

HEALTH SERVICES AGENCY



## COUNTY OF SANTA CRUZ

(831) 454-2022

 ENVIRONMENTAL HEALTH SERVICE  
 701 OCEAN STREET, ROOM 312 SANTA CRUZ, CALIFORNIA 95060

September 17, 1998

AGENDA: October 6, 1998

## BOARD OF SUPERVISORS

 County of Santa Cruz  
 701 Ocean Street  
 Santa Cruz, CA 95060

RE: SCHEDULING A PUBLIC HEARING FOR THE MORNING AGENDA OF OCTOBER 27, 1998, TO CONSIDER PROPOSED ORDINANCE REVISIONS FOR HAZARDOUS MATERIALS/ HAZARDOUS WASTE/ UNDERGROUND STORAGE TANKS

## Members of the Board:

State legislation and designation of Santa Cruz County Environmental Health Services as the Certified Unified Program Agency (CUPA) by the California Environmental Protection Agency has created the need to amend Chapter 7.96 (Hazardous Waste Permits) and Chapter 7.100 (Hazardous Materials) of the Santa Cruz County Code. The proposed ordinance revisions have been reviewed by the Hazardous Materials Advisory Commission and were recommended by them for Board approval on April 20, 1998. It is now recommended that your Board schedule a public hearing to consider these revisions on October 27, 1998.

Attached is a copy of the proposed ordinance that will be provided for the public hearing. A detailed staff report will also be prepared for the October 27th date.

It is therefore RECOMMENDED that your Board:

1. Schedule a public hearing for October 27, 1998, on the morning agenda to consider the proposed revisions to Chapter 7.96 (Hazardous Waste Permits) and Chapter 7.100 (Hazardous Materials) of the Santa Cruz County Code.
2. Direct the Clerk of the Board to publish the appropriate notices of the hearing.

Sincerely,

 Charles Moody  
 Health Services Agency Administrator



 Diane L. Evans  
 Environmental Health Director

## RECOMMENDED

 SUSAN A. MAURIELLO  
 County Administrative Officer

Attachment: Proposed Ordinance

 cc: CAO  
 County Counsel  
 HSA Administration  
 Environmental Health

**HAZARDOUS MATERIALS/HAZARDOUS WASTE/UNDERGROUND STORAGE TANKS****Article I. General Provisions**

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## Article I. General Provisions

### 7.100.010 Findings and intent.

A. The Board of Supervisors finds and declares:

1. Hazardous materials and hazardous waste (hereinafter collectively referred to as Hazardous Materials) present in the community may pose acute and chronic health hazards to individuals who live and work in this County and who are exposed to such materials as a result of fires, spills, industrial accidents, or other types of releases or emissions. Additionally, many Hazardous Materials present a serious health risk, even when emitted in low levels over long periods of time.
2. Improper handling of small amounts of Hazardous Materials has resulted in contamination of soil, air and groundwater.
3. The cleanup of soil and groundwater contaminated with Hazardous Materials can cost many times more than the original cost of properly containing and handling the Hazardous Materials responsible for the contamination.
4. It is the responsibility of all businesses to protect their workers and the public from Hazardous Materials they use and hazardous waste they generate.
5. That Division 20, Chapters 6.11 (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program), 6.5 (Hazardous Waste Control), 6.7 (Underground Storage of Hazardous Substances), 6.75 (Petroleum Underground Storage Tank Cleanup) and 6.95 (Hazardous Materials Release Response Plans and Inventory) of the California Health and Safety Code are hereby adopted and are to be used 'in conjunction with the provisions of this Chapter. In addition, Title 19 (Public Safety), 22 (Social Security), 23 (Water), and 27 (Environmental Protection) of the California Code of Regulations, and this Chapter, will be utilized in the implementation and enforcement of requirements relative to hazardous materials, hazardous waste, and underground storage tanks.

B. It is the intent of the Board of Supervisors that this Chapter shall:

1. Recognize the County's responsibility and authority to protect human health, safety, and the environment .
2. Foster the best available industrial processes and best available practical control technology to minimize or eliminate the use of Hazardous Materials in the County, and minimize or eliminate potential contamination by Hazardous Materials. This Chapter shall condition any permitted use of Hazardous Materials by placing an obligation on the Users to strictly control the discharges and releases.
3. Require that Hazardous Materials Users monitor any discharges into the environment and keep records on the effectiveness of their Hazardous Materials management practices as a means of enforcing the obligations established by this Chapter.
4. Recognize the community's right to know basic information on the use and storage of Hazardous Materials in the County and establish an orderly system for the provision of such information.

Unless otherwise expressly stated, whenever used in this Chapter, the following terms shall have the meanings set forth below:

- A. “Abandoned” when referring to a storage facility, means out of service and not safeguarded in compliance with State or Federal Laws, and/or this Chapter.
- B. “Business” means any establishment, employer, self-employed individual, trust, firm, joint stock company, corporation, partnership, association, city, county, district, and the state, or any department or agency thereof to the extent allowed by law. For the purpose of this Chapter, a business shall include both for-profit and nonprofit business.
- C. “CAS number” means the unique identification number assigned by the Chemical Abstracts Service to specific chemical materials.
- D. “Discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, dumping, or release of a hazardous material into the environment.
- E. “Economic poison” means any spray adjuvant, or any material or mixture of materials which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling or mitigating any and all insects, fungi, bacteria, weeds, rodents, predatory animals; or any other form of plant or animal life.
- F. “EPA waste stream code” means the identification number assigned pursuant to the regulations of the U.S. Environmental Protection Agency to specific types of hazardous waste.
- G. “Facility” means a building or buildings, appurtenant structures, and surrounding land used by a person or business at a single location or site.
- H. “Hazard. class” means explosives (1.1, 1.2, 1.3, 1.4, 1.5, & 1.6), flammable liquids, combustible liquids, flammable solids, oxidizers, organic peroxides, corrosive materials, flammable gases, nonflammable gases, poisons A, poisons B, irritating materials, etiologic agents, radioactive materials, other regulated materials (ORM) A, B, C, D and E. For purposes of this Chapter, the U. S. Department of Transportation (DOT) definitions in 49 CFR Part 173 as amended shall be utilized; however, whenever the definitions in 49 CFR 173 refer to transportation or hazards associated with transportation, they shall be deemed to refer to storage or other regulated activity under this Chapter.
- I. “Hazardous Materials Advisory Commission” means that body created by Chapter 2.92 of this code.
- J. “Hazardous Materials Appeals Commission” means that body created by Chapter 2.112 of this code.
- K. “Health Officer” means the Health Officer of Santa Cruz County or his/her representative or designee.
- L. “Monitor” means to perform a test, sample, check, or otherwise provide oversight of a release, discharge, or clean-up activity to ensure compliance with standards set pursuant to any provision of this Chapter or any other law regarding the handling of Hazardous Materials.

- M. "MSDS" means a Material Safety Data Sheet prepared pursuant to Section 6390 of the California Labor Code or pursuant to the regulations of the Occupational Safety and Health Administration of the U.S. Department of Labor.
- N. "Permit" means any Hazardous Materials permit issued pursuant to this Chapter, as well as any additional approvals, amendments or revisions thereto.
- O. "Person" means an individual, trust, firm, joint stock company, business concern, partnership, limited liability company, association, and corporation, including, but not limited to, a government corporation. "Person" also includes any city, county, district, ~~commission~~, the state or any department, agency, or political subdivision thereof, any interstate body, and the federal government or any department or agency thereof to the extent permitted by law.
- P. "Property" means any land or improvements owned, leased, possessed or under the direct control of the User.
- Q. "Remove" means the cleanup or removal of released Hazardous Materials or environmental media contaminated by Hazardous Materials, such actions as may be necessary to monitor, assess or evaluate the release or clean-up of Hazardous Materials, or the taking of other such actions as may be necessary to mitigate damage to the human health, safety, and the environment.
- R. "Reproductive toxin" means a material or agent which can affect reproductive functions causing birth defects, spontaneous abortions, impaired spermatogenesis, reduced fertility and/or intrauterine growth retardation as specified in guidelines prepared by the Office of Environmental Health Hazard Assessment, Cal/EPA.
- S. "Significant change" means any change in ownership, operator, or resulting in, or potentially resulting in, an increase or change in the type, volume or location of storage, use, release, emission or discharge of a hazardous material.
- T. "Standard Temperature and Pressure" (STP) means a temperature of zero degrees centigrade and a pressure of one atmosphere.
- U. "Storage facility" or "storage container" means any one, or combination of, tanks, sumps, wet floors, waste treatment facilities, pipes, vaults or other portable or fixed containers, used, or designed to be used, for the storage of Hazardous Materials at a facility.
- V. "Tank" means a device designed to contain an accumulation of Hazardous Materials which is constructed primarily of non-earthen material (e.g. wood, concrete, steel, plastic) which provides structural support.
- W. "UN/NA numbers" means United Nations/North American identification numbers assigned to Hazardous Materials.
- X. "Underground storage tank" or "underground storage facility" means any one or combination of tanks, including pipes connected thereto, which is used for the storage of Hazardous Materials and which is substantially or totally beneath the surface of the ground. This definition includes, but is not limited to, any container, vessel, vault, sump, separator, and/or hydraulic lift.

**7.100.030 Conflicting provisions.**

Notwithstanding any other provision of this Chapter.

- A. Whenever any provision of this Chapter conflicts with any state or federal regulation, the stricter provision shall prevail.
- B. Whenever any provision of this Chapter conflicts with the Uniform Fire Code as adopted by a **city** or the County, the stricter provision shall prevail.

**7.100.040 Material regulated.**

All of the following liquid, solid and gaseous materials are subject to regulation by this Chapter as Hazardous Materials:

- A. Any material or product for which the manufacturer or producer is required to prepare an MSDS for the material or product pursuant to the Hazardous Materials Information and Training Act (commencing with Section 6360, Chapter 2.5, Part 1 of Division 5 of the California Labor Code) or pursuant to any applicable federal law or regulation;
- B. Any material or product which is listed as a radioactive material set forth in 10 CFR, Chapter 1, maintained and updated by the Nuclear Regulatory Commission. (Such materials shall be exempt from the requirement that an MSDS be submitted with the disclosure form);
- C. Any material or product which is a “hazardous waste” or an “extremely hazardous waste” as defined by Sections 25 115 and 25 117 of the California Health and Safety Code;
- D. Materials on the list prepared by the Director of the Department of Industrial Relations pursuant to Section 6382 of the Labor Code;
- E. Hazardous Materials, as defined in Section 253 16 of the Health and Safety Code;
- F. Any material which is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid;
- G. The materials listed pursuant to Title 49 of the Code of Federal Regulations;
- H. Any material which is on the list of EPA pollutants, 40 Code of Federal Regulations, Section 401.15, as amended;
- I. Economic poisons stored in sufficient quantities as determined by either the Health Officer or the Agricultural Commissioner;
- J. Any material determined to be hazardous by the Health Officer, subsequent to a review by the Hazardous Materials Advisory Commission after public notice and a public hearing, based on a finding that the material, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health, safety, or to the environment if released into the community.

**7.100.050 Materials excluded.**

- A. Hazardous Materials contained solely in consumer products packaged for distribution to and

used by the general public shall be exempt from this Chapter unless the Health Officer has provided written notice that the storage of certain quantities of specified-consumer products requires compliance with this Chapter to protect human health, safety, and the environment.

- B. The Health Officer shall exempt any material from the requirements of this Chapter where it has been demonstrated to the satisfaction of the Health Officer that the material in the quantity and/or solution stored and/or used does not present a significant actual or potential hazard to human health, safety, and the environment. (Ord. 3735 § 3 (part), 1986: prior code § 11.37.110)

## Article II. Permits

### 7.100.060 Permit requirements.

- A. No person or business shall store any Hazardous Materials regulated by this Chapter until a Hazardous Materials permit has been issued pursuant to this Chapter.
- B. No person or business shall install, construct, repair, modify, close, remove, or cause significant change to any storage facility or underground storage tank until the appropriate permit(s) and/or approval has been issued pursuant to this Chapter.
- C. No permit issued pursuant to this Chapter is assignable or transferable.
- D. An application for a new, amended, or renewed permit shall be made by the User or facility owner on standardized forms prepared by the County and provided by the Health Officer for approval and shall be accompanied by the appropriate fee.
- E. Pursuant to this Chapter, each applicant for a permit shall file a written plan, for the Health Officer's approval, to be known as a Hazardous Materials Management Plan (HMMP).
- F. One permit shall be issued for a single facility.
- G. A permit may be issued at any time of the year. All permits expire annually on the one-year anniversary of the date of issuance. A new permit shall be applied for at least fifteen days prior to the date of expiration.
- H. Where the permittee is a company, firm or corporation, the application must be signed by a person having the legal authority to bind the permittee.
- I. No permit shall be granted pursuant to this Chapter unless the permit applicant demonstrates to the satisfaction of the Health Officer by the submission of appropriate application, forms, plan, and/or other information that the design and construction of the storage facility will result in a manner of storage consistent with this Chapter.
- J. Applicants for permits who are delinquent in filing their applications, or permit fees, or both, are subject to the following penalties:
  - 1. Twenty-five percent of the regular permit fee, if delinquent by more than thirty days;
  - 2. Fifty percent of the regular permit fee, if delinquent by more than sixty days;
  - 3. One hundred percent of the regular permit fee, if delinquent by more than ninety days.

- K. A one hundred percent penalty shall be applied to all permit fees, other than those relating to the use of Hazardous Materials, obtained after the unpermitted activity has commenced. These permits include, but are not limited to, facility modification, underground storage tank installation or removal, and monitoring well installation or removal permits.
- L. The imposition of, or payment of, a penalty imposed by either subsection J or K of this section shall not preclude the imposition of any other penalty prescribed by this Chapter or the prosecution of any violation under this Chapter.

#### **7.100.070 Grant or denial.**

Within forty-five business days after receipt of a completed application, the Health Officer shall either grant, provisionally grant, conditionally grant, or deny the permit. This time limit may be extended by mutual agreement between the Health Officer and applicant.

#### **7.100.080 Permit denial, amendment, suspension, or revocation.**

- A. Any permit issued pursuant to the provisions of this Chapter may be amended, suspended, or revoked by the Health Officer, as provided in this section, if he/she determines that a violation of this Chapter exists or where such action would be appropriate and consistent with achieving the general obligation of this Chapter for protecting human health, safety, or environment.
- B. Any permit may also be amended, suspended, or revoked by the Health Officer if he/she determines at a hearing held by the Health Officer that the person or business to whom any permit was issued pursuant to this Chapter has obtained the same by fraud or misrepresentation, provided that notice of the time, place and purpose of such hearing is given to the permittee at least five days prior to the hearing.
- C. The denial, amendment, suspension, or revocation of any permit shall not be effective until notice thereof, in writing, is served personally on the applicant or holder of the permit, or alternatively may be sent by registered or certified mail, postage prepaid, return receipt requested, to the applicant or the holder of the permit. Such notice shall set forth therein a brief statement of the reasons for the denial, amendment, suspension, or revocation.
- D. No suspension period shall exceed ninety days. The Health Officer shall deny, amend, revoke, or reinstate the suspended permit within this time frame.
- E. A person or business whose permit has been denied, amended, suspended, or revoked may file an appeal pursuant to the procedures set forth in Section 7.100.090.

#### **7.100.090 Appeals process.**

An applicant for a permit under this Chapter whose application has been denied or issued provisionally or conditionally by the Health Officer, or whose permit once issued has been amended, suspended, or revoked and who believes that his/her application and HMMP and/or use, handling or storage satisfy the criteria set forth in this Chapter, may appeal to the Hazardous Materials Appeals Commission under the following conditions:

- A. Within fifteen days after receipt of notice of the denial, amendment, suspension, or revocation, the applicant or permit holder shall file with the Health Officer a written notice of appeal setting forth the reasons the appellant believes such denial, amendment, suspension, or revocation is improper. The written notice of appeal shall be accompanied by the appeal fee as established by resolution of the Board of Supervisors.



- B. Upon receipt of the notice of appeal, the Health Officer shall schedule a hearing of the appeal before the Hazardous Materials Appeals Commission and shall give notice, in writing, to the appellant of the date, time and place of such hearing by personally delivering the notice to the appellant, or alternatively, by sending the notice to the appellant by registered or certified mail, postage prepaid, return receipt requested. The hearing shall be scheduled no later than thirty

days from the date the Health Officer receives the notice of appeal. Written notice thereof by the Health Officer to the appellant shall be given no later than fifteen days prior to the date set for the hearing.

- C. At the appeal hearing, the appellant may appear in person or through or with legal counsel and may present such evidence as he/she may desire and show cause why the application should be granted, or show cause why the permit should not be suspended or revoked, as the case may be. In conducting the hearing, the commission shall receive information, evidence and testimony relevant to the circumstances of the denial, suspension or revocation and the formal rules of evidence shall not apply. Appeal hearings shall be tape recorded and such recordings shall be the official records of such hearings and shall be retained in the custody of the Health Officer.
- D. The Hazardous Materials Appeals Commission, may affirm, modify or reverse the denial, amendment, suspension, or revocation. The Commission shall render its decision not later than ten days following the conclusion of the hearing and a notice thereof shall be personally delivered or sent by the Health Officer to the appellant by registered or certified mail, postage prepaid, return receipt requested, not later than three days following the rendering of the decision. The action of the Hazardous Materials Appeals Commission shall be final.

#### **7.100.100 Fees.**

- A. The Board of Supervisors shall by resolution adopt a fee schedule at a level sufficient to pay the necessary and reasonable costs incurred in administering this Chapter, including, but not limited to, permitting and inspection responsibilities. No application as provided for in this Chapter shall be considered complete unless and until the applicable fee has been paid.
- B. The Health Officer shall recover all costs incurred that are both reasonable and necessary in gaining compliance with this Chapter and in providing oversight of activities which are not otherwise calculated into a permit fee.
- C. The fee for a permit shall include any applicable state surcharges, the amount of which shall be determined by the Legislature annually to cover the costs of the California Environmental Protection Agency in carrying out its responsibilities under state law. Any state surcharge shall be clearly identified as such on the billing statement provided by the County to the permittee.

### **Article III. Hazardous Materials Management Plan**

#### **7.100.110 Standard form HMMP.**

The Standard Form HMMP shall be consistent with the California Health and Safety Code and the requirements the California Code of Regulations.

**7.100.120 Short form HMMP**

- A. Any User handling, at any one time, an aggregate amount of less than fifty-five gallons of a liquid, two hundred cubic feet of a gaseous material at Standard Temperature and Pressure, or five hundred pounds of a solid, of a product or formulation containing a hazardous material, may opt to file the Short Form HMMP unless the Health Officer has provided notice that he/she has lowered the weight or volume limits for a specific hazardous material to protect **human** health, safety, or the environment.
- B. The Short Form HMMP shall consist of the following:
1. Business Owner/Operator Information. The Short Form HMMP shall contain the Business Name; Site Address; Business Phone number; Name, Title, and emergency phone numbers of the primary response person and one alternate; the number of employees; number of shifts; hours of operation; principal business activity; and any other information deemed relevant by the Health Officer;
  2. The Short Form HMMP shall contain a Chemical Inventory Form which will, at a minimum, identify the Location and list the Hazard Class; Common/Chemical Name; Number and Size of Containers (maximum amounts); and a brief description of the use or if the material is a waste, the EPA I.D. number;
  3. The Short Form HMMP shall also indicate the use and/or storage of any quantity of any carcinogen or reproductive toxin as defined in this Chapter;
  4. In addition to the Chemical Inventory Form, a copy of the MSDS for every hazardous material used by the person or business completing the HMMP unless the MSDS has been previously filed pursuant to the requirements of this Chapter or does not exist;
  5. The Short Form HMMP shall contain a simple line drawing (Map) of the facility showing the location of the use or storage facilities in sufficient detail to allow fire and safety personnel to prepare adequate emergency responses to potential releases of the Hazardous Materials;
  6. Information indicating that the Hazardous Materials will be stored in a suitable manner and that they will be appropriately contained, separated and monitored;
  7. A description of adequate contingency plans for spills and unauthorized emissions, discharges, and releases of the hazardous material and employee training and equipment for proper handling of Hazardous Materials, and in response to all emergencies involving the hazardous material;
  8. Assurance that the disposal of any Hazardous Materials will be in an appropriate manner.
- C. Any User filing a Short Form HMMP pursuant to this section shall also maintain a recordkeeping form upon which any repair of a storage container or facility shall be noted. The recordkeeping form shall be maintained at the facility and shall be subject to review by the Health Officer.

**7.100.130 Trade secrets.**

- A. If a User believes that a request for information contained in the disclosure form or the HMMP involves the release of a trade secret, the User shall complete the documents nonetheless, but shall notify the Health Officer in writing of that information in the documents that the User believes involves the release of a trade secret. As used in this Chapter, trade secret shall have the meaning given to it by Section 6254.7(d) of the Government Code and Section 3426.1 (d) of the Civil Code.
- B. Subject to the provisions of this Chapter, the Health Officer shall exempt from public disclosure any and all information coming into his/her possession which is claimed to involve the release of a trade secret, pursuant to subsection A of this section.
- C. Subject to the provisions of this Chapter, the Health Officer shall also exempt from public disclosure that portion of a Hazardous Materials disclosure form, the HMMP or other record on file which states the precise location where Hazardous Materials are stored or handled.
- D. Any information reported to or otherwise obtained by the Health Officer, or any of his/her representatives or employees, which is exempt from disclosure pursuant to subsections B or C shall not be disclosed to anyone except:
  - 1. An officer or employee of the County, a City within the County, the State of California, or the United States of America, in connection with the official duties of such officer or employee under any law for the protection of human health, or to contractors with the County and their employees if in the opinion of the Health Officer such disclosure is necessary and required for the satisfactory performance of a contract of work, or to protect the health and safety of the employees of the contractor; or
  - 2. To a physician when the Health Officer determines that such information is necessary for the medical treatment of the physician's patient.
- E. For the purpose of this section, fire and emergency response personnel and County health personnel operating within the jurisdiction of the County shall be considered employees of the County.
- F. Information claimed as a trade secret must be disclosed to a physician by the Health Officer when the physician requests such information for the purpose of treating a patient. Any physician who, by virtue of his/her treating a patient has possession of or access to information the disclosure of which is prohibited by this section, and who, knowing that disclosure of this information is prohibited, discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor.
- G. Any officer or employee of the County or former officer or employee who, by virtue of such employment or official position has possession of or access to information the disclosure of which is prohibited by this section, and who, knowing that disclosure of the information is prohibited, discloses the information in any manner to any person not entitled to receive it, is guilty of a misdemeanor. Any contractor with the County and any employee of such contractor, who has been furnished information as authorized by this section, shall be considered to be an employee of the County for purposes of this section.
- H. Information certified by appropriate officials of the United States, as necessarily kept secret for national defense purposes, shall be accorded the full protection against disclosure as

- I. Upon receipt of a request for the release of information to the public which includes information which the User has notified the Health Officer is a trade secret pursuant to subsection A of this section, the Health Officer shall notify the User in writing of the request by certified mail. The Health Officer shall release the information forty-five days after the day of mailing the notice unless, prior to the expiration of the forty-five days, the User institutes an action in an appropriate court for a declaratory judgment that such information is subject to protection under subsection B of this section and obtains a temporary restraining order or preliminary or permanent injunction prohibiting disclosure of said information to the general public.

#### **7.100.140 Additional information.**

In addition to the Hazardous Materials Management Plan, the Health Officer may request whatever additional information he/she deems necessary to protect the human health, safety, or the environment. The additional information that must be provided upon request by the Health Officer may include, but is not limited to, the following:

- A. Diagrams showing the flow of all Hazardous Materials through each step of any production, assembly or cleaning process;
- B. Diagrams and descriptions of all processes that produce wastewaters, air emissions or hazardous wastes;
- C. Diagrams and descriptions of all treatment processes for Hazardous Materials, including information on their efficiency in removing or destroying hazardous contaminants; and
- D. A description of the methods to be used to eliminate or minimize the use of Hazardous Materials at the proposed facility and in the proposed processes, including a discussion of alternative processes which could be used to eliminate or minimize the use of Hazardous Materials and a justification for selection of the processes proposed to be used, if the processes proposed do not provide for the maximum possible elimination or minimization of the use of Hazardous Materials.

#### **7.100.150 Emergency disclosure.**

In an emergency, all Users must immediately provide, upon request, information beyond that specifically required in the disclosure form to the agency of jurisdiction during the emergency if that agency has determined that such information is necessary to protect human health, safety, or the environment.

### **Article IV. Use, Handling, and Storage Responsibilities**

#### **7.100.160 Performance standards.**

All installation, construction, repair or modification, closure and removal of Hazardous Materials storage facilities shall be to the satisfaction of the Health Officer. The Health Officer shall have the discretion to impose reasonable additional or different requirements in order to better secure the purpose and general obligation of this Chapter for protection of human health, safety, or the environment. Every storage facility shall meet the following requirements:

- A. The storage facility shall be designed and constructed to provide primary and secondary levels of containment of the Hazardous Materials stored in them in accordance with the following performance standards:
  - 1. Primary containment shall be product-tight;
  - 2. Secondary containment shall be provided, and shall be constructed to prevent structural weakening as a result of contact with any released Hazardous Materials and also shall be capable of storing the Hazardous Materials for the maximum anticipated period of time necessary for the recovery of any released hazardous material;
  - 3. In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least one hundred ten (110) percent of the volume of the primary container;
  - 4. In the case of multiple primary containers, the secondary containment shall be large enough to contain one hundred fifty (150) percent of the volume of the largest primary container placed in it, or ten (10) percent of the aggregate internal volume of all primary containers, whichever is greater;
  - 5. If the storage facility is open to rainfall, then the secondary containment must be able to additionally accommodate the volume of a 24-hour rainfall as determined by a one-hundred-year storm;
  - 6. Secondary containment for storage facilities for materials which react with water to produce hazardous gas or vapor shall not be open to rainfall;
  - 7. Laminated, coated, or clad materials shall be considered single-walled and shall not be construed to fulfill the requirements of both primary and secondary containment.
- B. When required by the Health Officer, a means of overfill protection shall be provided for any primary container, including but not limited to an overfill prevention device, or an audible and visual level alarm, or both.
- C. Different materials that in combination may cause a fire or explosion, or the production of flammable, toxic or poisonous gas, or the deterioration of a primary or secondary container, shall be separated in both the primary and secondary containment so as to avoid potential intermixing.
- D. If water can enter into the secondary containment by precipitation or infiltration, the storage facility shall contain a means of water removal by the owner or operator. This removal system shall prevent uncontrolled removal of this water, provide a means of analyzing the removed water for hazardous material contamination and provide a means of disposing of the water, if so contaminated, at an authorized disposal facility, or in an otherwise authorized manner.
- E. The storage facility shall be designed and constructed with a monitoring system capable of detecting the entry of the hazardous material stored in the primary containment into the secondary containment.
- F. All monitoring alternatives shall be subject to review and approval by the Health Officer.
- G. Underground storage tanks not otherwise regulated under Chapters 6.11, 6.7, and/or 6.75 of the California Health and Safety Code shall meet the following monitoring requirements:

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1. The owner shall outfit the storage facility with a monitoring system capable of detecting unauthorized releases of any Hazardous Materials stored in the storage facility, and thereafter, the operator shall monitor each storage facility, based on materials stored and the type of monitoring installed.
  2. The owner shall provide a means for visual inspection of the storage facility wherever practical, for the purpose of the monitoring required by subsection G. 1. of this section. Alternative methods of monitoring on a monthly, or more frequent basis, may be required by the Health Officer. The alternative monitoring methods include, but are not limited to the following methods:
    - a. For underground tanks, precision testing as defined in National Fire Protection Association Pamphlet 329, Recommended Practice for Handling Underground Leakage of Flammable and Combustible Liquids, as amended, for proving the integrity of an underground storage tank and piping system at time intervals specified by the Health Officer;
    - b. A groundwater monitoring well or wells which are down-gradient and adjacent to the storage tank or facility, vapor analysis within a well where appropriate, and analysis of soil boring at the time of initial installation of the well. The Health Officer shall approve the location and number of wells, the depth of wells, and the sampling frequency, pursuant to the policies and procedures promulgated by the Health Officer;
    - c. A continuous leak detection and alarm system which is located in monitoring wells adjacent to the storage tank or facility and which is approved by the Health Officer.

#### **7.100.170 Safety and care generally.**

- A. No person or business shall cause, suffer or permit the use, handling or storage of Hazardous Materials in any of the following ways:
  1. In a manner which violates any provision of this Chapter or any other local, federal or state statute, code, rule or regulation relating to Hazardous Materials;
  2. In a manner which harms or poses a significant risk of harm to human health or adverse impact on the environment; or
  3. In a manner which causes an unauthorized discharge of Hazardous Materials or poses a significant risk of such unauthorized discharge.
- B. The Health Officer shall have discretion to require an applicant to meet additional, modified or reduced requirements, where such action would be appropriate and consistent with achieving the general obligation of this Chapter for protecting human health, safety, or environment.

#### **7.100.180 Safe dispensing, mixing and transportation.**

Dispensing and mixing of Hazardous Materials must not be done in such a manner as to substantially increase the risk of an unauthorized discharge. When Hazardous Materials are moved into or out of a storage facility, they shall remain in the travel path only for the time reasonably necessary to transport the Hazardous Materials and such movement shall be in a manner which will not result in an unauthorized discharge.

**7.100.190 Register of sales and deliveries.**

- A. Every person or business in the business of selling, supplying, delivering, or otherwise transferring a hazardous material, including but not limited to motor vehicle fuels, fuel products, and heating oils (referred to in this Chapter as “regulated material”), to be stored in any storage facility subject to the provisions of this Chapter, whether such sale, supply, delivery or transfer is wholesale or retail, shall keep and maintain a register in which shall be entered the following information:
  - 1. The name and address of each person or business receiving the regulated material;
  - 2. The address where the regulated material was received or stored upon completion of the transaction;
  - 3. The common name, chemical name and quantity of the regulated material sold, supplied, delivered or transferred;
  - 4. The date of such sale, supply, delivery or transfer.
- B. All records required by this section shall be maintained by the person or business keeping them for a period of not less than five years.- These records shall be made available to the Health Officer upon request during normal working hours and with reasonable notice.

**7.100.200 Access to storage facilities.**

Access to the storage facilities shall at all times be secured by means of fences and/or locks or some other reasonable means as determined by the Health Officer. The access to areas containing storage facilities shall be kept securely locked when unattended.

**7.100.210 Emergency equipment.**

Emergency equipment shall be provided by the User which is reasonable and appropriate for potential emergencies presented by the Hazardous Materials used, as determined by the Health Officer. Such equipment shall be regularly tested and adequately maintained.

**7.100.220 Emergency procedures.**

Simplified emergency procedures shall be conspicuously posted in locations where Hazardous Materials are stored or used.

**7.100.230 Maintenance, repair, or replacement.**

- A. All permittees shall carry out maintenance, ordinary upkeep, and minor repairs in a careful and safe manner.. No permit or other approval will be required for such maintenance and upkeep. Any repair activity made pursuant to this section shall be noted on the permittee’s recordkeeping forms and shall be subject to review by the Health Officer.
- B. Any substantial modification or repair of a storage facility other than minor repairs or emergency repairs shall be in accordance with plans to be submitted to the Health Officer and approved in accordance with Section 7.100.060 prior to the initiation of such work.
- C. A permittee may make emergency repairs to a storage facility in advance of seeking an additional permit approval whenever an immediate repair is required to prevent or contain an unauthorized discharge or to protect the integrity of the containment. However, as soon as

possible, but no later than five working days after such emergency repairs have been started, the permittee shall seek approval pursuant to Section 7.100.060 by submitting drawings or other information adequate to describe the repairs to the Health Officer:

- D. Replacement of any storage facility for Hazardous Materials, which are liquids or solids at standard temperature and pressure, must be in accordance with the installation standards of Section 7.100.160.

#### **7.100.240 Inspections.**

- A. The Health Officer may conduct inspections, at his/her discretion, for the purpose of ascertaining compliance with this Chapter, and shall cause to be corrected any condition which constitutes any violation of this Chapter, or of any other statute, code, rule or regulation affecting the use and handling of Hazardous Materials.
- B. For the purpose of investigating or enforcing the provisions of this Chapter, the Health Officer may enter the facilities or premises of a Hazardous Materials User at all reasonable times to inspect them; provided, that if the facilities or premises are occupied, the Health Officer shall first present proper credentials and request entry; and provided further, that if such facility or premises is unoccupied, the Health Officer shall first make a reasonable effort to contact the User and request entry, except. in emergency circumstances. If such entry is refused, the Health Officer shall have recourse to every remedy provided by law to secure entry.
- C. In order to carry out the purposes and provisions of this Chapter, the Health Officer has the authority specified in Health and Safety Code Section 25 185 with respect to any place where Hazardous Materials are located, and in Health and Safety Code Section 25 185.5 with respect to real property which is within two thousand feet of any place where Hazardous Materials are located.
- D. The Health Officer shall inspect every storage facility within his/her jurisdiction at least annually. The purpose of the inspection shall be to determine whether the storage facility complies with the provisions of this Chapter, including, but not limited to, whether the storage facility complies with required design and construction standards, whether the operator has monitored and tested the storage facility as required by the permit, and whether the storage facility is in a safe operating condition. After an inspection, the Health Officer shall prepare a compliance report detailing the inspection and shall give or send a copy of this report to the permit-tee.
- E. In addition to, or instead of, the inspections specified in subsection A of this section, the Health Officer may require the permittee to employ, periodically, special inspectors or consultants to conduct an audit or assessment of the permittee's facility to determine whether the facility complies with the factors specified in subsection A of this section and to prepare a special inspection report with recommendations concerning the safe storage and/or handling of Hazardous Materials at the facility. The report shall include an evaluation of the facility and contain recommendations consistent with the provisions of this Chapter, where appropriate. A copy of the report shall be filed with the Health Officer at the same time the inspector submits the report to the permittee. Within thirty days after receiving this report the permittee shall file with the Health Officer a plan to implement all recommendations contained in the report or shall demonstrate to the satisfaction of the Health Officer why these recommendations should not be implemented. The special inspector or consultant shall be a qualified person or firm who shall demonstrate expertise to the satisfaction of the Health Officer.



- F. All other inspections specified herein shall be at the discretion of the Health Officer, and nothing in this Chapter shall be construed as requiring the Health Officer to conduct any such inspection, nor shall any actual inspection made imply a duty to conduct any other inspection.
- G. Nothing in this Chapter shall be construed to hold the County, or any officer, employee or representative of the County, 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.

**7.100.250 Complaint investigation.**

- A. Whenever a citizen has a concern that a User is improperly handling a hazardous material, the citizen shall make a report to the Health Officer, indicating:
  - 1. The signs, evidence or other indications of improper handling;
  - 2. The date, or approximate date of improper handling;
  - 3. The impact, if known, of the improper handling;
  - 4. The name of the User, or location of the improper use; and
  - 5. The name of the person reporting the improper handling and such information as is necessary to contact them to report action taken if willing to be known.
- B. The Health Officer shall make an initial determination as to the validity of the complaint and whether it should be further investigated.
- C. Within forty-five days of a valid report of improper handling of a hazardous material, the Health Officer shall:
  - 1. Require the User to respond to the reported information of mishandling;
  - 2. Require the User to come into compliance with the provisions of the HMMP accepted for the issuance of a permit;
  - 3. Require the User to apply for a permit; and/or
  - 4. Take any enforcement action against the User permitted by this Chapter; and
  - 5. Notify, in writing, the person making the complaint of the actions taken and the reasons.
- D. The Health Officer shall keep the name of the informant confidential.

**7.100.260 Out-of-service storage facilities.**

- A. No storage facility shall be abandoned.
- B. Any storage facility may be temporarily taken out of service due to an emergency. The Health Officer shall be notified of any such emergency as soon as practically possible.
- C. A storage facility which is temporarily taken out of service, but which the operator intends to return to use, shall continue to be subject to all the permit, inspection and monitoring

requirements of this Chapter, unless the operator complies with the provisions of subsection D of this section for the period of time the facility is not in use.

- D. No person or business shall permanently close a storage facility unless the person or business undertakes all of the following actions:
  - 1. Obtains a written permit or approval from the Health Officer;
  - 2. Provides for, and carries out, the maintenance of the facility as the Health Officer determines is **necessary**, for the period of time the Health Officer requires or until it has been demonstrated to the satisfaction of the Health Officer that all residual amounts of Hazardous Materials have been removed, properly disposed of, and/or neutralized;
  - 3. Adequately seals any storage facility which is to remain in place in a manner to minimize any threat to the public safety and the possibility of water intrusion into, or runoff from, the facility;
  - 4. Demonstrates to the Health Officer that there has been no significant soil and/or water contamination resulting from a discharge in the area surrounding the storage facility.
- E. Any storage facility out of service for a period of one year shall be deemed to be permanently closed and shall be subject to the requirements of subsection D of this section.
- F. Any person or business having an interest, including a leasehold interest, in real property and having reason to believe that an abandoned storage facility is located upon such property shall make a reasonable effort to locate such storage facility and report the same to the Health Officer within ten days of discovery.

## **Article V. Unauthorized Releases**

### **7.100.270 Duty to report**

- A. Any person who has knowledge or observes any release of a hazardous material which he/she knows or reasonably suspects to be unauthorized shall report the known or suspected instance of unauthorized release to the Health Officer immediately or as soon as practically possible.
- B. A report of a known or suspected instance of an unauthorized release shall include the name of the person or business making the unauthorized release if known to the reporter, the location, date and time of the unauthorized release, and any other information requested by the Health Officer, including information that led that person to suspect the unauthorized release.
- C. The identity of all persons who report under this section shall be confidential and disclosed only between emergency response personnel, or to the District Attorney or other counsel prosecuting a criminal or civil action initiated pursuant to this Chapter, or to persons or agencies to whom disclosure is required by law, or when those persons waive confidentiality, or by court order.
- D. No person who reports a known or suspected unauthorized release shall be civilly or criminally liable for any report required by this section, unless it can be proven that a false report was made and the person knew that the report was false.

- E. No person or business shall discharge, discipline, or in any other manner retaliate against any person because such person reported a known or suspected unauthorized release of a hazardous material pursuant to this section. (Ord. 3725 § 3, Part VI, Section 11.37.570(c))
- F. Any unauthorized release from the primary containment which the User is able to clean up within eight hours after the release was detected or should reasonably have been detected and which does not escape ~~from~~ the secondary containment, does not increase the hazard of fire or explosion, and does not cause any deterioration of the secondary containment, shall be recorded on the User's monitoring record. Such unauthorized release shall be reported to the Health Officer within five business days.
- G. Any unauthorized release which escapes ~~from~~ the secondary containment, or from the primary containment, if no secondary containment exists, increases the hazard of fire or explosion, or causes any deterioration of the secondary containment shall be reported by the User to the Health Officer immediately after the release has been detected or should have been detected. A full written report shall be transmitted by the User within five working days of the occurrence of the release.
- H. The Health Officer shall review the permit whenever there has been an unauthorized release or when the Health Officer determines that the facility is unsafe. In determining whether to deny, amend, suspend, or revoke the permit, the Health Officer shall consider the age of the storage facility, the methods of containment, the methods of monitoring, the feasibility of any required repairs, the concentration of the Hazardous Materials stored in the storage facility, the severity of potential unauthorized releases, and the suitability of any long-term preventive measures which would meet the requirements of this chapter.

#### **7.100.280 Cleanup responsibility**

- A. Any person or business responsible for using or storing a hazardous material shall institute and complete all actions necessary to remedy the effects of any unauthorized release, whether sudden or gradual. In the event of an unauthorized release, the Health Officer may require:
  - 1. That the User conduct monitoring to establish whether there is environmental contamination as a result of the release, in a manner, and by persons, satisfactory to the Health Officer; and
  - 2. That the User pay the costs of a consultant of the County's choosing to evaluate testing and removal activities; and
  - 3. Removal of the hazardous material and contaminated environmental media.
- B. The Health Officer may undertake any and all actions necessary to remedy the effects of any unauthorized release if he/she determines that it is reasonable under the circumstances to do so. The responsible party shall be liable to reimburse the County for all costs incurred by the County in remedying the effects of such unauthorized release, including the costs of fighting fires to the extent allowed by law. This responsibility is not conditioned upon evidence of willfulness or negligence of the party storing the hazardous material in causing or allowing such release.
- C. Neither the County nor any responsible party who undertakes action to remedy the effects of any unauthorized release shall be barred by this Chapter from seeking to recover appropriate costs and expenditures from other responsible parties unless otherwise excluded by this

**7.100.290 Cleanup costs**

As a condition of the issuance of a permit under this Chapter, the Health Officer shall require the permittee to agree in writing to reimburse the County for all costs incurred by the County to remedy the effects of any unauthorized release, as specified in Section 7.100.280.

**7.100.300 Indemnification.**

As a condition of the issuance of a permit under this Chapter, the Health Officer shall require the permittee to agree in writing to indemnify, hold harmless and defend the County against any claim, cause of action, disability, loss, liability, damage, cost or expense, howsoever arising, which occurs by reason of an unauthorized discharge in connection with permittee's operations under this permit, except as arises from the County's sole willful act or sole active negligence.

**Article VI. Administration and Enforcement**

**7.100.310 Records--County.**

- A. The Health Officer shall maintain active files of all HMMP's, disclosure forms and reports of unauthorized releases or other reports prepared pursuant to this Chapter for a period of three years. HMMP's, disclosure forms and reports of unauthorized releases which are more than three years old shall be placed in inactive files and the information retained for a period of thirty years.
- B. The Health Officer shall index disclosure forms by street addresses and parcel numbers, and shall cross reference them by business name, SIC code numbers, CAS numbers, UN/NA numbers, hazard class, and EPA waste stream codes listed on the disclosure forms.
- C. The Health Officer shall maintain and be responsible for the security of information which constitutes a trade secret provided in Section 7.100.130 or which relates to the precise location where Hazardous Materials are stored or handled and shall not be disclosed to the public.
- D. In situations involving non-imminent human health concerns, or requests for large amounts of information, the Health Officer shall provide the information within a reasonable period of time, given the nature and extent of the request. The Health Officer may collect fees to recover costs for providing information under this subsection, as established by resolution of the Board of Supervisors.

**7.100.320 Records--Permittee.**

All records required by this Chapter shall be maintained by the permittee for a period of not less than five years. These records shall be made available to the Health Officer during normal working hours and upon reasonable notice. Nothing in this section alters or lessens the responsibility to maintain records required under other laws.

**7.100.330 Policies and procedures.**

- A. The Health Officer shall develop policies and procedures for implementing this Chapter.
- B. The Health Officer, who is responsible for the execution of the provisions of this Chapter,

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shall maintain at all times on file in his/her office for public inspection, a current copy of both this Chapter and the policies and procedures promulgated pursuant thereto.

#### **7.100.340 Professional consultation.**

Whenever the approval or satisfaction of the Health Officer may be required in this Chapter for the design, monitoring, testing or other technical submittal by an applicant or permit-tee, the Health Officer may, in his/her discretion, rely on properly certified data, facts, documents and/or other evidence provided by the applicant, or may, at the applicant's or permittee's sole cost or expense, retain a suitably qualified independent engineer, chemist, toxicologist, industrial hygienist or other appropriate professional consultant acceptable to the Health Officer to provide professional assistance to the Health Officer in making any determination required by the provisions of this Chapter. The Health Officer shall be entitled to rely on and shall give due weight to such evaluation and/or opinion of such engineer, chemist, toxicologist or industrial hygienist or other appropriate consultant in making the relevant determinations provided for in this Chapter.

#### **7.100.350 Civil action for retaliation.**

A civil action may be instituted against any employer by any employee who has been discharged, demoted, suspended, or in any other manner discriminated against in terms or conditions of employment, or threatened with any such retaliation, because such employee has in good faith, made any oral or written report or complaint related to the enforcement of this Chapter to any company official, public official or union official, or has testified in any proceeding in any way related thereto. In addition to any actual damages which may be awarded, damages shall include costs and attorney's fees. The court may award punitive damages in a proper case.

#### **7.100.360 Misdemeanor penalty.**

Any person who violates any provision of this Chapter is guilty of a misdemeanor.

#### **7.100.370 Civil penalties.**

- A. Any person who negligently violates any provision of this Chapter is liable to the County in a sum not to exceed two hundred fifty dollars per day for each day in which the violation occurs, and, if the violation results in or significantly contributes to an emergency, including a fire, that person shall be assessed the full costs incurred by all public agencies which responded to such emergency, as well as the cost of cleaning up and disposing of such Hazardous Materials.
- B. Any person which intentionally violates any provision of this Chapter is liable for a civil penalty to the County for a sum not less than five hundred dollars nor more than five thousand dollars for each day in which such violation occurs, and may have its permit/business license revoked, and, if such violation results in or significantly contributes to an emergency, including fire, that person shall be assessed the full costs incurred by all public agencies which responded to such emergency, as well as the cost of cleaning up and disposing of such Hazardous Materials.
- C. Any civil action filed pursuant to this Chapter shall be brought by the City Attorney, District Attorney or County Counsel. In any civil action filed pursuant hereto in which the County prevails, the person shall also be liable for reasonable expenses, including attorney's fees, as determined by the court, incurred by the County in the investigation and prosecution of the action.
- D. In determining both the civil and criminal penalties imposed pursuant to this article, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm or

potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

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**7.100.380 Other remedies unimpaired.**

Remedies under this article are in addition to and do not supersede or limit any and all other remedies.

**7.100.390 Duties discretionary.**

Subject to the limitations of due process, and notwithstanding any other provision of this code, whenever the words “shall” or “must” are used in establishing a responsibility or duty of the County or of its elected or appointed officers, employees, or agents, it is the legislative intent that such words are directory only and do not establish a mandatory duty.

**7.100.400 Disclaimer of liability.**

The degree of protection required by this Chapter is considered reasonable for regulatory purposes. The standards set forth in this Chapter are minimum standards and this Chapter does not imply that compliance will ensure that there will be no unauthorized discharge of Hazardous Materials. This Chapter shall not create liability on the part of the County, or of any officer or employee of the County, for any damages that result from reliance on this Chapter or any administrative decision lawfully made under this Chapter. All Users handling, storing, using, processing and disposing of Hazardous Materials within the County should be and are advised to determine to their own satisfaction the level of protection in addition to that required by this Chapter necessary or desirable to ensure that there is no unauthorized discharge of Hazardous Materials or risk of damage to human health, safety, or the environment.