

O'BRIEN COUNTY
HAZARDOUS WASTE AND HAZARDOUS SUBSTANCE ORDINANCE

ORDINANCE NO. 9

AN ORDINANCE REQUIRING THAT PERSONS HAVING CONTROL OVER A HAZARDOUS SUBSTANCE OR HAZARDOUS WASTE SHALL AT THEIR OWN COST CLEAN UP ANY HAZARDOUS CONDITIONS RESULTING FROM THEM AND PROVIDING REMEDIES FOR THE COUNTY TO CLEAN UP HAZARDOUS CONDITIONS IF THE PERSON HAVING CONTROL OVER A HAZARDOUS SUBSTANCE OR HAZARDOUS WASTE FAILS TO DO SO, AND TO RECOVER THE DAMAGES AND COSTS FOR THE COUNTY, AND ESTABLISHING CRIMINAL PENALTIES FOR CERTAIN VIOLATIONS.

Be it ordered by the O'Brien County Board of Supervisors of O'Brien County, Iowa:

SECTION 1. PURPOSE. In order to reduce the danger to public health, safety, and welfare from the leaks and spills and other hazardous conditions caused by hazardous substances or hazardous waste, these regulations are promulgated to establish responsibility for the treatment, removal, and cleanup of leaks and spills and other hazardous conditions within the County limits, and provide criminal penalties for certain violations.

SECTION 2. CONSTRUCTION. The Ordinance shall be broadly construed to effectuate its purposes.

SECTION 3. DEFINITIONS. For purposes 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 present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. "Hazard waste" may include, but is not limited to, wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.
2. **"Hazard waste"** does not include the following:
 - [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.
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 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 material designated by the Secretary of Transportation under the Hazardous Materials Transportation Act.

4. **"Hazardous condition"** means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous waste or hazardous substance into the land, into a water of the State, or into the air/atmosphere, which creates an immediate or potential danger to the public health or safety, or to the environment. For purposes of this division, a site which is an abandoned or uncontrolled disposal site as defined in Section 455B.411, subsection 1, is a hazardous condition.
5. **"Person having control over a hazardous substance or hazardous waste"** means any person, corporation, partnership, firm, associate, cooperative or government agency or any kind, who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance or hazardous waste, the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance or hazardous waste when a hazardous condition occurs, whether the person owns the hazardous substance or hazardous waste, or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance or hazardous waste.
6. **"Cleanup"** means actions necessary to contain, collect, control, identify, analyze, cleanup, treat, disperse, remove, or dispose of a hazardous substance or hazardous waste.
7. **"Treatment"** means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a hazardous substance or hazardous waste so as to neutralize it or to render the substance non-hazardous, safer for transport amenable for recovery, amenable for storage, or to reduce it in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous substances or hazardous waste to render it non-hazardous.

SECTION 4. CLEAN UP REQUIRED. Whenever a hazardous condition is created in O'Brien County by the deposit, injection, or dumping, spilling, leaking, or placing of a hazardous substance or hazardous waste, so that the hazardous substance or hazardous waste may enter the environment, or be emitted into the air, or discharged into any waters, including ground waters, the person having control over the hazardous substance or hazardous waste shall cause the condition to be remedied by a clean up, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition.

If that person does not cause the clean up 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 clean up, and stating that the County will proceed to procure clean up service, and bill the person having control over a hazardous substance or hazardous waste.

If the bill for those services is not paid within thirty [30] days, the Board of Supervisors may authorize the County Attorney to proceed to obtain payment by all legal means. The authorized officer shall report the non-payment to the Board of Supervisors and may immediately seek any State or Federal funds available for said clean up. The Board of Supervisors may at any time authorize the County Attorney to seek injunctive relief concerning the hazardous condition from a Court or agency.

SECTION 5. LIABILITY FOR CLEANUP COSTS. The person having control over a hazardous substance or hazardous waste 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 having control over a hazardous substance or hazardous waste, to clean up pursuant to this Ordinance or any State or Federal law or regulation, the hazardous substance or hazardous waste involved in the hazardous condition.
2. The reasonable costs incurred by the County to evacuate people from the area threatened by the hazardous substance or hazardous waste involved in the hazardous condition.
3. The reasonable damages to the County for the injury to, destruction of, or loss of, any and all County property, including parks and roads, caused by the hazardous substance or hazardous waste involved in a hazardous condition. The reasonable damages may also include the costs of assessing the injury, destruction, or loss.
4. All other reasonable costs or damages incurred by the County caused by the hazardous substance or hazardous waste involved in a hazardous condition or the cleanup of it.

All persons having control over a hazardous substance or hazardous waste shall be jointly and severally liable under this Ordinance.

SECTION 6. NOTIFICATIONS.

1. A person having control over a hazardous substance or hazardous waste shall notify the O'Brien County Emergency Management Coordinator and the O'Brien County Sheriff 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 O'Brien County Emergency Management Coordinator shall notify the proper State Office in the manner established by the State of Iowa.
2. Any County employee or any member of a law enforcement agency who discovers a hazardous condition shall notify the O'Brien County Emergency Management Coordinator and the O'Brien County Sheriff. The O'Brien County Emergency Management Coordinator shall notify the appropriate County Departments and the proper State Office in the manner established by the State.

SECTION 7. POLICE AUTHORITY. If the circumstances reasonably so require, the O'Brien County Sheriff or the O'Brien County Emergency Management Coordinator, or any other peace officer or law enforcement officer may:

1. Order the evacuation of persons from their homes to areas away from the site of the hazardous condition.
2. Order the establishment of perimeters or other boundaries at or near the site of a hazardous condition, and limit access to cleanup personnel.
3. Issue any other reasonable order to ensure the safety of persons or property or the containment of the hazardous condition.

No person shall disobey a lawful oral or written order issued under this section by the O'Brien County Emergency Management Coordinator, O'Brien County Sheriff, or any other peace officer or law enforcement officer issued under this section.

SECTION 8. PENALTY. Any person, corporation, partnership, firm, associate, cooperative, or government agency of any kind, who violates the provisions of Sections

6 or 7 of this Ordinance shall be guilty of a simple misdemeanor. A simple misdemeanor violation under this Ordinance shall carry a maximum penalty of a fine of \$100, plus surcharge and costs, or a sentence not to exceed thirty [30] days in the County jail. Each day of violation shall constitute a separate offense.

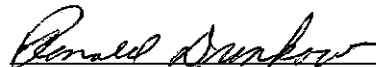
SECTION 9. LIABILITY. The County shall not be liable to any person for claims of damages, injuries or losses resulting from any hazardous condition, except if the County is the person having control over a hazardous substance or hazardous waste.


SECTION 10. REPEALER. All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.


SECTION 11. 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 of any section, provision or part thereof not adjudged invalid or unconstitutional.

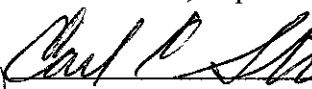
SECTION 12. WHEN EFFECTIVE. This Ordinance shall be in effect from and after its final passage, approval, and publication as provided by law.

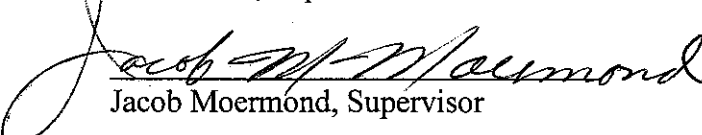
ADOPTED AND PASSED by the Board of Supervisors of O'Brien County, Iowa, this 10th day of June, 1996.


Ronald Drenkow, Chairperson


Rudolf Riessen, Supervisor


Daniel Struve, Supervisor


Carl Struve, Supervisor


Jacob Moermond, Supervisor


Barbara Rohwer, County Auditor