

**Spencer County, Kentucky**  
**Ordinance No. 13**  
**Fiscal Year 2011 Series**

**An Ordinance Relating to the Use and Control of Hazardous and Other Materials  
in Spencer County, Kentucky, the Timely Reporting of Releases Thereof, and  
Providing Compensation From the Parties Responsible for Hazardous Materials  
Released to Local Government, Public Safety, and Emergency Agencies for  
Expenses Incurred Responding to Such Hazardous Material Releases.**

**Whereas**, the Fiscal Court of Spencer County, Commonwealth of Kentucky, has determined that there have been numerous releases of hazardous materials in this County; and

**Whereas**, hazardous materials can pose a direct and potential threat to the health, safety and welfare of the people of this County and to the surrounding environment and that it is the duty of local government to protect its citizens, and that persons who handle hazardous materials also have a responsibility to the community and its residents to minimize risks; and

**Whereas**, the releases or spillage of hazardous materials may require emergency response by the various public safety and emergency agencies of the County and/or the cities therein to protect the health, safety and welfare of the people of this County and their environment; and

**Whereas**, the Fiscal Court further determines that an ordinance is necessary to provide a comprehensive approach on the local level to prevent the uncontrolled release of hazardous materials into the surrounding environment which can directly or indirectly cause harm or damage to the environment and to human health and property, and for this approach to be effective, cooperation between the public and private sectors is essential; and

**Whereas**, in order to implement a plan related to hazardous materials, information on the locations and types of hazardous materials stored, manufactured, used, disposed of, transported, or otherwise managed in and through this County must be gathered, compiled, and updated for use by the government, while protecting the legitimate interests of business in safeguarding confidential information and trade secrets; and

**Whereas**, the Fiscal Court further determines that the timely reporting of releases or threatened releases of hazardous materials and spills is critical to government emergency response procedures designed to limit and control danger to life and property; and

**Whereas**, this ordinance is intended to compliment efforts at the state and federal levels to deal effectively with the issues of hazardous materials allowing coordination of the efforts of all three levels of government to avail Spencer County and the incorporated cities therein of the best possible opportunities to protect their citizens and the environment from the potentially devastating effects of uncontrolled releases of hazardous materials; and



**Whereas**, the Fiscal Court further determines that the regulations established in this ordinance are necessary and appropriate and reasonably established and rationally related to the potentially exigent circumstances which may be posed by the release or spillage of hazardous materials occurring in this County;

**Now Therefore, Be It Ordained** by the Fiscal Court of Spencer County, Commonwealth of Kentucky, as follows:

**Section One – Purpose.**

This Ordinance is adopted by the Spencer County Fiscal Court for the purpose of protecting public health and safety in Spencer County, Kentucky, through prevention and control of hazardous material incidents and releases, requiring the timely reporting of releases of hazardous materials to appropriate local public safety and emergency agencies and requiring payment by parties responsible for hazardous materials of all expenses incurred by public safety and emergency agencies in responding to such hazardous materials releases.

**Section Two – Applicability.**

Pursuant to authority of KRS 61.083(7), the provisions of this Ordinance shall apply to all persons who manufacture, use, store or transport hazardous materials in quantities prescribed by this Ordinance and as defined herein within the entire area of Spencer County, including all incorporated and unincorporated areas thereof.

**Section Three – Definitions.**

As used in the herein Ordinance, unless the context of usage clearly requires otherwise, the meanings of specific terms in this Ordinance shall be as follows:

- A. "Authorized Release" means a release of hazardous materials in accordance with an appropriate permit granted by a state or federal agency having primary jurisdiction over such release;
- B. "Consumer Product" shall have a meaning stated in 15 U.S.C. 2052;
- C. "Costs" shall mean and include all expenses incurred by local government and/or local emergency response organizations regardless of whether or not such agencies are publicly or privately owned in responding to any hazardous materials spill, leak, or other release into the environment and for any remedial or removal actions taken to protect and safeguard the public health and safety, property or the environment. The term includes, but is not limited to, costs incurred for personnel, equipment and the use thereof, materials, supplies, services, lost wages of volunteer personnel, damage or loss of equipment, both organizational and personal, and related expenses resulting directly from response to a release or threatened release of a hazardous material;



- D. "Employee" means any person who works, with or without compensation, in a workplace;
- E. "Employer" means any person, firm, corporation, partnership, association, government agency, or other entity engaged in a business or providing service which has employees;
- F. "Environment" means the navigable waters of the United States and any other surface water, ground water, drinking water supply, soil surface, subsurface strata, storm sewer or publicly owned sanitary sewer or treatment works (other than those handling only wastewater generated at a facility) within Spencer County, Kentucky. The terms shall include air only for purposes of reporting releases pursuant to the further provisions of this Ordinance;
- G. "Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, tank, motor vehicle, truck trailer, rolling stock, or aircraft; or any site or area where a hazardous material has been deposited, stored, disposed of, abandoned, placed or otherwise come to be located. Consumer products in consumer use and vessels are not included;
- H. "Hazardous Materials" means any element, compound, substance or material or any combination thereof which are toxic, flammable, explosive, corrosive, radioactive, oxidizers, etiological agents, carcinogenic, or are highly reactive when mixed with other substances, including, but not limited to, any substance or material which is designated a hazardous material pursuant to the "Hazardous Materials Transportation Act" (49 U.S.C.A. Sec. 1801, et seq.) or is listed by Appendix A, 40 CFR part 302, "List of Hazardous Materials and Reportable Quantities", as amended, published by the U.S. Environmental Protection Agency (EPA), in a quantity and form which may pose a substantial present or potential hazard to human health, property or the environment when improperly released, treated, stored, transported, disposed of, or otherwise managed;
- I. "Normal Application of Pesticides" means application pursuant to the label directions for application of a pesticide product registered under section 30 or section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7U.S.C. 135 et seq.) (FIRA), or pursuant to the terms and conditions of an experimental use permit issued under section 5 of FIRA, or pursuant to an exemption granted under section 18 of FIRA;
- J. "Oil" means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;
- K. "Release" means any spilling, leaking, pumping, pouring, emitting, escaping, emptying, discharging, injecting, leaching, dumping, or disposing of a hazardous material into or on any land, air, water, well, stream, sewer or pipe so that such hazardous materials or any constituent thereof may enter the environment. The term shall not apply to a claim which a persons may assert against the employer of such persons as provided by CERCLA



regulations for a release which results in exposure to persons solely within a workplace, nor emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or a pipeline station pumping engine, nor the normal application of fertilizers and pesticides;

- L. "Person" means any individual, business, firm, partnership, corporation, consortium, association, trust, joint stock company, cooperative, joint venture, city, county, city or county special district, the state or any department, agency or political subdivision thereof, the United States Government, or any other commercial or legal entity;
- M. "Remedial Action" means any action consistent with permanent remedy taken instead of or in addition to any removal actions in the event of a release or threatened release of a hazardous material into the environment, to prevent or minimize the release of hazardous materials so that they do not migrate to cause a substantial present or potential hazard to human health, property or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay (or other earth) cover, neutralization, cleanup of released hazardous materials or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, repair or replacement of leaking container, collection of leakage and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect public health and welfare and the environment;
- N. "Removal" means the cleanup or removal of released hazardous materials from the environment, such actions as may be necessary or appropriate to monitor, assess, and evaluate the release or threatened release of hazardous materials, the disposal of removed materials, or the taking of such actions as may be necessary to prevent, minimize, or mitigate damage to public health or welfare or the environment. The term includes, but is not limited to, security fencing, provision of alternative water supplies, and temporary evacuation, reception and care of threatened persons;
- O. "Reportable Quantity" means that quantity as set forth in Section Four of this Ordinance;
- P. "Response" means any remedial or removal actions, including, but not limited to, response by local public safety and emergency agencies and subsequent actions taken to insure the preservation and protection of the public health, safety, welfare and the environment;
- Q. "Store" means to deposit or place a substance in the county for a period of ten (10) days or more provided such substance is not otherwise in transit;
- R. "Use" means to store, maintain, treat, process, handle, generate, dispose of, or otherwise manage. Use shall not include any mode of transportation other than onsite transportation.



- S. "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

#### **Section Four – Determination of Reportable Quantities**

- A. Listed Hazardous Materials: the quantity appearing in column "RQ" for each hazardous material listed by Appendix A "List of Hazardous Materials and Reportable Quantities", 40 CFR Part 302, as amended, published by the U.S. Environmental Protection Agency (EPA) shall be the reportable quantity for that material.
- B. Unlisted Hazardous Materials: Unlisted hazardous wastes designated as hazardous materials have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristics of EP toxicity identified in 40 CFR 261.24. Unlisted hazardous wastes which exhibit EP toxicity have the reportable quantities listed in Appendix A to 40 CFR Part 302, as amended, for the contaminant on which the characteristics of EP toxicity is based. If an unlisted hazardous waste exhibits EP toxicity on the basis of more than one contamination, the reportable quantity for that waste shall be the lowest of the reportable quantities listed by Appendix A to 40 CFR Part 302, as amended, for those contaminants. If an unlisted hazardous waste exhibits the characteristics of EP toxicity and one or more of the other characteristics, the reportable quantity shall be the lowest of the applicable reportable quantities.
- C. Oil: (1) The reportable quantity for releases of oil to waters of the United States or adjoining shorelines is any quantity which violates applicable water quantity standards or causes a film or sheet upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. (2) The reportable quantity for releases of oil to the environment other than releases to waters of the United States and adjoining shorelines is 56 gallons. (3) Notwithstanding any other provision of this Section, a release of oil from a property functioning vessel engine shall not be deemed to be in a reportable quantity; however, this provision shall not be applicable to oil accumulated in a vessel's bilges.
- D. Higher Reportable Quantity: Notwithstanding any other provision of this Section, the administering agency, after review of the "Spencer County Hazardous Materials Use and Spill Prevention Control Plan" (HMPC) required to be submitted pursuant to the further provisions of this Ordinance, may designate a reportable quantity for a hazardous material in excess of the quantity determined under this Section if the administering agency determines that the higher reportable quantity is consistent with the purpose and objectives of this Ordinance.
- E. Releases to Sanitary Sewer System: Notwithstanding any other provision of this Section, any release of a hazardous material to a sanitary sewer system which is prohibited under applicable pretreatment or other regulations of any sanitation district operating within Spencer County government shall be deemed to be discharged in reportable quantities.



- F. Component Hazardous Materials Release: A release of a mixture or solution of which a hazardous material is a component shall be considered to be a release in a reportable quantity only where the component hazardous material of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

#### **Section Five – Prohibited Acts**

No person shall cause, threaten or allow the release of a hazardous material into the environment within the territorial boundaries of Spencer County, Kentucky, unless such release is an authorized release in accordance with an appropriate permit granted by that agency of state or federal government which has primary jurisdiction over such release and such release is in such place and manner as will not create a substantial present or potential hazard to human health, property or the environment.

#### **Section Six – Notice to Public Safety Communications Center**

- A. Notice Upon Discovery: When a release or a threatened release, other than an authorized release, of a hazardous material in a quantity equal to or exceeding the reportable quantity hereinbefore established for such material occurs or is imminent on any facilities of any kind within Spencer County, the person in charge of such facilities, upon discovery of such release or threatened release, or evidence that a release has occurred even though it has apparently been controlled, shall immediately cause notice of the existence of such release or threatened release, the circumstances of same, and the location thereof to the Public Safety Communications Center.
- B. Emergency Telephone Number: The notice required to be given by this Section in Spencer County may be given by telephoning (502) 477-5533 (or such other emergency telephone number as may be subsequently designated). This one call will meet the requirements for notification of local agencies and, to the extent permitted by existing or future agreement, will provide notice to appropriate agencies of the Commonwealth of Kentucky, including, but not limited to, the Cabinet for Natural Resources and Environmental Protection, the Office of the State Fire Marshal in the Department of Housing, Buildings and Construction in the Cabinet for Public Protection and Regulation, and the division of Disaster and Emergency Services in the Department of Military Affairs.
- C. Duty to Control Releases: The notice required to be given by this Section shall not be construed as forbidding or otherwise exempting any person on or about the facilities from exercising all diligence necessary to control such release prior to or subsequent to such notice to the Public Safety Communications Center, especially if such efforts may result in the containment of the release and/or the abatement of extreme hazard to the employees or the general public. Delays in reporting due to any in-house requirement for notification to off-site owners/supervisors shall not be acceptable as reason for delay in notification required by this Section, and such delay may result in penalties.



- D. Duty to Report to Other Agencies: No statement contained in this Section shall be construed to exempt or release any person from any other notification or reporting procedures in accordance with applicable state or federal laws or regulations.

### **Section Seven – Administering Agency**

The purpose of this Ordinance is to establish a uniform county-wide program for protection of the environment from uncontrolled releases of hazardous materials to be administered by existing agencies of local government. The Spencer County Department of Disaster and Emergency Management shall be the lead agency in administering this Ordinance.

### **Section Eight – Response Authority**

- A. The Taylorsville/Spencer County Fire Protection District and WMD Hazmat 6 Team shall have authority to coordinate response to any release or threatened releases of hazardous materials in any incorporated or unincorporated area of Spencer County.
- B. The Fire Chief of the jurisdiction in which such release or threatened release is located shall have primary authority for taking remedial or removal actions necessary to control or contain such release or threatened release and to assure the protection of human health, property and the environment. The role of WMD Hazmat 6 Team is to give technical advice and assistance to the Fire Chief. WMD Hazmat 6 Team shall not direct the emergency response unless requested to do so by the Fire Chief or his authorized representative.
- C. WMD Hazmat 6 Team or the Fire Chief shall immediately report any release or threatened release to the executive authority of the jurisdiction (e.g. County Judge Executive or his administrative assistant, Mayor, City Administrative Officer, City Coordinator). If in the opinion of the executive authority, the seriousness of the situation warrants, the chief executive officer of the jurisdiction (County Judge Executive or Mayor) shall declare the existence of a State of Emergency in the jurisdiction, and thereafter, the response authority provided by this Section shall then be vested in such chief executive officer. In such event, the chief executive officer may authorize the Fire Chief, or other appropriate person to exercise all or part of the response authority provided by this Section until further notice.
- D. All local emergency response personnel shall cooperate with and operate under the direction of the chief executive officer of the jurisdiction, the Fire Chief, WMD Hazmat 6 Team, or other person then exercising response authority under this Section until such time as the person then exercising response authority has determined that the response is complete, or responsibility for response has been assumed by the state or federal agency having primary jurisdiction over such release or threatened release.
- E. The person exercising response authority under this Section shall coordinate and/or cooperate with other federal, state or local public health, safety and emergency agencies involved in the response to a release or threatened release of hazardous materials.



- F. The person exercising response authority under this Section may, with the approval of the executive authority of the jurisdiction, obtain vital supplies, equipment, services and other properties found lacking and needed for the protection of human health, property and the environment and obligate the jurisdiction for the fair value thereof.

### **Section Nine – Liability for Costs**

Notwithstanding any other provision or rule of law, the following persons shall be jointly and severally liable for all costs of removal and remedial actions incurred by local public safety and emergency agencies as a result of a release or threatened release of hazardous materials into the environment:

- A. The owner and operator of a facility or vessel from which there is a release or substantial threat of release of hazardous materials;
- B. Any person who, at the time of disposal, transport, storage, or treatment of hazardous materials, owned or operated the facility or vessel used for such disposal, transport, treatment, or storage from which there was a release or substantial threat of a release of hazardous materials;
- C. Any person who by contract, agreement, or otherwise has arranged with another party or entity for transport, storage, disposal or treatment of hazardous materials owned, controlled or possessed by another party or entity from which facility there is a release or substantial threat of release of hazardous materials;
- D. Any person who accepts or accepted any hazardous materials for transport to disposal, storage or treatment facilities from which there is a release or substantial threat of a release of hazardous materials.

### **Section Ten – Authorized Release**

There shall be no liability under this Ordinance for any release permitted by state or federal law, but only to the extent that such release is made in accordance with an appropriate permit granted by the state or federal agency having primary jurisdiction over such release and that such release is in full compliance with such permit with respect to time, location and manner of the release so that such release will not create a hazard or potential hazard to human health, property or the environment; or, if such release is in substantially lesser quantities than those reportable quantities established by state or federal law, regulations, permit requirements, or ordinances of the jurisdiction in which such release occurs. This also pertains to legitimate retail merchants who sell permitted goods in accordance with State and Federal laws.

### **Section Eleven – Contractual Indemnification; Subrogation**

- A. No conveyance, transfer, sale, indemnification, hold harmless, or similar agreement shall be effective to release the owner or operator of any facility or vessel or any person who



may be liable for a release of hazardous materials or threat thereof under this Ordinance. Nothing in this Section shall bar any arrangement to insure, hold harmless or indemnify a party to such agreement for any liability under this Ordinance.

- B. Nothing in this Section, including the provisions of subsection A above, shall bar a cause of action that an owner or operator or any other person subject to liability under this Ordinance, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

**Section Twelve – Release Prevention and Control Plan Required**

- A. The following persons who use hazardous materials must prepare, submit and maintain a “Spencer County Hazardous Materials Use and Spill Prevention Control Plan”, hereinafter referred to as “HMPC Plan”:
1. All federal, state and local government agencies which use hazardous materials in reportable quantities;
  2. All of the following businesses or services within Spencer County which use hazardous materials, as classified by the Standard Industrial Classification (SIC) code:

<u>Classification</u>	<u>Business or Service</u>
0782	Lawn and garden services
2011-3999	Manufacturing
4011-4953	Transportation, Communication & Public Utilities
5043	Photographic Equipment & Supplies (Wholesale Trade)
5085	Industrial Supplies (Wholesale Trade)
5161-5199	Specific Categories in Wholesale Trade
5541	Gasoline Service Stations (Retail Trade)
7011-7218	Industrial & Commercial Launderers, etc, in Services
7342	Disinfecting & Exterminating Services
7395	Photofinishing Laboratories, in Services
7512	Passenger Car Rental, in Services



7513	Truck Rental & Leasing
7538-7549	Automotive Repair Shops & Auto Services, in Services
8062	General Medical & Surgical Hospitals, in Services
8063	Psychiatric Hospitals, in Services
8069	Specialty Hospitals except Psychiatric, in Services

3. Those persons not covered in 1 or 2 above who use hazardous materials may be required to submit a HMPC Plan if the administering agency finds it necessary to protect the public health and safety.

B. Exemptions:

1. Persons who handle agricultural chemicals in the ordinary course of agricultural operations other than warehousing or bulk storage of such chemicals for resale or commercial applications.
2. Persons who handle hazardous materials only in conjunction with residential use or for non-commercial purposes.
3. Consumer products and foodstuffs packaged for distribution to and intended for use by general public. This refers to ingredients used in production of foodstuffs which are regulated by the Federal Food, Drug and Cosmetic Act, as amended.

C. Required HMPC Plan Elements:

The administering agency shall provide forms with the necessary instructions and requirements for completing HMPC Plans in compliance with this Ordinance. The HMPC Plans will include, but not be limited to:

1. Facility identification;
2. Spill history;
3. Identification of hazardous materials (HM) storage, in-plant transfer, process and materials handling areas and hazardous materials truck, rail car and/or vessel loading and unloading areas;
4. Description of plant site runoff from parking areas described in #3 above, including in-place containment appurtenances (e.g. dikes) and means of releasing rainwater from such areas;



5. Other means of spill prevention, control and countermeasure of all listed hazardous materials, such as containment or detection equipment and absorbent materials;
6. Provisions for the operation and maintenance of all items described in #5 above;
7. Contingency plans, including spill notification procedures for both internal personnel as well as outside authorities;
8. Provisions for training of personnel in the utilization of contingency plans;
9. Security provisions;
10. Provisions for inspections, spill report preparation and records retention;
11. Schedule (with actual dates or milestones) for plan elements yet to be implemented, with provisions for reporting progress to the administering agency;
12. Provisions for periodic review and amendments to the Plan;
13. Certification of the Plan by a Registered Professional Engineer or an officer of the company;
14. For the purposes of this Section, only one plan need be submitted by the owner of electrical equipment at multiple locations when such equipment contains hazardous materials as a coolant, lubricant, or insulation for the operation of such equipment. Subsections 3 and 5 above shall not apply to single plans authorized under this subsection.

D. Plan Submittal Deadlines:

Those persons and facilities required to submit a HMPC Plan under this Ordinance shall submit such plans in duplicate to the administering agency within 180 days following the effective date of this Ordinance provided, however, that persons required to submit such HMPC Plans may request in writing for extensions of time where the complexity of the operations involved require additional time in which to complete such plans. When granted by the administering agency, such extensions of time shall be for periods of thirty (30) days, renewable thereafter for like periods not exceeding three 30-day extensions or 90 days total, at which time all HMPC Plans shall have been submitted to the administering agency for review.

E. Review and Approval of Plan:

The HMPC Plan shall be reviewed by the administering agency, the fire department having jurisdiction, and, where appropriate, the Local Kentucky District Health Department, any sanitation district operating within Spencer County, or other local agency with appropriate authority; however, final administrative action on the HMPC



Plan shall be taken by the administering agency. Upon submission of the HMPC Plan or the granting of time extension in accordance with the subsection D of this Section, the person submitting the plan shall be presumed to be in compliance with this Section pending final approval of the plan. HMPC Plans which do not provide the necessary information or are otherwise defective shall be rejected and returned to the person submitting the plan for revision and resubmittal.

F. Appeals:

Any rejection or denial of approval of an HMPC Plan by the administering agency may be appealed to the government body of the jurisdiction in which the facility for which such plan is submitted is located. As soon as practicable following receipt of notice of such appeal, the governing body shall conduct a public hearing into the matter, and after consideration of all evidence and testimony relative to such an appeal, shall, by majority vote, uphold the finding of the administering agency or may modify the requirements of the HMPC Plan for the particular facility as it may deem appropriate so long as such modifications are in compliance with the intent of this Ordinance which is to promote and secure protection of human health, property and the environment against present or potential hazards occasioned by the uncontrolled release of hazardous materials into the environment.

G. Updates, Revisions, and Changes:

A new or modified HMPC Plan may be required and submitted to the administering agency when any person institutes the use of a new process or change in its manufacturing or processing facilities, or when there is significant change in its existing operations or wastewater constituents or characteristics.

H. Training and Educational Programs:

1. Each employer who uses hazardous materials as herein defined and who is required to prepare an HMPC Plan shall be required to have an initial and on-going safety and accident prevention training program for all employees. This training and education shall include, but not be limited to, appropriate work practices, protective measures and emergency procedures. The details and frequency of the training program should be provided as a part of the HMPC Plan for the facility.
2. The administering agency shall have the authority to require different frequencies of training for industries with frequent spills and/or spill histories.

**Section Thirteen – Inspections**

The administering agency and the response authority shall have the authority to jointly conduct the periodic inspections of any facilities, for the purpose of ascertaining and causing to be corrected, any condition which may be a violation of this Ordinance.



Joint inspection shall be conducted where necessary for purposes of HMPC Plan review. Inspections shall be made during working hours except by special arrangement with the person in charge of the facility.

#### **Section Fourteen – Confidential Information and Trade Secrets**

Information and data provided by any person or obtained from any report, questionnaire, permit application, permit and monitoring program, and from inspections shall not be made available to the public or any other government agency, unless required by law.

- A. Upon submission of information in any form, it shall be the obligation of the submitter to separate all confidential and trade secret material from any materials subject to disclosure under the law.
- B. Any request made under the law for information containing confidential or trade secret information shall be brought to the attention of the person requesting confidentiality of its trade secrets by certified mail, return receipt requested.

The notification shall advise the person requesting confidentiality of the decision of the administering agency regarding release of the confidential information. In no event, will such confidential information be release until five (5) days have elapsed from date notice is sent by certified mail.

- C. Within seventy-two (72) hours after receipt of notice, the person requesting confidentiality of its trade secrets shall have the burden to initiate appropriate actions at law or otherwise to protect its confidential or trade secret information from disclosure, and must demonstrate that public disclosure of confidential or trade secret information is likely to cause substantial harm to his competitive position.
- D. Any individual who releases information containing confidential or trade secret information in violation of law or this section shall be subject to disciplinary action by his employer for malfeasance, misfeasance and willful neglect of official duties, and may further be guilty of misuse of confidential information under KRS 522.040.
- E. The provision of this Section shall in no way prohibit or limit the exchange of information, confidential or otherwise, between public agencies when the exchange is serving a legitimate government need or is necessary in the performance of a government function including, but not limited to, the carrying out of the provisions and intent of this Ordinance.
- F. Taylorville/Spencer County Fire Protection District and WMD Hazmat 6 Team shall be the repository for all trade secret information for the purposes of this Ordinance.

#### **Section Fifteen – Enforcement; Notice of Violation**



- A. The administering agency and the response authority hereinbefore designated shall have joint primary responsibility for enforcement of the provisions of this Ordinance.
- B. Upon notification or discovery of any violation of the provisions of this Ordinance, the administering agency shall immediately investigate the site upon which the violation is located. The administering agency will be the lead enforcement agency for violations of this Ordinance. If a violation exists, a notice describing the violations shall be serviced upon the person who is responsible for the facilities upon which the violation has occurred, if the identity of the person is known. The notice shall also include the following, if applicable:
  - 1. A statement that if the situation is not remedied within the prescribed period of time, the administering agency may proceed to correct the violation;
  - 2. A statement that the person shall be liable for any costs incurred by public agencies associated with their releases except for those costs that are associated with a normal emergency response;
  - 3. A statement that after the administering agency has corrected the violation, a bill shall be sent charging the person the amount of costs and expenses incurred by the governmental agency in correcting the violation
  - 4. A statement that penalties may be levied for violations that have occurred.

C. Governmental Response:

In cases where the identity of the person who is responsible for facilities upon which a violation has occurred is not known at the time a violation is reported or discovered, the county or any governmental agency within the county may take reasonable steps to abate any problem and may take reasonable steps to clean up the area affected to assure continuing safety of the public and the environment. When the identity of the person responsible for the facility is determined, a bill shall be sent to that person for the costs for correcting the violation according to the provisions of subsection A and B of this Section.

D. Injunctive Relief:

The administering agency is empowered to seek injunctive relief for violations of this Ordinance should other means prove ineffective and a threat to public health and safety exists.

**Section Sixteen – Penalties**

- A. Any person who is responsible for the release or substantial threat of a release of hazardous materials into the environment in violation of Section Five (Prohibited Acts) or who fails to report such release or threatened release in violation of Section Six



(Notification) of this Ordinance shall, upon conviction thereof by a court of competent jurisdiction, be guilty of a Class A Misdemeanor and subject to a fine or imprisonment or by both such fine and imprisonment as is otherwise provided by law for such offense. Each day that such violation occurs, exists or continues shall be deemed to be a separate offense.

- B. Any person who otherwise violates any provisions of this Ordinance other than Section Five (Prohibited Acts) or Six (Notification) shall, upon conviction thereof by a court of competent jurisdiction, be guilty of a Class B Misdemeanor and subject to such fine or imprisonment or by both such fine and imprisonment as is otherwise provided by law for such offense. Each day that such violation occurs, exists or continues shall be deemed to be a separate offense.
- C. Any person or business transporting hazardous or other waste material in Spencer County shall have such waste covered by sufficient material to insure and prevent its contents from spilling or leaking upon the roadway or on property over which it is being transported. Violations of this provision, upon conviction thereof by a court of competent jurisdiction, shall be guilty of a Class A Misdemeanor and subject to a fine or imprisonment or by both such fine and imprisonment as is otherwise provided by law for such offense. Each day that such violation occurs, exists or continues shall be deemed to be a separate offense.
- D. In addition to the penalties provided in subsections A, B, and C above, any person violating any provisions of this Ordinance shall become liable civilly to the appropriate county government or agency thereof caused by reason of such violation, including, but not limited to, any clean up, evacuation, administration or other expenses, and legal expenses.

#### **Section Seventeen – Fees**

Fees shall be imposed by HMPC Plan review or approval, the revenues of which shall cover only the costs of HMPC Plan review and approval. The administering agency shall set and collect fees. The fee schedule shall be uniform for all persons required to submit HMPC Plans under the provisions of this Ordinance.

#### **Section Eighteen – Disclaimer of Liability**

This Ordinance shall not create liability on the part of the administering agency or on the part of the response authority of any damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder. All persons are advised to determine to their own satisfaction the level of protection, in addition to that required by this Ordinance, necessary or desirable to ensure that there is not unauthorized release of hazardous materials.

#### **Section Nineteen – Severability**



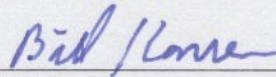
If any provision or section of this Ordinance or the enforcement of such provision or section is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not effect or render invalid or unenforceable any other provision or section.

**Section Twenty – Effective Date.**

This Ordinance shall become effective immediately upon its passage, approval, and publication according to law.

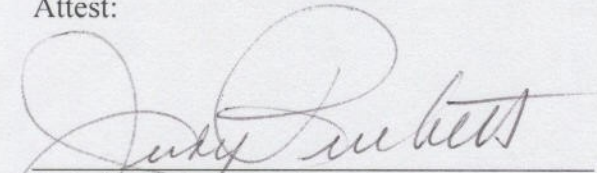
Given first reading and approval on February 21<sup>st</sup>, 2011.

Given second reading and adoption on March 21<sup>st</sup>, 2011.



\_\_\_\_\_  
Bill Karrer  
Spencer County Judge Executive

Attest:

  
\_\_\_\_\_  
Judy Puckett  
Spencer County Fiscal Court Clerk



## Taylorsville/Spencer County COST RECOVERY RATES\*

FIRE RESOURCES	Hourly Rate Initial Call Out	Hourly Rate Additional Hours
Command Vehicle	\$60.00	\$30.00
Class A Pumper	\$180.00	\$100.00
Tanker	\$180.00	\$100.00
Pumper	\$150.00	\$90.00
HazMat Unit	\$150.00	\$90.00
Rescue Unit	\$150.00	\$90.00
Field Unit	\$150.00	\$90.00
Service Unit	\$60.00	\$30.00
<b>Fire Personnel Costs Paid Staff</b>	<b>Regular Time</b>	<b>Overtime</b>
Command Officer (Paid Staff)	No Charge	\$51.00 per hour
Command Staff (Volunteers)	\$12.00 per incident per volunteer	
Firefighter (Paid Staff)	No Charge	\$24.00
Firefighter (Volunteers)	\$12.00 per incident per volunteer	
LAW ENFORCEMENT RESOURCES	Hourly Rate Initial Call Out	Hourly Rate Additional Hours
Command Vehicle	\$60.00	\$30.00
Police Car	\$36.00	\$18.00
Personnel Costs- Command Officer (Regular Time)	No Charge	
Personnel Costs- Command Officer OT	\$51.00	
Personnel Costs- Police Officer (Regular Time)	No Charge	
Personnel Costs- Police Officer (Overtime)	\$36.00	
EMERGENCY MANAGEMENT RESOURCES	Hourly Rate Initial Call Out	Hourly Rate Additional Hours
Command Vehicle	\$60.00	\$30.00
Mobile Command Post	\$180.00	\$100.00
ATV	\$60.00	\$30.00
Highway Advisory 1650 AM Radio	\$120.00	\$60.00
Personnel Costs (Salaried)	No Charge	

\* Based on Approved FEMA Cost Recovery Rates