

Chapter 91

HAZARDOUS WASTES

ARTICLE I Hazardous Accidents

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[HISTORY: Adopted by the Borough Council of the Borough of Westfield as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Hazardous Accidents [Adopted 8-13-2003 by Ord. No. 289]

§ 91-1. Purpose.

The Council members of Westfield Borough are empowered to adopt ordinances deemed necessary for the proper management, care and control of the Borough and its finances and the maintenance of peace, good government and welfare of the Borough and its trade, commerce and manufacturers. The Borough of Westfield may incur substantial costs in connection with hazardous accidents and emergency response to dangerous incidents which occur in the Borough for the reason that immediate action must be taken when the accident or incident is discovered. The Borough Council of Westfield Borough has determined that any person who is responsible for such hazardous accidents or dangerous incidents should bear all costs associated with such accidents or incidents and reimburse the Borough if it has been necessary to lesson the hazard caused by the accident or incident and it is in the best interest of the Borough to enact an ordinance authorizing the recovery of costs incurred by the Borough as a result of hazardous accidents or dangerous incidents from the persons or legal entity responsible therefor, or in making an immediate demand upon the party responsible for the accident or incident.

§ 91-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

HAZARDOUS ACCIDENT — Any incident that occurs from the storage, transportation, use or manufacturing, processing or discharging of any substance potentially dangerous to the public health and welfare at large, including any hazardous waste or hazardous substance, as those terms are defined by the Hazardous Sites Cleanup Act (35 P.S. § 6020.103), which necessitates either or both of the following responses:

- A. The intervention of the Westfield Borough Police Department or any of the emergency agencies or services which may assist the Borough of Westfield, including but not

limited to fire companies or rescue squads operating within the Borough of Westfield;
or

- B. The need for clean-up or abatement measures to be performed by Westfield Borough employees, or the need for any responsive action resulting in expense to the Borough.

DANGEROUS INCIDENT — Any incident which creates a dangerous condition requiring immediate and emergency action in order to prevent injury to persons or damage to property and necessitates either or both of the following responses:

- A. The intervention of the Westfield Borough Police Department or any of the emergency agencies or services which may service the Borough of Westfield, including but not limited to fire companies or rescue squads operating in the Borough of Westfield; or
- B. The need for clean-up or abatement measures to be performed by Borough employees or the need for any responsive action resulting in expense to the Borough.

ENTITY — Any person, corporation, partnership or other entity engaged in the buying, selling, storing, transferring, transporting or manufacturing or processing of properties, merchandise, chemicals, fuels, waste products or any other goods or services for compensation.

PUBLIC THOROUGHFARES — State highways, county roads, Borough streets, bridges, any navigable waterways or other roadways or watercourses owned by a governmental unit or a privately owned street, parking lot or accessway to which the public has access.

§ 91-3. Cost of abatement.

- A. The entity which owns or leases the premises upon which a hazardous accident occurs shall be responsible for all costs that occur as a direct or consequential result of a hazardous accident. In the event of a hazardous accident occurring during transportation on a public thoroughfare or a delivery to any entity other than a business as defined in § 91-2 herein above, the entity who owns or has custody or control of the vehicle or substance involved in a hazardous accident shall be responsible for all costs that occur as a direct or consequential result of such accident. Nothing contained herein shall prevent such business or entity from recovering any costs from a third party whose negligence may have caused such a hazardous accident.
- B. In the event that any person undertakes, either voluntarily or upon order of an official of the Borough of Westfield, to cleanup or abate the effects of any hazardous accident, the Borough may take such action as deemed necessary to supervise or verify the adequacy of the cleanup or abatement. The entity described in Subsection A herein above shall be liable to the Borough for all costs incurred as a result of such supervision or verification.
- C. For the purpose of this article, costs of a hazardous accident shall include, but are not limited to, the following: expenses incurred by police, fire or emergency medical services; actual labor costs of the Borough personnel, including benefits and administrative overhead; costs of consultants or others preparing reports concerning the hazardous accident; costs of equipment operation; costs from materials obtained directly by the Borough; costs of any contractual labor and materials for cleanup or

abatement; costs of any services rendered by professionals in connection with the hazardous accident, including but not limited to the Borough's Solicitor and Borough engineering; and costs to replace or repair any damage caused to equipment utilized by the Borough or any other service agency which responded to the hazardous accident.

- D. The costs resulting from the hazardous accident shall be paid directly to the Borough within 30 days from the date upon which the Borough issues an invoice or other appropriate demand for such cost. Interest shall accrue on any unpaid invoice at the rate of 1% per month, commencing after the expiration of the thirty-day grace period.

§ 91-4. Costs of emergency response to dangerous incidents.

- A. Any entity which owns or has custody or has control of any motor vehicle or other instrumentality that creates a dangerous incident, as herein above described, shall be responsible for all costs of any emergency response that arises as a direct or consequential result of such dangerous incident. Nothing contained herein shall prevent such entity from recovering any costs from a third party whose negligence may have caused such dangerous incident.
- B. In the event that any person undertakes, either voluntarily or upon order of any official of the Borough of Westfield, to cleanup or abate the effects of any dangerous incident, the Borough may take such action as deemed necessary to supervise or verify the adequacy of the cleanup or abatement. The entity described in § 91-3A herein above shall be liable to the Borough for all costs incurred as a result of such supervision or verification.
- C. For the purpose of this article, costs of a dangerous incident shall include, but are not limited to, the following: expenses incurred by the police, fire or emergency medical services; actual labor costs of the Borough personnel, including benefits and administrative overhead; costs of consultants or others preparing reports concerning the dangerous incident; costs of equipment operations; costs of materials obtained directly by the Borough; costs of any contractual labor and materials for cleanup or abatement; costs of the services of any professional rendered in connection with the dangerous incident, including but not limited to the Borough Solicitor and Borough Engineer; and costs to repair or replace any damage caused to equipment utilized by the Borough or any other service agency which responded to the dangerous incident.
- D. The costs resulting from the dangerous incident shall be paid directly to the Borough within 30 days from the date upon which the Borough issues an invoice or other appropriate demand for such costs. Interest shall accrue on any unpaid invoice at the rate of 1% per month, commencing after the expiration of the thirty-day grace period.

§ 91-5. Schedule of fees.

The Borough of Westfield shall from time to time adopt a resolution, after consultation with the Borough Fire Department, Borough Police Department and Borough Council members, to adopt a schedule of fees for personnel, material and equipment to be reimbursed to the Borough for their activities in connection with the clean-up operation set forth in this article.