

COUNTY ORDINANCE NO. 07-17

A BILL ENTITLED HAZARDOUS MATERIALS COST RECOVERY ACT

AN ACT CONCERNING the Recovery of Costs Associated with the Release of Hazardous Materials in Queen Anne's County.

FOR THE PURPOSE of providing for the recovery of response costs associated with the release of hazardous materials in Queen Anne's County; defining certain terms, establishing rates to be charged for response costs; providing for collection and disbursement of cost recovery; providing for enforcement and conflict.

BY ADDING Chapter 30 to the Code of Public Local Laws of Queen Anne's County, Maryland entitled "Hazardous Materials".

WHEREAS, Queen Anne's County's rapid growth, expanding commercial activities and major transportation routes result in the potential for increased hazardous materials incidents; and

WHEREAS, the County and the municipalities within the county are increasingly called upon to meet planning and preparedness requirements for response to emergencies involving the release of hazardous materials; and

WHEREAS, various agencies and organizations charged with the responsibility of responding to these emergencies may incur costs in response to a hazardous materials incident or release; and

WHEREAS, the County Commissioners of Queen Anne's County desires that the party responsible for causing a hazardous materials incident or release shall reimburse such agencies, organizations and municipalities for those costs considered reasonable and necessary to protect the public health, safety and welfare.

SECTION I

BE IT ENACTED BY THE COUNTY COMMISSIONERS OF QUEEN ANNE'S COUNTY, MARYLAND that a new Chapter 30 entitled "Hazardous Materials" be added to the Code of Public Local Laws of Queen Anne's County, Maryland to read as follows:

CHAPTER 30
HAZARDOUS MATERIALS

§ 30-1. Title.

This Chapter shall hereafter be referred to as the "Hazardous Materials Chapter."

§ 30-2. Purpose and intent.

- A. The purpose of this Chapter is to provide for cost recovery for response and recovery efforts related to hazardous materials incidents; providing for liability for costs; and providing for collection and disbursement of funds for cost recovery, thereby supporting those agencies providing the necessary services. In providing this service the County will be protecting the citizens, property and employees of Queen Anne's County and the municipalities therein from the health hazards and other risks resulting from releases or incident to the use, storage, distribution, possession or transportation of hazardous substances.
- B. This Chapter is enacted pursuant to the enabling powers conferred by the Annotated Code of Maryland, Article 25A, § 5(A), (B), (J) and (T); Public Safety Article; Courts and Judicial Proceeding Article, Sections 3-1101 thru 3-1207; and the Environment Article of the Code. This Chapter is not intended to supersede state responsibility and authority in the subject matters covered by this Article.

§ 30-3. Definitions.

For the purposes of this Chapter, the following definitions shall be used:

FACILITY -- Any buildings, structures, accessory structures, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, lagoon, impoundment, ditch, landfill, storage container and other stationary items which are located on a single site or a contiguous or adjacent site which are owned, occupied or operated by the same person or entity and which manufacture, produce, use, import, export, store, supply or distribute any hazardous material.

HAZARDOUS SUBSTANCE:

- A. Any substance designated pursuant to Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 U.S.C. § 9601(14)], as amended, and regulations enacted pursuant thereto, the Environmental Protection Agency or the Maryland Department of Environment; or
- B. Gas, as defined by Maryland Annotated Code (herein, "the Code") Environment Article, § 14-102, as amended; or
- C. Oil, as defined by the Code, Environment Article, § 14-102, as amended; or
- D. Motor fuel, as defined by the Code, Business Regulation Article, §10-101, as amended; or
- E. Low-level nuclear waste.

F. "Hazardous substance" does not include fly ash, bottom ash, slag, and other by-products generated from the combustion of fossil fuels.

PERSON -- An individual, corporation, firm, association, partnership, joint venture, commercial entity, public utility, trust, estate, public or private institution, group, agency, political subdivision and any legal successor, representative or agency of the foregoing.

RELEASE -- Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of a hazardous substance, including but not limited to the abandonment or discarding of barrels, containers and other receptacles contain a hazardous substance. "Release" does not include a discharge permitted by state or federal law.

RESPONSE:

- A. The cleanup of released hazardous substances from the environment;
- B. Such actions as may be necessary to monitor, assess and evaluate the release of hazardous substances; and
- C. The disposal of removed materials.

RESPONSE ACTION -- Those actions taken to prevent or minimize the release of hazardous substances, including but not limited to storage, confinement, neutralization, cleanup of hazardous substances or associated contaminated materials, recycling, destruction, perimeter protection, segregation of reactive wastes, repair or replacement of damaged or leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies and any monitoring reasonably required to assure that such actions taken protect the public health and welfare and the environment.

RESPONSE COST -- All reasonable and necessary costs incurred to remove, contain, or otherwise mitigate the effects of a hazardous material incident, including, but not limited to the following:

- A. Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response to the hazardous substance release, at actual cost of replacement.
- B. Rental or leasing of equipment used specifically for the response; for example, protective equipment or clothing and scientific and technical equipment.
- C. Replacement costs for equipment that is contaminated beyond reuse or repair during the response, including, by way of illustration and not limitation, self-contained breathing apparatus, protective equipment or clothing and scientific and technical equipment irretrievably contaminated during the response.
- D. A surcharge related to the depletion of the useful life of any equipment, materials or supplies with a limited useful life span.

- E. Decontamination of equipment contaminated during the response.
- F. Total compensation associated with the response, including but not limited to benefits (FICA, insurance) for:
 - (i) members of the Department of Emergency Services (DES) hazardous material response team,
 - (ii) members of volunteer fire and/or ambulance companies at an hourly rate based on certification levels, established by the County Commissioners from time to time.
 - (iii) any contractor, subcontractor or agent.
- G. Special technical services specifically required for the response; for example, costs associated with the time, equipment and efforts of technical experts or specialists.
- H. Any tests to determine the physical, chemical or biological properties of the released items and monitoring the site and adjoining areas.
- I. Other special services, including but not limited to utilities specifically required for the response.
- J. Costs associated with the services, including housing and cost of care, supplies and equipment used to conduct an evacuation during the response.
- K. Costs associated with the disposal and/or storage of materials.
- L. Indirect costs such as administrative and legal costs may be included at a rate not to exceed 20% of the total direct costs claimed.

RESPONSIBLE PERSON:

- A. Any person who:
 - (i) Is the owner or operator of a vehicle or a site containing a hazardous substance
 - (ii) At the time of the release of any controlled hazardous substance, was the operator or owner of any site at which the hazardous substance was released.
 - (iii) By contract, agreement or otherwise arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of a hazardous substance owned or possessed by such person or by any other party or entity at any site owned or operated by another party or entity and containing such hazardous substances.
 - (iv) Accepts or accepted any hazardous substance for transport to a disposal or treatment facility or any sites selected by the person.
- B. "Responsible person" does not include a holder of a mortgage or deed of trust who acquires title through foreclosure to a site containing a hazardous substance as the result of a release.

§ 30-4. Response Costs.

- A. The County Commissioners of Queen Anne's County with the advice of the Department of Emergency Services (herein "DES"), Emergency Management Division and the Queen Anne's County Fire EMS Commission shall have the authority by Resolution to establish or modify rates to be charged for response costs under this Chapter.
- B. Initial Costs shall be established by levels of response as follows:
1. Level 1 Response of Primary Fire Dept and/or DES Response -- incident involving 10 gal. or less without exposure to waterway or drainage systems (including ditches) - \$250.00 plus materials and equipment used.
 2. Level 2 Response of Primary Fire Dept and/or DES Response of incident involving 10-25 gal. spill without exposure to waterway or drainage systems (including ditches) - \$500.00 plus materials and equipment used.
 3. Level 3 Response of Primary Fire Dept and/or DES Response of incident involving 20 to 50 gal spill with or without exposure to waterway or drainage systems (including ditches). -\$750.00 plus materials and equipment used.
 4. Level 4 Response of Primary Fire Dept and/or DES Response and Decontamination Unit and/or Emergency Response Trailer -- 50 gal or more spilled with or without exposure to waterway or drainage (including ditches); any leak from a box truck. Truck tanker overturned and or leaking; Industrial toxic gas and or chemical leak; All rail car leaks; any incident that does not fit in either levels 1-3. - \$2000.00 plus materials and equipment used/ up to 4 hours and \$100.00 per part of hour thereafter.
- C. Personnel and Vehicle Cost will be assessed on an hourly basis, or any part thereof, as follows:
1. Personnel
 - (a) Total compensation associated with the response, including but not limited to benefits (FICA, insurance) for:
 - (i) members of the Department of Emergency Services hazardous material response team,
 - (ii) members of volunteer fire and/or ambulance companies at an hourly rate based on certification levels, established by the County Commissioners in executive session from time to time. Initially said rates shall be as follows:
 - (a) Team Leaders @ \$35.00 per part of an hour

- (b) Crew Leaders @ \$30.00 per part of an hour
- (c) Technical Level Personnel @ \$25.00 per part of an hour
- (d) Operational Level @ \$ 20.00 per part of an hour
- (e) All others @ \$15.00 per part of an hour.

(iii) any contractor, subcontractor or agent.

2. Vehicles

- (a) Engine, Truck, Rescue will be assessed at \$150.00 per hour.
- (b) Hazmat Unit will be assessed at \$150.00 per hour.
- (c) Utility vehicles will be assessed at \$50.00 per hour.
- (d) DES or Volunteer EMS Unit will be assessed at \$100.00 per hour. (Does not apply if used for transport to emergency facility, this is on scene use only).
- (e) Decontamination Unit will be assessed \$200.00 per hour.
- (f) Emergency Response Trailer will be assessed \$200.00 per hour.

§ 30-5. Liability for and Recovery of response costs.

- A. Any responsible party who causes a hazardous material release, whether intentionally or negligently, shall be liable for the payment of all reasonable and necessary costs incurred by Queen Anne's County, including all costs of response action incurred by a volunteer fire and ambulance company, and all costs of response action incurred by a volunteer ambulance company for response and remediation of such an incident.
- B. There shall be a presumption that any person who owns and/or has a present possessory interest in any private property on which any release of a hazardous substance occurs has permitted or allowed the release.

§ 30-6. Collection and Disbursement of Funds for Cost Recovery.

- A. The Queen Anne's County DES, Emergency Management Division, shall serve as the agent for collecting invoices and supporting documentation. The Queen Anne's County Department of Finance is responsible for billing the responsible party for costs. Queen Anne's County DES and Fire Departments, including volunteer fire and/or ambulance companies dispatched to respond to a hazardous material release are eligible to submit invoices to Queen Anne's County DES Emergency Management Division.
- B. Queen Anne's County DES and volunteer fire and/or ambulance companies should submit an invoice and supporting documentation identifying eligible costs under this Chapter to the Queen Anne's County DES Emergency Management Division within ten (10) business days after the incident is closed. Submitted invoices must include sufficient documentation for cost reimbursement (i.e. copy of personnel certifications and on-scene duties performed by all personnel involved in the incident will be required for billing, as well as audits and justifications, copies of time sheets for specific personnel, copies of bills for materials, equipment and supplies procured or used, etc.). The acceptance of invoices by the Emergency Management Division shall not obligate the County to pay

those costs until payment is received by Queen Anne's County from the responsible party and approval of such invoices by the County.

- C. The Queen Anne's County Finance Department shall submit one or a series of consolidated invoices to the responsible party identifying agencies, agents or municipalities and their specific costs or reimbursements. The responsible party shall issue a check or money order made payable to the County Commissioners of Queen Anne's County within sixty (60) days of receiving a consolidated invoice.
- D. Queen Anne's County shall disburse payments received to the responding companies who submitted approved invoices and supporting documentation, on a quarterly basis. In the event payments received are insufficient to pay approved invoices in full, disbursement among the companies shall be on a pro rata basis. No volunteer Fire and/or ambulance company will receive reimbursement funds unless it has complied with the requirements of this section.
- E. Monies recovered from billed responsible parties on behalf of the Queen Anne's County DES Emergency Management Division shall be used for the continued support of the hazardous materials emergency response program including equipment, personnel and other costs associated with such program.

§ 30-7. Methods of Enforcement.

- A. The County may enforce these provisions by civil action in a court of competent jurisdiction for the collection of any amounts due hereunder plus administrative collection costs, attorneys' fees, or for any other relief that may be appropriate.
- B. This Section shall not prohibit the County from pursuing any other remedy, whether civil or criminal, or from instituting any appropriate action or proceedings, including injunction in a court of competent jurisdiction nor shall the recovery of expenses under this Chapter in any way release the various parties, or limit them, from further legal liability incurred as a result of hazardous material cleanup or abatement as defined under any local, State or Federal rule or regulation.

§ 30-8. Conflict with Other Laws.

Whenever the requirements or provisions of this Chapter are in conflict with the requirements or provisions of any other law, the more restrictive requirements shall apply.

SECTION II

BE IT FURTHER ENACTED that this Act shall take effect on the forty-sixth (46th) day following its enactment.

INTRODUCED BY: Commissioner Carol Fordonski

SPONSORED BY: Commissioners Billups, Gunther, Wargotz

DATE: April 3, 2007

PUBLIC HEARING HELD: April 24, 2007 @ 8:00 p.m.

VOTE: 5 YEA 0 NAY

DATE OF ADOPTION: June 26, 2007

DATE EFFECTIVE: August 4, 2007

FISCAL IMPACT NOTE

Legislation No: O-07-17 **Hearing Date:** 4-24-07
Date Introduced: 04-03-07 **Note Date:** 4-23-07

Legislation Title: Hazardous Materials Cost Recovery

Description:

This ordinance is for the purpose of adding a chapter to the Code that would provide for the cost recovery for efforts related to response and recovery of hazardous materials in Queen Anne's County.

Analysis of Fiscal Impact:

Fiscal impact resulting from this legislation is dependent upon the number of responses within the various response levels (ie: Level 1, Level 2, etc.) listed in the legislation that might take place in a given fiscal year. This information was not available at the time of the fiscal note, so the annual billing amounts and estimated total expenditures cannot be accurately estimated.

However, it is likely that the majority of the revenue generated by hazardous substance release would be paid to the volunteer fire departments that respond to the release. As such, the fiscal impact to the County would be minimal.