

**CODIFIED ORDINANCES OF EVART
PART SIXTEEN -FIRE PREVENTION CODE**

CHAPTER 1614

Hazardous Substances Release and Fire Emergency Response Cost Recovery

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CROSS REFERENCES

CHAPTER 1614 – Added by Ordinance 2010-2 (September 8, 2010)

1614.01 Title.

This Ordinance shall be known and cited as the "City of Evart Hazardous Substances Release and Fire Emergency Response Cost Recovery Ordinance."

1614.02 Purpose.

The purpose of this Ordinance is to protect City of Evart from incurring extraordinary expenses resulting from the use of Joint Fire Department and/or City resources in Emergency Responses to incidents involving Hazardous Substances and/or Fire Emergencies; to authorize the City to impose charges to recover the reasonable and actual costs the City and/or the Joint Fire Department incurs in responding to calls for assistance in connection with a Fire Emergency Response and/or Release or Threat of Release of Hazardous Substances; and to otherwise provide for the health, safety, and welfare of residents and property owners of the City.

1614.03 Preamble.

The City is empowered by MCL 41.806a to adopt Ordinances for the collection of fees for emergency services, and by the Home Rule City Act, being MCL 117.1 et seq and the Evart City Charter, Section 4.31, to adopt Ordinances regulating the public health, safety, and

general welfare of persons and property, and to provide penalties for the violation of such Ordinances.

1614.04 Definitions.

As used in this Ordinance:

- A. *"Emergency Response"* means providing, sending or utilizing public service, police, fire fighting, rescue services, or resuscitator services to the scene of a Release or Threat of Release; and any evaluation, interim response activity, remedial action, demolition, or other actions necessary to protect the public health, safety, or welfare, or **the** environment or the natural resources resulting from a Release or Threat of Release; and any health assessments or health effect studies carried out under the supervision, or with the approval of the department of public health, and enforcement actions related to any Release or Threat of Release; and any response to a Public Safety or Fire Emergency Incident.

- B. *"Expense of Emergency Response"* means all costs and expenses incurred in any Emergency Response and includes without limitation those costs for services incurred by the City and/or the Joint Fire Department in connection with a response to a Public Safety or Fire Emergency Incident or Release or Threat of Release, including but not limited to, the actual labor and material costs of the Joint Fire Department and/or City (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 contracted labor) whether or not the services are provided by the Joint Fire Department, the City, or by a third party on behalf of the Joint Fire Department or City, service charges and interest, attorney fees, litigation costs and any costs, charges, fines or penalties to the Joint Fire Department or the City imposed by any court or by any state or federal agencies.

- C. *"Facility"* means any area, place, or property where a Hazardous Substance in excess of the concentrations which satisfy the requirements of MCL 324.20120a(l)(a) or (17) or the cleanup criteria for unrestricted residential use under Part 213 of the Natural Resources and Environmental Protection Act (*"NREPA"* or *"1994 PA 451"*) has been released, deposited, disposed of, or otherwise comes to be located. *"Facility"* does not include any area, place, or property at which response activities have been completed which satisfy the cleanup criteria for the residential category provided for in MCL 324.20120a(l)(a) and (17) or at which corrective action has been completed under part 213 of NREPA which satisfies the cleanup criteria for unrestricted residential use.

- D. *"Hazardous Substance"* means 1 or more of the following:
 - 1. Any substance that the Michigan Department of Natural Resources and Environment (MDNRE) demonstrates, on a case by case basis, poses an unacceptable risk to the

public health, safety, or welfare, or the environment, considering the fate of the substance, dose-response, toxicity, or adverse impact on natural resources.

2. A Hazardous Substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act ("*CERCLA*") of 1980, Public Law 96-510, 94 Stat. 2767.
3. Hazardous waste as defined in Part 111 of NREPA.
4. Petroleum as described in Part 213 of NREPA.

"Hazardous Substance" does not include fruit, vegetable, or field crop residuals or processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural management practices developed pursuant to the Michigan Right to Farm Act, 1981 PA 93.

E. *"Joint Fire Department"* means the Ewart Area Joint Fire Department.

F. *"Permitted Release"* means one or more of the following:

1. A Release in compliance with an applicable, legally enforceable permit issued under state law.
2. A lawful and authorized discharge into a permitted waste treatment facility.
3. A federally permitted Release as defined in the CERCLA.

"Person" means an individual, sole proprietorship, partnership, joint venture, trust, firm, joint venture trust, firm, joint stock company, corporation, limited liability company, or any other legal entity.

G. *"Public Safety or Fire Emergency Incident"* means one or more of the following:

1. Medical first response, technical rescue, extrication, or other Joint Fire Department or City services provided for any accident or fire.
2. Joint Fire Department and/or City response to a false alarm by an automated or manual device designed to request or summon emergency assistance which device is activated intentionally or otherwise, in the absence of an actual need for emergency assistance.
3. Joint Fire Department and/or City response to the verbal or written threat of a bomb or other explosive device, which if discharged as threatened, would violate a federal, state or local law.
4. Joint Fire Department and/or City services relating to the tearing down of a structure damaged by fire, which must in the opinion of the Joint Fire Department chief or his or her designee be promptly demolished following the fire to protect public safety.
5. Joint Fire Department and/or City response to the verbal or written threat of physical harm to oneself or another or another's property, which if carried out would be a violation of federal, state or local law.
6. Joint Fire Department and/or City services relating to the disabling of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect,

transport electricity, natural gas, communication or electronic signals (including, but not limited to, telephone, computer, cable television and stereo signals or electronic impulses), water or sanitary or storm sewage.

"Release" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Hazardous Substance into the environment, or the abandonment of barrels, containers, and other closed receptors containing a Hazardous Substance. "Release" does not include any of the activities exempted from the definition of "Release" in MCL 324.20101(bb)(i)-(v).

J. "Responsible Party" means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity responsible for a public safety or fire emergency incident or any owner, tenant, occupant or party in control of real and personal property from which, onto which or related to, which there is a public safety or fire emergency incident and their heirs, estates, successors, and assigns.

K. "Threat of Release" means any circumstance that may reasonably be anticipated to cause a Release.

L. "City" means City of Ewart, Osceola County, Michigan,

1614.05 Findings.

The City hereby finds that:

- A. There are certain Facilities in the City that contain Hazardous Substances that pose a danger to the public health, safety, or welfare, or to the environment of the City.
- B. There is a need to provide a method to eliminate the danger of environmental contamination caused by the existence of Hazardous Substances at Facilities within the City.
- C. It is the purpose of this Ordinance to help eliminate or lessen unacceptable risks to public health, safety, or welfare, or to the environment from environmental contamination at premises within the City.
- D. The responsibility for the cost of Emergency Response and repairing injury, destruction, or loss to natural resources caused by a Release or Threat of Release or Public Safety or Fire Emergency Incident should not be placed upon the public except when funds cannot be collected from, or an Emergency Response cannot be undertaken by, a Person liable under this Ordinance.

- E. Liability for the Expense of Emergency Response to address environmental contamination should be imposed upon those Persons who are responsible for the environmental contamination.
- F. This Ordinance is not intended to impose penalties or exemplary damages upon parties conducting an Emergency Response pursuant to a decree or order to which the United States is a party.
- G. This Ordinance is intended to foster the redevelopment and re-use of vacant Facilities and sites that have economic development potential, if that redevelopment and re-use assures the protection of the public health, safety, and welfare, and the environment.

1614.06 Liability

- A. Notwithstanding any other provision or rule of law and except as provided in NREPA or this Ordinance, the following Persons are liable to the City for the Expense of Emergency Response under this Ordinance:
 - 1. The owner or operator of a Facility if the owner or operator is responsible for an activity causing a Release or Threat of Release.
 - 2. The owner or operator of a Facility at the time of disposal of a Hazardous Substance if the owner or operator is responsible for an activity causing a Release or Threat of Release.
 - 3. A Person who operates a motor vehicle or other transporter which operation results in an Emergency Response; and a Person who owns or leases a motor vehicle or other transporter that is operated so as to result in an Emergency Response.
 - 4. Those Persons listed in MCL 324.20126(c).
 - 5. A Person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a Hazardous Substance owned or possessed by the Person, by any other Person, at a facility owned or operated by another Person and containing the Hazardous Substance. This subsection does not include any of the following:
 - (i) A Person who, on or after June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product. As used in this subsection, secondary material means scrap metal, paper, plastic, glass, textiles, or rubber, which has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products which may otherwise be produced from a raw or virgin material.

- (ii) A Person who, prior to June 5, 1995, arranges for the sale or transport of a secondary material for use in producing a new product unless the state has incurred response activity costs associated with these secondary materials prior to the effective date of the 1999 amendments to MCL 324.20126. As used in this subsection, "secondary material" means scrap metal, paper, plastic, glass, textiles, or rubber, which has demonstrated reuse or recycling potential and has been separated or removed from the solid waste stream for reuse or recycling, whether or not subsequent separation and processing is required, if substantial amounts of the material are consistently used in the manufacture of products which may otherwise be produced from a raw or virgin material.
 - (iii) A Person who arranges the lawful transport or disposal of any product or container commonly used in a residential household, which is in a quantity commonly used in a residential household, and which was used in the Person's residential household.
6. A Person who accepts or accepted any Hazardous Substance for transport to a facility selected by that Person.
 7. The estate or trust of a Person described in subsections 1 through 6 of Section 6 of this Ordinance.
 8. A Person responsible for a Public Safety or Fire Emergency Incident.
- B** Notwithstanding the above, the following Persons are not liable under this Ordinance unless the Person is responsible for an activity causing a Release at the facility:
- 1 The owner or operator of property onto which contamination has migrated (unless that Person is responsible for an activity causing the Release that is the source of contamination
 - 2 A Person who owns or operates a Facility in which the Release or threat of Release was caused solely by 1 or more of the following:
 - a. An act of God or war.
 - b. An act or omission of a third party other than an employee or agent of the Person or a Person in a contractual relationship existing either directly or indirectly with a Person who is liable under this section.
 - 3 Those listed in MCL 324.20126(1)(c)(i)-(ii).
 - 4 Those listed in MCL 324.20126(1)(d)(i)-(ii).
 - 5 Those listed in MCL 324.20126(2).
 - 6 Those listed in MCL 324.20126(3)(a)-(j).
 - 7 Those listed in MCL 324.20126(4)(a)-(b).
- C.** This Ordinance does not apply to a Permitted Release or a Release in compliance with applicable federal, state, or local pollution laws.

- D. The Expense of Emergency Response shall be determined by the City in consultation with the Joint Fire Department. In making such determination, the following may be considered:
1. The total costs attributable to the Emergency Response.
 2. The risk the Public Safety or Fire Emergency Incident, the Release, or Threat of Release imposed on the Joint Fire Department, the City, its residents and their property.
 3. Whether there was any injury or damage to person or property.
 4. Whether the Public Safety or Fire Emergency Incident, the Release or Threat of Release required evacuation.
 5. The extent the Public Safety or Fire Emergency Incident, the Release or the Threat of Release required an unusual or extraordinary use of the Joint Fire Department and/or City equipment; and
 6. Whether there was any damage to the environment.

If the City determines not to assess all or part of the costs, such determination shall not in any way limit or extinguish the liability of the Person or Responsible Party.

1614.07 Joint and Several Liability; Costs of Amounts Recoverable.

Except as provided in MCL 324.20126(2) or in Section 6 of this Ordinance, a Person who is liable under this Ordinance is jointly and severally liable for all of the following:

- A. All the City's Expenses of Emergency Response lawfully incurred related to the Release or Threat of Release at issue.
- B. Damages for the full value of injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing the injury, destruction, or loss resulting from the Release.

1614.08 Divisibility of Harm and Apportionment of Liability.

If 2 or more Persons acting independently are liable under this Ordinance, and there is a reasonable basis for division of harm to the contribution of each Person, each Person is subject to liability under this Ordinance only to the extent provided for in NREPA in general and MCL 324.20129 in particular.

1614.09 Limitation on Liability.

- A. Except as provided for below or in NREPA, the liability under this Ordinance for each Release or Threat of Release or the Public Safety or Fire Emergency Incident must not exceed the total of all the Expenses of Emergency Response, fines, and exemplary damages, plus \$50,000,000.00 damages for injury to, destruction of, or loss of natural resources resulting from the Release or Threat of Release or the Public Safety or Fire Emergency Incident, including the reasonable costs of assessing the injury, destruction, or loss resulting from the Release or Threat of Release or the Public Safety or Fire Emergency Incident.

- B. Notwithstanding the limits set forth in subsection (A) above or as otherwise provided in this Ordinance, the liability of a Person under this Ordinance must be the full and total costs and damages listed in subsection (A) in either of the following circumstances:
1. The Release or Threat of Release of a Hazardous Substance or the Public Safety or Fire Emergency Incident was the result of willful misconduct or gross negligence of the Person.
 2. The primary cause of the Release or Threat of Release or the Public Safety or Fire Emergency Incident was a knowing violation of applicable safety, construction, or operating standards or regulations.

1614.10 Billing Procedures.

- A. Initial Invoices. At the conclusion of an Emergency Response or a Public Safety or Fire Emergency incident, the Joint Fire Chief may submit a detailed listing of all known expenses to the Fire Department Administrative Assistant related to the Emergency Response to the incident, release, or threat of release at issue. The Administrative Assistant must then prepare an invoice to the liable Person requesting payment thereof within 30 days of the Joint Fire Dept's mailing or serving of the bill.
- B. Follow-up Invoices. Any additional expenses related to the Emergency Response or the Public Safety or Fire Emergency Incident which become known to the Joint Fire Department and/or the City after the Administrative Assistant transmits the bill to the responsible Person shall be billed in the same manner on a subsequent bill to the responsible Person.
- C. Failure to Pay; Procedure to Recover Costs. Any failure by the Person from whom the City seeks payment of the invoice referenced in this Section to pay the invoice within 30 days of the City's mailing or serving of the invoice is a default on the invoice. In case of default, the City may add all Expenses of Emergency Response to the tax roll of such property involved in the Hazardous Substance Release or Threat of Release or the Publics Safety or Fire Emergency Incident and to levy and collect such taxes against that property.

1614.11 Notice and Right to Appear Provisions.

- A. Any Person who receives an invoice for costs assessed under this Ordinance has the opportunity to appear before the City Council to request a modification of the assessed costs by:
1. Filing a written request with the City Clerk within 14 calendar days of the date of the invoice.
 2. Including in that written request a statement of all the reasons the Person who received the invoice believes the costs assessed should be modified.
- B. Upon receipt of such a written request, the City Clerk must put the issue on the agenda for the City Board's next regularly scheduled meeting.

- C A Person who receives an invoice under this Ordinance but who fails to file a timely written request under this Section waives the Person's right to appear before the City Council and the Person must make payment within the date specified in the invoice.
- D At the City Council meeting, the Person may address the City Council regarding the written request that the City Council modify the invoice amount. The Person must within reason conform his statements to those set forth in the Person's written request. Any City official with knowledge of the issue may likewise address the City Council and comment on the invoice. After hearing from all interested Persons, the City Council must review the invoice and make a final determination as to the costs the Person is called upon to pay and make its determination in writing.
- E. Following the City Council meeting, the City Clerk must send the City Council's written determination to the Person by first class mail to the last known address of the Person, and the invoice (as revised, if applicable) is due 30 days from the date of that mailing. If the Person fails to pay the assessed costs within those 30 days, the City has all available remedies under this Ordinance or applicable law to collect the invoice amount.

1614.12 Other Remedies.

- A. In addition to the remedies set forth in this Ordinance for collecting on invoices, the City may pursue any other available remedy, including instituting any appropriate action in a court of competent jurisdiction for payment of the charges due but unpaid from a responsible Person. All costs of such suit, including actual attorney fees, are also a recoverable cost within the same civil action.
- B. The recovery of charges imposed under this Ordinance does not limit liability of responsible Persons under local ordinance or state or federal law, rule or regulation.

1614.13 Conflict with State or Federal Law.

This Ordinance is to be construed so as not to conflict with state or federal law requiring Persons causing or responsible for Release, Threat of Release or the Public Safety or Fire Emergency Incident from engaging in remediation activities or paying the cost thereof, or both.

1614.14 Severability.

The provisions of this Chapter are severable; if any part of this Chapter is declared unenforceable by any court of competent jurisdiction, that declaration does not affect any other part of this Chapter.

1614.15 Repeal.

All Chapters and parts of Chapters that are in conflict with this Chapter are hereby repealed.