

**CHAPTER 8**  
**HAZARDOUS SUBSTANCE REMOVAL AND ABATEMENT**

**Section**

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**§7-8-1: PURPOSE AND INTERPRETATION:**

This Chapter shall be liberally construed to give effect to its purpose, which is to shift the burden of liability for the removal or abatement costs from the citizens of Tower Lakes to those responsible for the incident. (Ord. 04-015, 7-19-2004)

**§7-8-2: DEFINITIONS:**

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

*ABANDONMENT*: The act of leaving a thing with the intent not to retain possession of or assert ownership or control over it. The intent need not coincide with the act of leaving. It is prima facie evidence of the necessary intent to abandon a vehicle, vessel, and/or container containing a hazardous substance that:

- A) The vehicle, vessel, and/or container has been left for more than two (2) days unattended and unmoved; or
- B) License plates or other identifying marks have been removed from the vehicle, vessel, and/or container; or
- C) The vehicle, vessel, and/or container has been damaged or is deteriorated so extensively that it has value only for junk or salvage; or
- D) The owner or operator has been notified by a law enforcement agency to remove the vehicle, vessel, and/or container and it has not been removed within twenty four (24) hours after notification.

*CHIEF OF FIRE/EMS*: The Chief of Fire/EMS of the applicable Fire Protection District, or his authorized representative.

*CHIEF OF POLICE*: The Chief of Police of the Village of Tower Lakes Police Department

*CONTAINER*: A receptacle used for the shipment of goods, meeting one or more of the following criteria:

- (A) Of permanent character and strong enough for repeated use.
- (B) A cargo container used to transport small quantities of materials (e.g., box, drum, carboy).
- (C) Specifically designed to facilitate the carriage of goods by one or more modes of transport without intermediate reloading.

*EMERGENCY RESPONSE AUTHORITY:* A unit of local government, or volunteer fire protection organization, that provides or procures firefighting services, emergency rescue services, emergency medical services, hazardous materials response teams, or civil defense.

*FIRE PROTECTION DISTRICT:* The applicable Fire Protection District serving the Village.

*HAZARDOUS MATERIAL:*

- (A) Any material as designated pursuant to the federal “Comprehensive Environmental Response, Compensation, and Liability Act of 1980”, 42 USC 9601(14), as amended; or
- (B) Any substance, material, waste, or mixture designated as a hazardous material, waste, or substance according to 49 CFR or 410 Illinois Compiled Statutes 45/14 and 45/15, as amended, excluding highway route controlled quantities of radioactive materials as defined in 49 CFR 173.403(l), excluding ores, the products from mining, milling, smelting, and similar processing of ores, and the wastes and tailings therefrom, and excluding special fireworks as defined in 49 CFR 173.88(d) when the aggregate amount of flash powder does not exceed fifty (50) pounds; or
- (C) Any material which is listed on the list of environmental protection agency pollutants, 40 CFR 401.15, as amended; or
- (D) Any material which is classified by the National Fire protection Association (NFPA) as either a flammable liquid, a Class II combustible liquid, or a Class IIIA combustible liquid; or
- (E) Any material which has been determined by the party storing it, or having control of it, through testing or other objective means, to be likely to create a significant potential or actual hazard to public health, safety, or welfare or to the environment. This definition shall not establish a requirement to test for the purposes of this Chapter; or
- (F) Any material which has been determined by the Chief of Fire/EMS or Chief of Police, through information based on appraisal and assessment from reliable resources, to be likely to create a significant potential or actual hazard to public health, safety, or welfare or to the environment, including material which cannot be immediately identified but which, from its observable characteristics in the totality of the circumstances, the Chief of Fire/EMS or Chief of Police may reasonably deem to create a significant potential or actual hazard. The fact that the material in question is not designated as a hazardous substance pursuant to subsections (A) through (E) of this definition or is excluded by legislation or by the NFPA classifications of subsections (A) through (D) of this definition does not preclude the Chief of Fire/EMS or Chief of Police from determining that the material is a hazard, given the totality of the particular facts and circumstances.

*HAZARDOUS MATERIAL INCIDENT:* Any emergency circumstances involving the abandonment or the sudden release or threatened release of a “hazardous material” as defined in this Section which, in the judgment of an emergency response authority, whether said emergency response authority be the Village, the Fire Protection District, the Tower Lakes Police Department, a MABAS agreement member unit, or a federal or state agency or other local agency, threatens immediate and irreparable harm to the environment or the health, safety, or welfare of any individual other than individuals exposed to the risks associated with hazardous substances in the normal course of their employment. “Hazardous material incident” also includes incidents of intentionally releasing or abandoning a hazardous substance, whether or not such releasing or abandoning is found to threaten immediate and irreparable harm; but such term does not include any release of a hazardous substance authorized pursuant to any federal, state, or local law or regulation.

*MABAS*: Mutual aid box alarm system.

*PERSON*: Any individual, public or private corporation, partnership, association, firm, trust, or estate, the state or any department, institution or agency thereof, any municipal corporation, county, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

*RELEASE*: Any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, vaporizing, evaporating or disposing into the environment, exclusive of:

- (A) Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer or such persons;
- (B) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
- (C) Release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 1870 of such Act;
- (D) The normal application of fertilizer; and
- (E) A release authorized pursuant to any federal, state or local law or regulation.

*REMOVE OR REMOVAL*: The cleanup, containment, or removal of released hazardous substances from the environment; such actions as may be necessary to be taken in the event of the threat of release of hazardous substances into the environment; such action as may be necessary to monitor, assess, and evaluate the release of or threat of release of hazardous substances, the disposal of removed material; or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water suppliers, temporary evacuation and housing of threatened individuals, and any emergency assistance which may be provided under the Illinois Emergency Management Agency Act, as amended, pursuant to the MABAS agreement.

*RESPONSIBLE PARTY*: A person or persons who own or have custody of hazardous materials involved in an incident requiring emergency action by an emergency response agency; a person or persons who own or have custody of bulk or nonbulk packaging or a transport vehicle that contains hazardous materials involved in an emergency response incident; or a person or persons who cause or substantially contribute to the cause of an emergency action. For purposes of this Section and Section 7-8-5 of this Chapter, “own” and “have custody” shall include any ownership, custodial, fiduciary or other legally cognizable interest in the material manufactured, stored, released or abandoned in the Village.

*VEHICLE*: Any device which is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks, or by propulsion through air and water. The term includes, but is not limited to, any motor vehicle, trailer, semitrailer, boat, plane, train, tank, or track machine.

(Ord. 04-015, 7-19-2004; amd. 2014 Code)

**§7-8-3: ABANDONMENT OR RELEASE OF HAZARDOUS MATERIALS; NUISANCE DECLARED:**

The abandonment or release of hazardous materials or of containers or vehicles containing hazardous materials on public or private property within the Village, or at a location outside the Village so as to cause a “hazardous material incident” as defined in Section 7-8-2 of this Chapter and create an imminent danger to the health, safety and welfare of citizens of the Village is hereby prohibited and declared to be a public nuisance. (Ord. 04-015, 7-19-2004)

**§7-8-4: REMOVAL OR ABATEMENT OF HAZARDOUS MATERIAL INCIDENTS:**

(A) Summary Removal Or Abatement:

The Fire Protection District or the Village’s Police Department is authorized to summarily remove or abate the effects of any hazardous material incident involving the abandonment or actual or threatened release of hazardous material:

1. Upon or into property or facilities in the Village;
2. Pursuant to any MABAS agreement in effect, it being understood that such aid will be rendered outside the Village limits; or
3. Outside the corporate and/or MABAS response limits where the health, welfare, and/or property of the Village and/or those people within its protection are endangered.

(B) Supervision Of Voluntary Removal Or Abatement:

In the event that any person undertakes voluntarily, or upon order of the Chief of Fire/EMS or Chief of Police to remove or abate the effects of any actual or threatened hazardous substance release upon or into any property or facility in the Village, the Chief of Fire/EMS or Chief of Police may take such action as is necessary to supervise or verify the adequacy of the removal or abatement. The person described in subsection 7-8-5(A) of this Chapter shall be liable to the Village for all costs, direct or indirect, incurred as a result of such supervision or verification.

(C) Mutual Aid Assistance:

The Chief of Fire/EMS or Chief of Police or their respective designated agents are authorized to request assistance from mutual aid response personnel, including, but not limited to, fire, emergency medical services, or hazardous material personnel responding from neighboring communities, and to contract with or otherwise arrange for assistance from professional contractors, consultants or other experts in mitigating or abating a hazardous material incident. If the hazardous material incident in question requires an emergency response to prevent imminent danger to the public health, safety and welfare, the Chief of Fire/EMS or Chief of Police is authorized to contract with or make other arrangements for the services of professional contractors, consultants and other experts as needed without prior notice to the person in control or having custody of the hazardous material in question.

(D) Notice To Remove Or Abate:

When the hazardous material incident does not present an emergency, or if, after the emergency situation is abated, any additional cleanup, security or other mitigation of the incident is required, the Fire Department or Police Department shall serve a notice upon all responsible persons that the

hazardous material incident has created a public nuisance, and that the responsible parties shall be charged with any costs of abating the nuisance that the Village and Fire Protection District incurs if, within seventy two (72) hours of the notice, the responsible parties have not begun to abate the nuisance.

(Ord. 04-015, 7-19-2004; amd. 2014 Code)

**§7-8-5: REMOVAL OR ABATEMENT COSTS:**

(A) Liability For Costs:

The following described responsible parties shall be jointly and severally liable to the Village and to the Fire Protection District for the payment of all costs, direct or indirect, incurred by the Village and the Fire District as defined in subsection (B) of this Section, as a result of such removal and/or abatement activity, and no payment made by the Village and/or the Fire Protection District to any member unit of the MABAS agreement rendering aid to the Village and/or to the Fire Protection District pursuant to said agreement shall be deemed to be a waiver by the Village or by the Fire Protection District of any claim it may have against any responsible party, or its legal heirs, successors, or assigns:

1. The person or persons whose negligent, reckless, or willful act or omission proximately caused such release; and
2. The person or persons who owned or had custody or control of the hazardous substance at the time of such release, without regard to fault or proximate cause; and
3. The person or persons who owned or had custody or control of the container, transport vehicle, or transport vessel which held such hazardous substance at the time of, or immediately prior to, such release, without regard to fault or proximate cause; and
4. Any person owning or in control of any real property from which a hazardous substance is or may be released.

(B) Costs Established; Payment:

1. For the purposes of this Chapter, costs incurred by the Village shall include, but shall not be limited to, the following, whether incurred within the Village, or outside the Village limits as a result of rendering mutual aid pursuant to the MABAS agreement:
  - (a) Actual labor cost of Village and Fire District personnel, including benefits and administrative overhead.
  - (b) Medical treatment and surveillance of personnel exposed to hazardous materials.
  - (c) Costs of consultants whose expertise is required to remove or abate the incident or to assess the nature and extent of damage done.
  - (d) Cost of equipment operation.
  - (e) Replacement cost of vehicles or equipment which, in the determination of the Chief of Fire/EMS and/or the Chief of Police, is contaminated beyond reuse or repair.
  - (f) Laboratory costs.
  - (g) Costs of materials or equipment obtained directly by the Village.
  - (h) Cost of any labor and materials contracted for or provided pursuant to a mutual aid agreement and/or an intergovernmental cooperation agreement to which the Village and/or Fire District is a party.

2. When the action to remove or abate the effects of a hazardous substance includes extinguishing a fire, the costs may only include the expenses, such as those set forth in subsection (B)1 of this Section, related to the hazardous substance, including, but not limited to, specialized foam or dry chemical fire extinguishing agents and hoses, and not any expense related to extinguishing the fire.
3. Nothing contained in this Chapter shall be construed to change or impair any right of recovery or subrogation the Village, Fire District, or any other emergency response authority may have arising under any mutual aid agreement or any other ordinance, statute, or provision of law. No criminal or quasi-criminal remedy for any wrongful action shall be excluded or impaired by this Chapter.
4. The Chief of Police shall allow for a reasonable time for the responsible party to pay the reimbursement amount and shall consider any written objections from a responsible party concerning the type and amount of expense. In the event that a responsible party has made no payment or response to the request for reimbursement within thirty (30) days from the date of the invoice, the Chief of Police is hereby authorized to direct the Village Attorney to take appropriate legal action against the responsible party.

(Ord. 04-015, 7-19-2004; amd. 2014 Code)