

ORDINANCE NO. 9

An ordinance regarding hazardous substances and wastes, and requiring persons responsible for the storing, handling and transportation of such substances to cleanup spills, and providing remedies for the County of Benton to cleanup such spills upon failure to do so, and providing penalties for the violation thereof.

HAZARDOUS SUBSTANCES

.01 PURPOSE. In order to reduce the danger to public health, safety and welfare from the spills of hazardous substances these regulations are promulgated to establish responsibility for the removal and cleanup of spills within the county limits.

.02 DEFINITIONS. For the purpose of this ordinance these words have the following meanings:

(a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either the following effects:

1. Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible, illness.
2. Poses a substantial danger to human health or the environment.

"Hazardous waste" may include but not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

"Hazardous waste" does not include:

1. Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.
2. Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

(section 455B.411 (3), Code of Iowa)

(b) "Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "Hazardous substance" may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous materials designated by the secretary of transportation under the Hazardous Materials Transportation Act.

(section 455B.381 (1), Code of Iowa)

(c) "Hazardous condition" means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance or hazardous waste onto the land, into a water of the state or into the atmosphere which creates an immediate or potential danger to the public health or safety.

(section 455B.381 (2), Code of Iowa)

(d) "Persons having control over a hazardous substance" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

(section 455B.381 (8), Code of Iowa)

(e) "Cleanup" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.

(section 455B.381 (6), Code of Iowa)

(f) "Person" means individual, corporation, firm, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(section 4.1 (13), Code of Iowa)

.03 CLEANUP REQUIRED

(a) Whenever a hazardous condition is created so that a hazardous substance or waste or constituent of the hazardous waste or substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the person having control over the hazardous material shall cause the condition to be remedied by as cleanup, as defined by section .02 (e), as rapidly as feasible to an acceptable safe condition, and restore the affected area to its state prior to the hazardous condition as far as practicable. The cost of the cleanup shall be borne by the person having control over the hazardous substance.

(b) If the person having control over the hazardous substance does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the County may, by an authorized officer, give reasonable notice based on the character of the hazardous condition, setting a deadline for commencing and accomplishing the cleanup or the County may proceed to procure cleanup services. If the cost of the cleanup is beyond the capacity of the County to finance, the authorized officer shall report to the Board of Supervisors and immediately seek any state or federal funds available for such cleanup.

.04 LIABILITY FOR CLEANUP COSTS

1. The person in charge of the hazardous substance shall be strictly liable to the County for all of the following:

a. The reasonable cleanup costs incurred by the County as a result of the failure of the person to cleanup a hazardous substance or waste involved in a hazardous condition caused by that person.

b. The reasonable costs incurred by the County to evacuate people from the area threatened by the hazardous condition caused by the person.

c. The reasonable damages to the County for injury to, destruction of, or loss of County property, including parks and roads, resulting from a hazardous condition caused by the person, including the costs of assessing the injury, destruction or loss.

.05 NOTIFICATION

a. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the Benton County Sheriff's Department of the occurrence of a hazardous condition as soon as possible by no later than six (6) hours after the onset of the hazardous condition or discovery of the hazardous condition. The Sheriff's Department/County Office of Emergency Management shall notify the proper state office in the manner established by the state.

b. Any County employee or any member of a law enforcement agency, or any member of a city, township or fire district fire department who discovers a hazardous condition shall notify the Sheriff's Department, which shall or instruct the County Office of Emergency Management to notify the proper state office in the manner established by the state.

.06 POLICE AUTHORITY If the circumstances reasonably so require, the Benton County Sheriff and/or the County Office of Emergency Management or their representative may:

(a) Evacuate persons, even from their homes, to areas away from the site of the hazardous condition, and

(b) Establish perimeters or other boundaries at or near the site of a hazardous condition and limit access to cleanup personnel.

No person shall disobey an order of the Sheriff or any other deputy or peace officer/law enforcement officer issued under this section.

.07 COUNTY LIABILITY. Benton County shall not be liable to any person for claims of damage, injuries or losses resulting from any hazardous conditions. Except, if the County is the person having control over the hazardous substance as defined in section .02 (d).


.08 PENALTY. Any person violating any provision, section, or paragraph of this Ordinance shall be guilty of a misdemeanor, and on conviction hereof be subject to a fine of not more than \$100.00 or be imprisoned for not more than 30 days. Each day a violation shall continue shall constitute a separate offense.

.09 SEPARABILITY OF PROVISIONS. It is the intention of the Board of Supervisors that each section, paragraph, sentence, clause and provision is separate, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance nor any part thereof other than affected by such decision.

That this Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Passed and Approved this 16th day of December, 1986.

BENTON COUNTY BOARD OF SUPERVISORS


Dee Hanson
Harry J Horak
Edwin J. Brantley

ATTEST:

Lorenna E. Rippel
Florence E. Rippel
Benton County Auditor

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2

BOOK 212 PAGE 868
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