

830.4

## GRAYSON COUNTY HAZARDOUS MATERIALS ORDINANCE

An Ordinance relating to the use and control of hazardous materials in Grayson County, Kentucky and the timely reporting of releases thereof.

### HAZARDOUS MATERIALS ORDINANCE

WHEREAS, the Fiscal Court of Grayson County determines that hazardous materials can pose a direct and potential threat to the health and welfare of the people of Grayson County and surrounding areas and it is the responsibility of county government to protect its citizens, and that persons who handle hazardous materials also have a responsibility to the community and its residents to minimize risks; and

WHEREAS, the Grayson County Fiscal Court further determines that an ordinance is necessary to provide a comprehensive approach on the local level to prevent the uncontrolled release of hazardous materials into the surrounding environment which can directly or indirectly cause harm or damage to the environment and to person's health and welfare, and that for this approach to be effective, cooperation between the public and private sectors is essential; and

WHEREAS, the Grayson County Fiscal Court further determines that, in order to implement a plan related to hazardous materials, information on the location and type of hazardous materials stored, manufactured, used or disposed of within Grayson County, Kentucky must be gathered, compiled, and updated for use by the government, while protecting the legitimate interests of business in confidential information and trade secrets; and

WHEREAS, this ordinance is intended to compliment efforts at the state and federal levels to deal effectively with the issues of hazardous materials allowing coordination of the efforts of all three levels of government to avail Grayson County of the best possible opportunities to protect its citizens and its environment from the potentially devastating effects of hazardous materials; and

WHEREAS, the Grayson County Fiscal Court further determines that the timely reporting of hazardous materials spills and releases is critical to governmental emergency response procedures designed to limit and control danger to life and property,

NOW, THEREFORE, BE IT ORDAINED by the Fiscal Court of Grayson County that an Ordinance be and hereby is created to read as follows:

830.4

1) **Purpose:** The purpose of this Ordinance is the protection of public health and safety in Grayson County, Kentucky, through prevention and control of hazardous materials incidents and releases and to require the timely reporting of releases thereof.

2) **APPLICABILITY:** This Ordinance shall apply to all persons who manufacture, use, transport, or store hazardous materials in quantities prescribed by this Ordinance and as defined herein, within Grayson County.

3) **DEFINITIONS:** Unless the context of usage indicates otherwise, the meaning of specific terms in this Ordinance shall be as follows:

A) **Consumer product:** shall have the meaning stated in 15 U.S.C.2052.

B) **Employee:** any person who works, with or without compensation, in a work place.

C) **Employer:** any person, firm, corporation, partnership, association, government agency or other entity engaged in a business or in providing services, that has employees.

D) **Environment:** means the navigable waters of the United States and any other surface water, ground water, drinking water supply, soil surface, subsurface strata, storm sewer or publicly or privately owned treatment works (other than those handling only waste water generated at a facility) within boundaries of Grayson County, Kentucky.

E) **Facility:** means (1) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (2) any site or area where a hazardous material has been deposited, stored, disposed of, or placed or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

F) **Hazardous Materials:** means (A) any substance designated pursuant to section 311 (b) (2) (A) of the Federal Water Pollution Control Act, (B) any element, compound mixture, solution, or substance designated by the U.S. Environmental Protection Agency (EPA) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Section 102 (CERCLA), (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (commonly known as the Resource Conservation and Recovery Act "RCRA"), but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress, (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the U.S. Environmental Protection Agency has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does include petroleum, including crude oil or any fraction thereof which is not otherwise

830.4

specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does include, if stored, natural gas, natural gas liquid, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). Hazardous materials shall include those contained in the "List of Hazardous Materials", which is included as an appendix to this Ordinance, radioactive materials and isotopes, and explosives. Hazardous materials shall not include household wastes and other materials excluded by 40 CER 261.4. Hazardous materials shall not include any material which is a gas under standard temperature and pressure except for purposes of reporting of releases pursuant to Section 6(A) and 6(D).

(G) Normal Application of Pesticides: means application pursuant to the label directions for application of a pesticide product registered under section 30 or section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 135 et seq.) (FIFRA), or pursuant to the terms and conditions of an experimental use permit issued under section 5 of FIFRA, or pursuant to an exemption granted under section 18 of FIFRA.

(H) Oil: means oil of any kind or in any form including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(I) Person: means any individual, trust, firm, company, society, corporation, joint stock company, partnership, consortium, association, cooperative, joint venture, city, county, city, and county special district, the state or any department or agency or political subdivision thereof, United States Government, or other commercial or legal entities.

(J) Release: means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, out excludes (A) with respect to a claim which such persons may assert against the employer of such persons as provided by CERCLA regulations, any release which results in exposure to persons solely within a work place, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, and (C) the normal application of fertilizer and pesticides.

(K) Authorized Release: means (1) a release which is a federally permitted release under 42 U.S.C. 9601 (10); (2) a release to waters of the United States or adjoining shorelines which is exempt from notification under 40 CFR 117.11 through 40 CFR 117.14; (3) the introduction of any pollutant into a publicly owned treatment works which is not in violation of applicable pretreatment requirements or other regulations controlling the introduction of pollutants into the publicly owned treatment works; and (4) any release which is specifically authorized by the administering agency after review of the HMPC Plan submitted pursuant to Section 7 of this Ordinance provided the HMPC Plan is part of an approved permit.

830.4

(L) Reportable Quantity: means that quantity, as set forth in Section 4 of this Ordinance.

(M) Store: to deposit or place a substance in the city or county for a period of ten (10) days or more provided such substance is not otherwise in transit.

(N) Use: to store, maintain, treat, process, handle, generate, dispose of, or otherwise manage. Use shall not include any mode of transportation other than on-site transportation.

(O) Vessel: means every description of watercraft or other artificial contrivance used, or capable or being used, as a means of transportation on water.

#### (4) DETERMINATION OF REPORTABLE QUANTITIES

(A) Listed Hazardous Materials: The quantity in the column "RQ" for each hazardous material in the "Environmental Protection Agency(ies) TITLE III List of lists or as listed by the Local Emergency Planning Committee of Grayson County is the reportable quantity for that material. "Reportable Quantities" may be adjusted higher or lower as the EPA publishes new lists or on direction of the LEPC. This information is included in Appendix A.

(B) Unlisted Hazardous Materials: Unlisted hazardous wastes designated as hazardous materials have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristics of EP toxicity identified in 40 CER 261.24. Unlisted hazardous wastes which exhibit EP toxicity have the reportable quantities listed in Appendix A for the contaminant on which the characteristic of EP toxicity is based. If an unlisted hazardous waste exhibits EP toxicity on the basis of more than one contaminant, the reportable quantity of that waste shall be the lowest of the reportable quantities listed in Appendix A for those contaminants. If an unlisted hazardous waste exhibits the characteristic of EP toxicity and one or more of the other characteristics the reportable quantity shall be the lowest of the applicable reportable quantity.

(C) Oil: (1) The reportable quantity for releases of oil to water of the United States or adjoining shorelines is any quantity which violates applicable water quality standards or causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. (2) The reportable quantity for releases of oil to the environment other than releases to water of the United States and adjoining shorelines is 56 gallons. (3) Notwithstanding any other provision or this Section, a release of oil from a properly functioning vessel engine shall not be deemed to be in a reportable quantity; however, this provision shall not be applicable to oil accumulated in a vessel's bilges.

(D) Higher Reportable Quantity: Notwithstanding any other provision of this Section, the administering agency, after reviewing of the HMPC plan submitted pursuant to Section 7 of this Ordinance, may designate a reportable quantity for a hazardous material in excess

830.4

of the quantity determined under this Section if the administering agency determines that the higher reportable quantity is consistent with the purposes and objectives of this Ordinance.

(E) Release of Hazardous Materials to Sanitary Sewer System: Notwithstanding any other provision of this Section, any release of a hazardous material to a sanitary sewer system which is prohibited under applicable pretreatment or other regulations governing discharges to the sanitary sewer system shall be deemed to be discharged in a reportable quantity.

(F) Component Hazardous Materials Release: A release of a mixture or solution of which a hazardous material is a component shall be considered to be a release in a reportable quantity only where the component hazardous material of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.

#### (5) ADMINISTERING AGENCY

The purpose of this Ordinance is to establish a uniform county-wide program for protection of the environment from releases of hazardous materials to be administered by existing governmental agencies. The Local Emergency Planning Committee (LEPC) shall serve as the lead agency in the administration of the Ordinance.

#### (6) NOTIFICATION TO FIRE COMMUNICATIONS & DISPATCH:

(A) Notice Upon Discovery: Whenever a release (other than an authorized release) of any hazardous material, in a quantity which exceeds the reportable quantity, occurs on any facilities of any kind, the person in charge, upon discovery of such release, or evidence of there having been a release, even though it has apparently been controlled, shall IMMEDIATELY cause notice of the existence of such release, the circumstances of same, and the location thereof to be given to the Emergency Services Dispatch Office (County 911).

(B) Emergency Telephone Number: The notice required by this Section in Grayson County, Kentucky shall be given by telephoning "911" or such other emergency telephone number as may be designated. This one call will meet the requirement of notifying local agencies. Existing requirements for notification of state and federal agencies in the event of a release shall not be met by calling the "911" dispatch center.

(C) Duty to Control Release: The requirements of this Section shall not be construed to forbid any person on or about facilities from using all diligence necessary to control such release prior to the notification of "911", especially if such efforts may result in the containment of the release and/or the abatement of extreme hazard to the employees or the general public. Delays in reporting releases due to in-house notification of off-site, owner/supervisors shall not be acceptable and may result in penalties.

8304

(D) Accidental air releases in excess of the reportable quantities listed in Appendix A or if unlisted, as prescribed by Section 4 of this Ordinance (releases that are required to be reported to state and federal authorities), shall be reported under the requirement of this Section unless a different reportable quantity has been established under a previous agreement between the LEPC and the particular facility.

(E) Duty to Report to State, Federal and Local Agencies: No statement contained in this section shall be construed to exempt or release any person from any other notification or reporting procedure required by any state, federal and/or local agency.

#### (7) CONFIDENTIAL INFORMATION AND TRADE SECRETS

(A) Information and data provided by any person or obtained from any report, questionnaire, permit application, permit and monitoring program, and from inspections shall not be made available to the public or any other governmental agency, unless required by law.

(i) Upon submission of information in any form it shall be the obligation of the submitter to separate all confidential and trade secret material from any material subject to disclosure under the law.

(ii) Any requests made under the law from information containing confidential or trade secrets shall be brought to the attention of the person requesting confidentiality of its trade secrets by certified mail return receipt requested. The notification shall advise the person requesting confidentiality of the decision of the administering agency regarding release of the confidential information. In no event will such confidential information be released until five (5) days have elapsed from date notice is sent by registered mail.

(iii) Within seventy-two (72) hours after receipt of notification the person requesting confidentiality of its trade secrets shall have the burden to initiate appropriate actions at law or otherwise to protect its confidential or trade secrets from disclosure, and must demonstrate that public disclosure of confidential or trade secrets is likely to cause substantial harm to his competitive position.

(iv) Any individual who releases information containing confidential or trade secrets in violation of the law or this section shall be subject to disciplinary action by his employer for malfeasance, misfeasance and willful neglect of official duties, and may further be guilty of misuse of confidential information under KRS 522.040.

(B) The provision of this section shall in no way prohibit or limit the exchange of information, confidential or otherwise, between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

830.4

#### (8) ENFORCEMENT; NOTICE OF VIOLATION

(A) Notice: Upon notification or discovery of any violation of the provisions of this Ordinance the administering agency shall immediately investigate the site upon which the violation is located. The administering agency will be the lead enforcement agency for violations of this Ordinance. If a violation exist, a notice describing the violation shall be served upon the person who is responsible for the facilities upon which the violation has occurred, if the identity of the person is known. The notice shall also include the following if applicable:

(i) a statement that the situation must be abated within the period of time prescribed by the administering agency giving the person responsible for the release the option to initiate clean-up and disposal, provided that no unreasonable delay or damage to the public is the result thereof.

(ii) a statement that if the situation is not remedied within a prescribed period of time, the administering agency with jurisdiction may proceed to correct the violation.

(iii) a statement that the person shall be liable for any costs incurred by public agencies associated with their responses except for those costs that are associated with a normal emergency response.

(iv) a statement that the nature of hazardous material emergency response is outside the definition of "normal emergency response" for local governmental agencies as outlined in Section 8 (A) (iii) above.

(v) a statement that after the administering agency has corrected the violation, a bill shall be sent charging the person the amount of costs and expenses incurred by the governmental agency in correcting the violation.

(vi) a statement that "penalties" may be levied for violations that have occurred.

(B) Governmental Response: In cases where the identity of a person who is responsible for facilities upon which a violation has occurred is not known at the time a violation is reported, the County or any governmental agency with jurisdiction in Grayson County may take reasonable steps to abate any problem and may take reasonable steps to clean-up the area affected to assure continuing safety of the public and the environment. When the identity of the person responsible for the facility is determined, a bill shall be sent to the person for the costs for correcting the violation according to the provisions of Section (8) (A).

(C) Injunctive Relief: The administering agency is empowered to seek injunctive relief for violations of this Ordinance should other means prove ineffective and a threat to public health and safety exists.

830-4

**(9) PENALTIES**

(A) Amount Exceeding Reportable Quantity: The person responsible for a hazardous material release in an amount exceeding the reportable quantity may be fined not more than One Thousand Dollars (\$1,000.00), if the release is not an authorized release, and if the release involved willful violations, negligence, or repeated spills under similar conditions and where a significant quantity of hazardous material is involved taking into account real or potential damage to the environment and threat to the public health. Every incident giving rise to such a release shall constitute a separate offense; however, no person shall be held responsible for more than one (1) violation per day where the violations occur at the same facility and are casually related.

(B) Failure to Notify 911 Dispatch: The person who fails to notify the 911 Dispatch center as required by Section (6) of this Ordinance may be fined not more than Five Thousand Dollars (\$5,000.00).

(C) Any Provision Other Than Notification: The person who otherwise violates any provision of this Ordinance other than Section (6) (Notification), shall be fined not more than One Hundred Dollars (\$100.00). Every incident giving rise to such a violation shall constitute a separate offense; however, no person shall be held responsible for more than one (1) violation per day where the violations occur at the same facility and are casually related.

(D) Civil Damage: Any person violating any of the provisions of this Ordinance shall, subject to the affirmative defenses set forth in Section (11), become liable civilly to the County government for any expenses, loss or damage caused to the government by reason of such violation, including, but not limited to, and clean-up, evacuation, administrative or other expenses, and legal expenses.

(E) Penalties Imposed Pursuant to Legislative Authority: Any penalties imposed under this Section shall be levied by the administering agency with jurisdiction pursuant to its legislative authority.

**(10) AFFIRMATIVE DEFENSES**

It shall be an affirmative defense to any enforcement action other than an action for violation of Section 6 of this Ordinance, including the recovery of clean-up costs pursuant to this Ordinance, if a person can prove that a release of hazardous materials was caused solely by (a) an act of God; (b) an act of war; (c) negligence on the part of the County government; (d) an act or omission of a third party, or any combination of the foregoing clauses.

830.4

(11) DISCLAIMER OF LIABILITY

This Ordinance shall not create liability on the part of the administering agency for any damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder. All persons are advised to determine to their own satisfaction the level of projections in addition to that required by this Ordinance, necessary or desirable to ensure that there is no unauthorized release of hazardous materials.

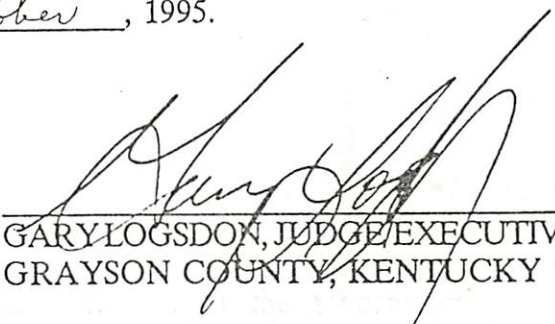
(12) SEVERABILITY

If any provision or section of this Ordinance or the enforcement of any such provision or section is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision.

(13) EFFECTIVE DATE

This Ordinance shall become effective \_\_\_\_\_ days after its passage and approval.

Passed and adopted this the 17th day of October, 1995.

  
GARY LOGSDON, JUDGE EXECUTIVE  
GRAYSON COUNTY, KENTUCKY

ATTEST:

MARGARET WOOSLEY, CLERK  
GRAYSON COUNTY, KENTUCKY

by: Margaret Woosley