

CUMBERLAND COUNTY BOARD OF HEALTH

ORDINANCE NO. 14

AN ORDINANCE OF THE CUMBERLAND COUNTY BOARD OF HEALTH REGULATING RECOVERY OF COSTS ASSOCIATED WITH HAZARDOUS MATERIALS EMERGENCY RESPONSE WITHIN THE JURISDICTION OF THE CUMBERLAND COUNTY BOARD OF HEALTH

WHEREAS, the New Jersey Department of Environmental Protection (the "DEP") by order dated August 22, 2008 re-certified approval of the County Plan for air, water, noise, hazardous materials emergency response and solid waste environmental enforcement; and

WHEREAS, the Cumberland County Health Officer, as administrative officer of the Cumberland County 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;

NOW THEREFORE BE IT ORDAINED, by the Cumberland County Board of Health that the Cumberland County Emergency Response Cost Recovery Ordinance is as follows:

Section 1 - 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 2 - Purpose:

The unauthorized and unpermitted discharge of a hazardous substance within the jurisdictional confines of the County of Cumberland is prohibited. This Ordinance establishes procedures and protocols for emergency response and provides for the recovery of costs incurred by the Cumberland County Health Department and its agents in an emergency response action to unauthorized and

unpermitted discharges and, as such, supplements the provisions of the Cumberland County Environmental Health Work Plan as approved by the DEP.

Section 3 - 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 shared services agreement with the County Board of Health 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 Cumberland County, provided such agreement is incorporated into the County's Work Plan pursuant to N.J.S.A. 26:3A2-33.

County: means the County of Cumberland.

County Health Department: means the Cumberland County Health Department ("CCHD"), its employees, agents, officers and officials, including the Cumberland County Board of Health ("CCBOH").

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 CCHD. This definition does not include any "leak."

Emergency response action: means any action taken by the CCHD, 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 CCHD, its employees, agents and contractors 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 firefighting.

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.

Municipality: means any of the incorporated municipalities within the County , including their employees, officers and officials.

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.

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 4 - 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 5 - 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 6 - 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 CCHD, its agents, employees, and contractors, and any personal or property damage incurred by the CCHD, its agents, employees and contractors.

Section 7 - Emergency Response:

The CCHD 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 DEP's Order of Certification dated August 22, 2008.

Section 8 - Cost Recovery:

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

B. Whenever the CCHD seeks to recover costs pursuant to paragraph A, above, the CCHD 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 CCHD, 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 CCHD issues a demand letter to a responsible party and the responsible party fails to remit payment within 45 days as prescribed herein, the CCHD and/or the CCBOH

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 9 - Inspection, Right of Entry:

Authorized representatives of the CCHD shall have the same right as an authorized representative of the DEP 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 10 - 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 and the DEP's Order of Certification dated August 22, 2008.
- 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 DEP as a condition of approval.

Section 11 - Repealer:

Any ordinance or portion thereof enacted by the County, any municipality, the CCBOH, or other public entity within the County that contains any subject matter governed by this Ordinance, which is inconsistent 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 12 - Effective Date:

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

- A. A public hearing on this ordinance shall be held at the Cumberland County Board of Health Meeting on January 15, 2014 and February 26, 2014.
- B. The Secretary of the CCBOH is hereby directed to publish and distribute this Ordinance in accordance with law.
- C. Copies of this ordinance upon adoption shall be forwarded to:
 - 1. The DEP, Bureau of Local Environmental Management
 - 2. All Municipalities within the Jurisdiction of the CCHD
 - 3. All Agents of the County