

ORDINANCE NO. 98 - 2

AN ORDINANCE OF THE TOWNSHIP OF PENN FOREST PROVIDING FOR THE CLEANUP OR ABATEMENT OF HAZARDOUS MATERIALS AND THE PERSONS LIABLE FOR THE COST OR EXPENSE OF THE SAME; DESIGNATING THE PENN FOREST TOWNSHIP FIRE COMPANIES AS THE COMMAND AGENCIES FOR ALL HAZARDOUS MATERIALS INCIDENTS WITHIN THE LIMITS OF THE TOWNSHIP; DEFINING VARIOUS TERMS NECESSARY TO AN UNDERSTANDING OF THE ORDINANCE; DETERMINING THE RIGHTS AND THE RESPONSIBILITIES OF THE TOWNSHIP, THE PENN FOREST TOWNSHIP FIRE COMPANIES, AND PERSONS LIABLE TO THE TOWNSHIP FOR THE PAYMENT OF COSTS AND EXPENSES INCURRED IN THE CLEANUP OR ABATEMENT OF HAZARDOUS MATERIALS; AND PROVIDING FOR THE RECOVERY OF SAID COST AND EXPENSES.

**Section 1. Definitions.**

As used in this Ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

**EMERGENCY ACTION** - All of the activities conducted in order to prevent or mitigate injury to human health or to the environment from a release or threatened release of any material into or upon the environment.

**EMERGENCY RESCUE PERSONNEL** - Any public employee or volunteer, including but not limited to any fire fighter or emergency rescue personnel, who responds to any condition caused, in whole or part, by a hazardous material that jeopardizes or could jeopardize public health or safety or the environment.

**FIRE CHIEF** - The Fire Chief of either Penn Forest Township Volunteer Fire Company No. 1 or Penn Forest Township Volunteer Fire Company No. 2, whichever is applicable, or his/her appointed designee.

**HANDLER** - Any person who handles hazardous material.

**HAZARDOUS MATERIAL** - Any material that, because of its quantity, concentration or physical or chemical characteristics, poses significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment; or is identified as a hazardous material by state law. "Hazardous materials" include but are not limited to hazardous substances, hazardous waste, extremely hazardous waste, and any material which a handler or the Fire Chief has a

reasonable basis for believing to be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.

**HAZARDOUS SUBSTANCE** - Any substance or chemical product for which any of the following applies to the substance in the quantity involved:

- A. The manufacturer or producer is required to prepare an MSDS for the substance or product pursuant to any applicable federal law or regulation.
- B. The substance is listed as a radioactive material in the Code of Federal Regulations, as amended.
- C. The substance is classified as a pesticide in accordance with applicable state laws and regulations.
- D. The substance is classified by the United States Environmental Protection Agency as a priority organic pollutant.
- E. The substance is identified as a hazardous substance by state law.

**HAZARDOUS WASTE or EXTREMELY HAZARDOUS WASTE** - Any material or substance of which any one (1) of the following applies:

- A. The substance is identified as a hazardous waste substance by state law.
- B. The substance is identified as an extremely hazardous waste by state law.
- C. The substance is identified in the Code of Federal Regulations, Title 40, Sections 261.31 through 261.33, inclusive, as amended.

**MSDS** - A material safety data sheet prepared pursuant to state law or pursuant to the regulations of the Occupational Safety and Health Administration of the United States Department of Labor.

**PERSON** - An individual, corporation, firm, association, public utility, trust, estate, public or private institution, group, commonwealth or local agency, political subdivision, and any legal successor, representative or agency of the foregoing.

**RECOVERABLE COSTS OR EXPENSES** - In general, those expenses or costs that are reasonable, necessary and allocable to the emergency action. Expenses or costs allowable for recovery may include but are not limited to:

- A. Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the emergency action.
- B. Compensation of employees for the time and efforts devoted specifically to the emergency action.
- C. Rental or leasing of equipment used specifically for the emergency action (such as protective equipment or clothing and scientific and technical equipment).
- D. Replacement costs or expenses for equipment owned by the township that is contaminated beyond reuse 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 response).
- E. Decontamination of equipment contaminated during the response.
- F. Special technical services specifically required for the response (such as costs or expenses associated with the time and efforts of technical experts or specialists not otherwise provided for by the township).
- G. Other special services specifically required for the emergency action.
- H. Laboratory costs or expenses of analyzing samples taken during the emergency action.
- I. Costs or expenses of cleanup, storage or disposal of the released material.
- J. Costs or expenses associated with the services, supplies and equipment procured for a specific evacuation.
- K. Medical costs or expenses incurred as a result of response activities.
- L. Legal costs or expenses that may be incurred as a result of the emergency action, including efforts to recover costs or expenses pursuant to this ordinance.

**RELEASE** - Any spilling, leaking, pumping, poring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of a hazardous material, including, but not limited to, the abandonment or discarding of barrels, containers and other receptacles containing a hazardous material.

**STORE** - The containment of substances or materials in such a manner as not to constitute a release or disposal of such substances or materials.

**THREATENED RELEASE** - A condition creating a substantial probability of harm when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce or mitigate damages to persons, property or the environment.

## **Section 2. Command agencies.**

The Board of Supervisors of the Township of Penn Forest hereby designates Penn Forest Township Volunteer Fire Company No. 1 as the hazardous materials incident command agency for all hazardous materials incidents within the limits of the Township occurring West of the Pennsylvania Turnpike and on the Pennsylvania Turnpike; and the Board of Supervisors of the Township of Penn Forest Township hereby designates Penn Forest Township Volunteer Fire Company No. 2 as the hazardous materials incident command agency for all hazardous materials incidents within the limits of the Township occurring East of the Pennsylvania Turnpike.

## **Section 3. Report of release or threatened release.**

- A. The handler of any hazardous material shall, upon discovery, immediately report any release or threatened release of a hazardous material to Penn Forest Township Volunteer Fire Company No. 1 or Penn Forest Township Volunteer Fire Company No. 2, whichever is applicable. Each handler shall provide all state, township or county fire or public health or safety personnel and emergency rescue personnel with access to the handler's facilities.
- B. A copy of a report submitted to any state or federal agency concerning such release may be filed with the applicable Fire Chief, instead of any original report.

**Section 4. Liability for cleanup costs or expenses.**

Any persons causing an unauthorized release of any hazardous material which requires the township or either fire company to expend funds for the cleanup or removal of such hazardous material shall be civilly liable to the township for all costs or expenses incurred by the township or either fire company for such cleanup and removal.

**Section 5. Cleanup or abatement; persons liable for costs or expenses.**

Penn Forest Township Volunteer Fire Company No. 1 or Penn Forest Township Volunteer Fire Company No. 2, whichever is applicable, is authorized to cleanup or abate the effects of any hazardous material unlawfully released, discharged or deposited upon or onto property or facilities within its designated portion of the township. The following described persons shall be jointly and severally liable to the township for the payment of all costs or expenses incurred by the township or either fire company as a result of such cleanup or abatement activity:

- A. Any person or persons whose negligent or willful act or omission proximately caused such release, discharge or deposit;
- B. The person or persons who owned or had custody or control of the hazardous material at the time of such release, discharge or deposit, without regard to fault or proximate cause; and
- C. The person or persons who owned or had custody or control of the container which held such hazardous material at the time of or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

**Section 6. Verification and supervision of cleanup.**

In the event that any person undertakes, either voluntarily or upon order of the Fire Chief of Penn Forest Township Volunteer Fire Company No. 1 or the Fire Chief of Penn Forest Township Volunteer Fire Company No. 2, whichever is applicable, or other township official, to clean up or abate the effects of any hazardous substance or material unlawfully released, discharged or deposited upon or onto any property or facility within the township, the applicable Fire Chief may take such action as is necessary to supervise or verify the adequacy of the cleanup or abatement. The persons described in Sections 4 and 5 shall be liable to the township for all costs or expenses incurred as a result of such supervision or verification.

**Section 7. Recovery of costs or expenses.**

- A. Itemization of recoverable costs or expenses. Township personnel and departments, Penn Forest Township Volunteer Fire Company No. 1 and Penn Forest Township Volunteer Fire Company No. 2, whichever is or are applicable, shall keep an itemized record of recoverable costs or expenses resulting from an emergency action. Promptly after completion of an emergency action, Penn Forest Township Volunteer Fire Company No. 1 or Penn Forest Township Volunteer Fire Company No. 2, whichever is applicable, shall certify its costs or expenses to the Township Secretary.
- B. Submission of claim. The township shall submit a written itemized claim for the total costs and expenses incurred by the Township, Penn Forest Township Volunteer Fire Company No. 1 and Penn Forest Township Volunteer Fire Company No. 2, whichever is or are applicable for the emergency action to the responsible person and a written notice that, unless the amounts are paid in full within thirty (30) days after the date of mailing of the claim and notice, the township will file a civil action seeking recovery for the stated amount.
- C. Civil suit. The township may bring a civil action for recovery of the recoverable expenses or costs against any and all persons causing or responsible for the emergency action.

**Section 8. Conflict with state or federal law.**

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

**Section 9. Additional remedies.**

The township may take any appropriate action at law or equity, civil or criminal, to enforce the provisions of this Ordinance, and this Ordinance shall in no way restrict any remedies otherwise provided or allowed in law or equity.

**Section 10. Severability.**

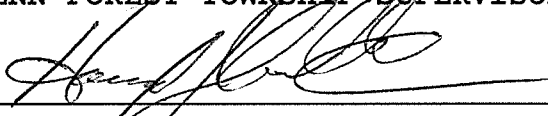
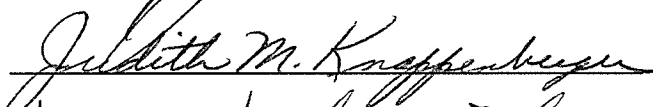

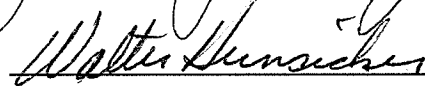
The provisions of this ordinance are severable. If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or application.

**Section 11. Effective date.**

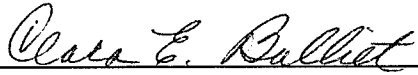
This Ordinance shall become effective ten (10) days after the date of enactment.

Enacted and ordained by the Board of Supervisors of Penn Forest Township, this \_\_\_\_\_ day of September, 1998.

PENN FOREST TOWNSHIP SUPERVISORS

  
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**ATTEST:**

  
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**SECRETARY**