

HAZARDOUS MATERIALS ORDINANCE

TOWNSHIP OF MANCELONA

COUNTY OF ANTRIM, STATE OF MICHIGAN

ORDINANCE NUMBER 8

Adopted: February 16, 1998

Effective: April 3, 1998

HAZARDOUS MATERIALS ORDINANCE

An Ordinance to preserve the peace, general welfare, order, health, and safety of persons and property in the Township, enacted pursuant but not limited to, *Michigan Public Act 246 of 1945*, as amended; to establish charges for township emergency services responding to a hazardous materials emergency incident and liability for such charges; and to establish certain notice requirements for such an incident.

TOWNSHIP OF MANCELONA

Antrim County, Michigan

ORDAINS:

SECTION I

TITLE

This Ordinance shall be known as the Mancelona Township Hazardous Materials Ordinance.

SECTION II

PURPOSE

The purpose of this Ordinance is to promote and secure the public health, safety, and general welfare of persons, property owners, and property in the Township of Mancelona. 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 the Township or its Designee having to respond in an emergency to protect life, property, and the environment when there has been a release of hazardous materials shall be recovered by the Township.

SECTION III

DEFINITIONS

For purposes of this Ordinance, certain terms and words as used herein shall have the following meanings:

A. CFR - the Code of Federal Regulations.

B. Compressed gas - any material regulated as a compressed gas by the United States Department of Transportation by regulations found in 49 CFR Section 173.300.

C. Designee - the Northwestern Regional Hazardous Materials Response Team or such other public or private agency authorized in writing by the Township to respond to hazardous materials incidents within the Township.

D. Emergency action - all of the activities conducted in order to prevent or mitigate injury to human health or to the environment inside the Township from a release or threatened release of any material into or upon the environment.

E. Explosive - any material regulated as a class A or class B explosive by the United States Department of Transportation by regulations found in 49 CFR Section 173.53 and Section 173.88.

F. Flammable liquid - any material regulated as a flammable liquid by the United States Department of Transportation by regulations found in 49 CFR Section 173.115.

G. Flammable solid - any material regulated as a flammable solid by the United States Department of Transportation by regulations found in 49 CFR Section 173.150.

H. Hazardous material - any of the following:

1. Any material listed in the list of toxic pollutants found in 40 CFR Section 401.15, as amended.

2. Any material designated as hazardous material by applicable state law.
3. Any compressed gas, explosive, flammable liquid, flammable solid, oxidizer, poison, organic peroxide, pyrophoric, unstable reactive, water reactive, or radioactive material.

I. Oxidizer - any material regulated as an oxidizer by the United States Department of Transportation by regulations found 49 CFR Section 173.151.

J. Person - any individual, corporation, limited liability company, association, partnership, firm, trustee, or legal representative.

K. Poison - 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 Section 173.326.

L. Radioactive material - 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 Section 173.425.

M. Release - 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 this or any other Township ordinance.

N. Threatened release - any imminent or impending event potentially causing but not resulting in a release, but causing the Township to undertake an emergency action.

O. Responsible Party - the person or persons who are jointly and severally liable for the release or threatened release pursuant to Section V of this Ordinance.

SECTION IV

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 Township.

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 of the Township, especially if such effort 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 required by any state or federal agency.

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

SECTION V

LIABILITY FOR COSTS

A. Any person causing or contributing to the causing of a release or threatened release which results in an emergency action shall be liable to the Township for the recoverable costs resulting from the emergency action.

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, deposit, or threatened release.
2. The person who owned or had custody or control of the hazardous material or the material at the time of such

release, discharge, deposit, or threatened release, 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, deposit, or threatened release, without regard to fault or proximate cause.
4. The owner, tenant, occupant and party in control of the property onto which, or from which, hazardous materials are released or threatened to be released.

SECTION VI

CHARGES

When the Township Fire Department responds to a call for assistance in connection with a hazardous materials release or threatened release, actual costs incurred by the Township responding to such a call shall be imposed upon responsible parties, including, but not limited to:

A. The current charges as set by the Fire Chief per hour, or fraction thereof, for each pumper required, in the opinion of the officer in command, to stand by at the hazardous materials incident.

B. The current charges as set by the Fire Chief per hour, or fraction thereof, for each water tender required in the opinion of the officer in command to be utilized in responding to the hazardous materials incident.

C. The current charges as set by the Fire Chief per hour, or fraction thereof, for each additional Township-owned Fire Department vehicle required, in the opinion of the officer in command, to be utilized in responding to the hazardous materials incident.

D. All personnel-related costs incurred by the Township as a result of responding to the hazardous materials incident. Such costs may include, but are not limited to, wages, salaries and fringe benefits, and insurance for full-time and part-time fire fighters; overtime pay and related fringe benefit costs for hourly employees, and fire run fees paid to on-call fire fighters. Such personnel-related

charges shall commence after the first hour that the fire department has responded to the hazardous materials incident, and shall continue until all township personnel have concluded hazardous materials incident-related responsibilities.

E. Other expenses incurred by the township in responding to the hazardous materials incident, including but not limited to, rental or purchase of machinery, equipment, labor, consultants, legal and engineering fees, medical and hospitalization costs, and the replacement costs related to disposable personal protective equipment, extinguishing agents, supplies, water purchased from municipal water systems, meals and refreshments for personnel while responding to the hazardous materials incident and the cost of disposal of contaminated equipment.

F. Charges to the Township imposed by any local, state, or federal government entities related to the hazardous materials incident.

G. Costs incurred in accounting for all hazardous material incident-related expenditures, including billing and collection costs.

SECTION VII

BILLING PROCEDURES

Following the conclusion of the hazardous materials incident, the Fire Chief shall submit a detailed listing of all known expenses to the Township Treasurer, who shall prepare an invoice to the responsible party(s) for payment. The Treasurer's invoice shall demand full payment within thirty (30) days of receipt of the bill. Any additional expenses that become known to the Township Fire Chief following the transmittal of the bill to the responsible party(s) shall be billed in the same manner on a subsequent bill to the responsible party(s). For any amounts due that remain unpaid after thirty (30) days, the Township shall impose a late charge of one (1 %) percent per month, or fraction thereof.

SECTION VIII

CIVIL SUIT

The Township or Designee may bring a civil action for payment of the recoverable expenses 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 IX

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 or paying the cost thereof, or both.

SECTION X

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 any other law or Township ordinance.

SECTION XI

VALIDITY

If any section, provision, or clause of this Ordinance, or the application thereof, to any person or circumstance is held to be invalid, such invalidity shall not affect any remaining portions or application of this Ordinance which can be given effect without the invalid portion or application.

SECTION XII

REPEAL

All ordinances, parts of ordinances, resolutions or parts of resolutions in conflict with this Ordinance are hereby repealed upon the effective date of this Ordinance.

SECTION XIII

EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after its publication in the Antrim County News.

Dated: April
March 5

Margaret Chapman
MARGARET CHAPMAN, Clerk
Mancelona Township

MANCELONA TOWNSHIP

ORDINANCE CERTIFICATION

At a regular meeting of the Township Board, Township of Mancelona, Antrim County, Michigan, held in the Mancelona Township Hall, located at 202 W. State St., Mancelona, Antrim County, Michigan, on February 16, 1998, at 7:00 p.m.:

PRESENT: Sue Robinson, Ray Merillat, Yousef Jabara, Gerald Patrick and Margaret Chapman

ABSENT: none

Ordinance No. 8, the HAZARDOUS MATERIALS ORDINANCE was considered by the Board and upon motion made and seconded, the Township Board duly adopted said Ordinance upon the following vote:

YES: Sue Robinson, Ray Merillat, Yousef Jabara, Gerald Patrick and Margaret Chapman

NO: none

I, Margaret Chapman, as Mancelona Township Clerk, hereby certify that said Ordinance was adopted by the Mancelona Township Board at said meeting as set forth above; that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act; that a synopsis of said Ordinance was published in the Antrim County News on *March 4*, 1998, and that a true and complete copy of said Ordinance can be inspected or obtained at the office of the Mancelona Township Clerk in the Mancelona Township Hall.

Margaret Chapman
MARGARET CHAPMAN, Clerk
Mancelona Township