

TOWNSHIP OF ERIE

ORDINANCE # 96

An Ordinance to provide for recovery of expenses incurred by the Erie Township and/or Morin Point Fire Department in responding to an emergency hazardous substances and/or materials incident.

THE TOWNSHIP OF ERIE ORDAINS:

SECTION 1: Findings and Purposes.

Erie Township finds that a potential exists for responses to incidents involving the release of hazardous substances and/or materials. Such incidents create a great likelihood of personal injury or property damage. The control and abatement of such incidents places a significant financial and operational burden upon the Township's fire fighting, rescue and emergency medical services and other Township resources. The Township finds that it is necessary to adopt an Ordinance to establish the liability for such incidents and to establish a policy and methods which will allow the Township to seek recovery of the Township costs associated with emergency response to hazardous substances and/or materials incidents.

SECTION 2: Definitions.

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

Emergency Response shall mean the providing, sending and/or utilizing of police, fire fighting, emergency medical and rescue services by the Township, or by a private industrial entity, corporation or other assisting government agency operating at the request or direction of the Township or State of Michigan, for an incident resulting in a hazardous substances and/or materials release or threatened release or the clean-up or abatement of same.

Expenses of an Emergency Response shall mean the direct and reasonable costs incurred by the Township, or by a private person, corporation or other assisting government agency, which is operating at the request or direction of the Township, when making an emergency response to the hazardous substances and/or materials incident, including the costs of providing police, fire fighting, rescue services, emergency medical services, containment storage, clean-up and abatement of all hazardous conditions at the scene of the incident. The costs further include all salaries and wages of Township personnel responding to the incident, salaries and wages

of Township personnel engaged in the investigation, supervision and report preparation regarding said incident, all salaries and wages of personnel of assisting government agencies operating at the request or direction of the Township, and all costs connected with the administration of the incident relating to any prosecution of the person(s) responsible, including those relating to the production and appearance of witnesses at any court proceedings in relation thereto. Costs shall also include such items as disposable materials and supplies used during the response to said incident, the rental or leasing of equipment used for the specific response, replacement of equipment which is contaminated beyond reuse or repair during the response to said incident, special technical services and laboratory cost, and services and supplies purchased for any specific evacuation relating to said incident.

Hazardous Substances and/or Materials shall include, but are not limited, to a chemical that is a combustible liquid, a flammable gas, explosives, flammables, oxidizing material, pryophoric, unstable reactive or water reactive, radioactive materials, petroleum products or gases, poisons and shall include all those materials designated as hazardous by the State of Michigan in Public Act 307 of 1982, as amended, or by the Federal Superfund Amendment.

Owner shall mean any person having a vested or contingent interest in the premises, real property, personal property, container or vehicle involved in the hazardous substances and/or materials incident, including but not limited to any duly authorized agent or attorney, purchaser, devisee or fiduciary of said person having said vested or contingent interest.

Oxidizing Material shall mean any material regulated as an oxidizing material by the United States Department of Transportation through regulations found in 49 CFR SubSec. 173.151.

Person shall mean individuals, firms joint ventures, partnerships, corporations, cluds and all associations or organizations of natural persons, either incorporated or unincorporated, howsoever operating or named, and whether acting by themselves or by a servant, contractor, employee, agent or fiduciary, and includes all legal representatives, heire, successors and assignees thereof.

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 through regulations found in 49 CFR SubSec. 173.326.

Premises shall mean any lot or parcel of land.

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 SubSec. 173.425.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a hazardous substance or material into the environment, or the abandonment or disposing of barrels, containers or other closed receptacles containing a hazardous substance.

Responsible Party shall mean the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle where an incident arises which involves the release or threatened release of hazardous substances and/or materials on or about said building, premises, property and/or vehicle.

Threatened Release shall mean any imminent or impending event potentially causing but not resulting in a release which causes the Township to undertake emergency response.

Vehicle shall mean any mode which is used as an instrument of conveyance, including but not limited to motor vehicles, railroads, boats, aircraft, etc.

SECTION 3: Hazardous Substances and/or Materials Incidents Policy

A. In the event that Township employees are dispatched to a hazardous substances and/or materials incident, the Township employee in charge shall notify the responsible party, including appropriate State and Federal agencies, as soon as possible. Township personnel shall make efforts to limit the Township's action to those necessary to address dangers from fire or the imminent threat of fire or the imminent threat from any hazardous substances or materials, and necessary evacuation of affected persons.

B. Except for procedures necessitated by fire or the imminent threat of fire resulting from a hazardous substances or materials incident, Township officials are not authorized to incur any obligations, financial or otherwise, to the Township in regards to the mitigation of impacts resulting from a hazardous substances and/or materials incident.

C. All Township personnel shall take appropriate steps for a hazardous substances and/or materials response that conforms to their level of training and as appropriate to the supplies and equipment to them, in accordance with established protocols and procedures.

**SECTION 4: Liability for Expense of
an Emergency Response**

A. **Responsible Party:** The responsible party shall be required to reimburse the Township for all costs and expenses of an emergency response to said hazardous substances and/or materials incident.

B. **Charge Against Person:** The expense of an emergency response shall be a charge imposed upon the responsible party under this Ordinance. The charge constitutes a debt of that responsible party and is collectible by the Township in the same manner as an obligation under contract, express or implied.

C. **Cost Recovery Schedule:** The Township Board may, by resolution, adopt a schedule of the costs included within the expense of an emergency response. This schedule shall be available at the office of the Township Clerk for inspection by the public during regular office hours.

D. **Billing:** The Township may, within ten (10) days of receiving itemized costs or any part thereof incurred for an emergency response, submit a bill for these costs by registered or certified mail, return receipt requested or personal service to the person liable for the expenses as enumerated under this Ordinance. The bill(s) shall require full payment within thirty (30) days from the date of mailing or service of said bill upon the responsible person.

E. **Failure to Pay: Procedure to Recover Costs:** Any failure, by the person described in this Ordinance as liable or responsible for expenses of an emergency response, to pay said bill within thirty (30) days of mailing or service of the bill shall constitute a default on said bill. In case of default, the Township shall have the right and power to add all emergency response costs to the tax roll of such property involved in the hazardous substances and/or materials incident, and to levy and collect such costs in the same manner as provided for the levy and collection of real property taxes against said property or premises. The Township shall also have the right to bring action in a court of competent jurisdiction to collect said costs if the Township deems such action to be necessary.

SECTION 5: Conflict with State or Federal Law

Nothing in this Ordinance shall be construed to conflict with State or Federal laws requiring persons responsible for or causing a release or threatened release from engaging in remediation activities or paying the cost thereof, or both.

SECTION 6: 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 7: Repeal

All Ordinances or parts of Ordinances in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

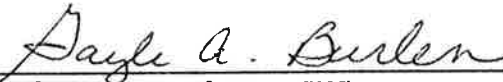
SECTION 8: Severability

If any section, subsection, clause, paragraph or provision of this Ordinance is adjudged invalid by a court of competent jurisdiction, such adjudication shall only apply to the said portions thereof adjudicated invalid; and the full remaining portions or parts of this Ordinance shall remain in full force and effect.

SECTION 9: Effective Date


This Ordinance shall be published in a newspaper having general circulation in Erie Township, Monroe County, Michigan, and shall become effective immediately upon publication.

This Ordinance was enacted at a Regular Meeting of the Erie Township Board held on March 25, 1997 5 Board members being present and all voting in favor thereof.



Gayle A. Burlen, CMC
Erie Township Clerk

ATTEST:



Daniel J. Bonkoski
Erie Township Supervisor

ERIE TOWNSHIP ORDINANCE NO. 96A- 1
AMENDMENT TO ERIE TOWNSHIP RECOVERY EXPENSE ORDINANCE.

An Ordinance enacted pursuant to Act 246, Public Acts of 1945, as amended, to provide for recovery of expenses incurred by the Erie Township Fire Department in responding to an emergency hazardous substance and/or materials incident; to amend the definition of who is designated a responsible party under this Ordinance and to create an absolute defense to a violation of this Ordinance; and for the purposes of promoting and protecting the public health, safety and general welfare of the residents and property of the Township of Erie.

ARTICLE I. AMENDMENT TO SECTION 2.

Section 2, entitled "Definitions", in Erie Township Ordinance No. 96, the "Erie Township Recovery Expense Ordinance", as may have been amended, shall be amended by modifying the provisions of the definition of "Responsible Party", such that "Responsible Party" of Section 2 shall be deleted and replaced in entirety as follows:

Responsible Party shall mean the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle where an incident arises which involves the release or threatened release of hazardous substances and/or materials on or about said building, premises, property and/or vehicle; and/or the person(s) who actually caused the release of hazardous substances and/or materials on or about said building, premises, property and/or vehicle.

ARTICLE II. AMENDMENT TO SECTION 4.

Section 4, entitled "Liability for Expense of an Emergency Response", in Erie Township Ordinance No. 96, the "Erie Township Recovery Expense Ordinance", is hereby amended to add new Subsection F, such that Subsection F of Section 4 shall hereafter read as follows:

F. Absolute Defenses to Liability: Defenses to liability under this Ordinance are available to the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle; if the release or threatened release of hazardous substances and/or materials on or about said building, premises, property and/or vehicle was actually caused by an act of God or war, or by a third party. This absolute defense to liability is not available if the responsible party, as defined in Section 2 of this Ordinance, is an employee or an agent of the owner, operator, occupant or other person responsible for the operation, maintenance and/or

condition of any building, premises, property or vehicle; or if the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle lacked due care and/or did not undertake reasonable precautions in preventing the release or threatened release of hazardous substances and/or materials.

ARTICLE III. - REPEALED.

All Ordinances or parts of ordinances in conflict with this Ordinance, are to the extent of such conflict, repealed.

ARTICLE IV. - SEVERABILITY.

This Ordinance, and the various parts, sentences, paragraphs, sections, subsections, phrases and clauses thereof are hereby declared to be severable and if any of them are adjudged unconstitutional or invalid, it is hereby provided that the remainder of the Ordinances shall not be affected.

ARTICLE V. - EFFECTIVE DATE

This Ordinance shall become effective on the day after publication of a Notice of Adoption in a newspaper of general circulation in the Township of Erie, Monroe County, Michigan, unless otherwise provided by law.

THE TOWNSHIP BOARD OF THE
TOWNSHIP OF ERIE, COUNTY OF
MONROE, STATE OF MICHIGAN:

By: Gayle A. Burlen
Gayle A. Burlen,
Erie Township Clerk

AUTHENTICATED:

Daniel J. Bonkoski
Daniel J. Bonkoski,
Erie Township Supervisor

I, Gayle A. Burlen, do hereby certify that I am the duly elected and acting Township Clerk of the Township of Erie, and do hereby certify that this Ordinance was adopted by the Township Board of the Township of Erie, Monroe County, Michigan at a regular meeting of the Township Board held at the Erie Township Hall, Erie, Michigan, on the 9th day of March, 2004.

The vote on said Ordinance, 5 members being present and 0 members absent, was as follows:

Member's Last Name

Voting in Favor:	<u>Bonkoski</u>	<u>Gordy</u>
	<u>Burlen</u>	<u>LaPlante</u>
	<u>Baum</u>	
Voting Against:	<u>-0-</u>	
Abstained:	<u>-0-</u>	
Absent:	<u>-0-</u>	

I, Gayle A. Burlen, the Township Clerk of the Township of Erie, do hereby certify that this Ordinance or a summary of it, and the supplementary notice of said Ordinance, a copy of which is inserted following the Ordinance, was published on the 18th day of March, 2004 in the Monroe Evening News, located in the City of Monroe, Monroe County; Michigan, a newspaper of general circulation in the Township of Erie, within thirty (30) days after adoption of the Ordinance.

Dated: 03/18/04

Gayle A. Burlen
Gayle A. Burlen,
Erie Township Clerk

ATTEST:

Daniel J. Bonkoski
Daniel J. Bonkoski,
Erie Township Supervisor

ADOPTED: March 9, 2004

PUBLISHED: March 18, 2004

EFFECTIVE: March 19, 2004

ERIE TOWNSHIP
ORDINANCE No. 96-A1
Amendment to Recovery Expense Ordinance

An Ordinance enacted pursuant to Act 246, Public Acts of 1945, as amended, to provide for Recovery of expenses incurred by the Erie Township Fire Department in responding to an emergency hazardous substance and/or materials incident; to amend the definition of who is designated a responsible party under this Ordinance and to create an absolute defense to a violation of this Ordinance; and for the purposes of promoting and protecting the public health, safety and general welfare of the residents and property of the Township of Erie.

ARTICLE I. AMENDMENT TO SECTION 2.

Section 2, entitled "Definitions" modify provisions of definition of "Responsible Party" shall be deleted and replaced in entirety.

ARTICLE II. AMENDMENT TO SECTION 4.

Section 4, entitled "Liability for Expense of an Emergency Response" is adding a new Subsection F, entitled "Absolute Defenses to Liability".

ARTICLE III - REPEALED.

All Ordinances or parts of ordinances in conflict with this Ordinance, are to the extent of such conflict, repealed.

SEVERABILITY.

This Ordinance, and various parts, sentences, paragraphs, sections, subsections, phrases and clauses thereof are hereby declared to be severable and if any of them are adjudged unconstitutional or invalid, it is hereby provided that the remainder of the Ordinances shall not be affected.

ARTICLE V. - EFFECTIVE DATE

Effective on day after publication of a Notice of Adoption in newspaper of general circulation in the Township of Erie, Monroe County, Michigan, unless otherwise provided by law.

TOWNSHIP BOARD OF THE TOWNSHIP
OF ERIE, COUNTY OF MONROE, STATE
OF MICHIGAN:

By: Gayle A. Burlen
Gayle A. Burlen, Erie Township Clerk

AUTHENTICATED:

Daniel J. Bonkoski
Daniel J. Bonkoski, Erie Township Supervisor

I, Gayle A. Burlen, do hereby certify that I am the duly elected and acting Township Clerk of the Township of Erie and do hereby certify that this Ordinance was adopted by the Township Board of the Township of Erie, Monroe County, Michigan at a regular meeting held on the 9th day of March, 2004. Vote on said Ordinance, 5 members being present and 0 members absent, was all in favor.

ERIE TOWNSHIP
ORDINANCE No. 96-A1
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TOWNSHIP BOARD OF THE TOWNSHIP
OF ERIE, COUNTY OF MONROE, STATE
OF MICHIGAN:

By: Gayle A. Burlen
Gayle A. Burlen, Erie Township Clerk

AUTHENTICATED:

Daniel J. Bonkoski
Daniel J. Bonkoski, Erie Township Supervisor

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