

Section

- 97.01 Definitions
- 97.02 Purpose; applicability
- 97.03 Administering agency, agent designation
- 97.04 Local notification procedure
- 97.05 Agriculture operations
- 97.06 Liability for costs
- 97.07 Authorized releases
- 97.08 Prohibited acts
- 97.09 Contractual indemnification; subrogation
- 97.10 Disclaimer of liability
  
- 97.99 Penalty

§ 97.01 DEFINITIONS.

For purposes of this chapter, the following definitions shall apply, unless the context clearly requires a different meaning.

"ADMINISTERING AGENCY." Individual or committee responsible for enforcement of this chapter.

"AUTHORIZED RELEASE." A release of hazardous materials in accordance with appropriate permit granted by state or federal agency having primary jurisdiction over such releases.

"CONSUMER PRODUCT." The meaning stated in 15 U.S.C. 2052.

"COSTS." Includes all expenses incurred by local government and/or local emergency response organizations, regardless of whether or not the agencies are publicly or privately owned, in responding to any hazardous materials spill, leak or other release into the environment and for any remedial or removal actions taken to protect and safeguard the public health and safety, property or the environment. The term includes, but is not limited to, costs incurred for personnel, equipment and use thereof, materials, supplies, services, lost wages of volunteer personnel, damage or loss of equipment, both organization and personnel, and related expenses resulting directly from response to a release or threatened release of a hazardous material.

"ENVIRONMENT." The navigable waters of the United States and any other surface water, ground water, drinking water supply, soil surface, subsurface strata, storm sewer or publicly or privately owned treatment works (other than those handling only wastewater generated at a facility) air space, within the entire boundaries of Rowan County, Kentucky.

"HAZARDOUS MATERIAL." Any element, compound, substance or material or any combination thereof which are toxic, flammable, explosive, corrosive, radioactive, oxidizers, etiological agents, carcinogenic, or are highly reactive when mixed with other substances, 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.A., Sec. 1801, et seq.) or is listed by Appendix A, 40 CFR Part 302, "List of Hazardous Materials and Reportable Quantities", as amended, published by the U.S. Environmental Protection Agency (EPA), a copy of which is attached and herein incorporated by reference as if set out at length herein, in a quantity and form which may pose a substantial present or potential hazard to human health, property or the environment wherein improperly released, treated, stored, transported, disposed of, or otherwise managed.

"PETROLEUM PRODUCT." Oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

"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 materials or any constituent thereof may enter the environment. The term shall not apply to:

(A) With respect to a claim which persons may assert against their employer as provided by CERCLA regulations, any release which results in exposure to persons solely within a workplace;

(B) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft vessel, or a pipeline station pumping engine; and

(C) The normal application of fertilizers and pesticides.

"REMOVAL." The cleanup or removal of released hazardous materials from the environment, such actions as may be necessary or appropriate to monitor, supervise, assess, and evaluate the release or threatened release of hazardous materials, the disposal of removed materials, or the taking of such actions as may be necessary to prevent, minimize or mitigate damage to public health or welfare or the environment. The term includes, but is not limited to, security, fencing, provision of alternative water supplies, and temporary evacuation, reception and care of threatened persons.

"REPORTABLE QUANTITY." The "Final RQ" as set forth on the "Hazardous Materials and Reportable Quantities" list.

"RESPONSE." Any remedial or removal actions, including, but not limited to response by local public safety and emergency agencies and subsequent actions taken to insure the preservation and protection of the public health, safety, welfare and the environment.

(Ord. 02:95, passed 1-9-95)

#### § 97.02 PURPOSE; APPLICABILITY.

(A) Purpose. The purpose of this chapter is the protection of the public health and safety and the environment in the city and county,

through prevention and control of hazardous materials incidents and releases, requiring the timely reporting of releases of hazardous materials to appropriate local public safety and emergency agencies, providing local monitoring or supervision of cleanup of hazardous materials spills/releases and requiring payment by parties responsible for hazardous materials releases/spills of all expenses incurred by public safety and emergency agencies in responding to hazardous materials releases. Further, the purpose is to provide for the timely reporting of release of hazardous materials into the environment so that local government can respond quickly and safely and take the necessary steps immediately to protect the general population.

(B) Applicability. This chapter shall apply to all persons who use, manufacture, store or transport hazardous materials in the city or county.

(Ord. 02:95, passed 1-9-95)

#### § 97.03 ADMINISTERING AGENCY, AGENT DESIGNATION.

(A) Administering agency. The administering agency of this chapter shall be the Local Disaster and Emergency Services Director.

(B) Duties of the Administering Agency. The administering agency has the authority to monitor the cleanup process of an on-going hazardous materials incident. In the event of a hazardous materials release/spill that is not being adequately, properly, or promptly cleaned up, the administering agency shall be permitted to select an appropriate cleanup contractor to clean up the incident site and submit a bill to the responsible party for the cleanup cost.

(C) The administering agency shall make a report to the county fiscal court and the city council on every hazardous materials incident that the agency responds to and list in detail the cause of the incident, the effect on the population and environment, and what steps were taken to deal with the incident.

(Ord. 02:95, passed 1-9-95)

#### § 97.04 LOCAL NOTIFICATION PROCEDURE.

(A) Notice upon discovery. When a release or a threatened release, other than an authorized release, of a hazardous material in a quantity equal to or exceeding the reportable quantity established for the material occurs or is imminent on any facilities or transportation vehicle of any kind within the city or county, the person in charge of the facilities or transportation vehicle, shall upon discovery of a release or threatened release, or evidence that a release has occurred even though it has apparently been controlled, immediately cause notice of the existence of a release or threatened release, the circumstances of same, and the location thereof to the administering agency at the number given in this section.

(B) Emergency phone number. The notice required in this section shall be given by calling 606-784-7511.

(C) Duty to report to federal and state agencies. No statement contained in this section shall be construed to exempt or release any person from any other notification or reporting procedure required by state or federal agency.

(Ord. 02:95, passed 1-9-95)

§ 97.05 AGRICULTURE OPERATIONS.

All persons who spill a hazardous material into the environment in any amount that equals or exceeds the amount listed in the EPA's List of Lists shall report the spill by calling the emergency phone number listed in § 97.04.

(Ord. 02:95, passed 1-9-95)

§ 97.06 LIABILITY FOR COSTS.

(A) Notwithstanding any other provisions or rule of law, the following persons shall be jointly and severally liable for all cost of removal and remedial actions incurred by local public safety and emergency agencies as a result of a release or threatened release of hazardous materials into the environment.

(1) The owner and operator of a facility or vessel from which there is a release or substantial threat of release of hazardous materials;

(2) Any person who, at the time of disposal, transport, storage, or treatment of hazardous materials, owned or operated the facility or vessel used for such disposal, transport, treatment, or storage from which there was a release or substantial threat of a release of hazardous materials;

(3) Any person who by contract, agreement, or otherwise has arranged with another party or entity for transport, storage, disposal or treatment of hazardous materials owned, controlled or possessed by another party or entity from which facility there is a release or substantial threat of a release of hazardous materials;

(4) Any person who accepts or accepted any hazardous materials for transport to disposal, storage or treatment facilities from which there is a release or substantial threat of a release of hazardous materials. The local responding agencies or local government that have incurred expenses as a result of their response shall submit their bills to the City Clerk for requesting reimbursement.

(B) Failure to provide reimbursement by the party responsible for the spill/release upon request by local agencies or local government(s), shall result in the local government seeking remuneration through court by the city attorney(s).

(Ord. 02:95, passed 1-9-95)

## § 97.07 AUTHORIZED RELEASE.

There shall be no liability under this chapter for any release permitted by state or federal law, but only to the extent that the release is made in accordance with an appropriate permit granted by the state or federal agency having primary jurisdiction over the release and that the release is in full compliance with the permit with respect to time, location and manner of the release so that the release will not create a hazard or potential hazard to human health, property or the environment; or, if the release is in substantially lesser quantities than those reportable quantities established by state or federal law, regulations, permit requirements, or ordinances of the jurisdiction in which the release occurs.

(Ord. 02:95, passed 1-9-95)

## § 97.08 PROHIBITED ACTS.

No person shall cause, threaten or allow the release of a hazardous material into the environment within the territorial boundaries of the city or other incorporated cities, or Rowan County, unless the release is an authorized release in accordance with an appropriate permit granted by that agency of state or federal government which has primary jurisdiction over the release and the release is in a place and manner as will not create a substantial present or potential hazard to human health, property or the environment.

(Ord. 02:95, passed 1-9-95)

## § 97.09 CONTRACTUAL INDEMNIFICATION; SUBROGATION.

(A) No conveyance, transfer, sale, indemnification, hold harmless, or similar agreement shall be effective to release the owner or operator of any facility or vessel or any person who may be liable for a release of hazardous materials or threat thereof under this chapter. Nothing in this section shall bar any arrangement to insure, hold harmless or indemnify a party to such agreement for any liability under this chapter.

(B) Nothing in this section, including the provisions of subsection (A) above, shall bar a cause of action that an owner or operator or any other person subject to liability under this chapter, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(Ord. 02:95, passed 1-9-95)

## § 97.10 DISCLAIMER OF LIABILITY.

This chapter shall not create liability on the part of the administering agency for any damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. All persons are advised to determine to their own satisfaction the level of protection, in addition to that required by this chapter to insure that there is no unauthorized release of hazardous materials.

(Ord. 02:95, passed 1-9-95)

## § 97.99 PENALTY.

(A) Failure to notify local government. Any facility or person who fails to notify local government as required in § 97.04 of this chapter may be fined not less than five hundred (\$500) dollars nor more than one thousand (\$1,000) dollars.

(B) Interference with local officials. Except by pursuance of legal action in the courts, no person shall interfere or attempt to interfere with any person conducting an inspection or other activity authorized by this chapter. Any person who violates this section shall be fined not less than five hundred (\$500) dollars nor more than one thousand (\$1,000) dollars.

(C) Civil damages. Any person violating any provision of this chapter shall become liable civilly to the city and county government for any expense, loss or damage, caused to the government by reason of a violation, including, but not limited to, any clean-up, evacuation, sheltering, administrative or other expenses, and legal expenses.  
(Ord. 02:95, passed 1-9-95)