

ORDINANCE 59

AN ORDINANCE RELATING TO HAZARDOUS SUBSTANCE AND WASTE REQUIRING PERSONS RESPONSIBLE FOR THE STORING, HANDLING AND TRANSPORTATION OF SUCH SUBSTANCE TO CLEAN UP SPILLS AT THEIR OWN COST, AND PROVIDING REMEDIES FOR THE COUNTY OF UNION COUNTY, IOWA. TO CLEAN UP SUCH SPILLS IF THE PERSONS RESPONSIBLE FAIL TO DO SO AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF UNION COUNTY, IOWA:

SECTION 1. PURPOSE.

In order to reduce the danger to public health, safety and welfare from the storage, transportation, and spills of hazardous substance, these regulations are promulgated to establish responsibility for the removal and cleanup of spills, leakage or release of hazardous substances which create an immediate and/or a potential danger to the public health or safety within the boundary limits of Union County.

SECTION 2. DEFINITIONS.

For the purpose of this ordinance, these terms have the following meanings:

- a. "Hazardous waste" means such wastes as defined in Section 455B.411 Subsection 3 (a) and (b), Code of Iowa, 2005.

(As stated in Iowa Code Section 455 is shown here in italics:

3. a . "Hazardous waste" means a 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:

(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.

b . "Hazardous waste" does not include:

(1) Agricultural wastes, including manure 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.)

- b. "Hazardous Substance" means any substance as defined in Section 455B.411 Subsection 2, Code of Iowa, 2005.

(As stated in Iowa Code Section 455 is shown here in italics:

2. "Hazardous substance" means a hazardous substance as defined in 42 U.S.C. § 9601 of the federal Comprehensive Environmental Response, Compensation, and Liability Act and any element, compound, mixture, solution, or substance designated pursuant to 40 C.F.R. § 302.4.

C. "Hazardous condition" means any circumstances as defined in Section 455B.381 Subsection 4, Code of Iowa, 2005:

(As stated in the Iowa code Section 455 is shown here in italics:

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 a hazardous waste or hazardous substance disposal site as defined in section 455B.411, subsection 4, is a hazardous condition.)

D. "Release" means a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying or dumping of a hazardous substance into or onto the land, air, or waters of Union County as stated in Section 455B.381 Subsection 8, Code of Iowa, 2005. (as of 2011 code it's subsection 9):

(As stated in Iowa Code Section 455 is shown here in italics:

9. "Release" means a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a hazardous substance into or onto the land, air, or waters of the state unless one of the following applies:

a . The release is done in compliance with the conditions of a federal or state permit.

b . The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.)

e. "Responsible person" 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, where the person owns the hazardous substance or is operating under a lease, contract or other agreement with the legal owner of the hazardous substance, as defined in Section 455.B381 (7), Code of Iowa, 2005.

(As stated in Iowa Code Section 455 is shown here in italics:

7. a . "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 other 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.

b . "Person having control over a hazardous substance" does not include a person who holds indicia of ownership in a hazardous condition site, if the person satisfies all of the following: (1) Holds indicia of ownership primarily to protect that person's security interest in the hazardous condition site, where the indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term "primarily to protect that person's security interest" includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the hazardous condition site, where the exercise is necessary or appropriate to

protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by the interest. The person holding indicia of ownership in a hazardous condition site and who acquires title or a right to title to the site upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold the indicia of ownership primarily to protect that person's security interest so long as the subsequent actions of the person with respect to the site are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) Does not exhibit managerial control of, or managerial responsibility for, the daily operation of the hazardous condition site through the actual, direct, and continual or recurrent exercise of managerial control over the hazardous condition site in which that person holds a security interest, which managerial control materially divests the borrower, debtor, or obligor of control.

(3) Has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

f. "Cleanup" means the same as defined in Section 455B.381 (1), Code of Iowa, 2005

(As stated in Iowa Code Section 455 is shown here in italics:

1. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance)

g. "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 non-hazardous, safe for transport, amenable for recovery and for storage, or to reduce it in volume. "Treatment" includes any activity or processing composition designed to change the physical form or chemical composition of a hazardous substance to render it non-hazardous, as defined in Section 455B.411(10), Code of Iowa, 2005.

(As stated in Iowa Code Section 455 is shown here in italics:

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

h. "Incident Commander" means the Fire Chief or his or her duly appointed designee, of the Fire Department in whose district said release or potential release has occurred. The Chief or his or her duly appointed designee may also appoint one or more Fire Chiefs or Assistant Fire Chiefs of any municipality or Fire District or Fire Department as his or her deputy or may delegate the duties of Incident Commander to one or more such Fire Chiefs or assistant Fire Chiefs, at his or her discretion.

i." Mitigation" means any action designed to contain, control, stop or eliminate a release or potential release of a hazardous substance or waste or condition.

SECTION 3. Mitigation and cleanup required.

- a. 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, or cause to alleviate, the condition by cleanup or treatment, as defined by Section 2(e) and 2(f) of this ordinance, and shall restore the affected area to its condition prior to the hazardous condition as far as predicable, The cost of cleanup or treatment shall be borne by the responsible person.
- b. 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 of Union County may by establishment of control of the scene of emergency by the Incident Commander and having rendered the problem as no longer an emergency, give notice to the responsible person, 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 of Union County will proceed to procure cleanup or treatment services if the cleanup or treatment is not accomplished within the deadline. The notice shall state that the person having control over a hazardous substance will be billed for all costs associated with the cleanup or treatment and that the total shall be due and payable within thirty (30) days following the receipt of the bill.
- c. If the bill for the above services is not paid within thirty (30) days, county of Union County may proceed, after service of notice, either by certified mail or by one publication in a newspaper having general circulation within Union County, and hearing before the Board of Supervisors, to obtain payment by all available legal means.
- d. If the costs of response, mitigation, cleanup and/or treatment is beyond the capability of the county of Union County, the Incident Commander shall proceed pursuant to Section 455B.387 Subsection (2), Code of Iowa, 2005, and immediately seek any state or federal resources that may be available for such mitigation, cleanup or treatment.
(as stated in the Iowa Code:
2. The director may use any resources available under the hazardous condition contingency plan to provide for the removal of hazardous substances. If the director finds that public agencies cannot provide the necessary labor or equipment or if the director determines that emergency conditions exist, the director may contract with a private person or agency for removal of the hazardous substance. In those cases where equipment or services are obtained from a public or private person or agency under emergency conditions, section 455B.105, subsection 6 does not apply.
- e. Whenever a hazardous condition which created an immediate danger to public health or safety exists and it is necessary to take immediate action to correct this condition in order to protect the public health or safety, the Incident Commander or any Peace Officer may, without prior notice to the responsible person, take any mitigation action necessary to limit the immediate danger to the public health or safety. The responsible person shall be liable for the cost of all such mitigation action.
- f.

SECTION 4. Liability for Mitigation and Cleanup Costs.

The responsible person shall be strictly liable to county of Union County and/or the fire department having jurisdiction whose personnel or equipment is involved, for all of the following:

- a. All costs relative to section 3(b) of this Ordinance, as may be incurred by the County, any City or Fire Department.
- b. Reasonable costs incurred by the County, and City, or Fire Department, 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 Union County property, including but not limited to, parks, roads and rights of way, 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.
- d. The repair and/or replacement costs for al equipment, material or supplies, lost, contaminated or otherwise rendered unusable, including laboratory analytical costs, transportation costs, disposal costs; costs or repair or decontamination of equipment; medical expenses, and personal injury to personnel responding to the hazardous condition; and all such other cost and expenses of the County, City or Fire Department(s) expended to deal with the hazardous condition.

SECTION 5. NOTIFICATION.

- a. Any person, manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the Union County Law Enforcement Center via 911 of the occurrences of a hazardous situation as soon as possible, but no later than six (6) hours after the onset or discovery of the hazardous situation. The Law Enforcement Center shall immediately notify the Fire Department having jurisdiction, the appropriate law enforcement agency, the Union County Emergency Coordinator, the operator of any threatened public or private water supply system which may be threatened and the Iowa Department of Natural Resources.
- b. 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 Union County Law Enforcement Communication Center Dispatcher, and upon receipt of such notification the Law Enforcement Communication Center Dispatcher shall proceed in the manner provided in Section 5(a) of this Ordinance.

SECTION 6. SITE ACCESS.

Access to any site, public or private, where a prohibited discharge, whether it is potential, occurring, or after the fact, is indicated, or suspected will be provided to the Incident Commander of the fire department, its officers and personnel, to law enforcement personnel and to the emergency coordinator for the purpose of evaluating the threat to the public, for monitoring, containment, cleanup and restoration activities.

SECTION 7. INCIDENT COMMANDER.

If the circumstance so requires, the Incident Commander may:

- a. Establish zones or other boundaries at, near or projected from the site of a hazardous condition and limit the access to such zones to persons engaged in the mitigation, cleanup or treatment of the hazardous situation, and/or
- b. Order the evacuation of persons to areas away from the site or potential sites of a hazardous condition.
- c. No person shall disobey an order of the Incident Commander or any law enforcement official acting under the direction of the Incident Commander issued under this section.

SECTION 8. COUNTY LIABILITY.

Except where the county of Union County is the responsible person as defined in section 2(e) of this Ordinance, the county of Union County shall not be liable to any person for claims or damages, injuries, or loss resulting from any hazardous condition.

SECTION 9. PENALTY.

Any person violating any provision, section, or paragraph of this Ordinance shall be guilty of a simple misdemeanor, and upon conviction be subject to a fine not exceeding \$855.00 or be imprisoned for not more than thirty (3) days. Each day of the violation shall constitute a separate offense.

SECTION 10. SEPARABILITY OF PROVISIONS.

It is the intention of the Union County 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.

SECTION 11. REPEALER

All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with the provisions of this Ordinance, are hereby repealed to extent necessary to give this Ordinance full force and effect.

SECTION 12. EFFECTIVE DATE.

This ordinance shall be in full force and effect from and after its passage and publication as provided by law. The terms and definitions used in this ordinance were adopted using the terms and conditions as described and defined in the relevant sections of the Code of Iowa 2025. It is the intention of Union County that modification of the terms and definitions in the Code be adopted and fully incorporated as modified when, and if they are modified in subsequent editions of the Code of Iowa

PASSED AND ADOPTED THIS FOURTH DAY OF JUNE, 2007.

Readopted February 4th, 2026