

ENSLEY TOWNSHIP  
NEWAYGO COUNTY, MICHIGAN  
ORDINANCE NUMBER 09-08  
HAZARDOUS MATERIALS COST RECOVERY ORDINANCE

An ordinance to establish charges for Ensley Township emergency services responding to an incident involving hazardous materials under Public Act 102 of 1990 (MCL 41.806a), which authorizes the legislative body of a municipality providing emergency police or fire service or the legislative bodies of municipalities acting jointly to provide such a service pursuant to this act may authorize by ordinance the collection of fees for the service, and to provide methods for the collection of such charges.

The Township of Ensley, Newaygo County, Michigan, ordains:

**Section 1: Purpose**

In order to protect the Township of Ensley from extraordinary expenses resulting from the utilization of the Sand Lake Fire Department resources to respond to an incident involving hazardous materials, the Ensley Board authorizes the imposition of charges to recover reasonable and actual costs incurred by the Sand Lake Fire Department resources in responding to or recovering from hazardous materials release in Ensley Township.

**Section 2: Definitions**

**Assessable Costs:** means those costs for services incurred by the Township of Ensley in conjunction with response to a hazardous materials incident including, but not limited to, the actual labor and material cost of the Township of Ensley including without limitation, employee wages, fringe benefits, administrative overhead, costs of equipment, costs of equipment operation, costs of materials, costs of transportation, costs of material disposal, and costs of contacted labor whether or not the services are provided by the jurisdiction or by a third party on behalf of the Township of Ensley; service charges and interest; attorneys' fees, litigation costs and any costs, or charges to the Township of Ensley imposed by any court or state or federal government entities.

**Hazardous Materials:** means any of the following:

1. Substances or materials in quantity or form which, in the determination of the Sand Lake Fire Department Chief or Incident Commander responding to the release of hazardous materials, pose an unacceptable risk or danger to the public health, safety, or welfare, the environment, or property, and shall include, but not be limited to such substances as chemicals, explosives, radioactive materials, petroleum or petroleum products, gases, poisons etiologic (biologic) agents, flammables and corrosives.
2. Hazardous substances as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 State 2767, as amended.
3. Hazardous substances as defined in Part 201 of Act number 451 of the Public Acts of 1994 of the State of Michigan, as amended.
4. Hazardous waste as defined in Part 111 of Act Number 451 of the Public Acts of 1994 of the State of Michigan, as amended.
5. Petroleum as described in Part 213 of Act Number 451 of the Public Acts of 1994 of the State of Michigan, as amended.

**Hazardous Materials Incident or Emergency:** means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent and where the Incident Commander has so declared such activity, accident, or emergency a hazardous materials incident or emergency.

**Release:** means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping, or disposing into the environment, including but not limited to, the air, soil, groundwater, and surface water.

**Responsible Party:** means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity, or any other legal entity responsible for a hazardous materials incident or any owner, tenant, occupant, or party in control of real and personal property from which, onto which, or related to which a hazardous materials release has or threatens to occur.

**Weapons of Mass Destruction:** means utilization of any chemical, biological, radiological, nuclear or explosive devices to attempt or accomplish mass destruction through an attack or occurrence.

**Section 3: Responsibility for the abatement, controls, and costs: use of outside contactors or municipal forces.**

Any person who accidentally, negligently, or intentionally causes or is responsible for any release, spill, or improper handling or storage of any hazardous materials in the Township of Ensley shall be responsible and liable for the abatement, control, capture, removal, and proper storage or disposal of such hazardous materials and for all response costs associated therewith.

It shall be the duty of the responsible party to immediately remove any hazardous materials released and complete a total cleanup in such a manner as to ensure that the hazardous materials are fully removed and the area is fully restored to its condition prior to the release of such hazardous materials, or to conditions or standards established by Michigan Department of Natural Resources pursuant to Act 307 of the Michigan Public Acts of 1982, as amended or other applicable law or environmental law or regulation.

Any responsible party who fails to comply completely with the provisions of this ordinance shall be liable to Ensley Township, its agents, contactors, and employees for any costs incurred in the removal and cleanup of any and all hazardous materials and the restoration of the affected property (“Assessable Costs”). In the event that any responsible party fails to remove immediately such hazardous materials, the Township of Ensley shall have the right to enter onto the property involved with the release and remove and conduct a cleanup of all hazardous materials either by Ensley Township employees or by contactors and agents of Ensley Township. Where the Hazardous Materials Team is used in any aspect of the removal, cleanup, control, or monitoring of any release or other incident involving hazardous materials, the responsible party shall be liable to the Township of Ensley for costs incurred in using the Hazardous Materials Team shall be Assessable Costs.

#### **Section 4: Cost Recovery Authorization and Procedure:**

- 1) The Township of Ensley may recover all Assessable Costs in connection with a hazardous materials incident from any or all responsible parties jointly or severally.
- 2) In an effort to uniformly bill for apparatus and personnel by fire departments in response to Hazmat calls, a uniform cost recovery schedule has been recommended by the Newaygo County Fire Chiefs Association. All costs for fire apparatus and personnel incurred by Ensley Township shall be billed as established in the Cost Recovery Fee Table. All fees shall be reviewed from time to time by the Ensley Township Board and set by resolution as part of the Ensley Township Consolidation Fee Schedule. (See Table 1-08)
- 3) The Sand Lake Fire Department Chief or his/her designee shall determine the total Assessable Costs in amounts as established by resolution of the Ensley

Township Board and shall in consultation with other Ensley Township personnel involved in responding to a hazardous materials incident determine whether to assess any, all or part of such costs against any of the Responsible Parties. In making such determination, the following may be considered, among other considerations:

- a) The total assessable costs incurred by the public entity or entities;
  - b) The risk the hazardous materials incident imposed on Ensley Township, its residents, and their property;
  - c) Whether there was any injury or damage to person or property
  - d) Whether the hazardous materials incident required evacuation
  - e) The extent the hazardous materials incident required an unusual or extraordinary use of Ensley Township personnel and equipment
  - f) Whether there was any damage to the environment.
- 4) After consideration of the factors stated above, the Sand Lake Fire Department Chief or his/her designee may allocate Assessable Costs among and between Responsible Parties, including allocating all or some of such costs jointly and severally against more than one Responsible Party regardless if the Responsible Party has other legal liability.
  - 5) If the Sand Lake Fire Department Chief or his/her designee determines not to assess all or part of Assessable Costs against a Responsible Party, such determination shall not in any way limit or extinguish liability of the Responsible Party to the Township of Ensley.
  - 6) The Responsible Party may appeal the decision of the Chief or his/her designee if the Party sends within fourteen (14) calendar days, a request for appeal to the clerk of the legislative body of the local unit, detailing the reasons for the objection and the amount the Party considers appropriate. The legislative body's decision on the appeal shall be final.

### **Section 5: Billing and Collection of Assessable Costs**

Following the conclusion of the hazardous materials incident the Sand Lake Fire Department Chief or his/her designee determines will determine the Assessable Costs against the responsible party and submit a detailed listing of all known expenses to the Ensley Township Treasurer, who shall prepare an itemized invoice to the Responsible Party for payment. The invoice shall demand full payment within thirty (30) days of receipt of the bill. Any additional expenses that become known to the Ensley Township Treasurer following the transmittal of the bill to the responsible party shall be billed in the same manner on a subsequent bill to the responsible party. For any amounts due that remain unpaid after thirty (30) days, the Ensley Township Treasurer shall impose a late charge of one percent (1%) per month, or fraction thereof.

## **Section 6: Other Remedies**

In the event that said costs are not paid, the Township of Ensley may pursue any other remedy deemed appropriate or may institute any appropriate action or proceeding, in court of competent jurisdiction to collect charges imposed under this Ordinance. The Chief or his/her designee may further assess to the Responsible Party legal fees, including court and attorney fees, required to collect the charges imposed under this Ordinance the Township of Ensley *in addition to the Assessable Costs*. In addition to the above, the Township of Ensley may, at its discretion, add any and all un-reimbursed costs of cleanup and restoration and mentioned in this Ordinance to the tax roll (via a LIEN) of the affected property if one or more of the responsible parties own the affected property, and to levy and collect such costs in the same manner as provided for the levy and collection of real property taxes. The recovery of charges imposed under this Ordinance does not limit the liability of the responsible parties under local Ordinance or State or Federal law, rule, or regulation.

## **Section 7: Severability**

Should any provision or part of this Ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this Ordinance which shall remain in full force and effect.

## **Section 8: Effective Date**

This ordinance shall become effective immediately after publication in the newspaper. All ordinances or parts of ordinances in conflict are hereby repealed.

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Cynthia Harwood  
Ensley Township Clerk

## **Certification**

The undersigned Clerk of the Township of Ensley hereby certifies that the foregoing constitutes a true and complete copy of an Ordinance adopted by the Ensley Township Board of Trustees of the Township of Ensley, Newaygo County, Michigan at the meeting held on August 4, 2009, and that said meeting was conducted and public notice of said meeting was given pursuant to and in full compliance with the Open Meetings Act, being

Act 27, Public Acts of Michigan, 1976 and that the minutes of said meeting were kept and will be or have been made available as required by said Act.

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Cynthia Harwood  
Ensley Township Clerk