after the date of the mailing of the claim and notice, a civil action will be commenced seeking recovery for the stated amount plus any amounts occasioned by such suit;

(c) For the purposes of this ordinance, costs of the Township, Fire Chief, or either's Designee shall mean all direct and indirect costs and shall include but limited to the following:

- (1) Actual labor cost of personnel, including workers' compensation benefits and fringe benefits;
- (2) Administrative overhead;
- (3) Costs of equipment operation;
- (4) Costs of materials;
- (5) Laboratory costs of analyzing samples taken during the emergency action;
- (6) Medical expenses incurred as a result of response activities;
- (7) Costs of any contract labor;
- (8) Costs to supervise or verify the adequacy of the cleanup or abatement by others; and,
- (9) Legal expenses that may be incurred as a result of the emergency action, including actions for recoverable expenses pursuant to this ordinance.

(d) Costs recovered related to the emergency action incurred by the Township or Fire Chief's Designee shall be transferred to the Designee as soon as possible.

SECTION 6. CIVIL SUIT

The Township, Fire Chief, or either's Designee may bring a civil action for payment of the recoverable costs against any and all persons liable under this ordinance. All costs of such suit, including actual attorney fees, shall also be a recoverable cost within the same civil action.

SECTION 7. CONFLICT WITH STATE OR FEDERAL LAW

Nothing in this ordinance shall be construed to conflict with state or federal laws requiring persons causing or responsible for release or threatened releases from engaging in remediation activities, paying the cost thereof, or both.

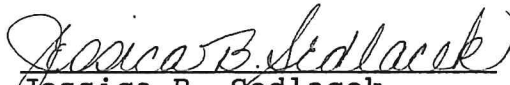
SECTION 8. NONEXCLUSIVE REMEDY

The remedies provided by this ordinance shall be in addition to any other remedies available in equity or at law and such penalties as provided by law or ordinance.

This ordinance shall take effect thirty (30) days after publication of the ordinance in the Traverse City Record-Eagle.

CERTIFICATION

The undersigned, Jessica B. Sedlacek, the duly elected and acting Clerk of Paradise Township, hereby certifies that the foregoing constitutes a true and complete copy of an ordinance adopted by the Township Board on March 9, 1994 at which meeting a quorum was present; that said meeting was conducted in accordance with the Open Meetings Act of the State of Michigan and the members of said Board voted upon said Resolution as hereinbefore set forth.


Jessica B. Sedlacek
Paradise Township Clerk