

COUNTY ORDINANCE NO. 14-15

A BILL ENTITLED

AN ACT CONCERNING AMENDMENTS TO THE HAZARDOUS MATERIALS CHAPTER (CHAPTER 30) OF THE CODE OF PUBLIC LOCAL LAWS OF QUEEN ANNE'S COUNTY.

FOR THE PURPOSE of providing for the recovery of response costs associated with the release of and response to hazardous materials by Queen Anne's County Volunteer Fire Companies and/or DES; 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 AMENDING 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 Chapter 30 of the Code of Public Local Laws of Queen Anne's County, Maryland entitled "Hazardous Materials" be amended 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 MATERIALS UNIT:

Any emergency response unit owned and operated by Queen Anne's County or any volunteer fire department of Queen Anne's County that meets or exceeds the requirements for a FEMA Type III team or higher as outlined in the FEMA Resource Typing Documents.

HAZARDOUS SUBSTANCE:

- A. Any substance designated pursuant to Section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42U.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) employees of the Department of Emergency Services ("DES"),
(ii) members of volunteer fire and/or ambulance companies at an hourly rate based on certification levels and in accordance with currently accepted industry standard rates. (iii) actual cost of 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. Administrative costs shall include but not be limited to preparation of documentation, reports, invoices or other items required by this ordinance. Administrative costs shall be billed at the hourly rate based on the certification level of the person(s) completing the documentation. All legal fees shall be invoiced at the actual cost billed to the county and/or fire department.

RESPONSIBLE PERSON -- The term "Responsible Person" shall have the meaning set forth in Section 7-201 of the Environmental Article of the Annotated Code of Maryland as the same may be amended from time to time.

SPILL RESPONSE UNIT -- A unit that contains at least the minimum equipment listed in the apparatus standards of the Queen Anne's County Fire and EMS Commission.

§ 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 - Primary Fire Dept., DES and/or HazMat Unit response-- incident involving 10 gallons or less without exposure to waterway or drainage systems (including ditches)
 2. Level 2 Response - Primary Fire Dept., DES and/or HazMat Unit response- incident involving 10-25 gallons spill without exposure to waterway or drainage systems (including ditches)
 3. Level 3 Response - Primary Fire Dept., DES and/or HazMat Unit Response - incident involving 20 - 50 gallons spill with or without exposure to waterway or drainage systems (including ditches).
 4. Level 4 Response - Primary Fire Dept., DES and/or HazMat Response Unit and/or Decontamination Unit -- 50 gallons 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; overturned tractor trailer; any incident requiring drilling of tanks, pump off of any product; Industrial toxic gas and or chemical leak; All rail car leaks; any incident that does not fit in either levels 1-3.
- 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) employees of the Department of Emergency Services,
 - (ii) members of volunteer fire and/or ambulance companies at an hourly rate based on certification levels and in accordance with currently accepted industry standard rates.

§ 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. Any Queen Anne's County Volunteer Fire Company or Queen Anne's shall be permitted to invoice the responsible person or company directly or by the use of a third party billing service.

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 responsible person or company within fifteen (15) business days after the incident is closed. Submitted invoices must include sufficient documentation for cost reimbursement to include a Maryland Department of the Environment (MDE) spill report and the reports of the responding fire department(s) and/or DES. Copies of personnel certifications and on-scene duties performed by all personnel involved in the incident, 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. shall be maintained by the primary fire department, DES or the hazardous materials unit for review).

C.

§ 30-7. Methods of Enforcement.

A. The Volunteer Fire Company or 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 Volunteer Fire Company or 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.

C. The Volunteer Fire Company or the County may retain the services of a third party to collect any invoices that remain unpaid after sixty days from the date of the invoice. Fees assessed by the third party to collect the debt shall be paid by the invoiced responsible person.

§ 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 Dumenil

DATE: September 9, 2014

PUBLIC HEARING HELD: September 23, 2014 @ 6:20 p.m.

VOTE: 5 Yea/ 0 Nay

DATE OF ADOPTION: October 14, 2014

DATE EFFECTIVE: November 29, 2014

FISCAL IMPACT NOTE

Legislation No: 0-07-17
Date Introduced: 04-03-07

Hearing Date: 4-24-07
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 by Queen Anne's County Volunteer Fire Companies and/or DES regardless of the location of the incident.

Analysis of Fiscal Impact: