Agenda Item #10

323.71 Local agency response and reimbursement.

(1) A person who possesses or controls a hazardous substance that is released or who causes the release of a hazardous substance shall take the actions necessary to protect public health and safety and prevent damage to property.

(2) If action required under sub. (1) is not being adequately taken or the identity of the person responsible for an emergency involving a release or potential release of a hazardous substance is unknown and the emergency involving a release or potential release threatens public health or safety or damage to property, a local agency may take any emergency action that is consistent with the contingency plan for the undertaking of emergency actions in response to the release or potential release of hazardous substances established by the department of natural resources under s. 292.11 (5) and that it considers appropriate under the circumstances.

(3) The division shall reimburse a local emergency response team for costs incurred by the team in responding to an emergency involving a hazardous substance release, or potential release, if the team followed the procedures in the rules promulgated under s. 323.70 (7) (c) to determine if an emergency requiring the team's response existed. Reimbursement under this subsection is limited to the amount appropriated under s. 20.465 (3) (dr). Reimbursement is available under s. 20.465 (3) (dr) only if the local emergency response team has made a good faith effort to identify the person responsible under sub. (4) and that person cannot be identified, or, if that person is identified, the team has received reimbursement from that person to the extent that the person is financially able or has determined that the person does not have adequate money or other resources to reimburse the local emergency response team.

(4) (a) Except as provided in par. (b), a person shall reimburse a local agency as provided in sub. (5) for actual, reasonable, and necessary expenses incurred in responding to an emergency involving the release or potential release of a hazardous substance if any of the following conditions applies:

1. The person possessed or controlled a hazardous substance involved in the emergency.
2. The person caused the emergency.

(b) A local emergency response team may receive reimbursement under par. (a) only if the team followed the procedures established under s. 323.70 (7) (c) to determine if an emergency requiring the team's response existed.

(5) (a) The county board may designate a county employee or body as the reviewing entity under this subsection. If the county board does not make a designation, the local emergency planning committee is the reviewing entity.
(am) A local agency seeking reimbursement under sub. (4) shall submit a claim stating its expenses to the reviewing entity for the county in which the emergency occurred.
(b) The reviewing entity shall review claims submitted under par. (am) and determine the amount of reasonable and necessary expenses incurred. The reviewing entity shall provide a person who is liable for reimbursement under sub. (4) with a notice of the amount of expenses it has determined to be reasonable and necessary that arose from the emergency involving the release or potential release of a hazardous substance and that were incurred by all local agencies from which the reviewing entity receives a claim.
(c) If a person receiving a notice under par. (b) objects to the amount of expenses in the notice, the person may ask the reviewing entity to review its determination. The reviewing entity may modify the determination and shall notify the person of the result of its review.
(d) A person liable for reimbursement under sub. (4) shall pay the reimbursement directly to each local agency.
(6) A county may enact an ordinance in conformity with this section that governs the administration of claims under sub. (5).

History: 1989 a. 256; 1995 a. 13, 227, 247; 1997 a. 27; 2001 a. 16; 2009 a. 42 ss. 222, 225 to 231; Stats. 2009 s. 323.71.

Agenda Item # 11

ORDINANCE NO. 2013-_____

Establish penalties for hazardous material discharges and reimbursement process for emergency responses

THE COUNTY BOARD OF SUPERVISORS OF JEFFERSON COUNTY DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I. PURPOSE

The purpose of this ordinance is to prohibit dangerous material discharges and to enable Jefferson County to require reimbursement from those responsible who possess or control a hazardous substance that is released or who causes the release of a hazardous substance thereby resulting in the response to and incurring of costs by the responding agency(ies).

SECTION II. PROHIBITED DISCHARGES.

(1) No person, firm, or corporation shall discharge or cause to be discharged, leaked, leached, or spilled upon any public street, alley, or pubic property, or onto the ground, surface waters, sub-surface waters, or aquifers, or on any private property within Jefferson County, except those areas specifically licensed for waste disposal or landfill activities and to receive such materials, any explosive, flammable, toxic, or combustible solid, liquid, or gas, any radioactive material at or above Nuclear Regulatory Commission Restriction levels, etiologic agents, or any solid, liquid, or gas creating a hazard, potential hazard, or public nuisance or any solid, liquid, or gas having a deleterious effect on the environment.

(2) Containment, Clean-Up and Restoration. Any person, firm, or corporation in violation of the above section shall, upon direction of the appropriate federal or state agency and the Emergency Management Director and/or the Jefferson County Hazardous Materials Response Team, begin immediate actions to contain, clean up, and remove to an approved repository the offending material(s) and restore the site to its original condition, with the offending person, firm, or corporation being responsible for all expenses incurred. Should any person, firm, or corporation fail to engage the necessary staff and equipment to comply or to complete the requirements of this section, the Emergency Management Director may order the required actions to be taken by public or private resources and allow the recovery of any and all costs incurred by Jefferson County and its cooperating agencies.

(3) Site Access. Access to any site, public or private, where a prohibited discharge is indicated or suspected will be provided to Emergency Management officers and staff and to County Sheriff's Department personnel for the purpose of evaluating the threat to the public and monitoring containment, clean up, and restoration activities.

(4) Public Protection. Should any prohibited discharge occur that threatens the life, safety, or health of the public at, near, or around the site of a prohibited discharge, where the situation is so critical that immediate steps must be taken to protect life or property, the Director of Emergency Management, his/her designee, or the senior Sheriff's Department officer on the scene of the emergency may order an evacuation of the area or take other appropriate protective steps for a period of time until the County Board, Wisconsin Department of Natural Resources, or other appropriate federal or state agency can take appropriate action.

(5) Enforcement. The Director of Emergency Management and his or her designees, as well as the Sheriff's Department officers, shall have authority to issue citations or complaints under this section.

(6) Civil Liability. Any person, firm, or corporation in violation of this section shall be liable to Jefferson County for any expenses incurred by the County or loss or damage sustained by the County by reason of such violations.

(7) Penalties. Any person, firm, or corporation in violation of this section shall forfeit to Jefferson County, upon conviction thereof, not less than $200 or more than $2,000, plus the costs of prosecution, and in default of payment thereof, such alternate as the Court may order. Each day of violation shall constitute a separate offense. If a spill is voluntarily reported to the Jefferson County Emergency Management Director, the forfeiture shall be not less than $25 nor more than $200.

SECTION III. DEFINITIONS.

(1) Hazardous Substance. For purposes of this ordinance, a hazardous substance is any substance set forth in Section II (1) the release of which creates a hazard, potential hazard, public nuisance or has a deleterious effect on the environment.

(2) "Responsible Party" Defined. For purposes of this ordinance, responsible party shall include any person or entity who was, at the time of the release responsible for, or in possession of, or in a position of control of a dangerous or hazardous substance, or any vehicle, container, or property used for the transport, conveyance, holding or storage of same and furthermore, including any person or entity in control of property onto which or from which the dangerous or hazardous substance matter was or may be released. For purposes of this ordinance the term "entity" shall mean any firm, corporation, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity.

SECTION IV. FINANCIAL RESPONSIBILITY.

(1) The cost of hazardous material responses shall be the responsibility of the party, agency, entity, or person which created the condition requiring the hazardous materials response. The actual cost of the response shall be charged to the party, agency, entity, or person according to the following schedule:

(a) Staff time, including the hourly rate for fringe benefits, of the staff involved in the response.

(b) A charge for response by the HazMat vehicle and or the Jefferson County Mobile Command Post, in an amount to be determined annually by the Local Emergency Planning Committee based on the cost to operate the vehicle, depreciation and other factors bearing on the cost of activating the equipment.

(c) The replacement cost of all consumable supplies used in the response and the actual cost of any charges incurred by the Team.

(d) A use charge for reusable equipment, in an amount determined annually by the Local Emergency Planning Committee based on the operating cost of the equipment, its depreciation and other factors bearing on its cost.

SECTION V. ENFORCEMENT.

The Jefferson County Corporation Counsel shall be empowered to pursue any and all legal action to effect payment as herein provided for, including representation of non-county agency members of the Level B Team. In the event of a conflict of interest, a non-county agency shall be represented by its municipal attorney.

SECTION VI. This ordinance shall be effective after passage and publication as provided by law.

AYES _____
NOES _____
ABSTAIN ____
ABSENT ____

Requested by
Local Emergency Planning Committee

Date of County Board Meeting

Philip C. Ristow: 08-22-13