

CHAPTER 31 - HAZARDOUS SUBSTANCES ORDINANCE
OF DUBUQUE COUNTY, IOWA

Adopted October 26, 1987
Amended October 19, 2009

Table of Contents

		Page
Part 1 Introduction		2
31-1	Purpose	2
31-2	Definitions	2
31-3 through 31-10 Reserved		
Part 2 General Provisions		4
31-11	Cleanup Required	4
31-12	Liability for Cleanup Costs	5
31-13	Notifications	5
31-14	Police Authority	5
31-15	County Liability	6
31-16	Penalty	6
31-17	Separability of Provisions	6
31-18 through 31-20 Reserved		
Part 3 Enactment		6
31-21	Effective Date	6

AN ORDINANCE REGARDING HAZARDOUS SUBSTANCES AND WASTE, AND REQUIRING PERSONS RESPONSIBLE FOR THE STORING, HANDLING AND TRANSPORTATION OF SUCH SUBSTANCES TO CLEAN UP SPILLS, AND PROVIDING REMEDIES FOR DUBUQUE COUNTY TO CLEAN UP SUCH SPILLS UPON FAILURE TO DO SO, AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

**PART 1
INTRODUCTION**

- 31-1 **PURPOSE.** In order to reduce the danger to public health, safety and welfare from the storage, transportation, and spills of hazardous substances, these regulations are promulgated to establish responsibility for the removal and cleanup of spills, leakage or release of hazardous substances which create an immediate or potential danger to the public health or safety within the limits of Dubuque County.
- 31-2 **DEFINITIONS.** For the purpose of this Ordinance, these terms have the following meanings:
- 31-2.1 **"Abandoned or uncontrolled disposal site"** Real property which has been used for the disposal of hazardous waste or hazardous substance either illegally or prior to regulation as defined in Section 455B.411(1), Code of Iowa.
- 31-2.2 **"Authorized person"** means the Dubuque County Sheriff or his or her duly appointed designee. The Sheriff or his or her duly appointed designee may also appoint the Fire Chief or Assistant Fire Chief of any municipality or Fire District as his or her temporary deputy, or may delegate the duties of Authorized Person to such Fire Chief or Assistant Fire Chief, in his or her discretion.
- 31-2.3 **"Cleanup"** means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance as defined in Section 455B.381(6), Code of Iowa.
- 31-2.4 **"Hazardous condition"** means any situation involving the actual imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. For purposes of this division, a site which is an abandoned or uncontrolled disposal site as defined is a hazardous condition as defined in Section 455B.381(2), Code of Iowa.
- 31-2.5 **"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 pressures 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 on January 1, 1977, or any hazardous substance designated under Section 311 of the Federal Water Pollution Control Act as amended on January 1, 1977, or any hazardous material designated by the Secretary of Transportation under the Hazardous Materials Transportation Act as defined in Section 455B.381(1), Code of Iowa.

- 31-2.6a **"Hazardous waste"** means a combination of waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical or infectious characteristics, has either of the following effects as defined in Section 455B.411(6a), Code of Iowa:
- (1) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.
 - (2) Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. "Hazardous waste" may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.
- 31-2.6b **"Hazardous Waste"** does not include as defined in Section 455B.411(3b), 2009 Code of Iowa:
- (1) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.
 - (2) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979. [Amended October 19, 2009]
- 31-2.7 **"Person having control over a hazardous substance"** means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance. [Amended October 19, 2009]
- 31-2.8 **"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, safe for transport, amenable for recovery and 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 as defined in Section 455B.411(10), Code of Iowa.
- 31-2.9 **"Hazardous Substance Emergency"** means any hazardous condition in which the existence of a hazardous waste or hazardous substance creates an imminent or immediate danger to the public health or safety as determined by the Office of

Dubuque County Emergency Management, Dubuque County Sheriff or the local Dubuque County Fire Chief or their designee(s) so as to justify the immediate containment, treatment, or clean up of said hazardous condition. [Amended October 19, 2009]

31-3 through 31-10 Reserved.

PART 2 GENERAL PROVISIONS

31-11 CLEANUP REQUIRED.

- 31-11.1 Whenever a hazardous condition is created so that a hazardous substance or waste or a constituent of a hazardous substance or waste has entered or may enter the environment, be emitted into the air, or discharged into any waters, including ground waters, the person having control over a hazardous substance shall alleviate the condition by cleanup or treatment, as defined by Section 2(3) and (f) of this Ordinance, and shall restore the affected area to its condition prior to the hazardous condition as far as practicable. The cost of cleanup or treatment shall be borne by the person having control over a hazardous substance.
- 31-11.2 If the person having control over a hazardous substance cannot be located within a reasonable period of time, or if the person having control over a hazardous substance does not cause the cleanup or treatment to begin within a time reasonable in relation to the hazard and circumstances of the incident, the County may, by the authorized person, give notice which shall be reasonable considering the character of the hazardous condition. The notice shall state a deadline for accomplishing the cleanup or treatment and state that the County will proceed to procure cleanup or treatment services if the cleanup or treatment is not accomplished within the deadline. The notice shall set forth a reasonable estimate of the cost of cleanup or treatment and state that the person having control over a hazardous substance will be billed for all costs associated with the cleanup or treatment, including but not limited to equipment rendered unservicable, personnel costs (including overtime), disposal costs and any other costs associated with the cleanup or treatment.
- 31-11.3 In the case of a Hazardous Substance Emergency, Dubuque County shall immediately proceed to the containment, clean up and treatment of said emergency so as to avoid endangering the well-being of the public. The decision of whether an emergency exist shall lie solely the Office of Dubuque County Emergency Management, Dubuque County Sheriff or the local Dubuque County Fire Chief or their designee(s) said office is authorized to utilize such other emergency personnel, including but not limited to local law enforcement or fire departments, for the containment, clean-up and treatment of said hazardous

substance emergency. Such costs shall be born as set out in section 31-12 of this Ordinance. The Office of Dubuque County Emergency Management is further authorized to recover any costs realized as a result of such utilization by the methods stated in Section 11.4 or 11.5 of this Ordinance. [Amended October 19, 2010]

- 31-11.4 If the cost of cleanup or treatment is beyond the capacity of the County to finance it, the authorized person shall proceed pursuant to Section 455B.387(2), Code of Iowa, and immediately seek any state or federal funds available for such cleanup or treatment.

31-12 LIABILITY FOR CLEANUP COSTS.

- 31-12.1 The person having control over a hazardous substance shall be strictly liable to Dubuque County for all of the following:

- a Those costs set out in section 11.1, 11.2 and 11.3 of this Ordinance. [Amended October 19, 2009]
- b The reasonable costs incurred by the County to evacuate persons from the area threatened by a hazardous condition caused by the person having control over a hazardous substance.
- c Reasonable damages for injury to, destruction of, or loss of County property, including parts and roads, resulting from a hazardous condition caused by the person having control over a hazardous substance, including the cost of assessing the injury, destruction or loss.

31-13 NOTIFICATIONS.

- 31-13.1 Any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the Dubuque County Sheriff's Office of the occurrence of a hazardous situation as soon as possible, but no later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. The Sheriff shall immediately notify the Department of Natural Resources and any member of the appropriate fire department who has received special training in the handling and disposal of hazardous substance or wastes. [Amended October 19, 2010]

- 31-13.2 Any county or municipal employee or member of a law enforcement agency, city or township fire department, or ambulance service who discovers a hazardous condition shall immediately notify the Dubuque County Sheriff's Office. The authorized person shall notify proper state authority in the manner established by state regulation. [Amended October 19, 2010]

31-14 POLICE AUTHORITY.

- 31-14.1 If the circumstances so require, the authorized person may:
- a Order the evacuation of persons to areas away from the site of a hazardous condition, and/or
 - b Establish perimeters or other boundaries at or near the site of a hazardous

- c condition and limit access to such site to persons engaged in cleanup or treatment. No person shall disobey an order of the authorized person or any law enforcement official acting under direction of the authorized person issued under this Section.
- 31-15 COUNTY LIABILITY. Except where Dubuque County is the responsible person as defined in Section 2(e) of this Ordinance, the County shall not be liable to any person for claims of damages, injuries, or loss resulting from any hazardous condition.
- 31-16 PENALTY. Any person violating any provision, section, or paragraph of this Ordinance shall be guilty of a misdemeanor, and upon conviction by subject to a fine not exceeding \$100.00 or be imprisoned for not more than thirty (30) days. Each day of violation shall constitute a separate offense.
- 31-17 SEPARABILITY OF PROVISIONS. It is the intention of the Board of Supervisors that each section, paragraph, sentence, clause, and provision of this Ordinance is separable, and if any such provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance or any part thereof other than that affected by such decision.
- 31-18 through 31-20 Reserved.

**PART 3
ENACTMENT**

- 31-21 EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.