

MC9-86

ORDINANCE

TITLE: Regulation of Hazardous Materials and Petroleum Products in Minnehaha County and Requirements for Registration of Certain Storage Containers

WHEREAS Minnehaha County is responsible for protecting the health, welfare, and safety of the public as well as safeguarding the clean water, soil, air, and general environment of this county;

WHEREAS Minnehaha County wishes to insure the safety and lives of emergency first-response personnel; and

WHEREAS Minnehaha County seeks to install a certain accountability for spills of hazardous materials and petroleum products within the County;

BE IT HEREAFTER ORDAINED by the Minnehaha County Board of Commissioners, pursuant to the authorities set forth in SDCL 7-8 and 33-15, as amended, on this the 22nd day of April, 1986, that:

A. Definitions.

1. Hazardous Material. For the purposes of this Ordinance, a hazardous material shall include any substance or material in quantity or form which may be harmful or injurious to humans, domestic animals, wildlife, economic crops and vegetation, or property. A hazardous material shall also include, but not be limited to, a hazardous material as set forth in 49 C.F.R. 172.101, as amended, and the National Registry of Hazardous Materials, United National Classification System (cf. "Guidebook for Hazardous Materials", DOT P. 5800.3). Further, a hazardous material shall include by definition, but not be limited to, waste as set forth in SDCL 34A-6 and 34A-11.

2. Hazardous Material Spill. For the purposes of this Ordinance, a hazardous material spill means any release of a hazardous material or petroleum product into the environment whenever it shall pose an unreasonable risk to health, safety or environment. This shall include but not be limited to "discharge" as defined in the Administrative Rules of South Dakota (e.g. A.R.S.D. 74:28:21:01(14)). This shall not include spills of any hazardous materials in amounts less than "reportable quantities" as set forth in 40 C.F.R. 117 and 302.

3. 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, or other political subdivision of the State, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

4. Petroleum Product. As used in this Ordinance, the words "petroleum product" mean liquid petroleum fuels or lubricants. Other petroleum derivatives are not covered by this Ordinance except as captured by the definition for "hazardous material".

B. Reports of Hazardous Materials or Petroleum Products Spills.

Any person in control of a hazardous material or petroleum product which spills or is spilled shall immediately report the spill and all conditions or circumstances relevant thereto to the Minnehaha County Metro-Communications Center or 911. If such person is not immediately available or able to report the spill, then the person who either caused or is primarily involved in the spill shall report. This report requirement shall be in addition to any other Federal or State report requirement.

C. Registration.

1. All stationary containers or tanks located within Minnehaha County, or any storage facility actually used or intended to be used for the storage of any petroleum product shall be registered. Such registration shall be accomplished by filing at the Minnehaha County Office of Civil Defense all necessary information upon forms supplied by that office; PROVIDED HOWEVER that only the following shall be exempt from this registration requirement:

- a) All containers, tanks or building already registered pursuant to the Federal "UST" Program (i.e., Underground Storage Tanks, registered as required by the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA).
- b) All containers and tanks for the storage of petroleum products which are less than 350 gallons in size.
- c) All containers and tanks for the storage of petroleum products which are less than 1,100 gallons in size, where the container or tank is located on land zoned for agriculture and where the purpose of the storage is intended to be the non-commercial use of the product by the owner of the tank.

2. All stationary containers or tanks located within Minnehaha County, or any storage facility actually used or intended to be used for the storage of any hazardous material shall be registered. Such registration shall be accomplished by filing a contingency plan at the Minnehaha County Office of Civil Defense; PROVIDED HOWEVER, that only the following shall be exempt from this registration requirement:

- a) all containers, tanks and storage facilities located on land zoned as residential and not used for commercial or industrial purposes; and

- b) all containers, tanks and storage facilities located on land zoned as agricultural so long as the volume of the storage is less than sixty gallons liquids or five hundred pounds solid weight.

3. After the effective date of this Ordinance all new stationary containers or tanks located within Minnehaha County, or any new storage facility intended to be used for the storage of any hazardous material or petroleum product shall be registered by its owner on or before the date of installation and actual use.

4. Within one year of the effective date of this Ordinance, all stationary containers or tanks located within Minnehaha County, or any storage facility existing prior to the effective date of the Ordinance and actually being used or having been used for the storage of any hazardous material or petroleum product shall be registered by its current owner or last owner of record.

5. The Director of Civil Defense shall develop policies and regulations for the implementation of this Ordinance. These policies and regulations, upon being drafted, shall be reasonably distributed to representatives of the affected industries. These policies and regulations shall be effective only after two public hearings and a publication, as provided for Ordinances; and shall be subject to review and amendment by the Minnehaha County Commission. The Civil Defense Director shall make all registrations and regulations available to other government offices as necessary, specifically Metro Communications and all first response agencies; PROVIDED HOWEVER that Minnehaha County shall be responsible to take reasonable steps to protect the confidentiality of all trade secrets or formulas necessarily divulged as a result of registration.

6. Any citizen who wishes to voluntarily register either a petroleum product or a hazardous material, which is otherwise exempt under this Ordinance, shall be encouraged to complete the registration for the benefit of emergency first-response personnel.

D. Disposal of Hazardous Materials or Petroleum Product.

All citizens are encouraged to contact the appropriate governmental agency prior to disposing of a hazardous material or petroleum product so that the citizens may dispose of it safely.

E. Violations.

1. Any person who violates this Ordinance, Section B or Section C, is guilty of a Class Two Misdemeanor for each and every violation.

2. Minnehaha County is hereby authorized to secure injunctive relief against any person who violates this Ordinance; further, where appropriate, Minnehaha County may seek and receive civil damages on account of any such violation.

3. Minnehaha County is further authorized, through the Offices of the State's Attorney, to act as agent, in the form of class action or otherwise, to secure recovery and reimbursement of all costs to the members of the Minnehaha community actually adversely affected by a hazardous materials or petroleum products spill.

This Ordinance shall be effective August 1, 1986.

APPROVED:
BY THE COMMISSION:

ATTEST:

Nancy Zoobas, Auditor
Nancy Zoobas,
Auditor

Juda L. Barker
Jack D. Kuntzler
Carole C. Hanson
[Signature]