

## CHAPTER 36

# HAZARDOUS SUBSTANCE SPILLS

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**36.01 PURPOSE.** In order to reduce the danger to the public health, safety and welfare from the leaks and spills of hazardous substances, these regulations are promulgated to establish responsibility for the treatment, removal and cleanup of hazardous substance spills within the City limits.

**36.02 DEFINITIONS.** For purposes of this chapter the following terms are defined:

1. “Cleanup” means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove or dispose of a hazardous substance or hazardous waste, and restoration of the affected environment.

*(Code of Iowa, Sec. 455B.381[1])*

2. “Hazardous condition” means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance or hazardous waste onto the land, into a water or into the atmosphere which creates an immediate or potential danger to the public health or safety.

*(Code of Iowa, Sec. 455B.381[4])*

3. “Hazardous substance” means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. “Hazardous substance” may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous materials designated by the Secretary of Transportation under the Hazardous Materials Transportation Act.

*(Code of Iowa, Sec. 455B.381[5])*

4. “Hazardous waste” means those wastes which are included by definition in the *Code of Iowa*, Section 455.B411(3). In brief, a hazardous waste means a waste or combination of waste that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical or infectious characteristics, has either of the following effects:

A. Causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.

B. Poses a substantial danger to human health or the environment.

“Hazardous waste” may include, but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives. It does not include (a) agricultural wastes, including manures and crop residues that are returned to the soil

as fertilizers or soil conditioners; or (b) source, special nuclear or by-product material as defined in the Atomic Energy Act of 1954, as amended.

5. “Responsible person” means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance or hazardous waste, the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance or hazardous waste when a hazardous condition occurs, whether the person owns the hazardous substance or hazardous waste or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance or waste.

*(Code of Iowa, Sec. 455B.381[7])*

6. “Treatment” means a method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous substance so as to neutralize it or to render the substance nonhazardous, safer for transport, amenable for recovery, amenable for storage or to reduce it in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of a hazardous substance to render it nonhazardous.

**36.03 CLEANUP REQUIRED.** Whenever a hazardous condition is created so that the hazardous substance or waste or a constituent of the hazardous substance or waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the responsible person shall cause the condition to be remedied by a cleanup, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition, and restore the affected area to its state prior to the hazardous condition as far as practicable. The costs of cleanup shall be borne by the responsible person. If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the City may, by an authorized officer, give reasonable notice, based on the character of the hazardous condition, said notice setting a deadline for accomplishing the cleanup and stating that the City will proceed to procure cleanup services and bill the responsible person. If the bill for those services is not paid within thirty (30) days, the City Attorney shall proceed to obtain payment by all legal means. If the cost of the cleanup is beyond the capacity of the City to finance it, the authorized officer shall report to the Mayor or Mayor Pro Tem and advise that the City immediately seek any State or Federal funds available for said cleanup.

**36.04 LIABILITY FOR CLEANUP COSTS.** The responsible person shall be strictly liable to the City for all of the following:

1. The reasonable cleanup costs incurred by the City or the agents of the City as a result of the failure of the responsible person to clean up a hazardous substance involved in a hazardous condition.
2. The reasonable costs incurred by the City or the agents of the City to evacuate people from the area threatened by a hazardous condition caused by the person.
3. The reasonable damages to the City for the injury to, destruction of, or loss of City property, including parks and roads, resulting from a hazardous condition caused by that person, including the costs of assessing the injury, destruction or loss.
4. The excessive and extraordinary cost incurred by the City or the agents of the City in responding at and to the scene of a hazardous condition caused by that person.

Impoundment of the vehicle, the tractor, its trailers or cars, its containers and appurtenances and all merchandise or other goods being shipped by the vehicle shall be within the power of the emergency management office of the County, the Sheriff or deputies, and the Mayor and Council of the City to impose if written, telegraphic or other binding proof of acceptance of responsibility for damages or cleanup of spilled materials and restoration of the environment has not been obtained and in hand for any of the above-mentioned authorities.

### **36.05 NOTIFICATIONS.**

1. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the County Sheriff's Department of the occurrence of a hazardous condition as soon as possible.

A. Notification shall be as immediate as is humanly possible and available communications allow if the hazardous condition exposes any of the population of the City or County to immediate danger or potential escalation of danger in the near future.

B. If the hazardous condition is not immediately life threatening, the notification should proceed as soon as possible but not later than six (6) hours after the onset of the hazardous condition or its discovery.

2. The person or persons responsible for the spilled or released hazardous substance or waste shall, on such person's own initiative, fulfill the requirements of State law for notification of the State Emergency Response Commission through the Department of Natural Resources.

A. The responsible person shall make contact with the Department of Natural Resources for the spill or release notification. Notification of the local emergency planning committee through the County dispatcher constitutes local notification only.

B. Any contact by City officials or authorities with the Department of Natural Resources does not constitute, imply, convey or carry any notification of the State authorities for the responsible person.

**36.06 LAW ENFORCEMENT AUTHORITY.** If the circumstances reasonably so require, the Sheriff or the officers of the Sheriff's Department, the County Emergency Program Manager, the Mayor or any Council person, or the Fire Chief may:

1. Evacuate persons from their homes to areas away from the site of a hazardous condition, and

2. Establish perimeters or other boundaries at or near the hazardous condition site and limit access to the site to emergency personnel, including cleanup personnel, for as long as is deemed necessary by either the incident commander or the Sheriff.

3. Impound any vehicle or carrier of hazardous materials involved in a spill or release until such time that legally binding assurances have been received from the carrier or manufacturer assuming full responsibility for all the costs of the cleanup of the damage caused and the restoration of the environment.

**36.07 LIABILITY.** The City shall not be liable to any person for claims of damages, injuries, or losses resulting from any hazardous condition, unless the City is the responsible person as defined in this chapter.

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