

CHAPTER 20

HAZARDOUS MATERIALS MANAGEMENT

Article 1. Purpose And Standards.

Sec. 20-101. Purposes. This chapter provides for the regulation of the storage, containment, handling and use, and disposal of hazardous materials, and sets requirements for preventing releases, leaks and spills of such materials into the environment and remediation of those spills which pose a threat to public health, public safety or the environment.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-102. Standards. The standards set forth in this chapter are minimum standards and do not imply that compliance will ensure no unauthorized discharge or accidents involving hazardous materials. All persons covered by this chapter are required to maintain the level of protection necessary, in addition to that required by this chapter, to ensure that no unauthorized discharge of hazardous materials occurs.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Article 2. Definitions: In addition to definitions contained elsewhere in The Code, the following definitions shall apply:

Sec. 20-201 "Container" shall mean a portable or non-portable device, designed and constructed to hold or enclose any material. A container includes but is not limited to, such items as boxes, crates, drums, jars, barrels, tanks, and ancillary equipment.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-202 "Unauthorized discharge" shall mean an accidental release or discharge of a hazardous material posing a significant risk to public health, public safety or the environment, and/or an intentional release or discharge of a hazardous material posing a significant risk to public health, public safety or the environment.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Article 3. Applicability & Powers Of The Health Officer.

Sec. 20-301. The provisions of this chapter shall apply to a hazardous material which, because of its physical or chemical nature, presents a reasonable chance of a hazard to public health, public safety, or the environment by direct contact or via ground water, surface water, soil or air.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-302. The provisions of this Chapter do not apply to premises regulated under the provisions of Chapter 10, Residential Premises, except that the provisions of this Chapter 20 apply to the following circumstances even if also regulated under Chapter 10:

- (1) storage, use or disposal of a hazardous material for any commercial purpose or criminal activity on a residential premise;
- (2) storage of a hazardous material for the benefit of a person other than a resident of a dwelling where the hazardous material is located; or
- (3) storage of a hazardous material on the premises of a multi-unit dwelling or rooming house outside an individual unit on the premises.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-303. The Health Officer may make any inspection or investigation which is necessary for the enforcement of this chapter. Whenever necessary for the provisions of this chapter, or whenever the Health Officer has reasonable cause to believe that there exists in any structure or upon any premises, any condition that constitutes a violation of this chapter, the Health Officer may enter at all reasonable times to inspect. If the structure or premises is occupied, the Health Officer shall present proper credentials and request entry. If the structure or premises is unoccupied, the Health Officer shall first make a reasonable attempt to contact a responsible person and request entry, except in emergency circumstances.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-304. The Health Officer may order the owner or any other person or agent in possession of any premises, structure, vehicle, or equipment in violation of this chapter's provisions to take whatever action is necessary in the opinion of the Health Officer to bring the premises, structure, vehicle and/or equipment into compliance with the standards established herein.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-305. All inspections shall be at the discretion of the Health Officer. Nothing in this chapter shall be construed as requiring the Health Officer to conduct any inspection, nor shall any inspection made imply a duty to conduct any other inspection. Nothing in this chapter shall be construed to hold the Health Officer responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any failure to make an inspection or reinspection.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Article 4. General Obligations.

Sec. 20-401.

- (a) No person shall store, contain, handle, use or dispose of a hazardous material in a manner to pose a significant risk to public health, public safety or the environment.
- (b) Persons operating in compliance with the applicable portions of a local, state or federal regulation covering the storage, containment, handling, use or disposal of a specific hazardous material for those persons will be considered to be posing no significant risk for the purpose of this section.
- (c) Persons not so covered by existing regulations must select strategies to comply with this chapter by following appropriate practices established by:

- (1) nationally recognized professional standards;
- (2) industry standards or
- (3) "The Marion County Health Department Hazardous Materials Guidebook" provided by the Division of Public Health.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-402. No person shall abandon any hazardous materials or containers contaminated with hazardous materials in a manner that constitutes an unauthorized discharge.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-403. Any person who discharges, causes or permits any unauthorized discharge of hazardous materials must immediately cease the discharge and remediate all contaminated and discharged materials in accordance with applicable local, state and federal regulations.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Article 5. Elimination Of Hazards.

Sec. 20-501. Whenever the Health Officer shall determine that any real estate has been used for the abandonment of any hazardous material or of any container (whether full or with residue) any of the following actions may be taken:

- (a) If the hazardous material does not present an immediate threat to public health, public safety or the environment, the Health Officer may order the owner of the real estate, the occupant and/or person who abandoned the material to remove or properly dispose of the material or take whatever actions the Health Officer deems necessary within a reasonable time period. If the owner, occupant, or person who abandoned the material fails to comply with the Health Officer's order or cannot be identified, the Health Officer may remove the material to a site which the Health Officer deems to be secure and provide for the disposition of the material. The Health Officer may take such measures on site as appropriate for the protection of public health, public safety, or the environment.
- (b) If the hazardous material presents in the judgment of the Health Officer, an immediate threat to public health, public safety or the environment, and if the owner or occupant of the property or the person who abandoned the hazardous material is present and able properly to remove the material or take other action as deemed necessary by the Health Officer, the Health Officer may order such removal or action and the person so ordered shall comply with the order within the time specified by the Health Officer.
- (c) If in the judgment of the Health Officer the material in question poses an immediate threat to public health, public safety or the environment and if no property owner, occupant or person responsible is present to remove the material or take other action as deemed necessary by the Health Officer, or if such person refuses to comply with the Health Officer's order, the Health Officer may remove the material to a site which the Health Officer deems to be secure and provide for the proper disposition

of such material. The Health Officer may take such measures on site as appropriate for the protection of the public health, public safety or the environment.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-502. In the event that the Health Officer has removed the hazardous material as specified in Section 20-501, the reasonable expense of the removal, storage and/or disposal of such material and its container(s) and/or other measures taken for the protection of public health, public safety or the environment shall be charged to the owner or occupant of the premises or to the person responsible for the abandonment of the materials, and shall be payable within seven days to the Corporation. If the owner, occupant or responsible person fails to reimburse the Corporation within seven days, the Corporation may take appropriate steps to place a judgment lien against the real estate upon which the hazardous material was abandoned or upon real estate owned by the person responsible for such abandonment.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Article 6. Enforcement-Service Of Notices And Orders---Hearings.

Sec. 20-601. Whenever the Health Officer determines that there are reasonable grounds to believe that there has been a violation of any provision of this ordinance, a violation which affects an individual's or the public's health, public safety, or general welfare, or the environment, the Health Officer shall give notice of such alleged violation to the person or persons responsible therefor, or to any known agent of such person, as hereinafter provided. Such notice shall:

- (a) Be put in writing;
- (b) Include a statement of the reason why it is being issued;
- (c) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this ordinance;
- (d) Allow a reasonable time, as determined by the Health Officer, for any corrective action;
- (e) Be served upon the owner or his agent, or the occupant, as the case may require; provided that such notice shall be deemed to be properly served upon such owner or agent, or upon such occupant, if a copy is sent by first class mail to his last known address, or if a copy thereof is posted in a conspicuous place in or about the premises affected by the notice, or if he is served with such notice by any other method authorized or required under the laws of this state.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-602. Hearings: a person to whom an administrative notice of violation of this chapter has been issued shall be entitled to demand a hearing on the matter pursuant to the terms of Chapter 21, The Code of The Health and Hospital Corporation of Marion County, Indiana.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-603. Whenever the Health Officer finds that an emergency exists which requires immediate action to protect the public health, public safety, or the environment, he

may, without notice or hearing, issue an order citing the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the other provisions of this ordinance, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but upon petition under the terms of Chapter 21, The Code, The Health and Hospital Corporation of Marion County, Indiana, such person shall be afforded a hearing as soon as possible. After such hearing, depending upon the finding as to whether the provisions of this ordinance have been complied with, the Health Officer shall continue such order in effect or modify it or revoke it.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Article 7. Penalties.

Sec. 20-701. The doing of any prohibited act, or the omission of any required act, governed by this ordinance is declared to be a violation of this ordinance. Any person found to be in violation of any provision of this ordinance can be fined an amount not to exceed two thousand five-hundred dollars (\$2,500.00) by any court of competent jurisdiction. Each day after the expiration of the time limit for abating the violation shall constitute a distinct and separate offense.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]

Sec. 20-702. In addition to any fine levied under this ordinance, The Health and Hospital Corporation of Marion County may enjoin any violation of this ordinance by proceeding in any court of competent jurisdiction.

[Gen. Ord. 5-1996(A); Passed 10/16/96; Effective Date 10/16/96]