

# Regulation for Cleanup of Environmental Incidents

## Section 1: Purpose and Preamble

### Purpose

The purpose of this Regulation is to ensure that the person(s) responsible for an environmental incident resulting from an unauthorized release of hazardous substances, is responsible for clean-up of the affected area as well as recoverable expenses incurred by Washtenaw County government in response to and clean up of the environmental incident. In the event the person(s) responsible for an environmental incident does not or cannot perform such clean up in a reasonable time, in the sole judgment of the Washtenaw County Public Health Officer, the Public Health Officer shall perform or cause to be performed a clean-up of an environmental incident. The person(s) responsible for the environmental incident shall be financially responsible for any and all recoverable expenses.

### Preamble

Recognizing that an unauthorized release of a hazardous substance into the environment can threaten individual and community public health and safety, further recognizing that an unauthorized release of hazardous substance can pollute or impair the environment; further still recognizing that an unauthorized release of a hazardous substance should be cleaned up by the person(s) responsible for the unauthorized release, this regulation for the clean-up of environmental incidents is hereby established pursuant to the Michigan Public Health Code (MCLA 333.1101 et seq) Sections 2433, 2435, 2441, 2442, 2444, 2446, 2451, 2455, 2461, 2462, and 2465.

## Section 2: Definitions

"Clean-up": Refers to abatement, containment, site cleanup and restoration, disposal of hazardous materials and any other activities necessary to evaluate an environmental incident and return the site to its condition prior to the incident.

"Environmental Incident": Refers to an unauthorized release of hazardous substances into the environment.

"Environment": Refers to any land, surface waters, ground water, subsurface, strata, air, fish, wildlife, plant life or biota, within Washtenaw County.

- A chemical or other material that may pollute, impair, endanger become injurious to the public health, safety or welfare, or to the environment.
- Hazardous Substance as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat, 2767.

- Hazardous Waste as defined in the Hazardous Waste Management Act, Act No. 64 of the Public Acts of 1979, being Sections 299.501-299.850 of the Michigan Compiled Laws.
- Petroleum as defined in the Leaking Underground Storage Tank Act, Act No. 478 of the Public Acts of 1988, being Sections 299.831-299.850 of the Michigan Compiled Laws.

"Person(s)": Means an individual, sole proprietorship, association, corporation, or other legal entity.

"Public Health Officer": Refers to the County of Washtenaw Public Health Officer or his/her designee, duly authorized in writing.

"Recoverable Expenses": Refer to all expenses incurred by Washtenaw County that are, in the sole judgment of the Public Health Officer, necessary for response to and clean up of an environmental incident. Recoverable expenses shall include, but not be limited to, the following:

- Costs of equipment, materials and supplies, whether purchased, rented or leased.
- Personnel costs of Washtenaw County employees including wages, benefits and administrative overhead.
- Costs of replacing equipment and equipment components owned by Washtenaw County that are contaminated or damaged beyond reuse or repair.
- Costs of decontamination or repair of equipment and materials.
- Costs of contractors or consultants.
- Costs of analyzing and testing samples.
- Costs of site restoration, transportation, storage and disposal of materials.
- Costs associated with the services, supplies and equipment procured for any emergency action required as a result of an Environmental Incident.
- Medical expenses incurred.
- Legal expenses incurred, including those incurred by or on behalf of the Public Health Officer in attempting to recover expenses pursuant to this regulation.
- Costs incurred by the Hazardous Materials response Team created under the terms of the Hazardous Materials Response Authority Board Agreement.

"Response": Includes but is not limited to evaluation, assessment, documentation, coordination of activities, communications, testing and monitoring, containment, mitigation, and administrative activities related to the foregoing.

"Unauthorized Release": Means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous or polluting substances into the environment not authorized pursuant to federal, state or local permits or laws.

### **Section 3: Environmental Incidents in Washtenaw County**

It shall be the responsibility of any person(s) causing an unauthorized release of hazardous substances in Washtenaw County to immediately remove such hazardous substances and to clean up the area of the spillage to its pre-incident condition. The responsible person shall provide documentation to the Public Health Officer that cleanup has been performed consistent with prevailing state and federal laws.

When an environmental incident occurs, the Public Health Officer shall have the right to: immediately inspect the area to determine the extent of the damage; determine whether the person(s) responsible for the environmental incident possesses the necessary equipment, expertise and personnel to clean-up and restore the affected area; and determine whether the environmental incident poses threat of immediate harm to public health, safety, or welfare, or the environment. If, in the sole judgment of the Public Health Officer, the person(s) responsible for an environmental incident is unable to effectively clean-up and restore the affected area, the Public Health Officer may undertake the clean-up of such unauthorized release of contract such a clean-up through a private company. All recoverable expenses associated with the response of the Public Health Officer shall be the sole responsibility of the person(s) responsible for the environmental incident.

In the case of a transportation-related environmental incident, the owner of a vehicle from which an unauthorized release emanates shall be considered the person(s) responsible for the environmental incident.

### **Section 4: Remedies and Penalties**

The Public Health Officer shall have the authority to issue citations for any violation of this Regulation. Any person(s) who fails to comply with any provision of this Regulation shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not exceeding the sum of Two Hundred Dollars (\$200.00) by imprisonment in the Washtenaw County jail for not more than ninety (90) days, or both.

In addition, any person(s) who shall fail to comply with any provision of this Regulation shall be liable for monetary civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation or day that the violation continues.

Notwithstanding the existence or pursuit of any other remedy, the Public Health Officer may maintain an action in the name of Washtenaw County in a court of competent jurisdiction for any injunction or other appropriate process against any party to restrain or prevent violations of this Regulation.

Notwithstanding the existence of any other remedy listed in this section, the person(s) responsible for an environmental incident shall remain fully liable for the actual recoverable expenses incurred by Washtenaw County under this regulation. If the person(s) responsible for the environmental incident fails to reimburse Washtenaw County as above provided, the Public Health Officer shall have the right to enforce the payment of recoverable expenses as well as any other remedies listed in this Regulation, in any court of competent jurisdiction.

If the person responsible for an environmental incident refuses on demand to pay recoverable expenses, the sums due shall be assessed against the real property of the person responsible and shall be collected and treated in the same manner as taxes assessed under the general laws of this state.

#### **Section 5: Appeals Procedure**

Appeals from any action under this regulation shall be consistent with the appeals procedures identified in MCLA 33.2462.

#### **Section 6: Severability**

Should any section or provision of this Regulation be declared invalid or unconstitutional by any court of competent jurisdiction, such declarations shall not affect the validity of the Regulation as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

#### **Section 7: State of Michigan Environmental Response Act and Other Applicable State and/or Federal Law**

All activities performed pursuant to this Regulation shall be undertaken in a manner consistent with prevailing state and/or federal laws. Whenever possible, this Regulation shall be read in harmony with the Michigan Environmental Response Act, MCLA 299.601 and any other state and/or federal law which may apply. If in the event any part of this Regulation conflicts with the Michigan Environmental Response Act, or any other applicable state and/or federal law, the provisions of the applicable state and/or federal law shall be followed.

#### **Section 8: Repeal All Previous County Regulations or Parts of Regulations in Conflict Herewith**

All previous County regulations or parts of regulations in conflict herewith are hereby repealed only to the extent necessary to give this Regulation full force and effect.

### **Section 9: Procedure for Approval of Regulation and Effective Date**

This Regulation shall be published in the manner required by law, a public hearing shall be held and the Regulation shall become effective forty-five (45) days after its approval by the Washtenaw county Board of Commissioners.