

Submitted 6/28/99
by Keith Bauman
980747

Comments to the City Commission on June 28, 1999

Re: Draft Ordinance Relating to Hazardous Material Incident Cost Recovery

Under Sec. 11.5-31. Definitions

The draft ordinance states that costs includes "All costs incurred for response, containment and/or removal and disposal of hazardous materials or remedial action."

We believe the City should restrict its jurisdiction to the emergency condition. It should leave the oversight of environmental cleanups and remedial action to those entities have jurisdiction and experience for environmental matters. We believe the current language should be changed to "All costs incurred for response, containment and /or removal and disposal of hazardous materials as part of an emergency."

Under Sec. 11.5-31. Definitions

2. All of this definition deals with environmental damages and should be left to those entities having jurisdiction and expertise to deal with environmental matters. The current language under "2" should be eliminated.
3. Health assessments and health effect studies are the province of the Public Health Service. It is not an emergency response action. The language of "3" should be eliminated.
8. Cleanup and abatement are dealt with below. They should be dealt with in this ordinance only as they relate to stabilization of the emergency condition.
- H. "Recovery" should be restricted to actions taken to stabilize the emergency condition. Restoring conditions beyond this state is the province of those having jurisdiction and experience for environmental matters. Other restoration concerns are matters for the judicial system.

Under Sec. 11.5-32. Hazardous Materials Incidents-Liability for Costs

The draft ordinance authorizes the Incident Commander or Fire Chief “to take all measures to respond to and stabilize the hazardous material incidents.” We suggest that this authorization be qualified to say “to take all reasonable and necessary measures required to respond to and stabilize the hazardous material incidents.”

To leave the authorization unqualified places an obligation on the Incident Commander to take all measures to avoid “Monday morning quarterbacking” where someone could challenge how something was handled. We think the existing language in the current draft is inappropriate and will lead to the unnecessary use of resources.

Under Sec. 11.5-34 Verification and Supervision

The draft ordinance states that “In the event that any person(s) undertakes, either voluntarily or upon order or direction of the Incident Commander or Fire Chief, to clean up or abate the effects of any hazardous material unlawfully released into the environment, the Incident Commander or Fire Chief may take any action necessary to supervise or verify the adequacy of the cleanup or abatement. The person(s) described in Section 11.5-32 of this ordinance shall be liable to the City for all costs incurred as a result of such supervision or verification.”

We believe that once the emergency conditions are over, responsibility for any environmental cleanup should be left collectively to the party causing the incident, any affected third parties, and the regulatory entities having jurisdiction and experience for environmental matters. It should not be the province of the City to supervise environmental cleanups or to arrange for cost recovery for private parties.

Sincerely,

Keith Baucom