

ORDINANCE NO. 11

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF MITCHELL COUNTY, IOWA BY ADDING A NEW CHAPTER REQUIRING THAT PERSONS RESPONSIBLE FOR STORING, HANDLING AND TRANSPORTATION OF HAZARDOUS MATERIALS SHALL, AT THEIR OWN COST, CLEAN UP ANY LEAKS OR SPILLS OF THOSE MATERIALS AND PROVIDING REMEDIES FOR THE COUNTY TO CLEAN UP SPILLS IF THE RESPONSIBLE PARTY FAILS TO DO SO AND RECOVER COSTS FOR THE COUNTY.

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

Section 1. The Mitchell County Code is amended by adding the following Sections entitled "HAZARDOUS WASTE AND SUBSTANCE SPILLS" to read as follows:

HAZARDOUS WASTE AND SUBSTANCE SPILLS

455B.380 PURPOSE. In order to reduce the damage to public health, safety and welfare from the spills of hazardous substances, these regulations are promulgated to establish responsibility for the removal and clean up of spills within Mitchell County.

455B.381 DEFINITIONS. For the purpose of this Chapter, these words have the following meanings:

1. "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:
 - A. Causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
 - B. Poses a substantial danger to human health or the environment.

"Hazardous waste" may include, but is not limited to, wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

2. "Hazardous waste" does not include:
 - A. Agricultural wastes, including manures and crop residues, that are returned to the soil as fertilizers or soil conditioners.

B. Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

(Section 455B.411 of the Iowa Code)

3. "Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "Hazardous substance" may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under Section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under Section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the Secretary of Transportation under the Hazardous Materials Transportation Act.

(Section 455B.381 of the Iowa Code)

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 County, or into the atmosphere, which creates an immediate or potential danger to the public health or safety.

(Section 455B.381 of the Iowa Code)

5. "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 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.

(Section 455B.381 of the Iowa Code)

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

(Section 455B.381 of the Iowa Code)

7. "Treat" means to use or apply 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 nonhazardous, safer for transport, amendable for recovery, amendable for storage, or to reduce it in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of a hazardous substance to render it nonhazardous.

455B.382 CLEANUP REQUIRED. Whenever a hazardous condition is created so that the hazardous substance or waste or a constituent of the hazardous waste or substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the responsible person shall cause the condition to be remedied by a cleanup as rapidly as feasible to an acceptable, safe condition. The costs of cleanup shall be borne by the responsible person. If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the County may, by an authorized officer, give reasonable notice based on the character of the hazardous condition, said notice setting a deadline for accomplishing the cleanup or that the County will proceed to procure cleanup service and bill the responsible person. The responsible person shall be liable for all clean up expenses incurred by the County. The County Attorney is charged with the duty of instituting necessary collection procedures.

455B.383 EMERGENCY CLEANUP. Whenever a hazardous condition which creates 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 County Emergency Management Director or any Peace Officer may, without prior notice to the responsible person, take any action necessary to limit the immediate danger to the public health or safety and bill the responsible person for the cost of the cleanup. The responsible person is liable to the County for the cost of the clean up.

455B.384 LIABILITY FOR CLEANUP COSTS. The responsible person shall be strictly liable to the County for all of the following:

1. The reasonable cleanup costs incurred by the County as a result of the failure of the person to clean up a hazardous substance or waste involved in a hazardous condition caused by that person, including emergency treatment of the hazardous condition.
2. The reasonable costs incurred by the County to evacuate people from the area threatened by a hazardous condition caused by the person.
3. The reasonable damages to the County for the injury to, destruction of, or loss of, County property, including

parks and roads, resulting from a hazardous condition including the costs of assessing the injury, destruction or loss.

4. A reasonable fee for the services of the County Emergency Management Director in attending to any matter falling within the ambit of this ordinance. Such reasonable fee shall be based on time spent and shall be expressed in terms of an hourly rate. Said hourly rate shall be determined by the County Emergency Management Director and shall bear a reasonable relationship to the costs of his services to Mitchell County. The County Emergency Management Director shall change the rate per hour from time to time as may be appropriate and required by changes in the cost of his services to the County.

455B.385 NOTIFICATIONS. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the County Emergency Management Director of the occurrence of a hazardous condition as soon as possible, but not later than six (6) hours after the onset of the hazardous condition or discovery of the hazardous condition. The County Emergency Management Director shall notify the proper state office in the manner established by the State.

Any County employee or any member of a law enforcement agency who discovers a hazardous condition, shall immediately notify the County Emergency Management Director who shall notify the proper state officer in the manner established by the state.

455B.386 POLICE AUTHORITY. If the circumstances reasonably so require, the Mitchell County Sheriff or his representative may:

1. Evacuate persons from their homes to areas away from the site of hazardous condition; and
2. Establish perimeters or other boundaries at or near the site of a hazardous condition and limit access to the site.

No person shall disobey an order of the Mitchell County Sheriff or any other peace officer/law enforcement officer issued under this section. A violation of this section may be punished by a fine of not more than \$100.00 or imprisonment for not to exceed 30 days.


455B.387 LIABILITY. The County shall not be liable to any person for claims of damages, injuries or losses resulting from any hazardous condition, unless the County is the responsible person as defined in this ordinance.

Section 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section 4. WHEN EFFECTIVE. This ordinance shall be in full force and effect after its final passage, approval and publication as provided by law.

Passed and approved this 26th day of July,
1993.


Bob Lincoln


Sandra Heckstein, Mitchell County Auditor