

**CHAPTER 9**  
**CONTROL AND**  
**CONTAINMENT OF**  
**HAZARDOUS MATERIALS**

Section 1. Purpose.

This Chapter is adopted pursuant to the authority conferred by RSA 47:17, IX, XIV, and XV to provide for the control and containment of substances which are hazardous to the health, welfare and safety of the citizens of the City, or which pose a danger to property or the environment, and to provide for the repayment to the City for costs incurred in the disposition of such substances.

Section 2. Definitions.

(A) "Hazardous substance" means any solid, semi-solid, liquid, or contained gaseous material, or any combination of these materials, which, because of quantity, concentration, or physical, chemical or infectious characteristics may:

- (1) cause or contribute to an increase in mortality or an increase in irreversible or incapacitating illness; or
- (2) pose a present or potential threat to human health or the environment; or
- (3) pose a present or potential threat to property. Without limitation, such substances shall include explosives, flammable materials, combustible materials, radioactive materials, poisons, toxins, irritants, corrosive or oxidizing materials, etiologic agents, compressed gases, any substance or material classified as hazardous by the Materials Transportation Bureau of the United States Department of Transportation, listed in Title 49 of the Code of Federal Regulations, as amended from time to time, and hazardous wastes regulated under RSA 147-A.

(B) "Incident" means any emission, discharge, release, deposit, disposal or escape of any hazardous substance, in any physical state, into or upon land, the atmosphere, or any body of water.

(C) "Possession" means to have, own, hold or be in control of any hazardous substance.

(D) "Person in possession" means that individual who, either by virtue of ownership of the hazardous substance or by virtue of an ownership interest in the premises where a hazardous substance may be located, has the legal right and responsibility to exercise control over the substance or the

premises. In the case of a corporation, the "person in possession" shall be the entity itself and any and all of its officers and directors. In the case of a partnership, the "person in possession" shall be the partnership itself and any and all of its partners.

(E) "Person" means any individual, trust, firm, corporation, partnership or association.

### Section 3. Prohibited Conduct.

No person shall, directly or indirectly, discharge, dump, deposit, release or dispose, or cause or allow the discharge, deposit, release, disposal or escape, of any hazardous substance within the City of Somersworth. Any person in possession of any hazardous substance shall be strictly liable for maintaining, using and storing such substance in such a manner as to insure its safe containment and to prevent an incident.

### Section 4. Procedure in the Event of an Incident.

If any incident shall occur at any time, any person having knowledge of the occurrence of the incident shall immediately report the incident to the Emergency Management Director of the City of Somersworth, advising of the location of the incident and providing any information he/she may have regarding the nature of the hazardous substance involved. The Fire Department shall respond promptly to each incident reported to it and may take any action the Department deems necessary to:

- (A) control and contain the hazardous substance;
- (B) minimize any damages caused by the incident; and
- (C) protect public health, safety, property and the environment.

After the Fire Department has achieved safe containment of the hazardous substance, the person in possession shall secure and/or remove the hazardous substance in such a manner as complies with any and all federal, state and local law and regulations governing the possession, storage, transportation and/or disposal of such substance. (Amended 11/20/89).

### Section 5. Liability for Costs.

In the event of a reported incident, the person in possession of the hazardous substance shall be liable to the City for the following costs:

- (A) All costs incurred by the City in responding to, controlling, containing and/or dealing with the hazardous substance and the incident, including, but not by way

of limitation, the costs of any materials utilized in the response, any equipment damaged, any property damage, and any costs of labor or equipment incurred (e.g. contract labor, overtime compensation paid, independent contractors retained) beyond the regular compensation otherwise paid to Fire Department personnel then on duty.

Liability for the payment of these costs shall not be dependent upon legal fault in causing the incident but shall be assessed against the person in possession solely on the basis of that person's having control of the hazardous substance or the premises upon which it may have been located. If more than one person was in possession or, in the case of a corporation, partnership or other legal entity being the technical "person in possession," then liability for costs assessed under this Section shall be joint and several.

All costs assessed shall be due and payable to the City within ten (10) business days after receipt of notice of the amount of costs being assessed. Notice shall be deemed received by the person in possession two (2) business days after it is mailed to that person by the City.

If the person(s) in possession neglect or refuse to pay all or any part of the costs assessed, the City may recover the same by instituting legal proceedings in any court of competent jurisdiction. In that event, the person(s) in possession shall, in addition to the costs recovered, be liable to the City for all costs of collection incurred by the City, including attorneys' fees and court costs.

#### Section 6. Hazardous Substance Account.

All costs incurred by the City in responding to the incident shall be reimbursed to the City Treasurer and shall become part of the general funds of the City.

#### Section 7. Applicability of Other Laws.

Nothing in this Chapter shall be construed to permit the possession, storage, use, disposal or transportation of any substance in any manner except in compliance with all federal, state and local laws, rules and regulations as may be in force from time to time regarding such substance. In the event that the terms of this Chapter may conflict with any federal or state laws, rules or regulations regarding any substance, in the federal and state provisions shall control. (See, e.g. New Hampshire RSA 146-A; RSA 147; RSA 147-A).

### Section 8. City Liability.

Nothing in "this Chapter shall be construed to impose upon the City, the Fire Department or any City Officer, agent or employee any obligation to secure or remove any hazardous substance found within the City. In responding to an incident, the City shall not incur any liability for personal injury or property damage caused by the incident or by the City's response thereto. Any person who sustains any personal injury and/or property damage as a result of an incident shall have any and all remedies against the person in possession or any other person at fault as may otherwise be provided by law. Nothing in this Chapter shall be deemed to supersede or restrict the rights and remedies of any person injured or sustaining property damage.

### Section 9. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Chapter shall be determined to be invalid by a court of competent jurisdiction, for any reason, then such invalid provision or section shall be deemed a separate, distinct and independent portion of this Chapter, the invalidity of which shall not affect the validity and enforceability of the remaining provisions of this Chapter.

### Section 10. Effective Date.

This Chapter shall be effective on the date it is adopted by the City Council of the City of Somersworth. Adopted 8/21/89.