

CITY OF AVOCA

TITLE III: PUBLIC SAFETY
CHAPTER 11: HAZARDOUS SUBSTANCE SPILLS

11.01 PURPOSE. In order to reduce the danger to the public health, safety and welfare from the spills of hazardous substance, these regulations are promulgated to establish responsibility for the removal and cleanup of spills within the City limits and Emergency Response Area.

11.02 DEFINITIONS. For purposes of this chapter the following terms are defined:

1. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove or dispose of a hazardous substance
(Code of Iowa, Chapter 455B.381 [1])

2. "Hazardous conditions" means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance or hazardous waste onto the land, into a water of the State or into the atmosphere which creates an immediate or potential danger to the public health or safety.
(Code of Iowa, Sec 455.B.381[4])

3. "Hazardous substance" means any substance or mixture of substance that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. "Hazardous substance" may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under Section 307 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designed under Section 311 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designed by the Secretary of Transportation under the Hazardous Materials Transportation under the Hazardous Materials Transportation Act.
(Code of Iowa, Sec 455.B.381[5])

4. "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical or infectious characteristics, has either of the following effects:
 - A. Causes or significantly contributes to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
 - B. Poses a substantial danger to human health or the environment. "Hazardous waste" may include but is not limited to wastes that are toxic, corrosive or flammable³ or irritants, strong sensitizers or explosives.
 - C. "Hazardous waste" does not include agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners, or source, special nuclear, or by-product materials as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.
5. "Person having control over a hazardous substance" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance, the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

(Code of Iowa, Chapter 455.B.381[7])

11.03 CLEANUP REQUIRED. Whenever a hazardous condition is created so that hazardous substance or waste or constituent of the hazardous waste or substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the person having control over the hazardous material shall cause the condition to be remedied by a cleanup, as defined in the preceding section, as rapidly as feasible to an acceptable, safe condition, and restore the affected area to its state prior to the hazardous condition as far as practicable. The cost of the cleanup shall be borne by the person having control over the hazardous substance. If the person having control over the hazardous substance does not cause the cleanup to begin within a reasonable time in relation to the hazard and circumstances of the incident, the City may, by an authorized officer, give reasonable notice, based on the character of the hazardous condition, setting a deadline for commencing and accomplishing the cleanup or the City may procure cleanup services. Authorized officer shall report to the Council and immediately seeks State or Federal funds available for said cleanup.

11.04 LIABILITY FOR COSTS. The person having control over the hazardous substance shall be strictly liable to the City for all of the following:

1. The cleanup cost incurred by the City as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.
2. The cost incurred by the City to evacuate people from the area threatened by a hazardous condition caused by the person.
3. The damages to the City for the injury to, destruction of, or loss of City property, including parks and roads, resulting from a hazardous condition caused by the person, including the costs of assessing the injury, destruction or loss.
4. The Avoca City Council may from time to time, by motion or resolution, establish rates for cleanup and evacuation costs. If no rate is established, reasonable charges may be imposed at the discretion of the Council.

11.05 NOTIFICATIONS. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the State Department of Natural Resources and the Pottawattamie County Sheriff's Department of the occurrence of a hazardous condition as soon as possible but not later than six (6) hours after the onset of the hazardous condition or discovery of the hazardous condition. The Pottawattamie County Sheriff's Department shall immediately notify the Department of Natural Resources. Any other person who discovers a hazardous condition shall notify the Pottawattamie County Sheriff's Department, which shall then notify the Department of Natural Resources.

11.06 POLICE AUTHORITY. If the circumstances so require, Avoca Fire Department, the Pottawattamie County Sheriff, or representative may; evacuate persons from their homes to areas away from the site of hazardous conditions, and establish perimeters or other boundaries at or near the site of a hazardous condition and limit access to cleanup personnel.

11.07 CITY IMMUNITY. The City shall not be liable to any person for claims of damage, injuries, or losses resulting from any hazardous conditions, or from the enforcement or lack of enforcement of the chapter by the City.