

## HAZARDOUS SUBSTANCE DISCHARGE AND REMOVAL

**6.340** **Hazardous Substance - Definitions.** For purposes of sections 6.345 to 6.380, the following words and phrases mean:

**City Manager.** City Manager or designee.

**Environment.** Waters in the city, surface and underground drinking water supply, land surface, subsurface strata and ambient air.

**Facility.** Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located and where a release has occurred or where there is a threat of a release, but does not include any consumer product in consumer use or any vessel.

**Hazardous Substance.** Any hazardous waste as defined in ORS 466.005; any substance defined as a hazardous substance pursuant to Section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, and P.L. 99-499; oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, oil sludge or refuse of any other petroleum-related product or waste or fraction thereof that is liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute.

**Owner or operator.** Any person who owned, leased, operated, controlled or exercised significant control over the operation of a facility. "Owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect a security interest in the facility.

**Person.** An individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state and any agency thereof, political subdivision of the state, interstate body or the Federal Government including any agency thereof.

**Release.** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment including the abandonment or discarding of barrels, containers, underground storage tanks and other closed receptacles containing any hazardous substance, or threat thereof, but excludes:

- (a) Any release which results in exposure to a person solely within a work place, with respect to a claim that the person may assert against the person's employer under ORS chapter 656;
- (b) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

- (c) Any release of source, by-product or special nuclear material from a nuclear incident, as these terms are defined in the Atomic Energy Act of 1954, as amended, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, as amended, or, for the purposes of any removal or remedial action, any release of source by-product or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978;
- (d) A discharge in accordance with federal, state or local governing regulations or permits of the Lane Regional Air Pollution Authority, with a National Pollutant Discharge Elimination System Permit, with waste discharge requirements established by the Oregon Department of Environmental Quality (DEQ), or with the sewer pretreatment requirements of the Industrial Monitoring Section of the city's Public Works Department's Wastewater Division;
- (e) The normal application of fertilizer
- (f) Application of pesticides as defined by ORS Chapter 634, when such application is made within the provision of applicable state and federal regulations;
- (g) Application of agricultural lime, gypsum and other agricultural/horticultural soil amendments when made for that purpose and according to current industry practice;
- (h) Application of water based paint, when used as athletic field marking; and
- (l) Any release from a residential heating oil tank serving an owner-occupied single family dwelling.

**Removal.** The cleanup or removal of a released hazardous substance from the environment, such actions as may be necessary in the event of the threat of release of a hazardous substance into the environment, such actions as may be necessary to monitor, assess and evaluate the release or threat of release of a hazardous substance, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the public health, safety or welfare which may otherwise result from a release or threat of release. "Removal" also includes but is not limited to security fencing or other measures to limit access, provision of alternative drinking and household water supplies, temporary evacuation and housing of threatened individuals and action taken under ORS 465.260.

**Removal action costs.** Reasonable costs which are attributable to or associated with a removal action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

**Responsible Party.** The current owner or operator; any owner or operator at or during the time of the acts or omissions that resulted in the release; any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the release, and who knew or reasonably should have known of the release when the person first became the owner or operator; any owner or operator who obtained actual knowledge of the release at the facility during the time the person was the owner or operator of the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing such knowledge; any person who unlawfully hinders or delays entry to, investigation of or removal action at a facility; and any person who, by any acts or omissions, caused, contributed to, or exacerbated the release, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

**Underground storage tank.** Any one or combination of tanks and underground pipes connected to the tank, used to contain an accumulation of a regulated substance, and the volume of which, including the volume of the underground pipes connected to the tank, is ten percent or more beneath the surface of the ground.

**Waters.** Includes lakes, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, canals, and all other bodies of surface or underground waters, natural or artificial, public or private, which are wholly or partially within the city or within its jurisdiction.

*(Section 6.340 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992; and amended by Ordinance No. 20301, enacted November 10, 2003, effective December 10, 2003.)*

- 6.345 Hazardous Substance - Purpose.** The release of hazardous substances into the environment may present imminent and substantial threats to the public health, safety and welfare. In some, but not all cases, the United States Environmental Protection Agency or the Oregon Department of Environmental Quality become involved to ensure cleanup of contamination. It is not the intent of sections 6.345 to 6.380 of this code to have the city become involved where the Environmental Protection Agency and Department of Environmental Quality are involved. Due to the limited resources of the Environmental Protection Agency and Department of Environmental Quality, however, those agencies do not always have the ability to immediately respond to the release or identification of hazardous substances which threaten the public health, safety and welfare. The purpose of sections 6.345 to 6.380 is to minimize those threats by ensuring:
- (a) Prompt identification of discharges or threats of discharges into the environment of hazardous substances which present imminent risks to the public health, safety and welfare; and
  - (b) Implementation of removal actions.

The authorizations contained in sections 6.340 to 6.380 of this code are in addition to any other authority the city manager may have under other provisions of this code or applicable federal or state laws or regulations.

*(Section 6.345 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)*

**6.350 Hazardous Substance - City Manager Authority to Undertake Removal Action.**

- (1) In addition to any other authority granted by law, the city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may:
  - (a) Undertake independently, in cooperation with others or by contract, investigations, studies, sampling, monitoring, assessments, surveying, testing, analyzing, planning, inspecting, training, engineering, design, construction, operation, maintenance and any other activity necessary to conduct removal action and to carry out the provisions of sections 6.345 to 6.380.
  - (b) Recover the city's removal action costs.
- (2) Each responsible party is jointly, severally and strictly liable for those removal action costs incurred by the city that are attributable to or associated with a facility.

*(Section 6.350 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)*

**6.355 Hazardous Substance - Prohibition on Releases.** Unless authorized by state or federal law, no person may release, or cause to be released, any hazardous substance into the environment, or into the waters upstream of the boundaries of the city when such release results in detectable levels of contamination in the waters that subsequently enter the city's jurisdiction.

*(Section 6.355 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)*

**6.360 Hazardous Substance - Duty to Report.** Any person who releases, or who causes or discovers a release of, a hazardous substance into the environment shall immediately report the release to the city if state or federal law imposes an obligation on such person to report the release to a state or federal agency.

*(Section 6.360 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)*

**6.365 Hazardous Substance - Assessment, Evaluation and Investigation.**

- (1) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may undertake any assessment, evaluation or investigation of known or suspected contamination where necessary to protect the public health, safety and welfare. Notwithstanding the foregoing, nothing in this section 6.365 authorizes the city manager to undertake, or to order any action related to property which is subject to an enforceable order issued by the Oregon Department of Environmental Quality or United States Environmental Protection Agency if the order

requires investigation or remediation of suspected or known contamination.

- (2) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may authorize any person to carry out any assessment, evaluation or investigation in accordance with any requirements of or directions from the city manager, if the city manager determines that the person will commence and complete the assessment, evaluation or investigation properly and in a timely manner.
- (3) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may require any responsible party to conduct any assessment, evaluation or investigation which the city manager determines is necessary to protect the public health, safety and welfare. An order of the city manager is appealable only as provided by subsection (4) of this section.
- (4) Any person who receives and complies with the terms of an order issued pursuant to subsection (3) of this section may, within 60 days after completion of the required action, petition the city manager for reimbursement for the reasonable costs of such action. If the city manager denies reimbursement, the person may appeal the city manager's denial to a hearings officer in accordance with the timelines and procedures established by section 2.021 of this code. To obtain reimbursement, the person must establish by a preponderance of the evidence that the person is not a responsible party, and that the costs for which the person seeks reimbursement are reasonable in light of the action required by the relevant order; these criteria are the sole basis for reimbursement.
- (5) If any responsible party fails without sufficient cause to conduct an assessment, evaluation or investigation as required by an order of the city manager under subsection (3) of this section the responsible party shall be liable to the city for the city's removal action costs and for punitive damages not to exceed three times the amount of the city's removal action costs.

*(Section 6.365 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)*

**6.370 Hazardous Substance - Removal Action.**

- (1) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may undertake any removal action necessary to protect the public health, safety and welfare. Notwithstanding the foregoing, nothing in this section authorizes the city manager to undertake or order any action related to property which is subject to an enforceable order issued by the Oregon Department of Environmental Quality or United States Environmental Protection Agency if the order requires investigation or removal of suspected or known contamination.

- (2) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may authorize any person to carry out any removal action in accordance with any requirements of or directions from the city manager, if the city manager determines that the person will commence and complete removal action properly and in a timely manner.
- (3) The city manager, when he or she has reason to believe that hazardous substances pose imminent threats to the public health, safety or welfare, may require any responsible party to conduct any removal action necessary to protect the public health, safety and welfare. The city manager's action under this subsection may include but need not be limited to issuing an order specifying the removal action the person must take. An order of the city manager is appealable only as provided by subsection (4) of this section.
- (4) Any person who receives and complies with the terms of an order issued pursuant to subsection (3) of this section may, within 60 days after completion of the required action, petition the city manager for reimbursement for the reasonable costs of such action. If the city manager denies reimbursement, the person may appeal the city manager's denial to a hearings officer in accordance with the timelines and procedures established by section 2.021 of this code. To obtain reimbursement, the person must establish by a preponderance of the evidence that the person is not a responsible party, and that the costs for which the person seeks reimbursement are reasonable in light of the action required by the relevant order; these criteria are the sole basis for reimbursement.
- (5) If any responsible party fails without sufficient cause to conduct a removal action as required by an order of the city manager issued under subsection (3) of this section, the responsible party shall be liable to the city for the city's removal action costs and for punitive damages not to exceed three times the amount of the city's removal action costs.

*(Section 6.370 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)*

**6.375 Hazardous Substance - Prohibition on Building.** Where the city manager has reason to believe that a proposed building site is contaminated by a release of hazardous substances, and that such contamination poses an imminent threat to the public health, safety and welfare, the city manager may refuse to issue a building permit, or where a permit has been issued, stop work on the permit, until such time as a removal action is implemented. If the responsible party can demonstrate that construction and the removal action can occur simultaneously, and satisfies the city manager that the removal action will continue even if construction is allowed to proceed, the city manager may authorize construction to continue or may issue permits prior to completion of the removal action. In order to ensure completion of the removal action, the city manager may require a bond in an amount sufficient to cover the costs of the removal action.

*(Section 6.375 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)*

**6.380**     **Hazardous Substance - Violations.** In addition to the penalties set forth in subsections (8), (9), and (10) of section 6.990 of this code:

- (a)** For violations of sections 6.345 to 6.375 of this code, the city manager may proceed either by imposing an administrative civil penalty pursuant to section 2.018 of this code, except that the amount of the penalty shall be governed by subsection (b) of this section or subsections (8), (9) or (10) of section 6.990, or by citing responsible party into municipal court.
- (b)** In setting the amount of a civil penalty, the city manager (for an administrative civil penalty) and the municipal court shall impose a penalty sufficient to deter persons from violating sections 6.345 to 6.375 of this code, and shall be not less than three times the economic benefit which the responsible party would derive if the violation had not been discovered.

*(Section 6.380 added by Ordinance No. 19862, enacted June 22, 1992, effective July 22, 1992.)*