

ORDINANCE: CONTROL & CONTAINMENT OF HAZARDOUS MATERIALS:

SECTION I : AUTHORITY:

This ordinance is enacted under the authority of RSA 31:39, RSA 41:11, RSA 47:17, VI, and RSA 154.

SECTION II : PURPOSE:

To provide for the control and containment of hazardous materials after accident or discharge. The purpose of the ordinance is not to impose upon the Town, or any of its officers and agents, any obligation to secure or remove any hazardous from the Town once safe containment of the material is made; and that nothing in this ordinance is intended to relieve any owner or person in possession of hazardous material of any obligation imposed by State or Federal law; and specifically, that nothing in the ordinance shall be deemed to permit the possession, storage, or use of hazardous materials, except in conformance with all State, Federal, or Local laws.

SECTION III : APPLICATION:

This ordinance shall apply to all incidents involving hazardous waste or hazardous materials within the boundaries of the Town of Windham, and to all persons who may possess such materials found within the Town except as prevailing State or Federal laws or regulations may take precedence and control over any such incident or person. (see RSA 146-A; RSA 147; and RSA 265:115-118 for examples of such prevailing State law at the time this ordinance is adopted).

SECTION IV : DEFINITIONS:

For the purpose of this ordinance, the following definitions apply:

- A) "Hazardous Materials" : Those substances or materials in such quantity and form which may pose an unreasonable risk to health and safety or property, which may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids and solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases which are listed by the Materials Transportation Bureau of the United States Department of Transportation in Title 49 of the Code of Federal Regulations, and any amendment thereto.
- B) "Person" : Any individual, corporation, partnership, trust, or other legal entity.
- C) "User" : Any person who manufactures or transports, or owns, uses, handles, stores, or has the legal authority to control hazardous materials, specifically including their officers, directors, employees, and agents.
- D) "Responsible Party" : Any individual, partnership, corporation, association, trust or other entity partially or solely responsible for the release of any hazardous material within the Town.

- E) *“Cleanup”* : The management, control, containment, recovery, removal or neutralization of any released hazardous material for the purpose of promoting or protecting public health or safety.

SECTION V : DUTY TO REPORT:

Any person who causes or has knowledge of any discharge or release of hazardous materials from their safe container, in any manner which poses an actual or potential threat to people, animals, wildlife, vegetation, property, or the environment, shall immediately report the incident to the Windham Fire Department.

SECTION VI : CLEANUP:

The user or transporter of a hazardous material which is intentionally or accidentally discharged or released within the Town shall, in addition to reporting the accident as required by Section V, take immediate action to cause the discharge or release to be cleaned up in an environmentally safe and scientifically sound manner, and to restore the site and the surrounding environment.

SECTION VII : INTENTIONAL DISCHARGE OR RELEASE:

The intentional discharge or release of a hazardous material within the Town of Windham is strictly prohibited.

SECTION VIII : COST RECOVERY:

- A) Upon the completion of any cleanup in which Town employees participated, all costs of the cleanup shall be itemized by each Town department involved, including the Fire Department. Such costs shall include, but are not limited to, the cost of cleaning, repair, restoration or replacement of any town material or equipment used in the cleanup, the costs of any illness or injury sustained by any employee who participated in the cleanup and the costs of all contracted services utilized in the cleanup.
- B) Upon receipt of these itemizations (including its own), but in no event later than sixty (60) days from the date of the release, the Fire Department shall bill the full cost of the cleanup to the responsible party or parties. The bill shall include a description of costs incurred. Bills for less than the full amount of these costs shall be allowed, provided that the responsible party is advised of the reason therefor and the approximate date by which it can expect to receive a complete bill.
- C) Each responsible party shall be jointly and severally liable to the Town for the costs of the cleanup for which they are responsible. Such costs may be collected by any lawful means including, but not limited to, appropriate court proceedings. All funds received from responsible parties shall be forwarded to the Finance Officer for deposit in the Town treasury.
- D) Any and all costs recovered from a responsible party shall be separate from and in addition to any penalty that may be assessed for any violation of any provision of this article.

SECTION IX : PENALTIES:

- A) Any person who fails to report, as required by Section V, shall be assessed a civil forfeiture not to exceed one thousand dollars (\$1,000.00). Each 24-hour period that the incident is not reported shall constitute a separate violation.

- B) Any person who intentionally discharges or releases, or causes another to discharge or release any hazardous materials from their safe container, in any manner which poses an actual or potential threat to people, animals, wildlife, vegetation, property, or the environment, shall be assessed a civil forfeiture not to exceed one thousand dollars (\$1,000.00).

- C) Any person who fails to take the action required by Section VI shall be assessed a civil forfeiture not to exceed one thousand dollars (\$1,000.00). Each 24-hour period that a person fails to take action to cause the discharge or release of a hazardous material to be cleaned up, shall constitute a separate violation.

SECTION X : USE OF COSTS AND CIVIL FORFEITURE COLLECTED:

All costs and civil forfeitures collected under this ordinance shall be placed in the General Fund.

SECTION XI : EMERGENCY OPERATIONS:

The Fire Chief of the Town of Windham, or his designated representative(s) shall take, and be in control of, any actions necessary to mitigate a hazardous materials incident within the Town of Windham, except where State or Federal agencies have jurisdiction by law.

SECTION XII : ENFORCEMENT:

The Fire Chief of the Town of Windham shall be responsible for enforcing this ordinance.

SECTION XIII : REPEAL:

Any provision of any ordinance which is inconsistent with this ordinance is hereby repealed.

SECTION XIV : SEVERABILITY:

If any section, subsection, sentence, clause, phrase, or part of this ordinance should be held invalid for any reason whatsoever, such decision shall not affect the remaining portions; which shall remain in full force and effect; and, to this end, the provisions of this ordinance are severable.

SECTION XV : EFFECTIVE DATE:

This ordinance shall become effective upon passage by the Town Meeting.

Adopted at Town Meeting - March 13, 1992

Re-codified and affirmed by the Board of Selectmen - May 11, 1998

Charles E. McMahon
Douglass L. Barker
Carolyn B. Webber
Margaret M. Crisler
Galen A. Stearns
Board of Selectmen