

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2012 Legislative Session, Legislative Day No. : May 8, 2012

Bill No.: 1218

Expiration Date: July 12, 2012

Introduced by: Mr. Bartlett, Mr. Duncan, Mr. Hollis, Mr. Pack, Ms. Price

A BILL TO ADOPT CHAPTER 119, ARTICLE II, ENTITLED “HAZARDOUS SUBSTANCES” TO AUTHORIZE RECOVERY OF COSTS ASSOCIATED WITH THE RELEASE OF HAZARDOUS MATERIALS AND USE OF SPECIALIZED EQUIPMENT; DEFINING CERTAIN TERMS, PROVIDING THAT THE COUNTY COUNCIL SHALL ESTABLISH RATES FROM TIME TO TIME OF CHARGES FOR RESPONSE COSTS; PROVIDING FOR COLLECTION AND DISBURSEMENT OF RECOVERED COSTS; AND PROVIDING FOR ENFORCEMENT

By the Council: May 8, 2012

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, June 12, 2012 at 2:00 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland 21601.

By Order 
Susan W. Moran, Secretary

A BILL TO ADOPT CHAPTER 119, ARTICLE II, ENTITLED “HAZARDOUS SUBSTANCES” TO AUTHORIZE RECOVERY OF COSTS ASSOCIATED WITH THE RELEASE OF HAZARDOUS MATERIALS AND USE OF SPECIALIZED EQUIPMENT; DEFINING CERTAIN TERMS, PROVIDING THAT THE COUNTY COUNCIL SHALL ESTABLISH RATES FROM TIME TO TIME OF CHARGES FOR RESPONSE COSTS; PROVIDING FOR COLLECTION AND DISBURSEMENT OF RECOVERED COSTS; AND PROVIDING FOR ENFORCEMENT

KEY	
Boldface	Heading or defined term
<u>Underlining</u>	Added to existing law by original bill
Strikethrough	Deleted from existing law by original bill
<u>Double underlining</u>	Added to bill by amendment
Double strikethrough	Deleted from bill by amendment
* * *	Existing law unaffected

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that a new Chapter 119, Article II, “*Hazardous Substances, Cost Recovery for Specialized Response Incidents*” be added to the Talbot County Code to read as follows:

CHAPTER 119, ARTICLE II

Hazardous Substances, Cost Recovery for Specialized Response Incidents

§ 119-2.1. Purpose and intent

- 1 A. The purpose of this Chapter is to provide for cost recovery for response and recovery efforts
- 2 related to Hazardous Substances and specialized response incidents’ providing for liability
- 3 for costs; and providing for collection and disbursement of funds for cost recovery, thereby
- 4 supporting those agencies providing the necessary services. In providing this service the
- 5 County will be protecting the citizens, property, and employees of the Talbot County and the
- 6 municipalities therein from the health hazards and other risks resulting from releases or
- 7 incident to the use, storage, distribution, possession or transportation of Hazardous
- 8 Substances.
- 9
- 10 B. This Chapter is enacted pursuant to the enabling powers conferred by the Annotated Code of
- 11 Maryland, Article 25A, § 5(A), (B), (j) and (T); Public Safety Article; Courts and Judicial

12 Proceedings Article, Section 3-1101 through 3-1207; and the Environment Article of the
13 Code. This Chapter is not intended to supersede State responsibility and authority in the
14 subject matters covered by this Article.
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16 **§ 119-2.2. Definitions**

17 For the purposes of this Chapter, the following terms have the meanings indicated:
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19 “FACILITY” means any buildings, structures, accessory structures, installation, equipment, pipe
20 or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit,
21 lagoon, impoundment, ditch, landfill, storage container and other stationary items which are
22 located on a single site or a contiguous or adjacent site which are owned, occupied or operated
23 by the same person or entity and which manufacture, produce, use, import, export, store, supply
24 or distribute any Hazardous Substance.
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26 “HAZARDOUS SUBSTANCE” means:
27

- 28 A. Any substance designated pursuant TO Section 960 1(14) of the Comprehensive
29 Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42
30 U.S.C. § 9601(14)], as amended, and regulations enacted pursuant thereto, the
31 Environmental Protection Agency of the Maryland Department of Environment; or
32
- 33 B. Gas, as defined by Maryland Annotated Code (herein, “the Code”) Environment
34 Article, § 14-102, as amended; or
35
- 36 C. Oil, as defined by the Code, Environment Article, § 14-102, as amended; or
37
- 38 D. Motor fuel, as defined by the Code, Business Regulation Article, § 10-101, as amended;
39 or
40
- 41 E. Low-level nuclear waste.
42
- 43 F. “Hazardous substance” does not include fly ash, bottom ash, slag, and other by-
44 products generated from the combustion of fossil fuels.
45

46 “PERSON” means an individual, corporation, firm, association, partnership, joint venture,
47 commercial entity, public utility, trust, estate, public or private institution, group, agency,
48 political subdivision and any legal successor, representative or agency of the foregoing.
49

50 “RELEASE” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging,
51 injection, escaping, leaching, dumping, or disposing into the environment of a Hazardous
52 Substance, in any manner, whether intentionally, accidentally, or negligently, including, but not
53 limited to, the abandonment or discarding of barrels, containers, and other receptacles that
54 contain a Hazardous Substance. “Release” does not include a discharge permitted by State or
55 federal law.
56

57 “RESPONSE” means:

- 58
- 59 A. The cleanup of released Hazardous Substance from the environment;
- 60
- 61 B. Such actions as may be necessary to monitor, assess, and evaluate the release of
- 62 Hazardous Substances; and,
- 63
- 64 C. The disposal of removed materials.
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66 “RESPONSE ACTION” means those actions taken to prevent or minimize the release of
67 Hazardous Substances, including, but not limited to, storage, confinement, neutralization,
68 cleanup of Hazardous Substances or associated contaminated materials, recycling, destruction,
69 perimeter protection, segregation of reactive wastes, repair or replacement of damaged or leaking
70 containers, collection of leachate and runoff, on-site treatment or incineration, provision of
71 alternate water supplies and any monitoring reasonably required to assure that such actions taken
72 protect the public health and welfare and the environment.

73

74 “RESPONSE COST” means all reasonable and necessary costs incurred to remove, contain, or
75 otherwise mitigate the effects of a Hazardous Substances incident, including, but not limited to,
76 the following:

- 77
- 78 A. Disposable materials and supplies acquired, consumed, and expended specifically for the
- 79 purpose of the response to the Hazardous Substance release, at cost of replacement;
- 80
- 81 B. Rental or leasing of equipment used specifically for the response; for example, protective
- 82 equipment or clothing and scientific and technical equipment;
- 83
- 84 C. Replacement costs for equipment that is contaminated beyond reuse or repair during the
- 85 response, including, by way of illustration and not limitation, self-contained breathing
- 86 apparatus, protective equipment or clothing and scientific and technical equipment
- 87 irretrievably contaminated during the response;
- 88
- 89 D. A surcharge related to the depletion of the useful life of any equipment, materials or
- 90 supplies with a limited useful life span;
- 91
- 92 E. Decontamination of equipment contaminated during the response;
- 93
- 94 F. Total compensation associated with the response, including, but not limited to, benefits
- 95 (FICA, insurance) for:
- 96
- 97 (i) members of the Department of Emergency Services (“DES”);
- 98
- 99 (ii) members of volunteer fire and/or ambulance companies at an hourly rate based on
- 100 certification levels, established herein, as may be amended by the County Council
- from time to time; and
- 101
- (iii) any contractor, subcontractor or agent.

- 102
103 G. Special technical services specifically required for the response; for example, costs
104 associated with the time, equipment, and efforts of technical experts or specialists;
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106 H. Any tests to determine the physical, chemical, or biological properties of the released
107 items and monitoring the site and adjoining areas;
108
109 I. Other special services, including, but not limited to, utilities specifically required for the
110 response;
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112 J. Costs associated with the services, including housing and cost of care, supplies, and
113 equipment used to conduct an evacuation during the response;
114
115 K. Costs associated with the disposal and/or storage of materials; and,
116
117 L. Indirect costs such as administrative and legal costs may be included at a rate not to
118 exceed 20% of the total direct costs claimed.
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120 “RESPONSIBLE PERSON” means:

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122 A. Any person who:

- 123
124 i. Is the owner or operator of a vehicle or a site containing a Hazardous Substance;
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126 ii. At the time of the release of any controlled Hazardous Substance, was the operator or
127 owner of any site at which the Hazardous Substance was released;
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129 iii. By contract, agreement or otherwise arranged for disposal or treatment or arranged
130 with a transporter for transport for disposal or treatment of a Hazardous Substance
131 owned or possessed by such person or by any other party or entity at any site owned
132 or operated by another party or entity and containing such Hazardous Substances; or
133
134 iv. Accepts or accepted any Hazardous Substance for transport to a disposal or treatment
135 facility or any sites selected by the person.
136
137 B. “Responsible Person” does not include a holder of a mortgage or deed of trust who
138 acquires title through foreclosure to a site containing a Hazardous Substance as the result
139 of a release.
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141 C. One or more persons may each be a “Responsible Person” and each shall be jointly and
142 severally liable for payment of all Response Costs, in full.
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§ 119-2.3. Response costs

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A. The County Council with the advice of the Department of Emergency Services (herein “DES”), Emergency Management Division and the Talbot County Fire Departments shall have the authority, from time to time, by Resolution or in the Annual Budget and Appropriation Ordinance, to establish or modify rates to be charged for Response Costs under this Chapter. The rates to be applied are the rates in effect when the Response Action occurs. Current rates, as amended from time to time, shall be published on a Schedule of Fees.

B. Initial Rates for Response Costs shall be established by levels of response as follows:

1. Level 1 Response – Primary Fire Department and/or DES Response – incident involving 10 gal. spill or less without exposure to waterway or drainage systems, including ditches.

2. Level 2 Response – Primary Fire Department and/or DES Response – incident involving 10-25 gal. spill without exposure to waterway or drainage systems, including ditches.

3. Level 3 Response – Primary Fire Department and/or DES Response – incident involving 20-50 gal. spill with or without exposure to waterway or drainage systems, including ditches.

4. Level 4 Response – Primary Fire Department and/or DES Response and Decontamination Unit and/or Emergency Response Trailer – 50 gal. or more spilled with or without exposure to waterway or drainage systems, including ditches; any leak from a box truck. Truck trailer/tanker overturned and or leaking; Industrial toxic gas and/or chemical leak; all rail car leaks; any incident that does not fit in either levels 1-3, above.

C. Personnel, Vehicles, and Equipment Cost will be assessed in hourly increments as follows for all time spent, including any part of an hour, for any Response:

1. Personnel

a. Total compensation associated with the response, including, but not limited to, benefits, FICA, insurance, and overtime pay for:

i. Members of the Department of Emergency Services

ii. Members of volunteer fire and/or ambulance companies at an hourly rate based on certification levels, established by the County from time to time.

189 iii. Any contractor, subcontractor or agent, at actual costs incurred.

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2. Vehicles and equipment, per hour or part thereof, each:

- a. Engine, Truck, Rescue
- b. Hazmat Unit
- c. Utility vehicles
- d. DES or Volunteer EMS Unit
- e. Decontamination Unit
- f. Emergency Response Pump-off Trailer
- g. Foam / Spill Emergency Response Trailer
- h. SCBA
- i. Four Gas Meter
- j. Command/Decon/Rehab Shelter

§ 119-2.4. Liability and recovery of response costs

- A. A Responsible Person who causes or permits a Release of a Hazardous Substance is jointly and severally liable for payment of all Response Costs incurred by the County, including all Response Costs of Response Action incurred by a volunteer fire and ambulance company for Response and remediation of such incident.
- B. There shall be a presumption that any person who owns and/or has a present possessory interest in any private property on which any Release of a Hazardous Substance occurs has permitted or allowed the release.

§ 119-2.5. Collection and disbursement of cost recovery

- A. The County DES, Special Operations Team, shall serve as the agent for collecting invoices and supporting documentation. The County Department of Emergency Services is responsible for billing the Responsible Person for costs. County DES and Fire Departments, including volunteer fire and/or ambulance companies dispatched to respond to a Hazardous Substance release or an incident requiring the use of foam are eligible to submit invoices to Talbot County DES Special Operations Team for cost reimbursement.
- B. County DES and volunteer fire and/or ambulance companies should submit all invoices with supporting documentation identifying eligible costs under this Chapter to the County

231 DES Special Operations Team within five (5) business days after the incident is closed.
232 Invoices must include sufficient documentation for cost reimbursement. This includes,
233 without limitation, copies of personnel certifications and on-scene duties performed by
234 all personnel involved in the incident, copies of time sheets for specific personnel, copies
235 of bills for materials, equipment, and supplies procured or used, and such other
236 documentation as may be reasonably required. No volunteer fire and/or ambulance
237 company will receive reimbursement funds unless it has complied with the requirements
238 of this section.

- 239
- 240 C. Submission of invoices to the Special Operations Team shall not obligate the County to
241 pay those costs until the County has approved such invoices and received payment from
242 the Responsible Person.
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- 244 D. The County DES shall submit one or a series of consolidated invoices to the Responsible
245 Person separately identifying the Response Action, responding agency, and Response
246 Costs. Invoices shall be payable to "Talbot County, Maryland," in full within sixty (60)
247 days.
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- 249 E. On a quarterly basis the County shall disburse funds collected from Responsible Persons
250 to responding companies that submitted approved invoices and supporting
251 documentation. In the event costs recovered from Responsible Persons are insufficient to
252 pay approved invoices in full, disbursement among the companies shall be on a pro-rata
253 basis. Response Costs recovered from billings to Responsible Persons for Response
254 Action by Talbot County DES Special Operations Team shall be used for the continued
255 support of the special operations emergency response program including equipment,
256 personnel, and other costs associated with such program.
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258 **§ 119-2.6. Methods of Enforcement**

- 259 A. The County may enforce these provisions by civil action in a court of competent
260 jurisdiction for the collection of any amounts due hereunder plus administrative
261 collection costs, attorneys' fees, or for any other relief that may be appropriate.
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- 263 B. This Section shall not prohibit the County from pursuing any other remedy, whether civil
264 or criminal, or from instituting any appropriate action or proceedings, including
265 injunction in a court of competent jurisdiction nor shall the recovery of expenses under
266 this Chapter in any way release the various parties, or limit them, from further legal
267 liability incurred as a result of Hazardous Substance cleanup or abatement as defined
268 under any local, State or federal rule or regulation.
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270 **§ 119-2.7. Conflict with Other Laws**

271 Whenever the requirements or provisions of this Chapter are in conflict with the
272 requirements or provisions of any other law, the more restrictive requirements shall
apply.

SECTION TWO: BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

SECTION THREE: AND BE IT FURTHER ENACTED, That if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. _____ having been published, a public hearing was held on _____.

BY THE COUNCIL

Read the third time.

ENACTED _____

By Order _____
Susan W. Moran, Secretary

Pack -

Hollis -

Bartlett -

Price -

Duncan -