

MODEL COST RECOVERY ORDINANCE # _____

Section _____, Chapter _____, Title _____

Sec. _____ Title _____

This article shall be known as the "Hazardous Material Emergency Response Cost Recovery Ordinance."

(Ord. No. _____, § _____)

Sec. _____. Intent and purpose.

This article is intended to provide for recovery by [political subdivision] of the State of Florida, its agencies or agents *[and, if applicable, the municipalities within the county]* of costs incurred in emergency response, incident assessment, control, containment and abatement efforts directly related to hazardous material Emergency Response.

(Ord. No. _____, § _____)

Sec. _____. Authority.

The [political subdivision] has the authority to adopt this article pursuant to the provisions of Florida Statutes, Chapters 125 [counties], 166 [municipalities] and 252.

(Ord. No. _____, § _____)

Sec. _____. Jurisdiction.

This article shall apply to [describe jurisdiction] Florida.

(Ord. No. _____, § _____)

Sec. _____. Definitions.

As used in this article, the following words and phrases shall have the meaning indicated unless the context otherwise requires:

Costs means all reasonable and necessary expenses that are incurred by [political subdivision] as a direct result of the hazardous materials emergency response, including but not limited to the following:

- (1) Emergency response, incident assessment, control, containment and abatement of a hazardous materials incident, to include costs associated with transportation and temporary storage of hazardous materials if such transportation and temporary storage is necessary to control and contain the hazardous materials incident.
- (2) Ensuring the safety of the public, both on and off the site of the hazardous materials incident.
- (3) Repairing or replacing equipment if said equipment was damaged or destroyed as a direct result of the hazardous materials incident.

- (4) Equipment, including rental equipment, utilized by the [political subdivision] to the extent such labor and equipment is necessary for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (5) Contract labor and equipment utilized by the [political subdivision] for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (6) Overtime costs for compensation of [political subdivision employees] for the time devoted specifically to the hazardous materials incident.
- (7) Labor and equipment utilized by the [political subdivision] via a mutual aid agreement for emergency response, incident assessment, control, containment and abatement of the immediate hazard.
- (8) Disposable materials and supplies consumed and expended as a result of the hazardous materials incident, including but not limited to, absorbents, foams, neutralization agents, over pack drums or containers.
- (9) Decontamination of equipment that is contaminated during the hazardous materials incident.
- (10) Laboratory costs for purposes of analyzing samples taken during the release.

Hazardous material means a substance or material that the United States Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 C.F.R. 172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. 173.

Hazardous material incident means actual or threatened release of a hazardous substance or material, including hazardous waste, which poses an imminent threat to the environment and/or to the health, safety or welfare of the population and requires emergency response, incident assessment, control, containment and abatement of the immediate hazard.

Person means an individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, governmental entity, or any other legal entity.

Release means the accidental or intentional, sudden or gradual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any hazardous material or substance or waste or pollutant or contaminant) whether such release occurs from a fixed facility or while the materials are being transported.

Responder means any person authorized to participate in [the political subdivision's] coordinated emergency response to a hazardous material incident.

Emergency response means the provision of authorized assistance during and following a hazardous material incident and to reduce the likelihood of secondary damage, and may include incident assessment, control, containment and abatement of the immediate hazard.

Responsible party means the person or persons who cause or allow a release of a hazardous material or substance or who had custody or control of the hazardous material or substance at the time of such release.
(Ord. No. _____, § _____)

Sec. _____. Hazardous materials incidents--Liability for costs.
Any responsible party shall be liable for the payment of all reasonable and necessary costs incurred by the [political subdivision] or its agents for emergency response, incident assessment, control, containment and abatement of the immediate hazard as a direct result of the hazardous material incident.

Sec. _____. Hazardous materials incidents—Exceptions.
The authority to recover costs under this article shall not include costs incurred for actual fire suppression service which is normally or usually provided within the [political subdivision's] by its' fire department or its authorized agents.

Sec. _____. Collection and disbursement of funds for cost recovery.
(a) *Agent for collection.* The [political subdivision] shall be responsible for collecting invoices from responders to a hazardous material incident and presenting a bill to the responsible party for costs.

(b) *Procedure for responders.* When responding to a hazardous material incident, the emergency response agencies of the [political subdivision] shall keep a detailed record of the costs attributable thereto.

(c) *Procedure for responders submittal of invoices to [political subdivision].* An invoice identifying eligible costs under this article shall be submitted by responders to the [political subdivision] within [___# days] after the cost was

incurred or identified. Submitted invoices must include sufficient documentation for cost reimbursement (i.e. copies of time sheets for specific personnel, copies of bills for the materials, equipment and supplies procured or used, etc.). Accepting invoices from agencies outside the [political subdivision] shall not incur liability to the [political subdivision] to pay costs from such agencies until payment is received by the [political subdivision] from the responsible party.

(d) *Method of billing and payment.* The [political subdivision] shall submit one or a series of consolidated invoices to the responsible party, identifying the responders (i.e. agencies, agents or municipalities) and their specific costs for reimbursements. The responsible party shall issue a separate certified check made payable to each responder that submitted an invoice. The checks will be sent to [the political subdivision] within 60 days of receiving a consolidated invoice. The [political subdivision] shall disburse the checks to the responders. (Ord. No. _____, § _____)

Sec. _____. Methods of enforcement.

(a) *Supplemental Beneficial Projects.* This article shall not prohibit the [political subdivision] from entering into binding agreements with the responsible party for remedial actions such as Supplemental Beneficial Projects (SBPs) in lieu of monetary payment, provided that all or part of the responders agree with the SBP in lieu of payment or the [political subdivision] accepts the SBP and compensates the other responders. SBPs are projects which a responsible party agrees to undertake to benefit the emergency response entity but is not otherwise legally required to perform. The SBP must have a direct benefit to the responding entity of the [political subdivision] and the value of the SBP can be used to offset monetary payment on a dollar for dollar basis. There is no minimum or maximum amount of monetary payment that can be offset by a SBP. (Ord. No. _____, § _____)

(b) *Civil action.* The [political subdivision] may enforce these provisions by civil action in a court of competent jurisdiction for the collection of any amounts due hereunder plus administrative collection costs, attorneys' fees, or for any other relief that may be appropriate. A certified copy of a judgment in favor of the [political subdivision] may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by such person(s) and such lien shall be coequal with the lien of all state, district and municipal taxes superior in dignity to all other liens, titles, and claims until paid or extinguished.

(c) *Remedies at law.* The [political subdivision] may seek any or all available remedies at law, to include the provisions of this article, against any parties responsible for any hazardous materials incident, to include those actions and remedies available under the U.S. Bankruptcy Code relating to such matters. (Ord. No. _____, § _____)

Sec. _____. Conflict with other laws.

(a) Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the more restrictive requirements shall apply as to the matters in conflict, and all provisions of this ordinance not in conflict shall remain in full force and effect.

(b) This article shall not restrict or replace cost recovery from funding sources available under state and federal regulations including but not limited to the revolving fund established under section 311(K) of the Federal Water Pollution Trust Fund established under Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9611); the Hazardous Materials account of the Florida Division of Emergency Management Operating Trust Fund established under F.S. ch. 252, and the Florida Coastal Protection Trust Fund established under F.S. ch. 376.

(b) This article shall not restrict or replace any legal remedy or cause of action otherwise available to the [political subdivision] or Responsible Party.
(Ord. No. _____, § _____)

Adopted by the State Emergency Response Commission for Hazardous Materials July 14, 2006