

## ORDINANCE NO. 160

### AN ORDINANCE TO RECOVER EXPENDITURES INCURRED DURING THE CLEAN UP OF HAZARDOUS SPILLS IN THE VILLAGE OF DECATUR, MICHIGAN.

#### **THE VILLAGE OF DECATUR, MICHIGAN ORDAINS:**

**Section 1. INTENT.** Surface waters, groundwater, soils, vegetation, and atmosphere within the corporate limits of the Village of Decatur, Michigan are susceptible to damage from the handling, storage, use, processing and disposal of hazardous material. The expense incurred by taxpayers as a result of the Village of Decatur or its Designee having to respond in an emergency to protect life, property and the environment when there has been a release of hazardous materials should be recovered from the person responsible for the emergency.

**Section 2. DEFINITIONS.** As used in this Ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

A. CFR shall mean the Code of Federal Regulations.

B. Compressed gas shall mean any material regulated as a compressed gas by the United States Department of Transportation by regulations found in 49 CFR §173.300.

C. Designee shall mean Young's Environmental Services or such other public or private agency authorized in writing by the Village of Decatur to respond to hazardous materials incidents within the Village of Decatur.

D. Emergency action shall mean all of the activities conducted in order to prevent or mitigate injury to human health or to the environment inside the Village of Decatur from a release or threatened release of any material into or upon the environment.

E. Explosives shall mean any material regulated as a class A or class B explosive by the United States Department of Transportation by regulations found in 49 CFR §173.53 and §173.88.

F. Flammable liquid shall mean any material regulated as a flammable liquid by the United States Department of Transportation by regulations found in 49 CFR §173.115.

G. Flammable solid shall mean any material regulated as a flammable solid by the United States Department of Transportation by regulations found in 49 CFR §173.150.

H. Hazardous material shall mean any of the following:

- 1) Any material listed in the list of toxic pollutants found in 40 CFR §401.15, as amended.
- 2) Any material designated as hazardous material by applicable state law.
- 3) Any compressed gas, explosive, flammable liquid, flammable solid, oxidizer, poison or radioactive material.

I. Oxidizer shall mean any material regulated as an oxidizer by the United States Department of Transportation by regulations found in 49 CFR §173.151.

J. Person shall include any individual, corporation, association, partnership, firm, trustee, or legal representative.

K. Poison shall mean any liquid or gas that is life threatening when mixed with air in small amounts, and shall also include all those materials regulated as poison class A by the United States Department of Transportation by regulations found in 49 CFR §173.326.

L. Radioactive material shall mean any material required by the United States Department of Transportation to have type A packaging or other special protection or closed transport vehicles, under regulations found in 49 CFR §173.425.

M. Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into or upon the environment, which causes danger or harm to the public health or to the environment, including, but not limited to, the release of any material classified as hazardous material by any federal legislation or regulation, by any state legislation or regulation, or by any Village ordinance.

N. Threatened release shall mean any imminent or impending event potentially causing but not resulting in a release, but causing the Village of Decatur to undertake an emergency action.

### **Section 3. NOTICE AND RESPONSE.**

A. Any person who has damaged the surface waters, groundwater, soils or atmosphere by the handling or storage of hazardous materials, or who have violated any local, state or federal environmental laws with respect to hazardous materials, are required to immediately notify the Village of Decatur.

B. The requirements of this Ordinance shall not be construed to forbid or forgive any person from using all diligence necessary to control a hazardous material release prior or subsequent to the notification of the Village of Decatur, especially if such efforts may result in the containment of the release or the abatement of extreme hazard to the employees or the general public. Delays in reporting releases due to in-house notification of off-site owners or supervisors shall result in penalties. Nothing in this Ordinance shall be construed to exempt or release any person from any other notification or reporting required by any state or federal agency.

C. The Village Manager of the Village of Decatur, Michigan, or his or her Designee, is authorized to direct an emergency action and the clean up and abatement of any release, or threatened release within the Village of Decatur, Michigan.

### **Section 4. LIABILITY FOR COSTS.**

A. Pursuant to the provisions of MCL Section 41.806A or the provisions of MCL Section 324.20135 Any person causing a release or threatened release which results in an emergency action shall be liable to the Village of Decatur for the recoverable costs resulting from the emergency action.

B. The following described persons shall be jointly and severally liable to the Village of Decatur for the payment of all costs incurred by the Village of Decatur as a result of such clean up or abatement activity:

- 1) Any person whose negligent or willful act or omission proximately caused such release, discharge or deposit;
- 2) The person who owned or had custody or control of the hazardous material or the material at the time of such release, discharge, or deposit, without regard to fault or proximate cause; and
- 3) The person who owned or had custody or control of the container which held such hazardous material at the time of or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

#### **Section 5. RECOVERY OF COSTS.**

A. The Village of Decatur or its Designee shall keep an itemized record of recoverable costs resulting from an emergency action.

B. The Village of Decatur or its Designee shall submit a written itemized claim to the responsible person for the total costs incurred by the Village of Decatur or its Designee for the emergency action and a written notice that unless the amounts are paid in full within thirty (30) days after the date of the mailing of the claim and notice, a civil action will be commenced seeking recovery for the stated amount plus any amounts occasioned by such suit.

C. For the purposes of this Ordinance, recoverable costs of the Village of Decatur or its Designee shall mean all direct and indirect costs and shall include, but are not limited to, the following:

- 1) Actual labor cost of personnel, including workers compensation benefits and fringe benefits;
- 2) Administrative overhead;
- 3) Costs of equipment operation;
- 4) Costs of materials;
- 5) Laboratory costs of analyzing samples taken during the emergency action;
- 6) Medical expenses incurred as a result of response activities;
- 7) Costs of any contract labor;
- 8) Costs to supervise or verify the adequacy of the cleanup or abatement by others; and
- 9) Legal expenses that may be incurred as a result of the emergency action, including actions for recoverable expenses pursuant to this Ordinance.

D. The authority to recover costs under this Ordinance shall not include actual fire suppression services which are normally or usually provided by the Fire Department.

**Section 6. CIVIL SUIT.** The Village of Decatur or Designee may bring a civil action for payment of the recoverable expenses against any and all persons liable under this Ordinance. All costs of such suit, including actual attorney fees, shall also be a recoverable cost within the same civil action.

**Section 7. CONFLICT WITH STATE OR FEDERAL LAW.** Nothing in this Ordinance shall be construed to conflict with state or federal laws requiring persons causing or responsible for release or threatened releases from engaging in remediation activities or paying the cost thereof, or both.

**Section 8. NONEXCLUSIVE REMEDY.** The remedies provided by this Ordinance shall be in addition to any other remedies available in equity or at law and such penalties as provided by law or ordinance.

**Section 9. EFFECTIVE DATE.** This Ordinance shall become effective August 1, 2003.

Adopted by the Village Council of the Village of Decatur, Michigan on this 7th day of July, 2003.