

ORDINANCE NO. 2014-2

AN ORDINANCE OF HILLTOWN TOWNSHIP PROVIDING FOR THE RECOVERY OF THE COSTS OF AN EMERGENCY SERVICE PROVIDER RESPONDING TO A RELEASE OF HAZARDOUS MATERIALS.

IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of Hilltown Township, Bucks County, Pennsylvania, as follows:

ARTICLE I. TITLE.

This Ordinance shall be known as the Hilltown Township Recovery of Hazardous Materials Response Costs Ordinance.

ARTICLE II. AUTHORITY, FINDINGS AND PURPOSE.

A. **Authority** – Under Section 210 of the Hazardous Material Emergency Management Planning and Response Act (the “Act”), 35 P.S. §6022.210, the Township has the authority to make rules and regulations for recovery of hazardous materials response costs.

B. **Findings** – The Township recognizes that a response to a release of hazardous materials requires specialized emergency rescue tools and equipment, emergency rescue materials, hazardous material abatement equipment hazardous abatement materials and specially trained responders. The Township recognizes that the cost of responding to a release of hazardous materials places a financial burden for responders which they should be able to recover.

C. **Purpose** – To grant certified hazardous materials response teams or a supporting paid or volunteer emergency service organization, or both, operating in Hilltown Township the authority to seek reimbursement for the costs of responding to such incidents as provided below.

ARTICLE III. DEFINITIONS.

As used in this Ordinance, the following terms shall have the meaning indicated unless a different meaning clearly appears from the context:

A. **Hazardous Chemical.** Substances as defined within the meaning of 29 CFR 1910.1200(c), except that the term does not include the following:

(1) Any food, food additive, color additive, drug or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent that exposure to the substance does not occur under normal conditions of use.

(3) Any substance to the extent that it is used for personal, family or household purposes or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4) Any substance to the extent that it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5) Any substance to the extent that it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

B. Hazardous Material. Any of the following, as defined in the Act:

- (1) A hazardous substance.
- (2) An extremely hazardous substance.
- (3) A hazardous chemical.
- (4) A toxic chemical.

C. Hazardous Substance. A substance appearing on the list of hazardous substances prepared under Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767), as set forth at 40 CFR part 302 (“Table 302.4 – List of Hazardous Substances and Reportable Quantities”), or appearing on any successor list of hazardous substances prepared under Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

D. Township. Hilltown Township, Bucks County, Pennsylvania.

ARTICLE IV. RECOVERY OF RESPONSE COSTS.

A. General Rule – A person who causes a release of hazardous materials shall be liable for the response cost incurred by a certified hazardous material response team or a supporting paid or volunteer emergency service organization, or both. The Commonwealth agency, local agency, regional hazardous material organization, volunteer emergency service organization, or hazardous material transporter, manufacturer, supplier or user that organized the certified hazardous material response team, as identified on the team certification, or undertakes a response action may recover those responses costs in law or an action in equity brought before a court of competent jurisdiction or may proceed by arbitration under the provisions of subsection (d) of Section 210 of the Act, 35 P.S.

§6022.210(d). Should more than one certified hazardous material response team incur response costs for the same hazardous material release or incident, the organizing entities of those certified hazardous material response teams may file a joint action in law or equity and may designate no entity to represent the others in the lawsuit.

B. **Amount** – In an action to recover response costs, an Emergency Service Organization may recover operational, administrative, personnel and legal costs incurred from the time of its initial response action upon to the time that it recovers its costs; provided, however, that no residential homeowner (not including owners of multifamily residential buildings with more than two (2) units) shall be responsible to pay the response costs in excess of their insurance company/carrier's policy limits and in the case of a Volunteer Fire Department, only the Fire Department in whose service area the release occurs, may bill for its response costs unless the costs arise from criminal activity.

C. Response costs include, but are not limited to, the following:

(1) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response to the hazardous material release.

(2) Rental or leasing of equipment used specifically for the response, for example, protective equipment or clothing and scientific and technical equipment.

(3) Replacement costs for equipment that is contaminated beyond reuse or repair during the response, for example, self-contained breathing apparatus irretrievably contaminated during the response.

(4) Decontamination of equipment contaminated during the response.

(5) Compensation of paid employees or members of the hazardous material response team and supporting paid or volunteer emergency service organization, to include regular and overtime pay for permanent full-time and other than full-time compensated employees or members.

(6) Special technical services specifically required for the response, for example, costs associated with the time and efforts of technical experts or specialists.

(7) Laboratory and testing costs for purposes of analyzing samples or specimens taken during the response.

(8) Other special services specifically required for the response, for example, utility costs.

(9) Costs associated with the services, supplies and equipment used to conduct an evacuation during the response.

(10) Costs associated with the removal and disposal of hazardous materials.

(11) Legal costs incurred from the initial response action up to the time that it recovers its costs.

ARTICLE V. PENALTY.

In Addition to the reimbursement of emergency service costs as provided in this Ordinance, any person who violates this Ordinance by failure to reimburse said costs within sixty (60) days of the occurrence thereof, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, shall pay a fine of not more than One Thousand Dollars (\$1,000.00) plus all court costs, including reasonable attorney's fees incurred by the Township.

ARTICLE VI. REPEALER.

All ordinances, parts of ordinances and amendments thereof which are inconsistent with this Ordinance are hereby repealed. Ordinance No. 90-3 is specifically repealed.

ARTICLE VII. SEVERABILITY.

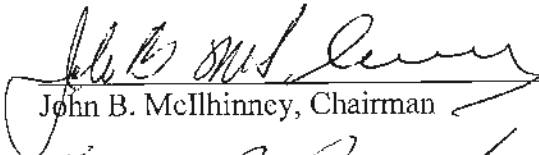
If sentence, clause, section or part of this ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared to be the intent of the Township Supervisors that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof been included herein.

ARTICLE VIII. EFFECTIVE DATE.

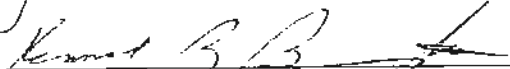
This Ordinance shall become effective five (5) days after final enactment.

ENACTED AND ORDAINED this 22nd day of September, 2014.

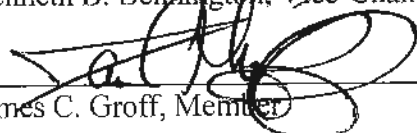
HILLTOWN TOWNSHIP
BOARD OF SUPERVISORS



John B. McIlhinney, Chairman



Kenneth B. Bennington, Vice-Chairman



James C. Groff, Member