

**TOWN OF WARNER  
HAZARDOUS MATERIAL CONTROL AND  
CONTAINMENT COST ORDINANCE**

December 15, 1995

The Town of Warner ordains the creation of procedures and fees for control and containment of Hazardous Materials.

**ITEM I - Short Title.**

This ordinance shall be known and may be cited and referred to as the "Administrative Ordinance for Establishing Fees for Control and Containment of Hazardous Materials."

**ITEM II - Authority.**

This Ordinance is adopted pursuant to the authority granted the Town by the State of New Hampshire RSA 31:39 and 41:11.

**ITEM III - Intent and Purpose.**

(1) It is the purpose of this Ordinance to provide the orderly and expeditious control and clean up of any hazardous material(s) which may escape from the control of the person or persons having possession of them, and thereby pose a threat to the Town of Warner. It is also the purpose of this ordinance to require that any person possessing any such hazardous material(s), shall pay for all services provided by the Town in relation to the clean up of said material(s), and to reimburse the Town for any costs or damages, direct or indirect, incurred by it as a result of its effort to contain, control or the clean up of such hazardous material.

(2) It is not the purpose of this Ordinance to impose upon the Town of Warner, any of its officials, officers or agents, any obligation to secure or remove any hazardous material(s) from the Town once safe containment of the material is made. Moreover, nothing in this Ordinance is intended to relieve any owner or person in possession of hazardous materials of any obligation imposed by State or Federal Laws and specifically nothing contained herein shall be deemed to permit the possession, storage, or use of hazardous materials except in conformance with all Federal, State and Local Laws and Regulations.

**ITEM IV - Application.**

(1) This Ordinance shall apply to all incidents involving hazardous waste or hazardous materials within the boundaries of the Town of Warner and to all persons who may possess such materials found within the Town, EXCEPT as prevailing State or Federal Laws or Regulations may take precedence and control over any such incident or person (see RSA 146-A, RSA 147-A and RSA 265:115-118 for examples of such prevailing State Law at the time this Ordinance is adopted.)

#### **ITEM V - Definitions.**

(1) **HAZARDOUS MATERIALS:** Those substances, materials or agents in such a quantity, state and form as may constitute a potential risk to the health and safety of the people and environment of the Town and which may constitute a threat to the property of the people, including without limitation the following: explosives, radioactive materials, etiologic agents, flammable materials, combustible materials, poisons, oxidizing or corrosive materials and compressed gases. Also any other materials listed as hazardous by the Materials Transportation Bureau of the United States Department of Transportation in Title 49 of the Code of Federal Regulations, as amended, or those materials the disposal of which is regulated under RSA 147-A.

(2) **PERSON** shall mean any individual, corporation, or other entity having the recognized legal status of a person (i.e. association), or any partnership, trust or other legal entity as distinguished from the individual members thereof.

(3) **POSSESSION** shall mean to possess, own, hold or have within their control any material defined as hazardous. In the case of any corporation or other legal entity, in addition to the entity itself, directors or other natural persons having legal responsibility for the control of said entity shall be deemed to be in possession. It is the intention of this Ordinance to include within the concept "person in possession" not only the legal owner but any other person who may at the time come within the chain of control without regard to the issue of legal title. "Person in possession" shall include not only the owner but any agent, consignee, employee, contractor, or representative within the gain of control.

#### **ITEM VI - Duties.**

The "person or persons in possession" of any hazardous material shall have the duty to prevent its discharge or release and to assure that any such material is used in a manner which will prevent its escape from safe containment. No person in possession shall discharge, dump, deposit, release or dispose of any hazardous material within the Town of Warner.

Any user or transporter who causes or has knowledge of any discharge or release of hazardous materials under their control or supervision, in any manner which poses an actual or potential threat to any person, animal, wildlife, vegetation, property or the environment, shall immediately report the incident to the Warner Fire Department.

#### **ITEM VII - Control and Containment.**

The Warner Fire Department and the Warner Emergency Management Staff shall promptly respond to each reported incident, and shall take such action as is necessary to protect public health, safety, property, and the environment. The primary goals of the Fire Department and the Emergency Management Staff shall be to bring the material under control in a safe containment manner and to minimize the damage caused by said material.

### **ITEM VIII - Clean-up.**

The user or transporter of a hazardous material which is intentionally or accidentally discharged or released within the Town shall, in addition to reporting the accident as required by Item VI, shall take immediate action to cause the discharge or release to be cleaned up in an environmentally safe and scientifically sound manner and to restore the site and the surrounding environment to its original state at their own expense.

### **ITEM IX - Cost and Penalties.**

(1) The person or persons in possession of any hazardous material shall pay a response fee of Two Hundred and Fifty Dollars (\$250.00) and in addition shall be strictly liable to the Town of Warner for all costs incurred by the Town in the control, containment, and clean-up of the materials which may have been discharged or released. If such material was possessed by more than one person then all shall be jointly and severally liable, and the costs incurred by the Town may be recovered from any one or all of them, if necessary, by suit brought in a court within the jurisdiction.

(2) Any person who fails to report, as required in Item VI, shall be assessed a civil forfeiture not to exceed Five Hundred Dollars (\$500.00).

(3) Any person who intentionally discharges or releases, or causes another to discharge or release, any hazardous materials from their safe container, in any manner which poses an actual or potential threat to people, animals, wildlife, vegetation, property, or the environment, shall be assessed a civil forfeiture not to exceed One Thousand Dollars (\$1,000.00).

(4) All costs and fees collected under this Ordinance shall be placed in a special hazardous materials account and expended by the Warner Emergency Management Staff and the Warner Fire Department to equip, maintain, and train for hazardous materials responses.

### **ITEM X - Enforcement.**

The Warner Emergency Management Staff and the Chief of the Warner Fire Department shall be responsible for enforcing this Ordinance.

### **ITEM XI - Severability.**

If any item, subsection, sentence, clause, phrase, or part of this Ordinance should be held invalid for any reason whatsoever, such decision shall not affect the remaining portions, which shall remain in full force and effect; and, to this end, the provisions of the Ordinance are severable.

**ITEM XII - Effective Date.**

This Ordinance shall become effective upon adoption by the Town of Warner.

December 15, 1995  
Date

SELECTMEN:

[Signature]  
Garth Lynn Beau  
[Signature]

Attest: \_\_\_\_\_