

HAZARDOUS SUBSTANCES

Chapter 102

HAZARDOUS SUBSTANCES

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[HISTORY: Adopted by the Board of Trustees (now Mayor and Town Council) of the Town of Frisco 6-17-86, Ord. 86-4. Amendments noted where applicable.]

§ 102-1. Purpose.

The purpose of this chapter is to designate an Emergency Response Authority for hazardous substance incidents occurring within the corporate limits of the town and within all areas outside the corporate limits of the town, the use of which the town has jurisdiction and authority to regulate, as required by Section 29-22-102(3) of the Colorado Revised Statutes, as amended, and to establish the duties and authority of the Emergency Response Authority. This chapter shall also establish the responsibilities of any person who owns or has control of a hazardous substance which is involved in a hazardous substance incident, and provide for reimbursement of costs incidental to hazardous substance incidents.

§ 102-2. Definitions. [Amended 11-14-06, Ord. 06-32]

The following terms, as used in this chapter, shall have the following meanings, unless the context specifically indicates otherwise or unless such meaning is excluded by express provision:

ABANDONMENT - The act of leaving a thing with the intent not to retain possession of or assert control over it. The intent need not coincide with the act of leaving.

EMERGENCY RESPONSE AUTHORITY - The Chief of the Town of Frisco Police Department or his designee(s).

EMERGENCY RESPONSE TO A HAZARDOUS SUBSTANCE INCIDENT - Taking the initial emergency action necessary to minimize the effects of a hazardous substance incident and exercising continuing supervisory authority over all further efforts to

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eliminate the threat of immediate and irreparable harm to the environment or the public health and safety.

HAZARDOUS SUBSTANCE - Any substance, material, waste or mixture designated as a hazardous material, waste or substance according to 49 CFR 172, as amended, or by Section 18-13-112(2)(b) of the Colorado Revised Statutes, or as designated pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (PL 96-510) as in effect July 1, 1983, or as subsequently amended, or any other material or substance including, but not limited to, petroleum products which, in the judgment of the Emergency Response Authority, pose an imminent danger to the public health and safety when involved in a hazardous substance incident.

HAZARDOUS SUBSTANCE INCIDENT - Any circumstance involving the sudden discharge or imminent discharge of a hazardous substance which, in the judgment of the Emergency Response Authority, threatens immediate and irreparable harm to the environment, to the health and safety of any person (other than persons exposed to the risks associated with hazardous substances in the normal course of their employment), or to both. " Hazardous substance incident" includes, but is not limited to, those incidents of spilling, dumping or abandonment of a hazardous substance, whether or not such spilling, dumping or abandonment is found to threaten immediate and irreparable harm, but such term does not include any discharge of a hazardous substance authorized pursuant to any federal, state or local law or regulation.

PERSON - Any individual, public or private corporation, partnership, association, firm, trust or estate, the state or any department, institution or agency thereof, any municipal corporation, county, city and county or other political subdivision or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

PRIVATE PROPERTY - Any property under the control, management or operation of any person other than a governmental entity.

RESIDUE OF A HAZARDOUS SUBSTANCE INCIDENT - The hazardous substance itself and the soil, pavement, stone, water, debris or any other matter which is contaminated by such hazardous substance.

§ 102-3. Jurisdiction of Emergency Response Authority.

The Emergency Response Authority shall have jurisdiction for hazardous substance incidents occurring within the corporate limits of the town and within all areas outside the corporate limits of the town over which the town has jurisdiction and authority to regulate.

§ 102-4. Duties and Authority of Emergency Response Authority. [Amended 10-20-92, Ord. 92-15; 11-14-06, Ord. 06-32]

The Emergency Response Authority shall have the following duties and authority:

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- A. To provide twenty-four-hour response capability to reported or suspected hazardous substance incidents.
- B. To take initial emergency action necessary to minimize the effects of a hazardous substance incident and exercise continuing supervisory authority over all further efforts to eliminate the threat of immediate and irreparable harm to the environment or the public health and safety.
- C. To request assistance of personnel and equipment at the scene and immediate vicinity of a hazardous substance incident from any town department, including but not limited to the Police Department and the Department of Public Works, and generally direct, supervise and coordinate the activities of such persons and the use of such equipment.
- D. To request assistance from any Fire Department or other public agency possessing such equipment, personnel or expertise which, in the judgment of the Emergency Response Authority, may be necessary to handle a particular hazardous substance incident when such equipment, personnel or expertise is not reasonably available on a timely basis from the various town departments.
- E. To enter into, subject to the prior approval of the Town Council of the Town of Frisco, mutual aid agreements with various public agencies, including but not limited to other emergency response authorities, the Colorado Department of Public Health and Environment, Summit County, the Frisco Fire Protection District and the Summit County Fire Protection Authority (SCFPA), for the purpose of utilizing equipment and expertise in order to safely handle hazardous substance incidents.
- F. To contract, as an emergency measure without the necessity of bids, for services and substance from any person for the purpose of minimizing the effects of a hazardous substance incident and for eliminating the threat of immediate and irreparable harm to the environment, to public health and safety, or to both, if such services or substance is not reasonably available on a timely basis from the various town departments, the Fire Protection District or public agencies.
- G. To notify the appropriate federal or state agency of hazardous substance incidents as required by any federal or state law or regulation. The Emergency Response Authority may request the Disaster Emergency Service Agency to assist in making the required notifications and for any other assistance the Emergency Response Authority deems appropriate.
- H. To prepare and, upon approval by the Town Council of the Town of Frisco, administer a plan or plans for the handling of hazardous substance incidents. Administration of the plan shall include, but not be limited to, periodic reports to the town on the preparedness, cost and availability of equipment, personnel and expertise to handle a hazardous substance incident under this chapter. To

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exercise all powers reasonable and necessary to the administration of this chapter.

§ 102-5. Right of Entry.

Whenever the Emergency Response Authority has reasonable cause to believe that any hazardous substance incident has occurred or that any hazardous substance incident is imminent, the Emergency Response Authority may enter any private property in the interest of public safety at all reasonable times to inspect the same or to perform any duty imposed by this chapter. If such private property is occupied, the Emergency Response Authority shall first identify himself by name and position and demand entry. If such private property is unoccupied, the Emergency Response Authority shall first make a reasonable effort to locate the owner or other person having charge or control of such private property and demand entry. For purposes of this §102-5, the location of the owner of such property shall be as his most recent address may appear in a telephone or other directory of general use in the area or on the tax records of Summit County, Colorado. If entry is refused, the Emergency Response Authority may apply for a search warrant or search warrant for inspection pursuant to the Colorado Municipal Court Rules of Procedure, or as otherwise provided by law. This section shall not be construed to require the issuance of a warrant in any case where warrants are not required by law.

§ 102-6. Responsibilities of Town Departments.

Upon request of the Emergency Response Authority, each town department shall provide any personnel, equipment and expertise as may be reasonably available to assist at the scene or immediate vicinity of a hazardous substance incident, taking into account the serious and immediate danger posed by the particular hazardous substance incident. All personnel and equipment from each department at a hazardous substance incident scene or vicinity shall be under the direct supervision of the senior person from that department or as otherwise provided by a plan adopted in accordance with § 102-4H above, except that the Emergency Response Authority shall provide general supervisory control and authority at a hazardous substance incident scene or vicinity, and all town departments and personnel shall cooperate with the Emergency Response Authority accordingly.

§ 102-7. Hazardous Substance Incidents on Private Property.

If a hazardous substance incident occurs on private property within the corporate limits of the town, the owner or operator thereof may undertake the emergency response to such hazardous substance incident and shall immediately notify and coordinate such response with the Emergency Response Authority. If the owner or operator does not undertake such emergency response, or if in the judgment of the Emergency Response Authority there exists an imminent danger to the public health and safety beyond such private property and the emergency response by the owner or operator thereof is inadequate or insufficient to alleviate such imminent danger, the Emergency

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Response Authority is authorized to make an emergency response to such hazardous substance incident as provided in this chapter.

§ 102-8. Responsibility for Cleanup and Disposal.

The owner of a hazardous substance and the operator of any vehicle or other conveyance by which a hazardous substance is moved or transported, in the case where a hazardous substance incident occurs during movement or transport, shall be jointly and severally responsible for properly cleaning up, transporting and disposing of the residue of the hazardous substance incident. "Proper cleanup, transport and disposal" shall mean actions in compliance with all federal and state laws and regulations pertaining to the particular hazardous substance or residue thereof, as the case may be. All such owners and operators shall cooperate with the Emergency Response Authority and shall provide all reasonably available means, personnel and equipment to affect the proper cleanup, transport and disposal of the residue of the hazardous substance incident.

§ 102-9. Reimbursement of Costs and Expenses.

Each town department and each and every person rendering assistance relating to any hazardous substance incident under this chapter shall have the right to claim reimbursement from the person or persons responsible for the incident for the reasonable and documented costs incurred. Each town department and each and every person rendering assistance under this chapter may make a claim for such reimbursement by submitting an itemized account of all reimbursable costs and expenses incurred as a result of such assistance at a hazardous substance incident to the Emergency Response Authority within forty-five (45) days following such incident, which time period may be extended by the Emergency Response Authority for good cause shown. Thereafter, the town shall bill the owner of the hazardous substance involved in the hazardous substance incident, or other person proximately causing a hazardous substance incident, for the total costs and expenses incurred by all the town departments and each and every person rendering assistance under this chapter as a result thereof, which bill shall be due and payable within thirty (30) days after mailing. Such owner or other person proximately causing a hazardous substance incident shall be jointly and severally liable for reimbursement of all such costs and expenses incurred as a result of assistance or emergency response to a hazardous substance incident. Upon the failure or refusal of any person to make full reimbursement, the Emergency Response Authority shall refer the matter to the Town Attorney for collection or other disposition as deemed appropriate.

§ 102-10. Violations.

- A. The driver of any vehicle involved in an accident resulting in a discharge of any hazardous substance upon any public or private property shall immediately stop such vehicle at the scene of the accident, or as close thereto as possible, in which latter case he shall immediately return to the scene of the accident, and in any

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event he shall remain at the scene of the accident until he has fulfilled the requirements of Subsection B below.

- B. The driver of any vehicle involved in an accident resulting in a discharge of any hazardous substance shall immediately notify the Emergency Response Authority or a police officer of the discharge and shall give his name, address and the registration number of the vehicle he is driving to the Emergency Response Authority or police officer. The driver shall also give the Emergency Response Authority the name, address and telephone number of the owner of the hazardous substance, if known to him.
- C. It shall be unlawful for the driver of any vehicle involved in the discharge of any hazardous substance to leave the scene of a hazardous substance incident until such substance is cleaned up pursuant to the requirements of §102-8 of this chapter, unless authorized to leave prior thereto by the Emergency Response Authority.
- D. It shall be unlawful for any person to intentionally, knowingly or recklessly discharge any hazardous substance into or upon any public or private property, unless such discharge is authorized pursuant to federal, state or local law or regulation.
- E. It shall be unlawful for any person to intentionally, knowingly or recklessly discharge any hazardous substance into the wastewater treatment works of the Frisco Sanitation District, including any collection line thereto, unless authorized by the Board of the Sanitation District, or into the water supply or water treatment works of the town, including any intake or distribution line thereto, unless authorized by the Supervisor of the Department of Public Works of the town.

§ 102-11. Penalties. [Amended 10-20-92, Ord. 92-151]

Any person who violates any provision of this chapter, by doing any act prohibited or declared to be unlawful thereby, may be deemed guilty of a misdemeanor under C.R.S. Section 24-67-101 and deemed guilty of a separate offense for each and every day, or portion thereof, during which any violation continues and shall be subject to a fine up to one thousand dollars (\$1,000.) or by imprisonment up to one (1) year for each offense, or both such fine and imprisonment for each offense.