

COMMONWEALTH OF KENTUCKY
SCOTT COUNTY FISCAL COURT
SCOTT COUNTY, KENTUCKY

ORDINANCE NO. 96-006

AN ORDINANCE RELATING TO RELEASE OR THREATENED RELEASE OF HAZARDOUS MATERIAL WITHIN SCOTT COUNTY, ESTABLISHING PROTOCOLS & OPERATING PROCEDURES, DESIGNATING DISASTER AND EMERGENCY SERVICES OPERATIONS (DESO) AS COORDINATOR AND PROVIDING COMPENSATION TO LOCAL GOVERNMENT AND EMERGENCY AGENCIES FOR EXPENSES INCURRED RESPONDING TO HAZARDOUS MATERIAL RELEASES FROM THE PARTIES RESPONSIBLE FOR SUCH HAZARDOUS MATERIAL RELEASES.

WHEREAS, hazardous materials are routinely transported in and through Scott County via Roadway, Railway & Pipeline; and

WHEREAS, Facilities as well as Private Citizens within Scott County use hazardous materials on a daily basis; and

WHEREAS, the improper release of a hazardous material may pose an imminent threat to the health, safety & welfare of the people/animals/surrounding environment and that it is the duty of local government to protect its citizens, and that persons who handle hazardous materials also have a responsibility to the community and its residents to minimize risk; and

WHEREAS, transportation incidents occur throughout the county in which material owners and/or transporters may not be prepared to respond with private resources in a timely manner; and

WHEREAS, in some cases, immediate actions taken by local responders/resources can minimize the hazard/damage to human health and the environment, minimize the cleanup time & minimize the cleanup cost; and

WHEREAS, this ordinance is intended to compliment efforts at the state and federal levels to deal effectively with the issues of hazardous materials allowing coordination of the efforts of all levels of government to avail Scott County and the incorporated cities therein of the best possible

opportunities to protect their citizens and the environment from the potentially devastating effects of uncontrolled releases of hazardous materials;

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF SCOTT COUNTY, KENTUCKY, AS FOLLOWS:

SECTION I - PURPOSE

This Ordinance establishes procedures to carry out the purpose of protecting the public health and safety of Scott County, Kentucky, through coordination of emergency services and individuals for incidents involving hazardous materials and federal requirements.

This ordinance also provides a mechanism for local agencies to recoup response costs from persons responsible for the release.

SECTION II - APPLICABILITY

Pursuant to authority of K.R.S. 67.093(7), the provisions of this Ordinance shall apply to all persons who manufacture, use, store, or transport hazardous materials within the entire area of Scott County, including all incorporated and unincorporated areas. In the event of an unauthorized release when:

- (1) a hazardous material incident in which there exists or occurs a release or threatened release of hazardous material which presents an imminent threat to public health, safety, or the environment requiring immediate action,
- (2) the responsible party has failed to act within a reasonable time or has failed to comply with existing reporting or record-keeping requirements under existing local, state, and/or federal laws relating to hazardous materials;
- (3) the incident requires response by existing local, state, and/or federal agencies responsible for responding to hazardous material incidents or a hazardous material emergency.

SECTION III - DEFINITIONS

- (1) "Authorized Release" means a release of hazardous materials in accordance with an appropriate permit granted by a local, state or federal agency having primary jurisdiction over such release.

(2) "Consumer Product" shall have a meaning as defined in 15 U.S.C. §2052.

(3) "Costs" shall mean and include all expenses incurred by local government and/or local emergency response organizations regardless of whether or not such agencies are publicly or privately owned in responding to any hazardous materials spill, leak or other release into the environment and for any remedial or removal actions taken to protect and safeguard the public health and safety, property or the environment. The term includes, but is not limited to cost incurred for personnel, equipment and the use thereof materials, supplies, services, damage, or loss of equipment put the organizations and persons, and other expenses resulting directly from response to a release or threatened release of a hazardous material;

(4) "Employee" means any person who works, with or without compensation, in a workplace.

(5) "Employer" means any person, firm, corporation, partnership, association, government agency, or other entity engaged in a business or providing services which has employees.

(6) "Environment" means the navigable waters of the United States and any other surface water, ground water, drinking water supply, soil, subsurface strata, storm sewer or publicly owned sanitary sewer or treatment works (other than those handling only wastewater generated at a facility) within Scott County, Kentucky. The terms shall include air only for purposes of reporting releases pursuant to the further provisions of this Ordinance.

(7) "Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment container) tank, motor vehicle, rolling stock, or aircraft; or any site or area where a hazardous material has been deposited, stored, disposed of, abandoned, or placed, or otherwise come to be located. Consumer products in consumer use or vessels are not included.

(8) "Hazardous Materials" means any element, compound, substance or material or any combination thereof which are toxic, flammable, explosive, corrosive, radioactive, oxidizers, etiologic agents, carcinogenic, or are highly reactive when mixed with other substances including, but

not limited to, any substance or material which is designated a hazardous material pursuant to the "Hazardous Materials Transportation Act" (49 U.S.C.A., Sec. 1801, et seq.) or is listed by Appendix A, 40 CFR Part 302, "List of Hazardous Materials and Reportable Quantities", as amended, published by the U.S. Environmental Protection Agency (EPA), and herein incorporated by reference the same as if set out at length herein in words and figures, in a quantity and form which may pose a substantial present or potential hazard to human health, property or the environment when improperly released, treated, stored, transported, disposed of, or otherwise managed.

(9) "Normal Application of Pesticides" means application pursuant to the label directions for application of a pesticide product registered under Section 3 or Section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.) (FIFRA), or pursuant to the terms and conditions of an experimental use permit issued under Section 5 of FIFRA, or an exemption under Section 18 of FIFRA.

(10) "Mixed with wastes other than" but not limited to

(11) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous material into or on any land, air, water, well, stream, sewer or other surface so that such hazardous materials or any constituent thereof may enter the environment. The term shall not apply to:

(a) with respect to a claim which such persons may assert against the employer of such persons as provided by CERCLA regulations, any release which results in exposure to persons solely within a workplace,

(b) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(c) the normal application of fertilizers and pesticides;

C. Releases to Sanitary Sewer System: Notwithstanding any other provision of this Section, any release of a hazardous material to a sanitary sewer system which is prohibited under applicable pretreatment or other regulations of the Georgetown Sewer Use Ordinance (###) or other sewer system operations in Scott County shall be deemed to be a release in reportable quantities.

(16) "Response" means any remedial or removal actions, including, but not limited to, response by local public safety and emergency agencies and subsequent actions taken to insure the preservation and protection of the public health, safety, welfare and the environment.

(19) "Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

SECTION IV - NOTIFICATION REQUIREMENTS

(1) Notification of Release: Upon discovery of a release or threatened release, other than an authorized release, of hazardous material in a quantity equal to or exceeding the reportable quantity previously established for such material, occurring within the boundaries of any kind within Scott County, the person in charge of such facilities, upon discovery of such release or threatened release, evidence that a release has occurred or evidence that a release has occurred even though it has apparently been controlled, shall immediately cause notice of the existence of such release or threatened release, the circumstances of same, and the location thereof to the Georgetown/Scott County Emergency Communications Center.

(2) Emergency Telephone Number: The notice required to be given by this Section in Scott County may be given by telephoning "911" or such other emergency telephone number as may be subsequently designated. This notice will meet the requirements for notification of local agencies (LEPC, Fire Department, Sheriff, Police, Ambulance Service, etc.)

(3) The notice required to be given by this Section is not intended to excuse or exempt any person from the responsibility of taking whatever action may be necessary to control the release or threatened release, nor shall it excuse any person from taking action to minimize damage to the environment or to abate the hazard to life and/or property.

(4) Duty to Report to Other Agencies: No statement contained in this Section shall be construed to exempt or release any person from any other notification or reporting procedures in accordance with applicable state or federal laws or regulations.

SECTION V - ADMINISTERING AGENCY

The purposes of this ordinance shall be administered through a county-wide program for responding to hazardous materials incidents coordinated by local government through protocols and procedures.

SECTION VI - RESPONSE AUTHORITY

(1) The Scott County Disaster and Emergency Services Operation (DES) shall have authority to coordinate response to any release or threatened release of hazardous materials in any incorporated or unincorporated area of Scott County.

(2) The Fire Chief of the jurisdiction in which such release or threatened release is located shall have primary authority for taking remedial or removal actions necessary to control such release or threatened release and to assure the protection of human health, property and the environment. The role of DES is to give technical advice and assistance to the Fire Chief.

(3) DES or the Fire Chief shall immediately report any release or threatened release to the executive authority of the jurisdiction (i.e., County Judge/Executive or his administrative assistant, Mayor, City Administrative Officer, City Coordinator) if Section II (2) of this ordinance applies. If in the opinion of the executive authority the seriousness of the situation warrants, the chief executive officer of the jurisdiction (County Judge/Executive or Mayor) shall declare the existence of a state of emergency in the jurisdiction and thereafter the response authority provided by this Section shall then be vested in such chief executive officer. In such event, the chief executive officer may authorize DES, the Fire Chief, or other appropriate person to exercise all or part of the response authority provided by this Section until further notice.

(4) All local emergency response personnel shall cooperate with and operate under the direction of the chief executive officer of the jurisdiction, the Fire Chief, or such other person exercising response authority under this Section until such time as the person exercising response authority has determined that the response is complete, or responsibility for response has been assumed by the

state or federal agency having primary jurisdiction over such release or threatened release.

(5) The person exercising response authority under this Section shall coordinate and/or cooperate with other federal, state or local public health, safety and emergency agencies involved in the response to a release or threatened release of hazardous materials.

(6) The person exercising authority under this Section may, with the approval of the executive authority of the jurisdiction, obtain vital supplies, equipment, services and other properties found lacking and needed for the protection of human health, property or the environment and obligates the jurisdiction for the fair value thereof.

SECTION VII - LIABILITY FOR COSTS

Notwithstanding any other provision or rule of law, the following persons shall be jointly and severally liable for all costs of removal and remedial actions incurred by local public safety and emergency agencies as a result of a release or threatened release of hazardous materials into the environment.

(1) The owner and operator of a facility or vessel from which there is a release or substantial threat of release of hazardous materials.

(2) Any person who at the time of disposal, treatment, storage, or transport of hazardous materials owned or operated any facility or vessel used for such purposes from which there was a release or threatened release of hazardous materials.

(3) Any person who by contract, agreement, or otherwise has arranged with another party or entity for transport, storage, disposal or treatment of hazardous materials owned, controlled or possessed by another party or entity from which facility there is a release or substantial threat of a release of hazardous materials.

(4) Any person who accepts or accepted any hazardous materials for transport to disposal, storage or treatment facilities from which there is a release or substantial threat of a release of hazardous materials.

SECTION VIII - AUTHORIZED RELEASE

There shall be no liability under this Ordinance for any release permitted by local, state or federal law, provided that such release is made in accordance with the conditions of the permit issued by the state or federal agency having primary jurisdiction, and that such release is in full compliance with the terms, location and manner of the permit and does not present a hazard or potential hazard to human health, property or the environment. Such release is in substantially lesser quantities than those specified by state or federal laws, regulations, permit requirements, or ordinances of the jurisdiction in which such release occurs.

SECTION IX - CONTRACTUAL AGREEMENTS; SUBROGATION

(1) No conveyance, transfer, sale, indemnification, hold harmless, or similar agreement shall be effective to release the owner or operator of any facility or vessel or any person who may be liable for a release of hazardous materials or threatened release under this Ordinance. Nothing in this Section shall bar any arrangements to insure, hold harmless or indemnify a party to such agreement for any liability under this Ordinance.

(2) Nothing in this Section, including the provisions of subsection A above, shall bar a cause of action that an owner or operator or any other person subject to liability under this Ordinance, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

SECTION X - DISCLAIMER OF LIABILITY

This Ordinance shall not create liability on the part of the administering agency or on the part of any response authority for any damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder. All persons are advised to determine for their own satisfaction the level of protection in addition to that required by this Ordinance necessary or desirable to ensure that there is no unauthorized release of hazardous materials.

SECTION XI - SEVERABILITY

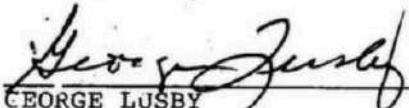
If any provision or section of this Ordinance or the enforcement of such provision or section is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability

shall not affect or render invalid or unenforceable any other provision or section.

SECTION XII - EFFECTIVE DATE

This ordinance shall become effective immediately upon its passage and approval according to law.

PASSED AND APPROVED this 1 day of July, 1996.



GEORGE LUSBY
SCOTT COUNTY JUDGE EXECUTIVE



WEAVER BLOEMER
FISCAL COURT CLERK