

SAMPLE COUNTY COST RECOVERY ORDINANCE

This sample ordinance is provided as guidance to counties and is subject to the approval of NJDEP prior to its use. Authority to adopt this Ordinance is pursuant to the County Environmental Health Act (CEHA) N.J.S.A. 26:3A2-21 et seq., whereby the Department of Environmental Protection certifies the county health agency and its approved agents to undertake a county-wide hazardous material emergency response program.

For more information, please contact NJDEP's Bureau of Local Environmental Management (BLEM) at (609) 292-1305.

The Ordinance must be sent to BLEM immediately following its adoption for NJDEP to review. The NJDEP Commissioner has 90-days from the date of receipt to issue her approval or denial. The mailing address for BLEM is:

**NJDEP-BLEM
Mail Code 09-01A
PO Box 420
Trenton, New Jersey 08625-0420**

The sample ordinance is as follows:

WHEREAS, the County of _____ designated the _____ County Health Department as the County entity for administration of the County Environmental Health Act Program, pursuant to N.J.S.A. 26:3A2-21 et seq. (CEHA) and, authorized preparation and submission to the Department of Environmental Protection (DEP) of a County Environmental Health Work Plan; and

WHEREAS, the DEP by order dated _____, certified approval of the County Plan for hazardous materials emergency response actions and enforcement; and

WHEREAS, the County Executive, through the _____ County Health Officer and Health Department has recommended adoption of an ordinance to establish standard procedures and provisions for the recovery from the responsible party of costs of responses to hazardous materials emergency spills and situations resulting from unpermitted discharges that occur throughout the County of _____; now, therefore, be it

ORDAINED, by the _____ County Board of Chosen Freeholders that:

1. The _____ County Emergency Response Cost Recovery Ordinance is as follows:

Section I - 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.

Section II - Purpose:

Unauthorized and unpermitted discharges of hazardous substances within the jurisdictional confines of the County of _____ are prohibited. This Ordinance establishes procedures and protocols for emergency response and provides for the recovery of costs incurred by the County of _____ and its approved agents in an emergency response action to unauthorized and unpermitted discharges and, as such, supplements the provisions of the _____ County Environmental Health Work Plan as approved by the DEP.

Section III - Definitions:

The words and terms used in this ordinance shall have the following meaning:

"Agents of the County" shall include, for purposes of this ordinance, a municipality, public entity, or other entity which executes a Uniform Shared Services agreement with the County pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1 et seq., for the purpose of providing emergency response services within the geographical boundaries of the County, provided such agreement is incorporated into the County's Work Plan pursuant to N.J.S.A. 26:3A2-33 and approved by DEP.

"County" means the County of _____, its employees, agents, officers and officials.

"Department" means the New Jersey Department of Environment Protection (DEP).

"Discharge" means an intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective State or Federal permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the land of the County, or into waters outside the County, or into waters outside of the County when

damage may result to the lands, waters or natural resources within the jurisdiction of the County. This definition does not include any "leak."

"Emergency response action" means any action taken by the County, its employees, agents or contractors in response to a discharge or threatened discharge of a hazardous substance for the purpose of: (1) investigating its cause, source or effect; (2) conducting or overseeing a remedial action; (3) initiating any action to prevent or mitigate any risk or threat to public health, safety or welfare arising out of a discharge; and (4) to prevent or mitigate any damage or injury to public or private property or natural resources.

"Emergency response action costs" means all costs reasonably incurred by the County of _____, its employees, Department approved agents, and contractors hired in connection with an emergency response action, including overtime costs for appropriately deployed emergency response personnel and expendable items. Excluded are costs to pay volunteer responders, and costs associated with fire fighting and police support.

"Expendable items" means any items used to prevent, mitigate or contain any discharge or threatened discharge, which cannot be reused or replenished or replaced without cost after use or employment in an emergency response action. Expendable items shall include, but are not limited to, chemical extinguishing agents, absorbents and absorbent materials, sand, recovery drums, protective equipment and clothing, including such items as disposable chemical protective suits, gloves, boots, and goggles. Items not compensable include those items typically employed to fight fires and not to mitigate a discharge.

"Hazardous substances" means all substances included within the definition of "hazardous substances" under N.J.A.C. 7:1E-1.7, including all amendments and supplements thereto.

"Leak or leaking" means any escape of a hazardous substance from the ordinary containers employed in the normal course of storage, transfer, processing or use into a 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.

"Municipality" means any of the incorporated municipalities within the County of _____, 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 or owner 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, any of the following; public or private corporations, 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.

"Responsible party" means a person who is in any way responsible for discharge, including each owner and operator and any other person obligated by law to clean up and remove contaminants.

Section IV - Prohibition:

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

Section V - Notification:

Any person who is in any way responsible for a discharge of a hazardous substance shall immediately notify the Department pursuant to N.J.A.C. 7:1E-5.3.

Section VI - Liability:

Any person who is in any way responsible for the discharge of a hazardous substance is liable strictly, jointly and severally for all emergency response action costs reasonably incurred by the County,

its agents, employees, and contractors, and any personal or property damage incurred by the county, its agents, employees and contractors.

Section VII - Emergency Response:

The County may initiate and conduct an emergency response action in response to a discharge that has occurred, is occurring or threatens to occur within the geographical boundaries of the County, in accordance with the provisions of the Department's Order of Certification dated _____.

Section VIII - Cost Recovery:

a. The County may recover all costs reasonably incurred by the County, its employees, Department approved agents, and contractors hired in connection with an emergency response action, including the overtime costs of appropriately deployed emergency response personnel costs incurred by the County in the recovery of these costs, and the costs of expendable items.

b. Whenever the County seeks to recover costs pursuant to a., above, the County shall send by certified and regular mail a demand letter to the responsible party or parties, which shall contain:

1. The date and time of the discharge;
2. The basis for liability;
3. A detailed narrative description of the costs incurred by the County, its employees, agents, contractors and authorized political subdivisions in responding to the discharge;
4. A calculation sheet, including hours and personnel charged, salary rates and any overhead rates;
5. An explanation of the procedures to be followed to pay the costs demanded or to appeal the demand.

Payment shall be remitted within 45 days of receipt of the demand letter.

c. Whenever the County issues a demand letter to a responsible party and the responsible party fails to remit payment within 45 days as prescribed herein, the County may bring an action in a court of competent jurisdiction to recover the costs incurred in the emergency response action, reasonable

litigation costs and interest on the outstanding amount due calculated from the 46th day following the receipt of the demand letter to the date judgment is rendered at the interest rate set forth in the Rules Governing the Courts of New Jersey.

Section IX - Inspection, Right of Entry:

Authorized representatives of the County shall have the same right as an authorized representative of the Department to enter and inspect any premises, facility, site, vessel, or building when there is an emergency condition, for the purpose of ascertaining compliance or non-compliance with the provisions of this ordinance and the provisions set forth at N.J.A.C. 7:1E-1 et seq.

Section X - Construction and Severability:

a. This Ordinance is to be liberally construed to effectuate the purposes 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 herein.

b. This Ordinance shall be implemented and enforced in accordance with the terms and conditions herein set forth, the County Plan, the Department's Order of Certification dated _____.

c. If any section, subsection, paragraph, sentence, clause, phrase, or word 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.

d. This Ordinance shall be deemed to include any additions or amendments that may be required by the Commissioner of the Department of Environmental Protection as a condition of approval.

Section XI - Repealer:

Any ordinance or portion thereof enacted by the County, any municipality, board of health, or other public entity within the County of _____ that contains any subject matter governed by this ordinance, which is consistent with or which stands as an obstacle to the effective implementation of this ordinance shall be superseded by this Ordinance and is hereby repealed and set aside.

Section XII - Effective Date:

This Ordinance shall take effect after public hearing and 90 days after final adoption by the Board of Chosen Freeholders unless disapproved by the Commissioner of the Department of Environmental Protection within said period pursuant to N.J.S.A. 26:3A2-27.

2. A public hearing on this Ordinance shall be held at: _____.
3. The Clerk of the Board is hereby directed to publish and distribute this ordinance in accordance with law.
4. Copies of this Ordinance upon adoption shall be forwarded to:

and within five working days after adoption, a certified copy shall be mailed to:

NJ Department of Environmental Protection

Bureau of Local Environmental Management

Mail Code 09-01A

PO Box 420

Trenton, New Jersey 08625-0420