

COUNTY OF MONTCALM

HAZARDOUS MATERIALS REMOVAL ORDINANCE

Adopted: May 28, 2013

Effective: July 29, 2013

AN ORDINANCE TO PROVIDE FOR THE REMOVAL AND CLEANUP OF
HAZARDOUS WASTE MATERIAL RELEASES AND THE COST
RECOVERY FOR PUBLIC REMOVAL AND CLEANUP OF HAZARDOUS
WASTE MATERIAL RELEASES

MONTCALM COUNTY, MICHIGAN, ORDAINS:

Section 1. Title. This Ordinance shall be known and cited as the Montcalm County "Hazardous Materials Removal Ordinance."

Section 2. Purpose. The purpose of this Ordinance is to protect the health, safety, and general welfare of the residents of Montcalm County by providing for the immediate removal and cleanup of hazardous material releases; for a duty to remove and clean up hazardous waste material releases by responsible parties; for County action to remove and clean up hazardous material releases when the responsible party fails to properly act; for recovery of costs incurred by the County in acting to remove and clean up releases; and by pursuing other remedies consistent with state laws and other county and township ordinances.

Section 3. Definitions. The following words and terms are defined for purposes of their use in this Ordinance. Any word or term not defined in this Ordinance shall be considered to be defined in accordance with its common or standard definition:

A) *Hazardous materials* means any materials which pose a substantial present or potential hazard to human life, health and safety, or the environment, including but not limited to hazardous materials as defined in Part 111 of Act 451 of Michigan Public Acts of 1994 (being MCL 324.11103), as amended, hazardous substances as defined in Part 201 of Act 451 of Michigan Public Acts of 1994 (being MCL 324.20101), as amended, and any other substances that have been classified by the local, state or federal government or any of their departments or agencies to be hazardous or toxic.

B) *Release* means any unpermitted spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment.

C) *Responsible Party* means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity that is responsible for or contributes to a release of a hazardous material, either actual or threatened, or is an owner or operator, as defined in Part 201 of Act 451 of Michigan Public Acts of 1994 (being MCL 324.20101), as amended, an operator, as defined in Part 111 of Act 451 of Michigan Public Acts of 1994 (being MCL 324.11104, as amended), tenant, occupant or party in control of real or personal property onto which or from which hazardous materials have been released.

Section 4. Duty to Remove. It shall be the duty of any responsible party to immediately remove hazardous materials released and undertake and complete a total cleanup of the area of the release 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 the Michigan Department of Natural Resources pursuant to Act 451 of the Michigan Public Acts of 1994, as amended, or other applicable law or environmental law or regulation.

Section 5. Failure to Remove.

A) Any responsible party who fails to comply completely with Section 4 of this Ordinance shall be liable to the County and its agents, contractors and employees, for any costs incurred in the removal and cleanup of any and all hazardous materials and the restoration of the affected property.

B) In the event that any responsible party fails to immediately remove such hazardous material, the County shall have the right to enter on to the property involved with the release and remove and conduct a cleanup of all such hazardous materials, either by County employees or by contractors and agents of the County.

Section 6. Liability for Cost Recovery.

A) The responsible party shall pay the County all costs incurred by the County pursuant to Section 5 including, but not limited to, the following:

(i) Equipment costs, including repair or replacement of equipment, if any equipment used in a cleanup is damaged or destroyed;

(ii) Any personnel-related costs incurred by the County, its agents, or contractors as a result of responding to a hazardous materials release, including, but not limited to, wages, salaries, fringe benefits, and insurance for full-time, part-time, and contractual employees;

(iii) Other expenses incurred by the County in responding to a hazardous materials release, including, but not limited to, the rental or purchase of machinery or equipment, services, labor, consultants, legal and engineering fees, medical and hospitalization costs, the replacement of personal protective equipment, extinguishing

agents, supplies, water purchased from municipal water supplies, transportation costs, meals and lodging for personnel responding to a hazardous materials release, and lodging and meals for persons evacuated from an area during a hazardous materials release;

(iv) Charges to the County imposed by any local, county, state or federal governmental entities related to a hazardous materials release;

(v) Costs incurred by the County for the cleanup of the equipment and site where the release occurred, and the return of both to acceptable standards; and

(vi) Costs incurred in accounting for all hazardous materials-related expenditures, including billing, collection costs, and legal fees.

B) A responsible party shall reimburse the County for the reimbursable costs and expenses described above incurred by the County in responding to a hazardous materials release. The responsible party shall remit the reimbursable costs and expenses to the County within thirty (30) days of the mailing date of an invoice. For any amounts due that remain unpaid after thirty (30) days, the County may impose a late charge of one percent (1%) per month. In the event that the responsible party does not pay the reimbursable costs, the County may take whatever collection steps may be deemed appropriate, including the placement of all such charges on the tax roll for the property and to levy and collect such costs in the same manner as provided for the levy and collection of real property taxes against such property.

C) The County may pursue any other remedy, or may institute any appropriate action or proceedings in a court of competent jurisdiction to collect costs for which liability is imposed under this Ordinance.

D) The recovery of charges composed under this Ordinance does not limit or modify liability of parties under local ordinance, state or federal law, rule or regulation.

Section 7. Local Government Functions. Nothing in this Ordinance shall be construed, nor have the effect of limiting or prohibiting any local unit of government from imposing and exacting charges for reimbursement upon a responsible party in order to recover costs incurred by the local unit. Furthermore, in the event any city, township, or village within the County shall pursuant to ordinance or resolution by its governing body, resolve that hazardous material responses shall not be provided by the County to their local unit, then, and in such event, this Ordinance shall be deemed to be of no force and effect in that city, township, or village.

Section 8. Effect upon Federal or State Law. Nothing herein shall be construed nor have the effect of limiting or modifying any lawful enablement provided to any governmental agency by virtue of existing federal or state law, rule, or regulation and nothing herein shall be construed, nor have the effect of limiting the County's ability to pursue remedies, including reimbursements, as may be provided for under any such federal or state law, rule, or regulation.

Section 9. Severability. The various parts, sections and clauses of this Ordinance are hereby declared severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

Section 10. Effective Date. This Ordinance becomes effective immediately upon its adoption and publication in a newspaper circulating within Montcalm County, Michigan.

Moved by Commissioner Retzloff, seconded by Commissioner Baker that the foregoing Ordinance is adopted.

YEAS: Commissioners Blanding, Lindeman, Kellenberger, Braman, Retzloff, Carr, Baker,
DeWitt, Johansen

NAYS:

ABSENT:

ORDINANCE IS ADOPTED.

Patrick Q. Carr,
Montcalm County Board of Commissioners, Chairperson

CERTIFICATION

I hereby certify the foregoing is a true and complete copy of an Ordinance adopted by the County Board of County Commissioners of Montcalm County at a regular meeting held on May 28, 2013. I hereby further certify the regular meeting was conducted and public notice of regular meeting was given pursuant to and in full compliance with the Open Meetings Act, being Public Act 267, of the Public Acts of Michigan of 1976, and that minutes were kept and will be or have been made available as required by the Act. I hereby further certify that the Ordinance was published in *The Daily News* on Saturday, June 8, 2013.

Kristen Millard, County Clerk