

CHARTER TOWNSHIP OF HAMPTON
ORDINANCE 53
HAZARDOUS MATERIALS-COST RECOVERY ORDINANCE

An ordinance to establish the basis for reimbursement of charges, cost, and fees incurred by the Charter Township of Hampton for providing for the abatement, containment, clean up, disposal and restoration from the non-permitted release of a hazardous substance within the Charter Township of Hampton.

The Charter Township of Hampton, Bay County, Michigan, ordains:

Section 1. Title

This ordinance shall be known as the Hazardous Materials-Cost Recovery Ordinance.

Section 2. Purpose

The purpose of this ordinance is to enable the Charter Township of Hampton to require reimbursement of costs for the abatement, containment, clean-up, disposal and restoration from the non-permitted release of a hazardous substance, pursuant to authority granted under Michigan law, Public Act 102 of 1990, being Compiled Law 41.806 (a).

Section 3. Definitions.

Unless otherwise indicated, the following definitions shall apply for the purposes of this article:

Dumping: means the abandonment, improper disposal of, or discharge of barrels, drums, containers, or any other closed receptacles containing a hazardous substance, which shall also be considered a non-approved release.

Hazardous substance: means one or more of the following:

- (1) A chemical or other material which is injurious to the public health, safety, welfare or to the environment or which poses a threat to waterways or the environment when released. This shall include all substances and materials classified as hazardous materials by the U.S. Department of Transportation.
- (2) "Hazardous substance" as defined in the comprehensive environmental response, compensation, and liability act of 1990, Public Law 96-510, 94 Stat. 2767 or classified as a hazardous substance by the U.S. Environment Protection Agency.
- (3) "Hazardous waste" as defined in the hazardous waste management act, Act No. 451

of the Public Acts of 1994, being sections 324.11101 to 324.11152 of the Michigan Compiled Laws.

- (4) "Petroleum" as defined in the leaking underground storage tank act, Act No. 451 of the Public Acts of 1994, being sections 324 of the Michigan Compiled Laws.

Non-permitted releases: include, but are not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injuncting, escaping, leaching, dumping, fire, explosion, or disposing of a hazardous substance into the environment. The threat of a release will be treated the same as a release for cost recovery.

Operator: Shall mean any person or entity which is in possession or control of any property, instrumentalities, equipment or vehicles which are involved in an occurrence resulting in enforcement of this article. Operator shall also mean any person or entity who through either negligence or intentional acts or omission, causes or contributes in whole or in part to an occurrence resulting in enforcement of this article.

Owner: shall mean any person or entity which has a legal interest in real or personal property which is involved in an occurrence resulting in enforcement of this article.

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 comprehensive environmental response, compensation, and liability act of 1980, Public Law 96-510, 94 Stat. 2767.

Person: any individual, association, partnership, legal entity, corporation or official thereof.

Section 4. Duty to report.

It shall be the duty of any person who causes a release of hazardous substance, or a threat of a release, or who owns, controls or who is responsible for a hazardous substance that is released or threatens to be released, to immediately report the release or threat of release to the Charter Township of Hampton Fire Department.

Section 5. Duty to remove.

It shall be the duty of any person or any other entity which causes, controls or permits the non-permitted release of a hazardous substance into the environment, or any owner or operator whose property is involved in an occurrence resulting in enforcement of this article, to

immediately stabilize the release and to clean up or otherwise restore the area to its condition prior to the release. Clean-up and restoration shall be in compliance with all state statutes and federal law.

Section 6. Recovery of costs.

(a) Any person, owner or operator causing or contributing to the release or threatened release of a hazardous substance who fails to immediately comply with Section 5, shall be liable to and shall pay the Charter Township of Hampton all costs and expenses, including any costs incurred by the township to engage any other party, to provide for the complete containment, abatement, clean-up and restoration of the effected area and assistance to persons within that area.

(b) Costs incurred by the township shall include, but shall not necessarily be limited to, the following: actual labor costs of township personnel, including overtime, worker compensation benefits, fringe benefits, administrative overhead, costs of equipment operations, replacement cost of expendable items, replacement or repair cost for damaged or destroyed equipment, costs for decontamination, disposal or replacement of chemically contaminated tools, equipment or protective clothing, cost of materials obtained by the township for response to the incident, the cost of any contract labor, materials and the cost of responding emergency vehicles. In addition, the cost of any of the above supplied by the other unit of government pursuant to mutual aid agreement.

(c) Costs shall continue until all equipment has been placed back in service and all reports have been completed. Equipment shall not be deemed to have been placed back in service until equipment decontamination is completed. Monies recovered under this section shall be placed back in the budget of the responding township departments to reimburse costs.

Section 7. Multiple parties.

When a particular service rendered under this article is necessitated by the actions of more than one person, owner or operator, each such person shall be jointly and severally liable for the payment of the full charge for any service rendered. The application of this section shall not allow the township a recovery in excess of its total actual costs as permitted by section 6.

Section 8. Intentional false alarm.

Any person intentionally reporting a false alarm, known to be false by the person reporting the same shall be liable for the costs of the response in accordance with Ordinance 52.

Section 9. Enforcement.

(a) All of the foregoing costs shall be the responsibility of the owner of any property which is involved in an occurrence resulting in enforcement of this article.

(b) The costs incurred shall be a lien against the property and shall be reported to the township Assessor who shall assess the same against the real property.

(c) The owner or party in interest in whose name the property appears on the current assessment records shall be notified of the amount of such costs by first-class mail at the address shown on the records. If the owner or party in interest fails to pay the same within (30) days after mailing by the township assessor of notice of the amount thereof, the township assessor shall add the same to the next tax roll for the township; and the amount shall be collected in the same manner in all respects as provided by law for the collection of taxes by the township.

(d) The township may also proceed in a court of competent jurisdiction by suit to collect any costs remaining unpaid and shall have any and all other remedies provided by law for the collection of said costs. No remedies shall be considered exclusive.

Section 10. Civil cause of action.

The township shall be permitted to commence a civil action seeking recoupment of costs within three (3) years of the date costs are incurred. Where such civil action is filed, as a separate item of damages, the township shall be permitted to recover actual attorneys fees and expenses in litigation if it prevails with respect to any disputed items in litigation.

Section 11. Severability

If any section, subsection, clause, phrase or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion of this ordinance, and such holding shall not effect the validity of the remaining portions of this ordinance.

Section 12. Effective Date.

This ordinance shall take effect immediately upon publication following adoption. All ordinances or parts of ordinances in conflict are hereby repealed.

COST RECOVERY

1. APPARATUS COST PER HOUR

Aerial	\$ 150.00
Engines	125.00
Light Rescue	75.00
Command Unit	100.00
*Car	25.00
DPW dump truck	100.00
**Specialize Vehicles	100.00

*Includes police cars, etc.

**Includes dozers; cranes; loaders; sewer cleaning equipment

2. PERSONNEL COST PER HOUR

Firefighters	actual cost incurred
Police Officers	actual cost incurred
DPW/Others	actual cost incurred
Benefit Cost	Forty percent of all personnel cost added

3. EQUIPMENT COST PER HOUR

SCBA	\$ 25 per unit
Specialize (monitors, meters, etc)	\$ 20 per unit

4. FIRE FLOW COST

Water Actual cost of municipal water system

5. SUPPLIES Actual replacement cost
of items used

6. ADMINISTRATIVE COST

Ten percent (10%) of Section 1 - 5 added