

O-09-15

**AN ORDINANCE ADDING CHAPTER 138 TO THE REVISED GENERAL
ORDINANCES OF THE BOROUGH OF WHARTON, COUNTY OF MORRIS, STATE
OF NEW JERSEY**

BE IT ORDAINED by the Governing Body of the Borough of Wharton that Chapter 138 of the revised general ordinances of the Borough of Wharton is hereby added as follows:

Chapter 138: Hazardous Substance Discharge and Reimbursement

§ 138-1 Application.

This ordinance shall apply to all incidents involving hazardous waste or hazardous materials within the boundaries of the Borough of Wharton, and to all persons who may possess such materials found within the Borough except as prevailing State or Federal laws or regulations may take precedence and control over any such incident or person.

§ 138-2 Definitions.

For the purpose of this ordinance, the following definitions apply:

- A. **“Hazardous Materials”** : Those substances or materials in such quantity and form which may pose an unreasonable risk to health and safety or property, which may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids and solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases which are listed by the Materials Transportation Bureau of the United States Department of Transportation in Title 49 of the Code of Federal Regulations, and any amendment thereto.
- B. **“Person”**: Any individual, corporation, partnership, trust, or other legal entity.
- C. **“User”** : Any person who manufactures or transports, or owns, uses, handles, stores, or has the legal authority to control hazardous materials, specifically including their officers, directors, employees, and agents.
- D. **“Responsible Party”**: Any individual, partnership, corporation, association, trust or other entity partially or solely responsible for the release of any hazardous material within the Borough.
- E. **“Cleanup”**: The management, control, containment, recovery, removal or neutralization of any released hazardous material for the purpose of promoting or protecting public health or safety.

§ 138-3 Duty to Report.

Any person who causes or has knowledge of any discharge or release of hazardous materials from their safe container, in any manner which poses an actual or potential threat to people,

animals, wildlife, vegetation, property, or the environment, shall immediately report the incident to the Wharton Police Department.

§ 138-4 Cleanup.

The user or transporter of a hazardous material which is intentionally or accidentally discharged or released within the Borough shall, in addition to reporting the accident as required by 138-3, take immediate action to cause the discharge or release to be cleaned up in an environmentally safe and scientifically sound manner, and to restore the site and the surrounding environment.

§ 138-5 Intentional Discharge or Release.

The intentional discharge or release of a hazardous material within the Borough of Wharton is strictly prohibited.

§ 138-6 Cost Recovery.

- A. Upon the completion of any cleanup in which Borough employees participated, all costs of the cleanup, including employee costs, shall be itemized by each Borough department involved. Such costs shall include, but are not limited to, the cost of cleaning, repair, restoration or replacement of any Borough material or equipment used in the cleanup, the costs of any illness or injury sustained by any employee who participated in the cleanup and the costs of all contracted services utilized in the cleanup.**
- B. Upon receipt of these itemizations (including its own), the Finance Department shall bill the full cost of the cleanup to the responsible party or parties. The bill shall include a description of costs incurred.**
- C. Each responsible party shall be jointly and severally liable to the Borough for the costs of the cleanup for which they are responsible. Such costs may be collected by any lawful means including, but not limited to, appropriate court proceedings. All funds received from responsible parties shall be forwarded to the Finance Officer for deposit in the Town treasury. The funds, at the discretion of the Borough Administrator, may be credited back to the budget of the participating department up to the amount of funds expended for the incident.**
- D. Any and all costs recovered from a responsible party shall be separate from and in addition to any penalty that may be assessed for any violation of any provision of this article.**

§ 138-7 Fee Schedule.

A fee schedule has been developed to reimburse agencies in the Borough of Wharton with the costs associated with hazardous materials incidents.

- A. All Borough Equipment- Cost as per FEMA's current schedule of Equipment Rates**
- B. In addition, any equipment or supplies that cannot be reused will be charged at replacement costs supported with receipts.**

§ 138-8 Enforcement.

The Borough Administrator, Fire Chief, Police Chief, Director of the Department of Public Works, and Borough Treasurer of the Borough of Wharton shall be responsible for enforcing this ordinance.

§ 138-9 Repeal.

Any provision of any ordinance which is inconsistent with this ordinance is hereby repealed.

§ 138-10 Severability.

If any section, subsection, sentence, clause, phrase, or part of this ordinance should be held invalid for any reason whatsoever, such decision shall not affect the remaining portions; which shall remain in full force and effect; and, to this end, the provisions of this ordinance are severable.

§ 138-11 Penalties.

Any person who is convicted of a violation of this chapter shall be punishable as provided in Chapter 1, General Provisions, Article I, General Penalty. Each sale shall constitute a separate offense and subject the violator to the penalties as subscribed herein.

First Reading: June 22, 2015

Second Reading: July 13, 2015

BOROUGH OF WHARTON

ATTEST:

**WILLIAM J. CHEGWIDDEN,
MAYOR**

**Robin Ghebreal,
Deputy Borough Clerk**