

MODEL COST RECOVERY ORDINANCE

This model is provided by the New Jersey Department of Environmental Protection (Department) as guidance for municipalities/counties to follow when adopting a cost recovery ordinance pursuant to the County Environmental Health Act (CEHA), N.J.S.A. 26:3A2-21, et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq.

For assistance, please contact the Department’s Office of Local Environmental Management at (609) 292-1305.

Procedures for written approval by the Department:

- (A) A governing body of a county may adopt this model ordinance without significant change. Changes in formatting, numbering, or any other changes of this type shall not be considered significant changes. Model ordinances adopted in full and without alteration by the appropriate governmental entity shall not be mailed to the Department and shall take effect immediately.

- (B) If a governing body of a county seeks to change any provision(s) of this model ordinance or wants to develop a cost recovery ordinance that is not based on the model, the entire cost recovery ordinance shall be submitted to the Department for review and approval. Counties can send the ordinance with proposed changes to the Department prior to adoption, however, at minimum in accordance with CEHA, each ordinance shall be mailed to the Department at the following address within five (5) working days of adoption. The ordinance shall take effect within 90 days of adoption, unless the Department disapproves the ordinance during that period.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
LEGAL AND REGULATORY AFFAIRS
OFFICE OF ENFORCEMENT POLICY
BUREAU OF LOCAL ENVIRONMENTAL MANAGEMENT AND RIGHT TO KNOW
401 EAST STATE STREET
4TH FLOOR, MAIL CODE 401-04N
P.O. BOX 420
TRENTON, NEW JERSEY 08625-0420

The model ordinance is as follows:

WHEREAS, the County of [] designated the [] County Health Department as the County entity for administration of the County Environmental Health Act Program, pursuant to N.J.S.A. 26:3A2-21, et seq. (CEHA) and, authorized preparation and submission to the New Jersey Department of Environmental Protection (NJDEP) of a County Environmental Health Work Plan; and

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WHEREAS, the NJDEP by order dated [], certified approval of the County Plan for hazardous materials emergency response actions and enforcement; and

WHEREAS, the County Executive, through the [] County Health Officer and Health Department has recommended adoption of an ordinance to establish standard procedures and provisions for the recovery from the responsible party of costs of responses to hazardous materials emergency spills and situations resulting from unpermitted discharges that occur throughout the County of []; now, therefore, be it

ORDAINED, by the [] County Board of Chosen Freeholders that:

The County Emergency Response Cost Recovery Ordinance is as follows:

Section I - Authority:

This Ordinance is enacted pursuant to and consistent with the County Environmental Health Act, N.J.S.A. 26:3A2-21, et seq., and the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., and the rules and regulations adopted thereunder.

Section II - Purpose:

Unauthorized and unpermitted discharges of hazardous substances within the jurisdictional confines of the County of [] are prohibited. This Ordinance establishes procedures and protocols for emergency response and provides for the recovery of costs incurred by the County of [] and its approved agents in an emergency response action to unauthorized and unpermitted discharges and, as such, supplements the provisions of the [] County Environmental Health Work Plan as approved by the NJDEP.

Section III - Definitions:

The words and terms used in this ordinance shall have the following meaning:

"Agents of the County" shall include, for purposes of this ordinance, a municipality, public entity, or other entity which executes a Uniform Shared Services agreement with the County pursuant to the Uniform Shared Services and Consolidation Act, N.J.S.A. 40A:65-1, et seq., for the purpose of providing emergency response services within the geographical boundaries of the County, provided such agreement is incorporated into the County's Work Plan pursuant to N.J.S.A. 26:3A2-33 and approved by NJDEP.

"County" means the County of [], its employees, agents, officers, and officials.

"Department" or "NJDEP" means the New Jersey Department of Environment Protection.

"Discharge" means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous substances into the waters or onto the land of the County, or into waters outside the jurisdiction of

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the County when damage may result to the lands, waters or natural resources within the jurisdiction of the County.

"Emergency response action" means those activities conducted by a local unit to clean up, remove, prevent, contain, or mitigate a discharge that poses an immediate threat to the environment or to the public health, safety, or welfare.

"Emergency response action costs" means all costs reasonably incurred by the County of [], its employees, Department approved agents, and contractors hired in connection with an emergency response action, including overtime costs for appropriately deployed emergency response personnel and expendable items. Excluded are costs to pay volunteer responders, and costs associated with fire fighting and police support.

"Expendable items" means any items used to prevent, mitigate or contain any discharge or threatened discharge, which cannot be reused or replenished or replaced without cost after use or employment in an emergency response action. Expendable items shall include, but are not limited to, chemical extinguishing agents, absorbents and absorbent materials, sand, recovery drums, protective equipment and clothing, including such items as disposable chemical protective suits, gloves, boots, and goggles. Items not compensable include those items typically employed to fight fires and not to mitigate a discharge.

"Hazardous substances" means all substances included within the definition of "hazardous substances" under N.J.A.C. 7:1E-1.7, including all amendments and supplements thereto.

"Municipality" means any of the incorporated municipalities within the County of [], including their employees, officers and officials.

"Owner" or "operator" means, with respect to a vessel, any person owning, operating or chartering by demise such vessel; with respect to any facility, any person or owner such facility, or operating it by lease, contract or any other form of agreement; with respect to abandoned or derelict facilities, the person who owned or operated such facility immediately prior to such abandonment; or the owner at the time of discharge.

"Person" means public or private corporations, companies, associations, societies, firms, partnerships, joint stock companies, individuals, the United States, the State of New Jersey and any of its political subdivisions or agents;

"Responsible party" means a person who is in any way responsible for a discharge, including each owner and operator and any other person obligated by law to clean up and remove contaminants.

Section IV - Prohibition:

The discharge of a hazardous substance is prohibited, except this prohibition shall not apply to discharges conducted in compliance with the conditions of valid Federal or State permit or otherwise authorized, by law.

Section V - Notification:

Any person who is in any way responsible for a discharge of a hazardous substance shall immediately notify the Department pursuant to N.J.A.C. 7:1E-5.3.

Section VI - Liability:

Any person who is in any way responsible for the discharge of a hazardous substance is liable strictly, jointly and severally for all emergency response action costs reasonably incurred by the County, its agents, employees, and contractors, and any personal or property damage incurred by the county, its agents, employees and contractors.

Section VII - Emergency Response:

The County may initiate and conduct an emergency response action in response to a discharge that has occurred, is occurring or threatens to occur within the geographical boundaries of the County, in accordance with the provisions of the Department's Order of Certification dated [].

Section VIII - Cost Recovery:

- A. The County may recover all costs reasonably incurred by the County, its employees, Department approved agents, and contractors hired in connection with an emergency response action, including the overtime costs of appropriately deployed emergency response personnel costs incurred by the County in the recovery of these costs, and the costs of expendable items.
- B. Whenever the County seeks to recover costs pursuant to a., above, the County shall send by certified and regular mail a demand letter to the responsible party or parties, which shall contain the following information. Payment shall be remitted within 45 days of receipt of the demand letter.
 - 1. The date and time of the discharge;
 - 2. The basis for liability;
 - 3. A detailed narrative description of the costs incurred by the County, its employees, agents, contractors and authorized political subdivisions in responding to the discharge;
 - 4. A calculation sheet, including hours and personnel charged, salary rates and any overhead rates;
 - 5. An explanation of the procedures to be followed to pay the costs demanded or to appeal the demand.
- C. Whenever the County issues a demand letter to a responsible party and the responsible party fails to remit payment within 45 days as prescribed herein, the County may bring an action in a court of competent jurisdiction to recover the costs incurred in the emergency response action, reasonable litigation costs and interest on the outstanding amount due

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calculated from the 46th day following the receipt of the demand letter to the date judgment is rendered at the interest rate set forth in the Rules Governing the Courts of New Jersey.

Section IX - Inspection, Right of Entry:

Authorized representatives of the County shall have the same right as an authorized representative of the Department to enter and inspect any premises, facility, site, vessel, or building for the purpose of ascertaining compliance or non-compliance with the provisions of this ordinance and the provisions set forth at N.J.A.C. 7:1E-1, et seq.

Section X - Construction and Severability:

- A. This Ordinance is to be liberally construed to effectuate the purposes herein described. Nothing herein is to be construed as repealing or abridging the emergency powers of any agency of government except to the extent expressly set forth herein.
- B. This Ordinance shall be implemented and enforced in accordance with the terms and conditions herein set forth, the County Plan, the Department's Order of Certification dated [].
- C. If any section, subsection, paragraph, sentence, clause, phrase, or word contained in this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect.
- D. This Ordinance shall be deemed to include any additions or amendments that may be required by the Commissioner of the Department of Environmental Protection as a condition of approval.

Section XI - Repealer:

Any ordinance or portion thereof enacted by the County, any municipality, board of health, or other public entity within the County of [] that contains any subject matter governed by this ordinance, which is inconsistent with or which stands as an obstacle to the effective implementation of this ordinance shall be superseded by this Ordinance and is hereby repealed and set aside.

Section XII - Effective Date:

This Ordinance shall take effect after a public hearing and 90 days after final adoption by the Board of Chosen Freeholders unless disapproved by the Commissioner of the Department of Environmental Protection within said period pursuant to N.J.S.A. 26:3A2-27. The Clerk of the Board is hereby directed to publish and distribute this Ordinance in accordance with the law.