

Chapter 12

HAZARDOUS MATERIALS EMERGENCY RESPONSE EXPENSE RECOVERY

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2-12-1: DEFINITIONS:

For the purpose of this chapter, the following terms, phrases and words shall have the following meanings:

EXPENSES: All costs incurred for the response, containment and/or removal and disposal of hazardous materials on initial remedial action. It includes, but is not necessarily limited to, the actual labor costs of government and other personnel, including workers' compensation benefits, fringe benefits, administrative overhead, and any costs of equipment, equipment operation, materials, disposal and any contract labor or materials.

HAZARDOUS MATERIALS EMERGENCY: A sudden and unexpected release of any substance that, because of its quantity, concentration or physical, chemical or infectious characteristics, presents a direct and immediate action to mitigate the threat. (Ord. 03-004, 6-24-2003)

2-12-2: RECOVERY OF EXPENSES:

- A. Authority: Those persons or entities whose negligent or intentional actions cause or create, in whole or in part, a hazardous materials emergency within the boundaries of the town are liable to the town for all costs and expenses incurred in or arising from response to such hazardous materials emergency by the town and any other political subdivision, agency or cooperative entity. The town shall recover all such costs and expenses, including reasonable attorney fees, litigation expenses and court costs incurred in, related to or arising out of, all cost recovery efforts and enforcement of the terms of this chapter.
- B. Rate: All costs and expenses shall be billed at the current rate established and admission of liability or negligence in any legal action for damages. (Ord. 03-004, 6-24-2003)

2-12-3: COST RECOVERY PROCEDURE:

- A. Investigation And Notice: The town shall investigate and determine the person or entity responsible for causing or creating the hazardous materials emergency and shall notify the responsible party in writing of said determination of responsibility and the amount of costs and expenses incurred by the town in responding to the hazardous materials emergency.
- B. Notice Of Right To Appeal: The notice required by subsection A of this section shall specify that the party determined to be responsible for causing or creating the hazardous materials emergency has the right to appeal the decision determining responsibility to the governing body of the town and shall specify a deadline for filing the notice of appeal and the person or office in which it must be filed. The deadline for filing the notice of appeal shall not be less than fifteen (15) days from the date of the notice.
- C. Hearing: In the event a notice of appeal is filed, the hearing before the governing body shall be an informal public hearing, and the parties shall not be required to adhere to the Utah rules of civil procedure or evidence. The appealing party and the town shall each be entitled to present evidence and argument in support of their respective positions, in accordance with procedures established at the hearing by the governing body.
- D. Final Decision: The decision of the governing body shall be final. (Ord. 03-004, 6-24-2003)

2-12-4: ACTION TO RECOVER COSTS:

In the event the responsible party fails or refuses to pay all of the costs and expenses determined by the town related to or arising out of the town's response to the hazardous materials emergency within thirty (30) days after assessment or after the governing body's decision on an appeal, the town may initiate a legal action to recover such costs, including reasonable attorney fees and costs. (Ord. 03-004, 6-24-2003)

2-12-5: EXPENSES OF OTHER RESPONDING ENTITIES:

- A. Recovery: In the event that personnel and equipment from other political subdivisions, agencies or cooperative entities shall respond to assist with the hazardous materials emergency, then the town shall recover costs and expenses incurred by such other political subdivisions, agencies or cooperative entities as part of the town's cost recovery efforts.
- B. Reimbursement: Upon recovery of costs and expenses from the responsible party, the town is authorized to reimburse such other political subdivisions, agencies or cooperative entities for their actual costs incurred in responding to the hazardous materials emergency. (Ord. 03-004, 6-24-2003)