

Chapter 40
HAZARDOUS MATERIALS RESPONSE

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40.01 DEFINITIONS

In addition to those terms defined in Appendix A of this Code, for the purpose of this Chapter, the following terms, whether capitalized or not, are defined as follows:

Emergency action: Any action taken at or near the scene of a hazardous materials incident to prevent or minimize harm to human health, to property, or to the environment from the release of hazardous materials, including responding to fires or explosions which are caused by or arise from the hazardous materials incident.

Emergency Response Agency: The Village and shall include any government agency(ies) or private entity(ies) whose assistance is requested and is supplied during an emergency action.

Hazardous material: Any substance(s) or material(s) defined or listed as a hazardous substance, pollutant, or contaminant in any applicable federal, state, or local laws or regulations or any substances or materials in a quantity or form which, in the determination of the Police Chief or his/her authorized designee, poses an imminent risk to the life, health, safety or welfare of persons or property within the Village.

Hazardous materials incident: An occurrence involving the potential or actual release of a hazardous material.

Person: An individual, a corporation, a partnership, an unincorporated association or any unit of federal, state or local government.

Costs: Those necessary and reasonable costs incurred by the Village in connection with responding to, investigating, mitigating, abating, cleaning, and/or removing the release of a hazardous material. Such costs include, but are not limited to:

1. Disposable materials and supplies acquired, consumed, and expended as a result of the release.

2. Full cost recovery for compensation of Village employees for the time devoted specifically to the release.
3. Rental or leasing of equipment used specifically for the release.
4. Replacement costs for equipment that is contaminated beyond reuse or repair as a result of the release.
5. Decontamination of equipment contaminated during the release.
6. Other special technical services or resources specifically required as a result of the release.
7. Other special services specifically required as a result of the response (e.g., utilities, etc.)
8. Laboratory costs for purposes of analyzing samples taken during the release.
9. Costs associated with the services, supplies, and equipment procured for a specific evacuation.
10. An hourly labor charge for each employee responding and an hourly operations and maintenance charge for each vehicle responding. There shall be a minimum three hour charge for each response.

The Village shall keep a detailed record of all costs associated with a release.

Release: 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 material or any constituent thereof may enter the environment.

Remedial action: Any action consistent with permanent remedy taken instead of or in addition to 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, ditches, clay cover, neutralization, cleanup of released hazardous materials or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment.

Removal: 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 threat of release of hazardous materials, the disposal of removed material or the taking of such action as

may be necessary to prevent, minimize or mitigate damage to the 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 of threatened individuals.

Responsible party or responsible parties: A person or persons who:

1. Owns or has custody of hazardous material that is involved in an incident requiring emergency action by an emergency response agency.
2. Causes or substantially contributes to the cause of the incident.

40.02 PROHIBITED ACTS

No person shall cause, threaten or allow the release of hazardous materials into the environment unless such release is in accordance with an appropriate permit granted by the Illinois Environmental Protection Agency or other state or federal agency having primary jurisdiction over the 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.

40.03 DETERMINATION OF EMERGENCY ACTION

The Chief of Police, or in his or her absence, his or her authorized designee, shall have the authority to determine whether an incident requires emergency action, and to use his or her judgment as to the nature and extent of the services to be provided by the Village within its capabilities, and whether to utilize other governmental agencies or private entities to provide emergency action.

40.04 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 action incurred by the Village as a result of a release or threatened release of a hazardous material:

1. The owner and operator of a facility or vessel from which there is a release or substantial threat of release of a hazardous material;
2. Any person who, at the time of disposal, transport, storage or treatment of a hazardous material, 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 any such hazardous materials;
3. 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 such person at a facility owned or operated by another party or entity from which facility there is a release or substantial threat of a release of such hazardous materials;

4. Any person who accepts or accepted any hazardous materials for transport to disposal, storage or treatment facilities from which there is a release or a substantial threat of release of such hazardous materials.

40.05 RELEASE IN ACCORDANCE WITH LAW

There shall be no liability under this Chapter for any release permitted by state or federal law, but only to the extent that such release is made in accordance with applicable state and federal law, regulations and permit requirements and the ordinances of the Village.

40.06 PUBLIC DUTY IMMUNITY

There shall be no liability under this Chapter for damages as a result of any actions taken or omitted by the response authority, its agents and employees with respect to an incident creating a danger to public health, welfare or the environment as a result of any release or threatened release of a hazardous material including, but not limited to, actions taken or omitted in the course of rendering:

1. Remedial action or removal under this Chapter;
2. Care, assistance or advice in accordance with this Chapter;
3. Care, assistance or advice in accordance with the Illinois Emergency Management Agency Act, as amended (20 ILCS 3305/1 *et seq.*);
4. Care, assistance or advice at the direction of the response authority; or
5. Care, assistance or advice at the direction of an on-site coordinator appointed under said National Contingency Plan, the Illinois Emergency Management Agency Act, the Village's emergency service and disaster basic plan or such other public health, safety or emergency agency exercising jurisdiction over the release or threatened release of a hazardous material.

40.07 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 or threat of release under this Chapter from the liability imposed under this Chapter. Nothing in this Section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this Chapter.

B. Nothing in this Section, including the provisions of Section 40.07-A herein, shall bar a cause of action that an owner or operator or any other person subject to liability under this Chapter, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

40.08 COSTS AND PENALTIES

Any person who is liable for the release or threatened release of a hazardous material who fails without sufficient cause to pay for or provide removal or remedial action upon or in accordance with a notice and request of the response authority, or in accordance with any order of any court having jurisdiction of the matter, shall be liable to the Village for all costs incurred by the Village as a result of such failure to provide or take such removal and remedial action, together with the cost of any removal or remedial action taken by the Village in accordance with this Chapter. In addition, any such person shall be guilty of a violation of this Chapter and shall be fined not less than \$500 nor more than \$1,000 for each offense. A separate offense shall be deemed committed for each day on which a violation occurs or continues.

40.09 NOTIFICATION OF REIMBURSEMENT

A. Within 90 days after providing emergency action, the Village shall notify the responsible party or parties of the Village's claim for reimbursement and shall furnish an itemized listing of the costs incurred. Furnishing such itemized list shall be deemed a request for reimbursement.

B. If the responsible party or parties, as the case may be, do not reimburse the Village within 30 days after receipt of such claim for reimbursement, then the Village is authorized to file suit in the Circuit Court of McHenry County or in any other county where any responsible party resides to collect the amount due.

C. The Village is authorized to file suit on its own behalf and in the behalf of any other governmental agencies or private entities who were requested to provide emergency action.

D. Amounts due from the responsible party or parties shall bear interest at the rate of 10 percent per annum from the date of the emergency action until paid.

E. In addition to all other amounts to which it is entitled, the Village shall also be entitled to recover reasonable attorney fees and all costs incurred in enforcing its rights under this Chapter

40.10 OTHER REMEDIES

The remedies provided by this Chapter shall be in addition to any other remedies provided by law.