COMMONWEALTH OF KENTUCKY
COUNTY OF CALLOWAY
ORDINANCE NO. 03-0121A

AN ORDINANCE PERTAINING TO COST RECOVERY FOR RESPONSE TO HAZARDOUS MATERIAL RELEASES IN CALLOWAY COUNTY AND ITS CITIES.

WHEREAS, the Fiscal Court of Calloway County, Kentucky, desires to establish and implement standard procedures to recover costs and expenses incurred by Calloway County, or any agent of Calloway County, including the Hazmat One regional WMD/hazardous materials response team, mutual aid providers, and other local public safety or emergency services agencies that respond to a release or threatened release of any hazardous material in Calloway County and its cities.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF CALLOWAY COUNTY, KENTUCKY, the following " Calloway County Hazardous Material Cost Recovery Ordinance."

SECTION I: PURPOSE

Pursuant to the authority of KRS 39B.070(2) and KRS 67.083 et seq, this ordinance is adopted by the Fiscal Court of Calloway 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 Calloway County and its cities, of all costs incurred by Calloway County or any agent of Calloway County, including the Hazmat One 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.

SECTION II: DEFINITIONS

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

A. "Costs" means all expenses incurred by Calloway County or any agent of Calloway County, including the Hazmat One 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 ordinance.

B. "Fixed facility" means 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.

C. "Handler" means a person that stores, maintains, treats, processes, uses, generates, disposes of, transports, controls, manages, or otherwise possesses a hazardous material.

D. "Hazardous Material" means 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 agents, carcinogenic, or highly reactive when mixed with other substances.

E. "Mobile carrier" means 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.

F. "Owner/Operator" means 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.

G. "Person" means 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.

H. "Release" means 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.

I. "Response" means 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.

J. "Responsible party" means any person possessing or controlling a hazardous material at the time of a release, or threatened release, of the hazardous material.

K. "Threatened release" means a factor or circumstance that presents a substantial threat of a release.

SECTION III: COST RECOVERY STANDARDS

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 Calloway County or any agent of Calloway County, including the Hazmat One regional WMD/hazardous materials response team, mutual aid providers, and other local public safety or emergency services agencies in Calloway County, shall be liable to Calloway County for all recoverable costs as outlined herein below and incurred by Calloway County, the Hazmat One regional WMD/hazardous materials response team, mutual aid providers, and other local public safety or emergency services agencies in Calloway County to include any protective, mitigation, remedial and recovery actions taken in the response.

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

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

C. At the direction of the Calloway County Fiscal Court, the director of the Calloway County Office of Emergency Management, on behalf of Calloway 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 ordinance.

D. At the direction of the Calloway County Fiscal Court, the County Attorney of Calloway County is hereby authorized and directed to initiate such proceedings, in the name of Calloway County, in any court having jurisdiction over such matters as are necessary to recover the costs incurred as described in this ordinance.

SECTION IV: 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 Calloway County. For the purpose of securing all recoverable costs incurred in executing a response to any hazardous material

release or threatened release by Calloway County and any agent of Calloway County, including the Hazmat One regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Calloway County and its cities, the Calloway County Fiscal Court shall have, and there is hereby created, a lien against the real or personal property in Calloway County possessed by the owner/operator, handler, or any other responsible party or person. The affidavit of the Calloway County Judge/Executive shall constitute prima facie evidence of the amount of the lien and it shall be recorded in the office of the Calloway 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 twelve percent (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 ordinance shall also be personally liable for the amount of the lien, including all interest, civil penalties, and other charges and Calloway 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 Calloway 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 Calloway 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 Calloway County Fiscal Court may effectuate or order the seizure or impoundment of such property pending enforcement of the lien by the Calloway County Circuit Court. In addition, the Calloway County Sheriff's Office may order impoundment to preserve such property as evidence.

SECTION V: RESPONSE STANDARDS

A. Response to a hazardous material release or threatened release within the geographical boundaries of Calloway County by Calloway County and any agent of Calloway County, including the Hazmat One regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Calloway County and its cities shall be conducted in accordance the with the provisions of the Calloway County Emergency Operations Plan, response agency SOP's, and the terms of written mutual aid agreements approved by the Calloway 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 Calloway County and any agent of Calloway County, including the Hazmat One regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Calloway 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 Calloway County Emergency Operations Plan, response agency SOP's, and the terms of written mutual aid agreements approved by the Calloway County Fiscal Court.

B. In the event Calloway County or any agent of Calloway County, including the Hazmat One regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Calloway County and its cities respond to a release or threatened release outside of the geographical boundaries of Calloway County under the terms and conditions of written mutual aid agreements approved by the Calloway 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 Calloway County and any agent of Calloway County, including the Hazmat One regional WMD/hazardous materials response team, mutual aid providers, and any other dispatched local public safety or emergency services agencies in Calloway 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 Calloway County Emergency Operations Plan, response agency SOP's, and the terms of written mutual aid agreements approved by the Calloway County Fiscal Court.

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

SECTION VI: SEVERABILITY

If any provision or section of this ordinance or the enforcement of such provision or section is held to be invalid or unenforceable by court of competent jurisdiction, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision or section.

INTRODUCED, SECONDED, AND GIVEN FIRST READING APPROVAL at the regular meeting of the Fiscal Court of Calloway County, Kentucky, held on the 21st day of January, 2003.

GIVEN SECOND READING AND ADOPTED at the regular meeting of the Fiscal Court of _____ County, Kentucky, held on the _____ day of _____, 2003.

_____
Larry Elkins
Judge/Executive

ATTEST: Ray Coursey Jr.
Ray Coursey, Jr.
Fiscal Court Clerk