

**ORDINANCE NO. 50
THE CHARTER TOWNSHIP OF CHOCOLAY,
MARQUETTE COUNTY, MICHIGAN
HAZARDOUS MATERIAL CLEAN-UP
COST RECOVERY ORDINANCE**

An ordinance to define hazardous materials; to enable the Charter Township of Chocolay to recoup from those responsible for the release of hazardous materials the costs incurred by the Township in cleaning up and abating such releases; and, to provide a means for the collection of such costs.

The Charter Township of Chocolay, Marquette County, Michigan, ORDAINS:

Section 50.1 Purpose

It is the intent and purpose of this Ordinance to provide to the Charter Township of Chocolay a means by which it may recover costs incurred by it in cleaning up hazardous material releases from the individuals and/or entities who cause or contribute, in whole or in part, to the occurrence of such releases.

Section 50.2 Definitions

For purposes of this Ordinance, the following words or terms shall have the following described meanings:

Hazardous material as used in this Ordinance shall mean any material or substance which because of its quantity, concentration, or physical, chemical, or infectious characteristics, presents a direct or immediate threat to the public health or safety or to the environment, and which requires immediate action to mitigate such threat. Such materials shall include, but not necessarily be limited to, any material classified as hazardous by any federal legislation or regulation, by any state legislation or regulation, or by any Township Ordinance, and shall include, but not be limited to, any of the following: explosives, pyrotechnics, flammable gas, flammable compressed gas, non-flammable compressed gas, flammable liquids, oxidizing material, any flammable material, poisonous gas or other material, poisonous liquid, irritating material, material that causes diseases in humans, gas under such pressure that an explosion hazard exists, liquified petroleum gas, gasoline, motor oil, anti-freeze, brake fluid, transmission fluid, diesel fuel, and any other petroleum products.

Emergency action shall mean all activities conducted by the Township to prevent or mitigate injury to human health or to the environment from a release or threatened release of any hazardous material into or upon the environment.

Person shall mean any individual, corporation, association, partnership, firm, trustee, or legal representative, or any other entity.

Recoverable expenses shall mean generally those expenses incurred by the Township that are reasonable, necessary, and attributable to an emergency action, and shall include but not be limited to the cost of services provided by private contractors or other governmental agencies summoned by the Township. Such recoverable expenses may include, but are not limited to expenses incurred for:

- A. Disposable materials and supplies required, consumed and expended specifically for the purpose of the emergency action; and,
- B. Compensation paid by the Township to employees or volunteer firefighters for the time and efforts devoted specifically to the emergency action, including wages, benefits, and administrative overhead; and,
- C. Rental or leasing of equipment used specifically for the emergency action, such as protective equipment or clothing, and scientific or technical equipment; and,
- D. Replacement costs for equipment owned by the Township that is contaminated beyond re-use or repair, if the equipment was a total loss and the loss occurred during the emergency action, such as self-contained breathing apparatus irretrievably contaminated during the emergency action; and,
- E. Decontamination of equipment contaminated during the emergency action; and,
- F. Special technical services specifically required for the emergency action, such as costs associated with time and efforts of technical experts or specialists not otherwise provided for by the Township; and,
- G. Other special services or equipment specifically required for the emergency action; and,
- H. Laboratory costs of analyzing samples taken during the emergency action; and,
- I. Costs of clean-up, storage, or disposal of hazardous materials; and,

- J. Costs associated with the services, supplies and equipment procured for a specific evacuation; and,
- K. Medical expenses incurred as a result of the emergency action; and,
- L. Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this Ordinance.

Release shall mean any discharge, deposit, spill, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, bleaching, dumping or disposing into or upon the environment, which causes potential danger or harm to the public health or to the environment.

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

Township shall mean the Charter Township of Chocoday.

Section 50.3 Release of Hazardous Materials Prohibited; Public Nuisance

No person shall cause, allow to be caused, or in any way contribute to, the release of any hazardous material upon any public or private property within the Township. Any such release shall be deemed to be a public nuisance.

Section 50.4 Emergency Action Authorization

The Township Fire Department, the Township Police Department, and such other Township offices and departments as may be deemed appropriate, shall be authorized to undertake an emergency action for a threatened release or a release of a hazardous material, and to clean up or abate, or contract with private contractors for the clean-up or abatement of, the effects of any hazardous material unlawfully released upon or onto any property or facilities within the Township.

Section 50.5 Strict Liability For Costs

Any and all persons causing or contributing to the cause of a release or threatened release of hazardous materials which results in emergency action or abatement being undertaken by the Township shall be liable to the Township for the recoverable expenses incurred by the Township attributable to such emergency action or abatement. This liability shall be in addition to any and all penalties provided by law, and shall exist regardless of whether such person has any other legal liability therefor apart from this Ordinance. The following described persons shall be jointly and severally liable to the Township for the payment of all recoverable costs incurred by the Township as a result of such emergency action or abatement activity:

- A. Any person or persons whose negligent or wilful act or omission is a contributing proximate cause of such release or threatened release; and,
- B. Any person or persons who owned, or had custody or control of, the hazardous material at the time of such release or threatened release, without regard to fault or proximate cause; and,
- C. Any person or persons who owned, or had custody or control of, the container which held such hazardous materials at the time of or immediately prior to such release or threatened release, without regard to fault or proximate cause; and,
- D. Any record owners of any motor vehicles or other equipment containing hazardous materials which are involved in any incident giving rise to the necessity for emergency action or abatement, without regard to fault or proximate cause.

Section 50.6 Procedure For Cost Recovery

A. Township personnel and departments involved in an emergency action or abatement shall keep an itemized record of recoverable expenses resulting from such emergency action or abatement. Promptly after completion of the emergency action or abatement, the appropriate Township department shall certify those recoverable expenses to the Township department responsible for invoicing.

B. The Township shall submit a written itemized invoice for the total recoverable expenses incurred by the Township for the emergency action or abatement to the responsible person or persons, along with a written notice that unless such amounts are paid in full within thirty (30) days after the date of mailing of such invoice, the Township will file a civil action in a court of appropriate jurisdiction seeking recovery of those recoverable expenses.

C. The Township may thereafter initiate civil action for recovery of those recoverable expenses against any and all persons causing or responsible for the emergency action or abatement, as defined in this Ordinance.

Section 50.7 Conflict With State Or Federal Law

Nothing in this Ordinance shall be construed to conflict with state or federal laws or regulations requiring persons causing or responsible for releases or threatened releases of hazardous materials from engaging in remediation activities or paying the costs thereof, or both.

Section 50.8 Severability

Should any provision or part of this Ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this Ordinance, which shall remain in full force and effect.

Section 50.9 Effective Date

Upon adoption, this Ordinance shall be published as required by law, and shall become effective thirty (30) days after such publication.

AYES: Fende, Hill, Greenberg, Wickstrom, Sherbinow, Engle.

NAYS: None.

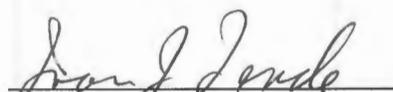
ABSENT: Bohjanen.

ORDINANCE ADOPTED.

I hereby certify that this is the official true and accurate copy of Ordinance No. 50 - An ordinance to adopt regulations and procedures for recouping township costs for clean up of hazardous material. Charter Township of Chocolay, Marquette County, Michigan. Ordinance was adopted by the Charter Township Board on March 4th, 1996.

Dated March 4, 1996.


Arlene E. Hill, CMC
Clerk, Charter Township of Chocolay


Ivan J. Fende, Supervisor
Charter Township of Chocolay

Dates of Publication in the "Mining Journal".

1. February 14, 1996.
2. March 14, 1996.