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SHERYL J THUL, COUNTY RECORDER  
BOONE IOWA

*ret. to - Co. Auditor*

**BOARD OF SUPERVISORS  
BOONE COUNTY, IOWA**

**ORDINANCE NO. 79 HAZARDOUS CONDITION CLEANUP ORDINANCE FOR BOONE COUNTY.**

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

AN ORDINANCE REPEALING AND REPLACING THE HAZARDOUS SUBSTANCES CLEANUP ORDINANCE FOR BOONE COUNTY NO. 18.

I. Purpose. In order to reduce the danger of public health, safety, and welfare from the spills of hazardous substances, these regulations are promulgated to establish responsibility for the removal and cleanup of spills within the unincorporated areas of Boone County, Iowa.

II. Definitions. For use in this Ordinance, the following terms or words shall be interpreted or defined as follows:

A. "Authorized Officer": The Boone County, Iowa Sheriff or his official deputy, Emergency Management Agency Coordinator, Fire Chief or his designee or any law enforcement officer of the State of Iowa or it's political subdivisions.

B. "Board of Supervisors": The Board of Supervisors of Boone County, Iowa.

C. "Cleanup": Actions necessary to contain, collect, control, identify, analyze, cleanup, treat, disperse, remove or dispose and/or properly dispose of a hazardous substance, hazardous waste, or special waste in accordance with all applicable federal, state, and local laws and regulations. (455B and 455D Code of Iowa as amended)

D. "County": Boone County, Iowa.

E. "Hazardous Condition": Any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into any waters of the state or into the atmosphere which creates an immediate or potential danger to the public health or safety or to the environment.

F. "Hazardous Substance": Any substance or mixture of a substance that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, or corrosive, or flammable, 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 January 1, 1977, or any hazardous substance material designated by the Secretary of Transportation under the Hazardous Materials Transportation Act. (455B Code of Iowa as amended).

For the purposes of this ordinance, the following shall be considered a Hazardous Substance if discharged in a manner that the Authorized Officer in his or her opinion determines to be a hazard to public health and/or the environment

1. Agricultural wastes, including manure and crop residues that are returned to the soil as fertilizer or soil conditioners.
2. Source, special nuclear or byproduct material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979. (455B Code of Iowa as amended)

G. "Person": Any individual, corporation, firm, government, or government subdivision or agency, business trust, estate, trust, partnership or association of any other legal entity. (4.1 (20), Code of Iowa as amended)

H. "Person having control over a hazardous substance": A person 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 hazardous substance or hazardous waste when a hazardous condition occurs, whether the person owns the hazardous substance or waste or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance of waste. (455B Code of Iowa as amended)

I. "Sheriff": The Boone County, Iowa, Sheriff.

J. "State": The State of Iowa.

K. "Special Waste": Means any industrial process waste, pollution control waste, or toxic waste which presents a threat to human or the environment or a waste with inherent properties which make the disposal of the waste in a sanitary landfill difficult to manage (455B and 455D, Code of Iowa as amended)

L. "EMA": Emergency Management Agency

M. "Toxic Waste": Means material containing poisons, biocides, acids, caustics, pathological wastes, and similar harmful waste which may require special handling and disposal procedures to protect the environment and persons involved in the storage, transport, and disposal of waste (455B and 455D, Code of Iowa as amended)

N. "Industrial Process Waste": Means waste that is generated as a result of manufacturing activities, product processing or commercial activities (455B and 455D, Code of Iowa as amended)

O. "Pollution Control Waste": Means any solid waste residue extracted by, or resulting from, the operation of pollution control processes (455B and 455D, Code of Iowa as amended)

### III. Cleanup Required.

A. Whenever a hazardous condition is created so that a hazardous substance or waste or a constituent of the hazardous substance or waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the person having control over a hazardous substance shall cause the condition to be remedied by a cleanup, as defined in section 2, Paragraph C "cleanup", as rapidly as feasible to an acceptable safe condition and restore the affected area to its state prior to the hazardous condition as far as practicable. The cost of cleanup shall be borne by the person having control over a hazardous substance and that cost of managing the hazardous condition shall be borne by the person having control over a hazardous substance and shall pay the county and/or any other agency or private party that has incurred costs related to the response or cleanup in a reasonable time in relation to the hazard and circumstances of the incident. The County may, through an Authorized Officer, give reasonable verbal and/or written notice based on the character of the hazardous condition, setting a deadline for commencing and accomplishing the cleanup or the County may proceed to procure cleanup services. The notice shall set forth that the person having control over a hazardous substance creating the hazardous condition will be billed for all costs associated with the cleanup or treatment, including, but not limited to, equipment rendered unserviceable, personnel costs (including overtime), disposal costs and any other costs associated with the cleanup or treatment.

B. If the bill for the above services is not paid within thirty (30) days of original notice, Boone County may proceed, after service of notice, either by certified mail or by one publication in a newspaper of general circulation within Boone County and a hearing before the Board of Supervisors, to obtain payment by all available legal means.

C. If the cost of the cleanup is beyond the capacity of the County to finance, the Authorized Officer shall proceed pursuant to applicable authority granted by the State of Iowa Section 455B Code of Iowa as amended and immediately seek any State or Federal funds available for such cleanup.

### IV. Liability for Cleanup Costs.

A. The reasonable person shall be strictly liable to the County and/or any agency and/or private party that incurred costs for all of the following:

1. The reasonable cleanup costs incurred as a result of the cleanup of a hazardous substance or waste involved in a hazardous condition caused by that person.
2. The reasonable costs incurred to evacuate people from the area threatened by a hazardous condition caused by the person.

3. The reasonable damages for the injury to, destruction of or loss of County or private property resulting from a hazardous condition caused by that person, including the costs of assessing the injury, destruction or loss.

4. Reasonable costs are determined by the fee schedules approved by the applicable responding agencies.

V. Notifications.

A. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the Sheriff's Department 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 Sheriff's Department will notify the EMA, who will notify the appropriate State Office.

B. Any county employee or any member of a Law Enforcement Agency or any member of a City Fire Department who discovers a hazardous condition shall notify the Sheriff's Department which shall notify the EMA, who will notify the appropriate State Office.

VI. Law Enforcement/ Authority. If the circumstances reasonably so require, the Sheriff and/or his representative may:

A. Evacuate persons, even from their homes, to areas away from the site of hazardous condition.

B. Establish a perimeter or other boundaries at or near the site of a hazardous condition and limit access to cleanup and response personnel.

C. No person shall disobey an order, of the Sheriff, Deputy, or other Law Enforcement Officer, issued under this Section.

D. Authorize responding entities to commence containment and/or cleanup activities and/or take preventative actions to mitigate potential danger or damage.

VII. County 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".

VIII. Special Account- Use of Account. All penalties and other monies available or paid to the County under the provision of the ordinance shall be placed in the appropriate fund and credited to the appropriate account within the fund designated as the hazardous material cleanup account. This fund shall be available to the Board by appropriation and shall be expended for the administration and enforcement of this ordinance and for any other expenses incurred by the County directly or indirectly due to the provisions set forth by this ordinance. Any unencumbered and any unexpended balance of this account remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of this ordinance until expended or until appropriated by subsequent Board action.

IX. Penalty. Any person violating any provisions, section or paragraph of this Ordinance, shall be guilty of a simple misdemeanor, and on conviction thereof be subject to a fine of not more that \$500.00 or be in imprisoned for not more that thirty (30) days for each offense.

X. Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

XI. 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.

XII. When Effective. This ordinance shall be in affect after its final passage, approval, and publication as provided by law.

Passed and adopted by the Board of Supervisors this 27<sup>th</sup> day of April, 2007.

**ACTION UPON FIRST READING**

**DATE:** April 18, 2007

Moved by: O'Brien

Seconded by: Sorensen

Discussion: Code Section references change and review

AYES (A), NAYES (N), ABSENT (X):

Albert Sorensen  Mike O'Brien  David Reed

**ACTION UPON SECOND READING**

**DATE:** April 20, 2007

Moved by: O'Brien

Seconded by: Reed

Discussion:

AYES (A), NAYES (N), ABSENT (X):

Albert Sorensen  Mike O'Brien  David Reed

**ACTION UPON FINAL READING**

**DATE:** April 27, 2007

Moved by: O'Brien

Seconded by: Sorensen

Discussion:

AYES (A), NAYES (N), ABSENT (X):

Albert Sorensen  Mike O'Brien  David Reed

David Reed

Chairman  
Boone County Board of Supervisors

April 27, 2007

Date

Philippe E. Meier

ATTEST:  
Philippe E. Meier, County Auditor

April 27, 2007

Date

