



12/3/2009

UNION COUNTY BOARD OF CHOSEN FREEHOLDERS

ORDINANCE NO: 698-2009  
 DATE OF INTRO: 12/3/2009  
 DATE OF ADOPTION: 12/17/2009

AN ORDINANCE TO AMEND "THE LAWS OF UNION COUNTY: ADMINISTRATIVE CODE AND POLICIES AND GENERAL LEGISLATION" BY ADDING CHAPTER 1 § 1-129-EMERGENCY RESPONSE AND COST RECOVERY

BE IT ORDAINED, by the Board of Chosen Freeholders of the County of Union:

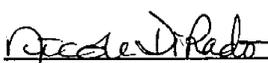
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Insertions are Underlined

**NO SUFFICIENCY OF FUNDS REQUIRED**

*MZ* 12/3/09

INTRODUCTION				RECORD OF VOTE				FINAL ADOPTION							
FREEHOLDER	Aye	Nay	Abs	Pass	Ord.	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Ord.	Sec	NP
ESTRADA	X							ESTRADA	X						
HOLMES	X							HOLMES	X						
KOWALSKI	X							KOWALSKI	X						
PROCTOR	X				X			PROCTOR	X				X		
SCANLON	X					X		SCANLON	X					X	
VAN BLAKE	X							VAN BLAKE	X						
WARD	X							WARD							X
SULLIVAN VICE-CHAIRMAN	X							SULLIVAN VICE-CHAIRMAN	X						
MIRABELLA CHAIRMAN	X							MIRABELLA CHAIRMAN	X						

APPROVED AS TO FORM  COUNTY ATTORNEY	I hereby certify the above is an original ordinance adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.   CLERK
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I hereby certify this is a true copy of a ordinance adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.  _____ CLERK
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**§ 1-129. Prohibition of Unauthorized of Unpermitted Discharge of Hazardous Substances**

A. Authority: This Ordinance is enacted pursuant to and consistent with the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq., and The Spill Compensation and Control Act N.J.S.A.58:10-23.11 et seq., and the rules and regulations adopted thereunder.

B. Purpose: This Ordinance serves to prohibit the unauthorized and/or unpermitted discharge of a hazardous substance within the jurisdiction of the County of Union. This Ordinance also authorizes the UCDEM to conduct emergency response actions and establish procedures and protocols for such actions. This Ordinance further provides for the recovery of cost incurred by UCDEM and/or its Agents in an emergency response action.

C. Definitions: The words and terms used in this Ordinance shall have the following meanings:

“Accidental Discharge” shall mean those incidents which occurred unexpectedly and unintentionally, by chance or by an act of God.

“Agent’s of Certified Local Health Agency” shall include, for the purpose of this Ordinance, any Municipality or Public Health Entity which executes a Shared Service Agreement with the County of Union; pursuant to the Uniform Shared Services and Consolidation Act N.J.S.A. 40A:65-1 et seq., or subcontracting units who agree to provide emergency response services within the geographical boundaries of the Municipality or geographical jurisdictional boundaries of the Local Certified Health Agency, provided such an Agreement is incorporated into the Union County CEHA (County Environmental Health Act) Work Plan pursuant to N.J.S.A. 26:3A2-33.

“Certified Local Health Agency” means the Union County, —Office of Health Management (UCOHM), or when appropriate, its designee.

“County” means the County of Union, its employees, its Agents, its Officers, and its Officials.

“Department” means the New Jersey Department of Environmental Protection.

“Discharge” means any intentional or unintentional act or omission, unless pursuant to, and in compliance with, a valid, State or Federal permit therefore, resulting in the releasing, spilling, pumping, pouring, emitting, emptying, or dumping of any amount of hazardous substance into the waters, or onto the land of the County, or into the waters or land outside the jurisdiction of the County when damage may result to the people, land, waters, or natural resources within the jurisdiction of the County of Union. This definition does not include any “leak”.

“Leak” or “Leakage” means any escape of a hazardous substance from the ordinary container employed in the normal course of storage, transfer, processing, or use, into secondary containment or diversion system or onto a surface from which it is cleaned up and removed prior to its escape into the waters or onto the lands of the State.

“Emergency Response Action” means any action taken by the Certified Local Health Agency, its Employees, Agents, Contractors, or Municipal Agencies in response to a discharge or a threatened discharge of a hazardous substance for the purpose of:

- (1) Investigating its cause, source or affect.

(2) Initiating any action to prevent or mitigate any risk or threat to public health, safety, or welfare arising out of the discharge. Preventing or mitigating any damage or injury to public or private property or natural resources, and

(3) Conducting or overseeing a remedial action.

“Emergency Response Action Costs” means all costs incurred by Certified Local Health Agency, its Employees, its Agents, Contractors, or Municipal Agencies in connection with any emergency response action, including overtime costs for deployed emergency response personnel, medical, and hospital treatment for injuries incurred, expendable items, and all reasonable expenses associated with cost recovery process, including but not limited to, reasonable attorney fees, court costs, litigation costs, expert fees, investigation costs, depositions, tests, copying and all out of pocket costs, as well as cost of towing, rigging company, and technical assistance by the County. Excluded are costs to pay volunteer responders and costs associated with Class “A” fire fighting.

“Expendable Items” means any items used to prevent, mitigate, suppress, or contain any discharge or threatened discharge, which cannot be reused or replenished or replaced without cost after use or deployed in an emergency response action.

“Expendable Items” shall include: but are not limited to, chemical extinguishing agents, adsorbents and adsorbent materials; sand; drums; containers; protective equipment and clothing; including chemical protective suits; gloves; boots; and goggles.

“Hazardous Substances” means for the purpose of this Ordinance all substances included within the definition of “hazardous substance” under N.J.A.C.7:1E-1.7, including all amendments and supplements, thereto, all substances considered hazardous materials under 49 CFR 105 and all substances considered hazardous waste under N.J.A.C. 7:26-1.1 et seq.

“Municipal Agency” shall mean any Municipality which has a written Shared Service Agreement with the Certified Local Health Agency for cost recovery.

“Municipality” means any of the incorporated Municipalities within the County of Union, including their Employees, Officers, and Officials.

“Owner or Operator” means with respect to a vessel, any person owning or operating or chartering by demise such vessel; with respect to any facility or vehicle, any person owning or operating such facility or vehicle, whether by lease, contract or any other form of Agreement; with respect to abandoned facilities or vehicles, the person who owned or operated the facility or vehicle immediately prior to such abandonment; the owner or operator at the time of the discharge.

“Person” means any entity or natural person, including without limitation of the following: Public or Private Corporations, Officers, Directors, Shareholders of a Corporation/Company, Companies, Associations, Societies, Firms, Partnerships, Joint Stock Companies, Individuals, Interstate Subdivisions or Agents, the State of New Jersey and any of its Political Subdivisions or Agents; and any other State and any of its Political Sub-Divisions or Agents.

“Responsible Party” means a person who is in any way deemed responsible for a discharge of a hazardous substance, including each owner and operator and any other person obligated, without regard to fault, by law to clean up and remove a discharged hazardous substance.

D. Regulations: The discharge of a hazardous substance is prohibited, except this prohibition shall not apply to discharges conducted in compliance with the conditions of a valid Federal or State permit or otherwise authorized by Law.

E. Notification; Any person who is in any way responsible for, or has knowledge of a discharge of a hazardous substance which occurs after the effective date of this Ordinance shall immediately notify the Department of Environmental Protection "Hot Line" at (877) WARN DEP (927-6337) pursuant to N.J.A.C. 7:1E-5.3. **Notification not required for exempted hazardous substances pursuant to NJAC 7:1E-5.3(e).**

F. Any Municipality having knowledge of a discharge for a hazardous substance shall in addition to notifying the Department "Hot Line" at (609) 292-7172 pursuant N.J.A.C. 7:1-5.3 shall notify the Union County Division of Emergency Management Dispatcher at (908) 654-9800.

G. Liability Except as provided in Section D, any person who is in any way deemed responsible for the discharge of a hazardous substance shall be liable strictly, jointly, and severally for all emergency response actions costs as defined in Section C, incurred by the County, as Certified Local Health Agency, their Agents, Employees, Contractors, or Municipal Agency, and any personal or property damage incurred by the County, the Certified Local Agency, their Agents, Employees, Contractors, and Municipal Agency.

H. Emergency Response: The Certified Local Health Agency (UCOHM) may initiate and conduct an emergency response action in response to a discharge of a hazardous substance that has occurred, is occurring, or threatens to occur within the jurisdictional boundaries of the County of Union pursuant to N.J.S.A. 26:3A2-27.

I. The Certified Local Health Agency shall be the lead Agency in conducting emergency response actions and at the scene of a Hazardous Materials Incident, unless otherwise provided for in an Shared Service Agreement incorporated into the County's CEHA Work Program.

J. Inspection, Right of Entry Authorized representatives of the Certified Local Health Agency shall have the same right as an authorized representative of the Department to enter and inspect any premises, facility, site, tank, vessel, vehicle, structure, container, pipe, hose, or building for the purpose of ascertaining compliance or non-compliance with the provisions of this Ordinance and the provisions set forth in N.J.A.C.7:1E-1.1 *et seq.*

K. When a discharge of a hazardous substance has occurred, is occurring, or appears imminent from a facility, site, premise, vessel, vehicle, building, tank, structure, pipe, hose, or container at which no one is present, the Certified Health Agency shall take responsible steps to gain access to the facility in order to protect human health, safety, welfare, and the environment.

L. Cost of Recovery; This Certified Local Health Agency may recover all costs as defined above incurred by it, the county, its Employees, Agents, Contractors, and Municipal Agencies in connection with an emergency response action. Cost reimbursement shall be in accordance with the currently approved reimbursement rates as established by the Federal Emergency Management Agency (FEMA) and as set forth in Schedule "A" annexed hereto and made a part hereof, for costs not otherwise established by FEMA.

(1) Whenever the Certified Local Health Agency seeks to recover costs the Certified Health Agency shall send, by certified mail, return receipt, a demand letter to the responsible party or parties, which shall contain:

(a) The inclusive date(s) and time(s) of the discharge, if known;

(b) The basis for the charges/liability to the extent known and as may be duly amended upon investigation, discovery and verification;

(c) An itemization of the costs incurred by the Certified Local Health Agency, the County, their Employees, Agents, Contractors, and authorized Municipal Agencies in responding to the discharge;

(d) A calculation sheet including hours and personnel charged, salary rates and any overhead rates; and

(e) An explanation of the procedure to be followed to pay the costs demanded and the process to appeal the demand. Failure to appeal will be interpreted as an acceptance of the cost recovery expenses. Payments shall be remitted within forty-five (45) of receipt of the demand letter.

(2) Whenever this Certified Local Health Agency issues a demand letter to a party

deemed responsible and the responsible party fails to appeal or remit payment within forty-five (45) as prescribed herein, the Certified Local Health Agency may bring an action in a court of competent jurisdiction to recover the costs incurred in the emergency response action, as prescribed in Section C, under Emergency Response Action cost.

(3) The County Manager or his designee may compromise the costs to be recovered in an amount not to exceed 25% of the original demanded costs to be recovered.

(4) Failure to remit payment beyond the forty-sixth (46<sup>th</sup>) day shall also result in a late penalty fee of 8% per year of the outstanding amount due.

(5) In the event that the collecting Agency is not able to collect all or partial cost from the responsible party or the New Jersey State Spill Fund, the County or Certified Local Health Agency shall not be responsible to its Agents or political sub-divisions for the balance due of same.

M. Penalties Pursuant to N.J.S.A. 26:3A2-25, N.J.S.A. 40:49-1 et seq. and N.J.S.A. 26:3-70, the State approved, Certified Local Health Agency Director or his/her designee, shall initiate legal proceedings for any violation of this Ordinance.

(1) It shall be a violation of this Ordinance for any person to:

(a) Obstruct, hinder, delay or interfere by force or otherwise the Certified Local Health Agency, any authorized governmental unit, their Employees, Agents, or Contractors, in the exercise of any power, function, or duty under the provisions of this Ordinance.

(b) Prepare, utter, or render any false statement, pertaining to investigations, reports, documents, plans or specifications permitted or required under the provisions of this Ordinance.

(c) Render, ineffective or inoperative, or fail to properly maintain any protective equipment or system installed, or intended to be installed in any building, premise, facility, structure, site, tank, vessel, vehicle, pipe, hose, container, or system which was intended to detect, sense, alarm, contain, prevent, suppress or control a discharge.

(d) Fail to properly maintain any equipment, vehicle, site, premise, facility, building, vessel, structure, storage container, cylinder, pipe, hose tank, or system which contains hazardous substance.

(e) Violate or cause to be violated any provisions of this Ordinance.

(2) A person who violates or causes to be violated a provision of this Ordinance shall be subject to a penalty of not less than two hundred (\$200.00) or more than five hundred (\$500.00) for each violation. If a violation is of a continuous nature, each day during which the violation remains shall constitute an additional and separate violation and penalty.

(3) A person who violates or causes to be violated a provision of this Ordinance shall also be subject to payment of reasonable litigation expenses, including but not limited to, court costs, attorney fees, investigation costs, expert expenses, depositions, tests, copying, and all out of pocket expenses.

N. Construction and Severability: This Ordinance is to be liberally construed to effectuate the purpose, herein, described. Nothing herein, is to be construed as repealing or abridging the emergency powers of any agency of government except to the extent expressly set forth within.

(1) If any Section, Subsection, Paragraph, Sentence, Clause, Phrase, or Work contained in this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance which shall remain in full force and effect.

O. Repealer: Any Ordinance or portion, thereof, enacted by the County of Union, any Municipality, Board of Health, or other public entity within the County of Union that is inconsistent with or stands as an obstacle to the effective implementation of this Ordinance shall be superseded by this Ordinance and, hereby, repealed.

(1) To the extent that any Municipality has adopted an Ordinance duly approved by the N.J.D.E.P. that provides for cost recovery of their own, this Ordinance does not supersede or obligate the Municipality/Political Sub-Division to utilize the County to obtain cost recovery.

P. Disposition of Monies: The collection of all emergency response cost and cost recovery expenses, fund monies, penalties, late fee(s), and interest, including all litigation costs, fees, and expenses, shall be deposited within the established Environmental Quality and Enforcement Trust Fund of the Union County Division of Emergency Management. Said monies shall be dedicated to the use of the County or Certified Local Health Agency in carrying out its responsibilities under this Ordinance and the County Environmental Health Act.

**BE IT FURTHER ORDAINED** as follows:

1. That this Ordinance shall take effect at the time and manner provided by law.
2. That the Clerk of the Board be and is hereby authorized and directed to publish the required notice in the appropriate newspaper of such introduction and of a public hearing on December 17, 2009 and shall forward one certified copy, upon final passage, to each Clerk of all Municipalities located within the County of Union.