

CHAPTER 92: HAZARDOUS MATERIALS

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GENERAL PROVISIONS**§ 92.01 PURPOSE.**

This subchapter is adopted by the Shelby County Fiscal Court for the purpose of protecting public health and safety in Shelby County, Kentucky, through prevention and control of hazardous materials incidents and releases, requiring the timely reporting of releases of hazardous materials to appropriate local public safety and emergency agencies and requiring payment by parties responsible for hazardous materials of all expenses incurred by public safety and emergency agencies in responding to the hazardous materials releases.

(Ord. passed 9-27-1988)

§ 92.02 APPLICABILITY.

Pursuant to authority of KRS 67.083(7), the provisions of this subchapter shall apply to all persons who manufacture, use, store or transport hazardous materials in quantities prescribed by this subchapter and as defined herein within the entire area of Shelby County, including all incorporated and unincorporated areas thereof.

(Ord. passed 9-27-1988)

§ 92.03 DEFINITIONS.

As used in the herein subchapter, unless the context of usage clearly requires otherwise, the meanings of specific terms in this subchapter shall be as follows:

AUTHORIZED RELEASE. A release of hazardous materials in accordance with an appropriate permit granted by a state or federal agency having primary jurisdiction over the release.

CONSUMER PRODUCT. Meaning is stated in 15 U.S.C. § 2052.

COSTS. All expenses incurred by local government and/or local emergency response organizations regardless of whether or not the agencies are publicly or privately owned in responding to any hazardous materials spill, leak, or other release into the environment and for any remedial or removal actions taken to protect and safeguard the public health and safety, property or the environment. The term includes, but is not limited to, costs incurred for personnel, equipment and the use thereof, materials, supplies, services, lost wages of volunteer personnel, damage or loss of equipment, both organizational and personal, and related expenses resulting directly from response to a release or threatened release of a hazardous material.

EMPLOYEE. Any person who works, with or without compensation, in a workplace.

EMPLOYER. Any person, firm, corporation, partnership, association, government agency, or other entity engaged in a business or providing service which has employees.

ENVIRONMENT. The navigable waters of the United States and any other surface water, ground water, drinking water supply, soil surface, subsurface strata, storm sewer or publicly-owned sanitary sewer or treatment works (other than those handling only wastewater generated at a facility) within Shelby County, Kentucky. The terms shall include air only for purposes of reporting releases pursuant to the further provisions of this subchapter.

FACILITY. Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, tank, motor vehicle, truck trailer, rolling stock, or aircraft; or any site or area where a hazardous material has been deposited, stored, disposed of, abandoned, placed or otherwise come to be located. Consumer products in consumer use and vessels are not included.

HAZARDOUS MATERIALS. Any element, compound, substance or material or any combination thereof which are toxic, flammable, explosive, corrosive, radioactive, oxidizers, etiological agents, carcinogenic or are highly reactive when mixed with other substances, including, but not limited to, any substance or material which is designated a hazardous material pursuant to the “Hazardous Materials Transportation Act” (49 U.S.C.A. §§ 1801 *et seq.*) or is listed by the Appendix A to the ordinance codified herein, 40 C.F.R. pt. 302, *List of Hazardous Materials and Reportable Quantities*, as amended, published by the U.S. Environmental Protection Agency (EPA), a copy of which the list is attached as Appendix A to the ordinance codified herein, and herein incorporated by reference the same as if set out at length herein in words and figures, in a quantity and form which may pose a substantial present or potential hazard to human health, property or the environment when improperly released, treated, stored, transported, disposed of, or otherwise managed.

NORMAL APPLICATION OF PESTICIDES. Application pursuant to the label directions for application of a pesticide product registered under §§ 30 or 24 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. §§ 135 *et seq.*) (FIRA), or pursuant to the terms and conditions of an experimental use permit issued under § 5 of FIRA, or pursuant to an exemption granted under § 18 of FIRA.

OIL. Oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

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RELEASE. Any spilling, leaking, pumping, pouring, emitting, escaping, emptying, discharging, injecting, leaching, dumping, or disposing of a hazardous material in to or on any land, air, water, well, stream, sewer or pipe so that the hazardous materials, or any constituent thereof, may enter the environment. The term shall not apply to:

(1) With respect to a claim which the persons may assert against the employer of the persons as provided by CERCLA regulations, any release which results in exposure to persons solely within a workplace;

(2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or a pipeline station pumping engine; and

(3) The normal application of fertilizers and pesticides.

PERSON. Any individual, business, firm, partnership, corporation, consortium, association, trust, joint stock company, cooperative, joint venture, city, county, city or county special district, the state or any department, agency or political subdivision thereof, the United States Government, or any other commercial or legal entity.

REMEDIAL ACTION. Any action consistent with permanent remedy taken instead of or in addition to any removal actions in the event of a release or threatened release of a hazardous material into the environment, to prevent or minimize the release of hazardous materials so that they do not migrate to cause a substantial present or potential hazard to human health, property or the environment. The term includes, but is not limited to, the actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay (or other earth) cover, neutralization, cleanup of released hazardous materials or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, repair or replacement of leaking container, collection of leachate and runoff, on site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that the actions protect public health and welfare and the environment.

REMOVAL. The cleanup or removal of released hazardous materials from the environment, the actions as may be necessary or appropriate to monitor, assess, and evaluate the release or threatened release of hazardous materials, the disposal of removed material, or the taking of the actions as may be necessary to prevent, minimize, or mitigate damage to public health or welfare or the environment. The term includes, but is not limited to, security fencing, provisions of alternative water supplies, and temporary evacuation, reception and care of threatened persons.

REPORTABLE QUANTITY. That quantity as set forth in § 92.04 of this subchapter.

RESPONSE. Any remedial or removal actions, including, but not limited to, response by local public safety and emergency agencies and subsequent actions taken to insure the preservation and protection of the public health, safety, welfare and the environment.

STORE. To deposit or place a substance in the county for a period of 10 days or more, provided the substance is not otherwise in transit.

USE. To store, maintain, treat, process, handle, generate, dispose of, or otherwise manage. Use shall not include any mode of transportation other than onsite transportation.

VESSEL. Every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.
(Ord. passed 9-27-1998)

§ 92.04 DETERMINATION OF REPORTABLE QUANTITIES.

(A) *Listed hazardous materials.* The quantity appearing in column “RQ” for each hazardous material listed by Appendix A, *List of Hazardous Materials and Reportable Quantities*, 40 C.F.R. pt. 302, as amended, published by the U.S. Environmental Protection Agency (EPA) shall be the reportable quantity for that material.

(B) *Unlisted hazardous materials.* Unlisted hazardous wastes designated as hazardous materials have the reportable quantity of 100 pounds, except for those unlisted hazardous wastes exhibiting the characteristic of EP toxicity identified in 40 C.F.R. pt. 261.24. Unlisted hazardous wastes which exhibit EP toxicity have the reportable quantities listed in Appendix A to 40 C.F.R. pt. 302, as amended, for the contaminant on which the characteristics of EP toxicity is based. If an unlisted hazardous waste exhibits EP toxicity on the basis of more than 1 contamination, the reportable quantity for that waste shall be the lowest of the reportable quantities listed by Appendix A to 40 C.F.R. pt. 302, as amended, for those contaminants. If an unlisted hazardous waste exhibits the characteristics of EP toxicity and 1 or more of the other characteristics, the reportable quantity shall be the lowest of the applicable reportable quantities.

(C) *Oil.*

(1) The reportable quantity for releases of oil to waters of the United States or adjoining shorelines is any quantity which violates applicable water quantity standards or causes a film or sheet upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(2) The reportable quantity for releases of oil to the environment other than releases to waters of the United States and adjoining shorelines is 56 gallons.

(3) Notwithstanding any other provision of this subchapter, a release of oil from a properly functioning vessel engine shall not be deemed to be in a reportable quantity; however, this provision shall not be applicable to oil accumulated in a vessel’s bilges.

(D) *Higher reportable quantity.* Notwithstanding any other provision of this subchapter, the administering agency, after review of the “Shelby County Hazardous Materials Use and Spill Prevention Control Plan” (HMPC) required to be submitted pursuant to the further provisions of this subchapter, may designate a reportable quantity for a hazardous material in excess of the quantity determined under this section if the administering agency determines that the higher reportable quantity is consistent with the purpose and objectives of this subchapter.

(E) *Releases to sanitary sewer system.* Notwithstanding any other provision of this subchapter, any release of a hazardous material to a sanitary sewer system which is prohibited under applicable pretreatment or other regulations of any sanitation district operating within Shelby County governing discharges to the sanitary sewer system shall be deemed to be discharged in reportable quantities.

(F) *Component hazardous materials release.* A release of a mixture or solution of which a hazardous material is a component shall be considered to be a release in a reportable quantity only where the component hazardous material of the mixture or solution is released in a quantity equal to or greater than its reportable quantity.
(Ord. passed 9-27-1998)

§ 92.05 PROHIBITED ACTS.

No person shall cause, threaten or allow the release of a hazardous material into the environment within the territorial boundaries of Shelby County, Kentucky, unless the release is an authorized release in accordance with an appropriate permit granted by that agency of state or federal government which has primary jurisdiction over the release and the release is in a place and manner as will not create a substantial present or potential hazard to human health, property or the environment.
(Ord. passed 9-27-1998)

§ 92.06 NOTICE TO PUBLIC SAFETY COMMUNICATIONS CENTER.

(A) *Notice upon discovery.* When a release or a threatened release, other than an authorized release, of a hazardous material in a quantity equal to or exceeding the reportable quantity hereinbefore established for the material, occurs or is imminent on any facilities of any kind within Shelby County, the person in charge of the facilities, upon discovery of the release or threatened release, or evidence that a release has occurred even though it has apparently been controlled, shall immediately cause notice of the existence of the release or threatened release, the circumstances of same, and the location thereof to the Public Safety Communications Center.

(B) *Emergency telephone number.* The notice required to be given by this subchapter in Shelby County may be given by telephoning (502) 633-2323 (or any other emergency telephone number as may be subsequently designated). This 1 call will meet the requirements for notification of local agencies and, to the extent permitted by existing or future agreement, will provide notice to appropriate agencies of the

Commonwealth of Kentucky, including, but not limited to, the Cabinet for Natural Resources and Environmental Protection, the Office of the State Fire Marshal in the Department of Housing, Buildings and Construction in the Cabinet for Public Protection and Regulation, and the Division of Disaster and Emergency Services in the Department of Military Affairs.

(C) *Duty to control releases.* The notice required to be given by this subchapter shall not be construed as forbidding or otherwise exempting any person on or about the facilities from exercising all diligence necessary to control the release prior to or subsequent to the notice to the Public Safety Communications Center, especially if the efforts may result in the containment of the release and/or the abatement of extreme hazard to the employees or the general public. Delays in reporting due to any in-house requirement for notification to off-site owners/supervisors shall not be acceptable as reason for delay in notification required by this section, and a delay may result in penalties.

(D) *Duty to report to other agencies.* No statement contained in this subchapter shall be construed to exempt or release any person from any other notification or reporting procedures in accordance with applicable state or federal laws or regulations.
(Ord. passed 9-27-1998)

§ 92.07 ADMINISTERING AGENCY.

The purpose of this subchapter is to establish a uniform county-wide program for protection of the environment from uncontrolled releases of hazardous materials to be administered by existing agencies of local government. The Hazardous Materials Response Team within the Department of Disaster and Emergency Services shall be the lead agency in administering this subchapter.
(Ord. passed 9-27-1998)

§ 92.08 RESPONSE AUTHORITY.

(A) The Shelby County Disaster and Emergency Services Hazardous Materials Response Team (hereinafter called "HMRT") shall have authority to coordinate response to any release or threatened releases of hazardous materials in any incorporated or unincorporated area of Shelby County.

(B) The Fire Chief of the jurisdiction in which the release or threatened release is located, shall have primary authority for taking remedial or removal actions necessary to control or contain the release or threatened release and to assure the protection of human health, property and the environment. The rule of HMRT is to give technical advice and assistance to the Fire Chief. HMRT shall not direct the emergency response unless requested to do so by the Fire Chief or his or her authorized representative.

(C) HMRT, or the Fire Chief, shall immediately report any release or threatened release to the executive authority of the jurisdiction (e.g. County Judge/Executive or his or her administrative assistant, Mayor, City Administrative Officer, City Coordinator). If in the opinion of the executive authority, the

seriousness of the situation warrants, the chief executive officer of the jurisdiction (County Judge/Executive or Mayor) shall declare the existence of a state of emergency in the jurisdiction, and thereafter, the response authority provided by this subchapter shall then be vested in the chief executive officer. In that event, the chief executive officer may authorize HMRT, the Fire Chief, or other appropriate person to exercise all or part of the response authority provided by this subchapter until further notice.

(D) All local emergency response personnel shall cooperate with and operate under the direction of the chief executive officer of the jurisdiction, the Fire Chief, HMRT, or other person then exercising response authority under this subchapter until a time as the person then exercising response authority has determined that the response is complete, or responsibility for response has been assumed by the state or federal agency having primary jurisdiction over the release or threatened release.

(E) The person exercising response authority under this subchapter shall coordinate and/or cooperate with other federal, state or local public health, safety and emergency agencies involved in the response to a release or threatened release of hazardous materials.

(F) The person exercising response authority under this subchapter may, with the approval of the executive authority of the jurisdiction, obtain vital supplies, equipment, services and other properties found lacking and needed for the protection of human health, property and the environment and obligate the jurisdiction for the fair value thereof.

(Ord. passed 9-27-1998)

§ 92.09 LIABILITY FOR COSTS.

Notwithstanding any other provision or rule of law, the following persons shall be jointly and severally liable for all costs of removal and remedial actions incurred by local public safety and emergency agencies as a result of a release or threatened release of hazardous materials into the environment:

(A) The owner and operator of a facility or vessel from which there is a release or substantial threat of release of hazardous materials;

(B) Any person who, at the time of disposal, transport, storage, or treatment of hazardous materials, owned or operated the facility or vessel used for the disposal, transport, treatment, or storage from which there was a release or substantial threat of a release of hazardous materials;

(C) Any person who by contract, agreement, or otherwise has arranged with another party or entity for transport, storage, disposal or treatment of hazardous materials owned, controlled or possessed by another party or entity from which facility there is a release or substantial threat of a release of hazardous materials; and

(D) Any person who accepts or accepted any hazardous materials for transport to disposal, storage or treatment facilities from which there is a release or substantial threat of a release of hazardous materials.

(Ord. passed 9-27-1998)

§ 92.10 AUTHORIZED RELEASE.

There shall be no liability under this subchapter for any release permitted by state or federal law, but only to the extent that the release is made in accordance with an appropriate permit granted by the state or federal agency having primary jurisdiction over the release and that the release is in full compliance with the permit with respect to time, location and manner of the release so that the release will not create a hazard or potential hazard to human health, property or the environment; or, if the release is in substantially lesser quantities than those reportable quantities established by state or federal law, regulations, permit requirements, or subchapters of the jurisdiction in which the release occurs. This also pertains to legitimate retail merchants who sell permitted goods in accordance with state and federal laws.

(Ord. passed 9-27-1998)

§ 92.11 CONTRACTUAL INDEMNIFICATION; SUBROGATION.

(A) No conveyance, transfer, sale, indemnification, hold harmless, or similar agreement shall be effective to release the owner or operator of any facility or vessel or any person who may be liable for a release of hazardous materials or threat thereof under this subchapter. Nothing in this subchapter shall bar any arrangement to insure, hold harmless or indemnify a party to this agreement for any liability under this subchapter.

(B) Nothing in this subchapter, including the provisions of division (A) above, shall bar a cause of action that an owner or operator or any other person subject to liability under this subchapter, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(Ord. passed 9-27-1998)

§ 92.12 RELEASE PREVENTION AND CONTROL PLAN REQUIRED.

(A) *Plan Required.* The following persons who use hazardous materials must prepare, submit and maintain a “Shelby County Hazardous Materials Use and Spill Prevention Control Plan”, hereinafter referred to as “HMPC Plan”:

(1) All federal, state and local government agencies which use hazardous materials in reportable quantities;

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(2) All of the following businesses or services within Shelby County which use hazardous materials, as classified by the Standard- Industrial Classification (SIC) code:

<i>Classification</i>	<i>Business or Service</i>
0782	Lawn and garden services
2011-3999	Manufacturing
4011-4953	Transportation, Communication and Public Utilities
5043	Photographic equipment and supplies (Wholesale trade)
5085	Industrial supplies (Wholesale trade)
5161-5199	Specific categories in wholesale trade
5541	Gasoline service stations (Retail trade)
7011-7218	Industrial and commercial launders, and the like, in services
7342	Disinfecting and exterminating services
7395	Photo finishing laboratories in services
7512	Passenger car rental in services
7513	Truck rental and leasing
7538-7549	Automotive repair shops and auto services in services
8062	General medical and surgical hospitals in services
8063	Psychiatric hospitals in services
8069	Specialty hospitals except psychiatric in services

(3) Those persons not covered in divisions (A)(1) or (2) above who use hazardous materials may be required to submit a HMPC Plan if the administering agency finds it necessary to protect the public health and safety.

(B) *Exemptions.*

(1) Persons who handle agricultural chemicals in the ordinary course of agricultural operations other than warehousing or bulk storage of the chemicals for resale or commercial applications.

(2) Persons who handle hazardous materials only in conjunction with residential use or property for non-commercial purposes.

(3) Consumer products and foodstuffs packaged for distribution to and intended for use by general public. This refers to ingredients used in production of foodstuffs which are regulated by the Federal Food, Drug and Cosmetic Act, as amended.

(C) *Required HMPC plan elements.* The administering agency shall provide forms with the necessary instructions and requirements for completing HMPC Plans in compliance with this subchapter. The HMPC Plans will include, but not be limited to:

(1) Facility identification;

(2) Spill history;

(3) Identification of hazardous materials (HM) storage, in-plant transfer, process and materials, handling areas and hazardous materials truck, rail car and/or vessel loading and unloading areas;

(4) Description of plant site runoff from parking areas described in division (C)(3), including in-place containment appurtenances (e.g. dikes) and means of releasing rainwater from those areas;

(5) Other means of spill prevention, control and countermeasure of all listed hazardous materials, such as containment or detection equipment and absorbent materials;

(6) Provisions for the operation and maintenance of all items described in division (C)(5) above;

(7) Contingency plans, including spill notification procedures for both internal personnel as well as outside authorities, including the Shelby County HMRT;

(8) Provisions for training of personnel in the utilization of contingency plans;

(9) Security provisions;

(10) Provisions for inspections, spill report preparation and records retention;

(11) Schedule (with actual dates or milestones) for plan elements yet to be implemented, with provisions for reporting progress to the administering agency;

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(12) Provisions for periodic review and amendments to the Plan;

(13) Certification of the plan by a registered professional engineer or an officer of the company; and

(14) For the purposes of this subchapter, only 1 plan need be submitted by the owner of electrical equipment at multiple locations when the equipment contains hazardous materials as a coolant, lubricant, or insulation for the operation of the equipment. Section 92.12 (C)(3) and (5) above shall not apply to single plans authorized under this subchapter.

(D) *Plan submittal deadlines.* Those persons and facilities required to submit a HMPC Plan under this subchapter shall submit the plans in duplicate to the administering agency within 180 days following the effective date of this subchapter provided, however, that persons required to submit the HMPC Plans may request in writing for extensions of time where the complexity of the operations involved require additional time in which to complete the plans. When granted by the administering agency, the extensions of time shall be for periods of 30 days, renewable thereafter for like periods until January 1, 1991, at which time all HMPC Plans shall have been submitted to the administering agency for review.

(E) *Review and approval of plan.* The HMPC Plan shall be reviewed by the administering agency, the fire department having jurisdiction, and, where appropriate, the Local Kentucky District Health Department, any sanitation district operating within Shelby County, or other local agency with appropriate authority; however, final administrative action on the HMPC Plan shall be taken by the administering agency. Upon submission of the HMPC Plan or the granting of time extension in accordance with division (D) of this subchapter, the person submitting the plan shall be presumed to be in compliance with this subchapter pending final approval of the plan. HMPC Plans which do not provide the necessary information or are otherwise defective shall be rejected and returned to the person submitting the plan for revision and resubmittal.

(F) *Appeals.* Any rejection or denial of approval of an HMPC Plan by the administering agency may be appealed to the governing body of the jurisdiction in which the facility for which the plan is submitted is located. As soon as practicable following receipt of notice of the appeal, the governing body shall conduct a public hearing into the matter, and after consideration of all evidence and testimony relative to the appeal, shall, by majority vote, uphold the finding of the administering agency or may modify the requirements of the HMPC Plan for the particular facility as it may deem appropriate so long as the modifications are in compliance with the intent of this subchapter which is to promote and secure protection of human health, property and the environment against present or potential hazards occasioned by the uncontrolled release of hazardous materials into the environment.

(G) *Updates, revisions, and changes.* A new or modified HMPC Plan may be required and submitted to the administering agency when any person institutes the use of a new process or change in its manufacturing or processing facilities, or when there is significant change in its existing operations or wastewater constituents or characteristics.

(H) Training and educational programs.

(1) Each employer who uses hazardous materials as herein defined and who is required to prepare an HMPC Plan shall be required to have an initial and ongoing safety and accident prevention training program for all employees. This training and education shall include, but not be limited to, appropriate work practices, protective measures and emergency procedures. The details and frequency of the training program should be provided as a part of the HMPC Plan for the facility.

(2) The administering agency shall have the authority to require different frequencies of training for industries with frequent spills and/or spill histories.
(Ord. passed 9-27-1998)

§ 92.13 INSPECTIONS.

(A) The administering agency and the response authority shall have the authority to jointly conduct the periodic inspections of any facilities, for the purpose of ascertaining and causing to be corrected, any condition which may be a violation of this subchapter.

(B) Joint inspection shall be conducted where necessary for purposes of HMPC Plan review. Inspections shall be made during working hours, except by special arrangement, with the person in charge of the facility.
(Ord. passed 9-27-1998)

§ 92.14 CONFIDENTIAL INFORMATION AND TRADE SECRETS.

(A) Information and data provided by any person or obtained from any report, questionnaire, permit application, permit and monitoring program, and from inspections shall not be made available to the public or any other government agency, unless required by law.

(B) Upon submission of information in any form, it shall be the obligation of the submitter to separate all confidential and trade secret material from any materials subject to disclosure under the law.

(C) (1) Any request made under the law for information containing confidential or trade secret information shall be brought to the attention of the person requesting confidentiality of its trade secrets by certified mail, return receipt requested.

(2) The notification shall advise the person requesting confidentiality of the decision of the administering agency regarding release of the confidential information. In no event, will the confidential information be released until 5 days have elapsed from date notice is sent by certified mail.

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(D) Within 72 hours after receipt of notice, the person requesting confidentiality of its trade secrets shall have the burden to initiate appropriate actions at law or otherwise to protect its confidential or trade secret information from disclosure, and must demonstrate that public disclosure of confidential or trade secret information is likely to cause substantial harm to his or her competitive position.

(E) Any individual who releases information containing confidential or trade secret information in violation of law or this section shall be subject to disciplinary action by his or her employer for malfeasance, misfeasance and willful neglect of official duties, and may further be guilty of misuse of confidential information under KRS 522.040.

(F) The provisions of this subchapter shall in no way prohibit or limit the exchange of information, confidential or otherwise, between public agencies when the exchange is serving a legitimate government need or is necessary in the performance of a government function including, but not limited to, the carrying out of the provisions and intent of this subchapter.

(G) Shelby County DES Hazardous Materials Response Team shall be the repository for all trade secret information for the purposes of this subchapter.
(Ord. passed 9-27-1998)

§ 92.15 ENFORCEMENT; NOTICE OF VIOLATION.

(A) The administering agency and the response authority hereinbefore designated shall have joint primary responsibility for enforcement of the provisions of this subchapter.

(B) Upon notification or discovery of any violation of the provisions of this subchapter, the administering agency shall immediately investigate the site upon which the violation is located. The administering agency will be the lead enforcement agency for violations of this subchapter. If a violation exists, a notice describing the violations shall be served upon the person who is responsible for the facilities upon which the violation has occurred, if the identity of the person is known. The notice shall also include the following, if applicable.

(1) A statement that if the situation is not remedied within the prescribed period of time, the administering agency may proceed to correct the violation;

(2) A statement that the person shall be liable for any costs incurred by public agencies associated with their releases except for those costs that are associated with a normal emergency response;

(3) A statement that after the administering agency has corrected the violation, a bill shall be sent charging the person the amount of costs and expenses incurred by the governmental agency in correcting the violation; and

(4) A statement that penalties may be levied for violations that have occurred.

(C) In cases where the identity of the person who is responsible for facilities upon which a violation has occurred is not known at the time a violation is reported or discovered, the county or any governmental agency within the county may take reasonable steps to abate any problem and may take reasonable steps to clean up the area affected to assure continuing safety of the public and the environment. When the identity of the person responsible for the facility is determined, a bill shall be sent to that person for the costs of correcting the violation according to the provisions of § 92.14(A) and (B).

(D) The administering agency is empowered to seek injunctive relief for violations of this subchapter should other means prove ineffective and a threat to public health and safety exists. (Ord. passed 9-27-1998)

§ 92.16 FEES.

Fees shall be imposed for HMPC Plan review or approval, the revenues of which shall cover only the costs of HMPC Plan review and approval. The administering agency shall set and collect fees. The fee schedule shall be uniform for all persons required to submit HMPC Plans under the provisions of this subchapter.

(Ord. passed 9-27-1998)

§ 92.17 DISCLAIMER OF LIABILITY.

This subchapter shall not create liability on the part of the administering agency or on the part of the response authority of any damages that result from reliance on this subchapter or any administrative decision lawfully made thereunder. All persons are advised to determine to their own satisfaction the level of protection, in addition to that required by this subchapter, necessary or desirable to ensure that there is no unauthorized release of hazardous materials.

(Ord. passed 9-27-1998)

COST RECOVERY FOR RESPONSE TO RELEASES

§ 92.30 PURPOSE.

Pursuant to the authority of KRS 39B.070(2) and KRS 67.040 *et seq.*, this subchapter is adopted by the Fiscal Court of Shelby County for the purpose of requiring the timely payment or reimbursement, by any parties responsible for a release or threatened release of any hazardous material in Shelby County and its cities, of all costs incurred by Shelby County or any agent of Shelby County, including the WMD

HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and other local public safety or emergency services agencies, in responding to a release or threatened release of any hazardous material.

(Ord. 11-05-07, passed 11-5-2002)

§ 92.31 DEFINITIONS.

As used in this subchapter, unless the context clearly requires otherwise:

COSTS. All expenses incurred by Shelby County or any agent of Shelby County, including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and other local public safety or emergency services agencies in responding to a release or threatened release of a hazardous material. The term includes, but is not limited to, expenses for salaries and personnel benefits of employees who respond to a hazardous material release or threatened release, including lost wages of volunteer personnel; the expenses incurred to replace materials, supplies, vehicles, and equipment expended or contaminated or damaged in response to a release or threatened release of a hazardous material; expenses incurred to properly clean-up, restore, or dispose of contaminated vehicles, equipment, supplies, and materials involved in response to a release or threatened release of a hazardous material; the logistical expenses incurred for food, lodging, utilities, fuel, services, sanitation, medical surveillance or treatment, evacuation, and rental; and other personnel, health, medical, safety, operating, support, logistical, maintenance, or administrative expenditures made to support the response to a release or threatened release of a hazardous material, including any legal expenses incurred in recovering costs as described in this subchapter.

FIXED FACILITY. Any building, structure, installation, storage container, equipment, pipe, or pipeline (including any pipe into a sewer or publicly-owned treatment system), well, pit, pond, lagoon, impoundment, reservoir, ditch, landfill, site, or immobile vessel where a hazardous material is stored, deposited, disposed of, abandoned, placed, or otherwise is located. Consumer products, as defined in 15 U.S.C. § 2052, in consumer use and vessels, are not included.

HANDLER. A person that stores, maintains, treats, processes, uses, generates, disposes of, transports, controls, manages, or otherwise possesses a hazardous material.

HAZARDOUS MATERIAL. A substance (gas, liquid, solid, or semi-solid) capable of creating harm to people, property, and the environment, including but not limited to, any element, commodity, compound, chemical, substance, mixture, waste, or any combination thereof, that is toxic, flammable, explosive, incendiary, corrosive, radioactive, an oxidizer, organic peroxide, an etiological or biological agent, carcinogenic, or highly reactive when mixed with other substances.

MOBILE CARRIER. Motor vehicles, cargo tanks, box trailers, rolling stock, rail tank cars, locomotive engines, aircraft, barges, boats, or other motorized vehicles or commodity containers used in transportation of a hazardous material.

OWNER/OPERATOR. A person who owns or operates a fixed facility or a person that owns or operates a mobile carrier as well as any person vested with proprietary or decision-making authority over a fixed facility or mobile carrier.

PERSON. An individual, trust, firm, business, corporation, joint stock, company, partnership, consortium, association, cooperative, joint venture, city, county, special district, a state or any department or agency thereof, the United States of America or any department or agency thereof, or other commercial or legal entities.

RELEASE. Any accidental or intentional, unauthorized or non-permitted spilling, leaking, pumping, pouring, emitting, escaping, emptying, discharging, injecting, leaching, dumping, or disposing of a hazardous material into or on any site, surface, land, air, water, well, river, lake, reservoir, stream, creek, ditch, sewer, pipe, drainage basin, or other area.

RESPONSE. Any actions taken to ensure the preservation and protection of public health, safety, welfare, and the environment, including but not limited to, any mitigation, logistical, remedial, and supporting measures required to safeguard emergency responders, the public, and the environment.

RESPONSIBLE PARTY. Any person possessing or controlling a hazardous material at the time of a release, or threatened release, of the hazardous material.

THREATENED RELEASE. A factor or circumstance that presents a substantial threat of a release.

(Ord. 11-05-07, passed 11-5-2002)

§ 92.32 COST RECOVERY STANDARDS.

(A) Any person, owner/operator, handler, or other responsible party, that causes or is otherwise responsible for a release or threatened release of a hazardous material that requires or results in a response to the release or threatened release and the expenditure of public funds in executing the response to the release by Shelby County or any agent of Shelby County, including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and other local public safety or emergency services agencies in Shelby County, shall be liable to Shelby County for all recoverable costs as outlined herein below and incurred by Shelby County, the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and other local public safety or emergency services agencies in Shelby County to include any protective, mitigation, remedial and recovery actions taken in the response.

(B) In the event of a release of a hazardous material, or a threatened release of a hazardous material, being transported in or otherwise involved in transportation or transit in Shelby County and its cities, the handler, the shipper or carrier, the owner/operator of the hazardous material, and any other responsible party, jointly and severally, shall be responsible for all costs incurred by Shelby County and any agent

of Shelby County, including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Shelby County and its cities in responding to the release or threatened release.

(C) In the event of a release of a hazardous material, or a threatened release of a hazardous material, at a fixed facility, the handler or the owner/operator of the hazardous material, and any other responsible party, shall be responsible for all costs incurred by Shelby County and any agent of Shelby County, including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Shelby County and its cities in responding to the release or threatened release.

(D) At the direction of the Shelby County Fiscal Court, the director of the Shelby County Office of Emergency Management, on behalf of Shelby County, is hereby authorized and directed to prepare and submit all bills of claim to any owner/operator, carrier, shipper, handler, or other responsible party for payment or reimbursement of all recoverable costs incurred as described in this subchapter.

(E) At the direction of the Shelby County Fiscal Court, the County Attorney of Shelby County is hereby authorized and directed to initiate the proceedings, in the name of Shelby County, in any court having jurisdiction over the matters as are necessary to recover the costs incurred as described in this subchapter.
(Ord. 11-05-07, passed 11-5-2002)

§ 92.33 LIEN CREATED, SEIZURE, IMPOUNDMENT.

(A) All releases or threatened releases of any hazardous material, including a release or threatened release of a hazardous material involved in transportation or transit or a release or threatened release of a hazardous material at a fixed facility, shall be considered a public health hazard in Shelby County. For the purpose of securing all recoverable costs incurred in executing a response to any hazardous material release or threatened release by Shelby County and any agent of Shelby County, including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Shelby County and its cities, the Shelby County Fiscal Court shall have, and there is hereby created, a lien against the real or personal property in Shelby County possessed by the owner/operator, handler, or any other responsible party or person. The affidavit of the Shelby County Judge/Executive shall constitute prima facie evidence of the amount of the lien and it shall be recorded in the office of the Shelby County Clerk. The lien shall be notice to all persons from the time of its recording and shall bear interest thereafter at the rate of 12% until paid. The lien created shall take priority over all other subsequent liens, except those asserted by any city or other taxing district which has priority under KRS 134.420, and may be enforced by judicial proceeding. The owner of property upon which a lien has been attached under this subchapter shall also be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and Shelby County shall have the same remedies as provided for the recovery of a debt owed.

(B) The lien shall be enforced upon the filing of an action in the Shelby County Circuit Court naming all persons with a security or other interest in the real or personal property to which the lien is attached.

(C) As to any moveable personal property or mobile carrier located in Shelby County, Kentucky, including, but not limited to, any titled motor vehicle, trailers attached thereto, vessels, cargo tanks, locomotive engines, rail tank cars, rolling stock, and other equipment used to store or transport a hazardous material, the Shelby County Fiscal Court may effectuate or order the seizure or impoundment of the property pending enforcement of the lien by the Shelby County Circuit Court. In addition, the Shelby County Sheriff's Office may order impoundment to preserve the property as evidence. (Ord. 11-05-07, passed 11-5-2002)

§ 92.34 RESPONSE STANDARDS.

(A) Response to a hazardous material release or threatened release within the geographical boundaries of Shelby County by Shelby County and any agent of Shelby County, including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Shelby County and its cities shall be conducted in accordance with the provisions of the Shelby County Emergency Operations Plan, response agency SOP's, and the terms of written mutual aid agreements approved by the Shelby County Fiscal Court. The owner/operator or handler of the hazardous material involved in a release or threatened release, or other responsible party, shall assume responsibility to Shelby County and any agent of Shelby County, including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Shelby County and its cities for all costs incurred in responding to the release or threatened release, including costs associated with execution or implementation of the Shelby County Emergency Operations Plan, response agency SOP's, and the terms of written mutual aid agreements approved by the Shelby County Fiscal Court.

(B) In the event Shelby County or any agent of Shelby County, including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies outside of the geographical boundaries of Shelby County under the terms and conditions of written mutual aid agreements approved by the Shelby County Fiscal Court, the owner/operator, or handler of the hazardous material involved in the release or threatened release, or other responsible party, shall assume responsibility to Shelby County and any agent of Shelby County including the WMD HAZMAT SIX regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Shelby County and its cities for all costs incurred in responding to the release or threatened release, including costs associated with the execution or implementation of the Shelby County Emergency Operations Plan, response agency SOP's, and the terms of written mutual aid agreements approved by the Shelby County Fiscal Court.

(C) At the direction of the Shelby County Fiscal Court, the County Attorney of Shelby County is hereby authorized and directed to initiate the proceedings against the owner/operator, or handler, or other responsible party, or other public or private entity, in the name of Shelby County, in any court having jurisdiction over the matters as are necessary to recover the costs incurred as described in this subchapter.

(Ord. 11-05-07, passed 11-5-2002)

§ 92.35 EFFECTIVE DATE.

This subchapter shall be in full force and effect from and after its approval, adoption and publication.

(Ord. 11-05-07, passed 11-5-2002)

§ 92.99 PENALTY.

(A) Any person who is responsible for the release or substantial threat of a release of hazardous materials into the environment in violation of § 92.05, or who fails to report the release or threatened release in violation of § 92.06 of this chapter shall, upon conviction thereof by a court of competent jurisdiction, be guilty of a Class A Misdemeanor and subject to a fine or imprisonment, or by both the fine and imprisonment, as is otherwise provided by law for the offense. Each day that the violation occurs, exists or continues shall be deemed to be a separate offense.

(B) Any person who otherwise violates any provisions of this chapter other than §§ 92.05 or 92.06 shall, upon conviction thereof by a court of competent jurisdiction, be guilty of a Class B Misdemeanor and subject to the fine or imprisonment, or by both the fine and imprisonment, as is otherwise provided by law for the offense. Each day that the violation occurs, exists or continues shall be deemed to be a separate offense.

(C) Any person or business transporting hazardous or other waste material in Shelby County shall have the waste covered by sufficient material to insure and prevent its contents from spilling or leaking upon the roadway or on property over which it is being transported. Violations of this provision upon conviction thereof by a Court of competent jurisdiction, shall be guilty of a Class A Misdemeanor and subject to a fine or imprisonment, or by both the fine and imprisonment, as is otherwise provided by law for the offense. Each day that the violation occurs, exists or continues shall be deemed to be a separate offense.

(D) In addition to the penalties provided in divisions (A), (B) and (C) above, any person violating any provisions of this §§ 92.01 through 92.17 shall become liable civilly to the appropriate county or city government for any expense, loss or damage to the government or agency thereof caused by reason of the violation, including, but not limited to, any clean-up, evacuation, administration or other expenses, and legal expenses.

(Ord. passed 9-27-1998)

(E) Any provision in this chapter for which a penalty is not set out shall be subject to § 10.99.