

**ORDINANCE NO. 2012-15**

**VILLAGE OF PECATONICA  
MUNICIPAL CODE  
ARTICLE SEVENTEEN**

**HAZARDOUS MATERIALS RESPONSE AND RECOVERY ORDINANCE**

**WHEREAS**, there are instances where hazardous materials are transported, used or temporarily stored in the Village of Pecatonica (“Village”); and

**WHEREAS**, actual or threatened spill or emission of these materials requires a rapid response from the Village, and frequently requires the use of sophisticated or expensive equipment, materials, protective gear and the like; and

**WHEREAS**, the actual or threatened emission or deposit of hazardous materials endangers the public health, safety and welfare; and

**WHEREAS**, the taxpayers of the community should not be obligated to carry the burden of the costs of responding to or neutralizing actual or threatened emissions or deposits of hazardous materials; and

**WHEREAS**, the Village Board of Trustees (“Board”) desires to create an ordinance that addresses the financial responsibilities of persons or entities that cause hazardous materials to be spilled in the Village, requiring emergency response by Village personnel.

**NOW THEREFORE, BE IT ORDAINED** by the Board of Trustees of the Village of Pecatonica, Winnebago County, Illinois, as follows:

**SECTION 1:** That Article 17 of the Village of Pecatonica Code is hereby created to read as follows:

**ARTICLE THREE HAZARDOUS MATERIALS RESPONSE AND RECOVERY**

**Section 1 Definitions**

For the purposes of this Ordinance, the following terms shall have the following meanings:

Costs – All expenses incurred by the Village or by another authorized emergency response agency for any removal or remedial action.

Emergency Response Agency – A unit of local government, volunteer organization or other support agency including licensed hazardous waste contractors that provide one or more of the following services: (1) firefighting services; (2) emergency medical services; (3) emergency medical treatment or transportation; (4) hazardous materials response teams; (5) emergency service, disaster response or civil defense services; (6) public works or maintenance; (7) police agencies (federal, state or local); or (8) remediation, mitigation or disposal of hazardous materials by a hazardous waste contractor.

Facility – Any building, structure, installation, equipment, pipe or pipeline including but not limited to any pipe into a sewer or publicly owned treatment works, well, pond, lagoon, impoundment, ditch, landfill, storage container, tank, motor vehicle, truck trailer, rolling stock or aircraft. Also, any site or area where a hazardous material has been deposited, stored, disposed of, abandoned, placed, or otherwise come to be located.

Hazardous Material – Any material, substance or mixture of materials or substances which are toxic, flammable, corrosive, explosive, carcinogenic or radioactive including, but not limited to, any substance or material which is designated a hazardous material pursuant to the “Hazardous Materials Transportation Act” (49 U.S.C. §5101 *et seq.*) in a quantity and form which may pose a substantial present or potential hazard to human health, property or the environment when improperly released, treated, stored, transported, disposed of, or otherwise managed.

Materials Incident – A situation involving an actual, suspected or possible hazardous material for which the Village or other emergency response agency must respond in order to ensure the safety of personnel or property.

Mutual Aid – Any action taken by the Village or any public agency pursuant to an intergovernmental agreement, including but not limited agreements made as part of the Mutual Aid Box Alarm System (MABAS).

Person – Any individual, business, firm, partnership, corporation, association, trust, estate, joint venture or other legal entity, or their legal representative, agent or assign.

Release – Any spilling, leaking, pumping, pouring, emitting, escaping, emptying, discharging, injecting, leaching, dumping or disposing of a hazardous material into or on any land, air, water, well, stream, sewer or pipe so that such hazardous material or any constituent thereof may enter the environment.

Remedial Action – Any action consistent with permanent, remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous material into the environment, to prevent or minimize the release of hazardous materials so that they do not migrate to cause a substantial present or potential hazard to human health, property or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous materials or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, repair or replacement of leaking containers, collection of leachate and runoff onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment.

Remove or Removal – The cleanup or removal of released hazardous materials from the environment, such actions as may be necessary or appropriate to monitor, assess, and evaluate the release or threat of release of hazardous materials, the disposal of removed material, or the taking of such action as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare of the environment.

Response – Any removal or remedial action to the materials incident or other incident.

Vehicle – Any device which is capable of moving itself, or being moved, from place to place upon wheels or endless tracks. The term includes, but without limitation, automobiles, trucks, semi-tractor, railroad engines and railroad cars.

## **Section 2 Prohibited acts**

No person shall cause, threaten or allow the release of hazardous materials into the environment unless such release is in accordance with an appropriate permit granted by the Illinois Environmental Protection Agency or other State or Federal agency having primary jurisdiction over the release and such release is in such place and manner as will not create a substantial present or potential hazard to human health, property or the environment.

## **Section 3 Responsive authority**

The Pecatonica Fire Protection District is authorized to remove the effects of any hazardous material incident:

- A. Upon or into property or facilities located within the corporate limits of the Village; and
- B. Pursuant to any mutual aid box alarm agreement; and
- C. In the waters of any lake, pond, creek, river, wetland or stream which directly or indirectly discharges water into any property located within the corporate limits of the Village; and
- D. Outside the corporate or response limits where the health, welfare or property of the Village or those people within its protection are in danger.

## **Section 4 Liability for costs**

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in this Ordinance, the following persons shall be jointly and severally liable for all costs of removal and remedial action, direct and indirect, foreseeable and unforeseeable, incurred by the Village as a result of a release or threatened release of a hazardous material:

- A. The person or persons whose conduct caused such release; and
- B. The person or persons who owned or had custody or control of the hazardous material at the time of such release, without regard to fault or proximate cause; and
- C. The person or persons who owned or had custody or control of the container, vehicle or vessel which held such hazardous material at the time of, or immediately prior to such release or threatened release, without regard to fault or proximate cause; and
- D. Any person owning or in control of any real property from which a hazardous material is or is threatened to be released.

## **Section 5      Defenses**

There shall be no liability under this Ordinance for a person otherwise liable who can establish by a preponderance of the evidence that the release or substantial threat of release of a hazardous material and the resulting damages occurred under one of the permitted defenses set forth in 415 ILCS 5/22.2(j).

## **Section 6      Costs and penalties**

- A. Any person who is liable for the release or threatened release of a hazardous material who fails without sufficient cause to pay for or provide removal or remedial action upon or in accordance with a notice and request of the Village, or in accordance with any order of any court having jurisdiction on the matter, shall be liable to the Village for any costs incurred by the Village as a result of such failure to provide or take such removal or remedial action, together with the cost of any removal or remedial action taken by the Village in accordance with the ordinance, and all attorneys' fees and related legal costs incurred in connection therewith.
- B. In addition, any such person shall be guilty of a violation of this Ordinance and shall be fined not less than one hundred dollars (\$100.00) nor more than seven hundred and fifty dollars \$(750.00) for each offense. A separate offense shall be deemed committed for each day on which a violation occurs or continues. Where such violation is found to be the result of willful and/or wanton conduct or gross negligence, or the person committing such violation attempts to evade responsibility hereunder by leaving the scene of the occurrence or by other means, that person shall be subject to a fine as provided for above or a fine in an amount equal to three times the costs, including attorneys' fees and legal costs, for which it is liable under Paragraph A, whichever is greater.
- C. Charges for removal or remedial action when rendered by the Village or any agency in accordance with any mutual aid agreement shall be as follows:
  - a. The cost of vehicles are determined by the responding agency, but in no case less than \$250.00 per hour per vehicle; and
  - b. The cost of all personnel including any over time cost to the Village or to any responding agency, incurred as a result of the removal or remedial action, but in no case less than \$70.00 per hour; and
  - c. The cost of all materials and equipment used, expended, depleted, destroyed or removed from service in accordance with federal, state or local ordinance as a result of the mitigation or containment operations or at the request of the Village or any responding agency; and
  - d. The cost of service and/or goods provided by a private or public entity which are used, expended, depleted or destroyed as a result of the response.

## **Section 7      Extent of liability**

The costs recoverable under this Article shall include:

- A. Any and all costs and expenses incurred by the Village in connection with the clean-up, site-management or fire extinguishment involved in any hazardous material incident;
- B. The actual cost of any experts or consultants needed by the Village in connection with the clean-up, site-management or fire extinguishment involved in any hazardous materials incident;
- C. Prejudgment interest on the costs and expenses described in subparagraphs 7(A) and 7(B) above at the rate of 9% per annum;
- D. Any and all collection costs, including, but not limited to attorneys' fees and court costs incurred by the Village in enforcing this Article, or in obtaining payment from the liable party or parties hereunder.

## **Section 8      Liberal construction**

This Article shall be liberally construed to give effect to its purposes, which are as follows:

- A. To shift the burden of liability for threatened or actual hazardous material incident from the taxpayers of the Village to those persons defined as liable hereunder; and
- B. To deter potentially liable persons from allowing hazardous material incidents to occur; and
- C. To protect the safety and living environment of the residents of the Village.

## **Section 9      Severability**

This is intended to be a severable ordinance, and if any portion of this Ordinance should be declared null and void by a court of competent jurisdiction, that declaration shall not be deemed to nullify or void the balance of the provisions of this Ordinance, which shall remain in full force and effect.

## **Section 10**

All ordinances and parts of ordinances in conflict with or which are inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

## **Section 11**

This Ordinance shall be in full force and effect from and after its passage, approval and publication as required by law.

AYES:

NAYS:

ABSENT:

PASSED AND APPROVED the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

APPROVED:

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Village President: Shawn Conners

ATTEST:

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Village Clerk: Dana Ryall

PUBLISHED: