

Storage of Hazardous Materials Ordinance

An ordinance to regulate the storage and handling of hazardous materials throughout Bridgewater Township.

The Township of Bridgewater ordains:

Section 1 Definitions.

Except as otherwise specifically provided or indicated by the context, for the purposes of this ordinance:

1.1 “*Hazardous material*” means any or all the following items:

- (a) *Hazardous substance*. One or more of the following, but not including fruit, vegetable, or field crop residuals or processing by-products, or aquatic plants, that are applied to the land for an agricultural use or for use as an animal feed, if the use is consistent with generally accepted agricultural management practices developed pursuant to the Michigan Right to Farm Act (P.A. 93 of 1981, as amended):
 - (i) Any substance that is demonstrated, on a case by case basis, to pose an unacceptable risk to the public health, safety, welfare, the environment, or natural resources.
 - (ii) "Hazardous substance" as defined in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767).
 - (iii) "Hazardous waste" as defined in the Natural Resources and Environmental Protection Act (P.A. 451 of 1994, as amended).
 - (iv) "Petroleum" as defined in the Natural Resources and Environmental Protection Act (P.A. 451 of 1994, as amended).
- (b) *Fireworks*. Any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "consumer explosive" (1.4G), "theatrical and

novelty explosive" (1.4S) or "display explosive" (1.3G) fireworks as set forth in the U.S. Department of Transportation's (DOT) Hazardous Materials Regulation, Title 49, Code of Federal Regulations (CFR), Parts 171-180, subject to the following exceptions:

- (i) Toy caps for use in toy pistols, toy canes, or toy guns, and trick noisemakers manufactured in accordance with DOT regulations, 49 CFR 173.100 (p), and packed and shipped according to said regulations.
 - (ii) Model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models.
- (c) *Detonable Materials.* Detonable materials include:
- (i) All primary explosives such as lead azide, lead styphnate, fulminates, and tetracene.
 - (ii) All high explosives such as TNT, RDX, HMX, PETN, and picric acid.
 - (iii) Propellants and components thereof such as dry nitrocellulose, black powder, boron hydrides, and hydrazine and its derivatives.
 - (iv) Pyrotechnics and fireworks such as magnesium powder, potassium chlorate, and potassium nitrate.
 - (v) Blasting explosives such as dynamite and nitroglycerin.
 - (vi) Unstable organic compounds such as acetylides, tetrazoles, and ozonides.
 - (vii) Strong unstable oxidizing agents such as perchloric acid, perchlorates and hydrogen peroxide in concentrations greater than 35 percent.
- (d) *Gases.* Any gas that is injurious or destructive to life or property, or that is explosive. Gaseous emissions measured at the property line at ground level exceeding the levels indicated in the following chart, that is based on the National Ambient Air Quality Standards, unless a higher standard is imposed by a federal state, county or local regulatory agency with jurisdiction, are deemed hazardous:

GAS	MAXIMUM EMISSIONS LEVEL	SAMPLING PERIOD
Sulfur dioxide	0.14 ppm	24 hours
Hydrocarbons	0.24 ppm	3 hours
Photochemical oxidants	0.12 ppm	1 hour
Nitrogen dioxide	0.05 ppm	Annual
Carbon monoxide	9.0 ppm	8 hours
	35.0 ppm	1 hour
Lead	1.5 ig/cubic meter	3 months
Mercury	0.01 mg/cubic meter	10 hours
Beryllium	2.0 ig/cubic meter	8 hours
Asbestos	0.5 fibers/cc	8 hours

Notes Related to Table:

- a. ppm = parts per million
- b. ig = micrograms
- c. mg = milligrams
- d. cc = cubic centimeters

- 1.2 "*Lien*" means a security interest as defined by law or as brought into being by operation of law, or both.
- 1.3 "*Person*" means individuals, political bodies, corporate entities, partnerships, limited liability companies and associations.
- 1.4 "*Township*" means Bridgewater Township, Michigan.
- 1.5 Words and phrases which are not herein defined shall be taken in their ordinary signification and import and, when there is doubt thereof, the meaning given in the

latest edition of Webster's Standard Unabridged Dictionary, extant at the time the meaning is required, shall govern.

- 1.6 All words indicating the present tense shall not be limited to the time of the adoption of this Charter, but shall extend to and include the time of the happening of any event or requirement to which the provision is applied.
- 1.7 The singular shall include the plural, the plural shall include the singular, and the masculine gender shall extend to and include the feminine gender and the neuter.

Section 2 Storage of Hazardous Materials Regulated.

No person, firm, or corporation shall store hazardous materials within the Township, except as herein provided.

Section 3 Permit Required.

Any person storing hazardous materials in the Township must first obtain a permit from the Township's zoning official. To obtain a permit a person must submit an application to the Township zoning official which set forth the following information and is supported by the following documentation:

- (a) Name, address and telephone number of the person applying.
- (b) The amount and type of hazardous materials the applicant proposes to store in the Township.
- (c) A detailed description of the building or structure where the hazardous material is to be stored.
- (d) A scaled drawing the showing the location of all storage buildings or structures, parking and other items necessary to demonstrate the applicant's compliance with the provisions of this ordinance.
- (e) Copies of all permits, licenses, approvals issued by any other local, county, state or federal agency having jurisdiction or authority over the material being proposed for storage.
- (f) An impact assessment describing the following factors associated with the use:
 - (i) expected odors,
 - (ii) aesthetics,
 - (iii) environmental impacts,

- (iv) traffic impacts,
- (v) procedures for managing stormwater runoff;
- (vi) pollution of surface water bodies or groundwater.

The assessment shall include proposed mitigation measures to be employed, which shall be subject to Township approval. The Township reserves the right to hire experienced professionals to evaluate the impact assessment and prepare additional analyses, with the cost borne by the applicant.

Section 4 Regulations.

The storage of hazardous materials in the Township shall be subject to the following regulations:

- 4.1 *Compliance with Outside Agency Standards.* All hazardous materials shall be stored in compliance with current standards established by the U.S. Environmental Protection Agency, the U.S. Department of Agriculture, State of Michigan, county health department and other county, state or federal agencies having jurisdiction.
- 4.2 *Setbacks and Screening.*
 - (a) Any building or structure used for the storage of hazardous materials shall be set back from adjoining property lines as follows:
 - (i) For fireworks and other materials regulated by the United States Department of Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives, (“ATFE”) the setback shall be equal to the minimum setback established by the ATFE for setbacks from habitable structures or 500 feet, whichever is greater.
 - (ii) For all other hazardous materials the minimum setback shall be 500 feet from adjoining property lines, unless a greater or lesser distance is specified by state or federal regulations.
 - (b) Any building or structure used for the storage of hazardous materials shall be screened from all street rights-of-way and abutting residential districts or uses.
- 4.3 *Parking and Loading.* All parking, loading and maneuvering space shall be contained within the site. Special consideration shall be given to any potential loading and unloading nuisances on surrounding properties.
- 4.4 *Impact Assessment.* The proposed use may not have an impact upon the

environment, traffic, infrastructure or demands for public services that potentially exceeds the anticipated impacts of other uses permitted in the area of the applicant's property.

- 4.5 *Fire Hazards.* The storage and handling of hazardous materials shall comply with all applicable state, county and local regulations, including the Michigan Fire Prevention Code (P.A. 207 of 1941, as amended).
- 4.6 *Storage Tanks.* The following regulations shall apply to storage tanks for all hazardous materials, except for tanks used for the storage of petroleum products.
- (a) *Above Ground Tanks.* All storage tanks for flammable liquid materials above ground shall be located at least 150 feet from all property lines, and shall be completely surrounded by earth embankments, dikes, or another type of approved retaining wall capable of containing one and one half (1.5) times the capacity of the largest tank so enclosed. The floor of the retention area shall be impervious to and non-reactive with the contents of the tank. These provisions shall not apply to approved tanks that hold propane or other fuel used for heating a dwelling or other building on the site.
- (b) *Below Ground Tanks.* Below-ground bulk storage tanks that contain flammable material shall be located no closer to the property line than the distance to the bottom of the buried tank, measured at the point of greatest depth. All underground tanks shall be registered with the State of Michigan in accordance with applicable state laws and regulations. The location and contents of all such tanks shall be indicated on the site plan.
- 4.7 *Gases.* The escape of or emission of any gas that is injurious or destructive to life or property, or that is explosive, is prohibited. Gaseous emissions shall be subject to regulations established in conjunction with the Michigan Environmental Protection Act, Public Act 451 of 1994, as amended, federal Clean Air Acts, as amended, and any other applicable state or federal regulations.
- 4.8 *Electromagnetic Radiation and Radio Transmission.* Electronic equipment required in an industrial, commercial or other operation shall be designed and used in accordance with applicable rules and regulations established by the Federal Communications Commission (FCC). The operation of such equipment shall not interfere with the use of radio, television, or other electronic equipment on surrounding or nearby property.

Section 5. Procedures for Determining Compliance.

In the event that the Township receives complaints or otherwise acquires evidence of possible violation of any of the performance standards set forth in Section 8.201

(Performance Standards), the following procedures shall be used to investigate, and if necessary, resolve the violation:

- 5.1 *Official Investigation.* Upon receipt of evidence of possible violation, the Township Zoning Official or designated Township consultant shall make a determination whether there is reasonable cause to suspect the operation is indeed in violation of the performance standards. The Township Zoning Official may initiate an official investigation in order to make such a determination.

Upon initiation of an official investigation, the Township Zoning Official is empowered to require the owner or operator of the facility in question to submit data and evidence deemed necessary to make an objective determination regarding the possible violation. Failure of the owner or operator to supply requested data shall constitute grounds for taking legal action to terminate the use or deny or rescind any permits required for continued use of the land. Data which may be required includes, but is not limited to the following:

- (a) Plans of the existing or proposed facilities, including buildings and equipment.
 - (b) A description of the existing or proposed machinery, processes, and products.
 - (c) Specifications for the mechanisms and techniques used or proposed to be used to control emissions regulated under the provisions of this Section.
 - (d) Measurement of the amount or rate of emissions of materials purported to be in violation.
- 5.2 *Method and Cost of Determination.* The Township Zoning Official or designated Township consultant shall take measurements and complete investigation necessary to make an objective determination concerning the purported violation.

Where required measurements and investigation can be accurately using equipment and personnel normally available to the Township without extraordinary expense, such measurements and investigation shall be completed before notice of violation is issued. If necessary, skilled personnel and spec equipment or instruments shall be secured to make the required determination.

If the alleged violation is found to exist in fact, the costs of making such determination shall be charged against those responsible, in addition to such other penalties as may be appropriate. If it is determined that no substantive violation exists then such costs shall be paid by the Township.

- 5.3 *Appropriate Remedies.* If, after appropriate investigation, the Township Zoning Official or designated Township consultant determines that a violation does exist, the Township Zoning Official shall provide written notice of the violation to the owners or operators of the facility deemed responsible, and shall request that the violation be corrected within a specified time limit.
- (a) Correction of violation within time limit. If the alleged violation is corrected within the specified time limit, the Township Zoning Official shall note “violation corrected” on the Township’s copy of the notice, which shall be retained on file.
 - (b) Violation not corrected and no reply from owner or operator. If there is no reply from the owner or operator within the specified time limits and the alleged violation is not corrected, then the Township Zoning Official shall take such action as may be warranted to correct the violation in accordance with the regulations set forth in this Section.
 - (c) Reply requesting time extension. If a reply is received within the specified time limit indicating that an alleged violation will be corrected, but that more time is required, the Township Zoning Official may grant an extension upon determining that the extension is warranted because of the circumstances in the case and will not cause imminent peril to life, health, or property.
 - (d) Reply requesting technical determination. If a reply is received within the specified time limit request further review and technical analysis even though the alleged violations continue, then the Township Zoning Official may call in properly qualified experts to complete such analysis and confirm or refute the initial determination of violation.
- 5.4 *Costs and Penalties Incurred.* If expert findings indicate that violations do exist in fact, the costs incurred in making such a determination shall be paid by the persons responsible for the violations in addition to other applicable penalties under this Ordinance. Such costs shall be billed to those owners or operators of the use deemed responsible for the violation.

If the bill is not paid within 30 days, the Township may take necessary action to recover such costs, or may charge such costs against the property where the violation occurred.

Section 6. Agricultural Exemption

This ordinance shall not apply to hazardous materials used in agricultural applications so long as they are used in conformity with generally accepted agricultural management principles, as that term is used in the Michigan Right to Farm Act.

Section 7. Severability and Captions.

This Ordinance and the various parts, sections, subsections, sentences, phrases and clauses hereof are declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby. The captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.

Section 8. Repeal.

All other ordinances, parts of ordinances, or amendments thereto, any of which are in conflict with the provision of this Ordinance, are hereby repealed in their entirety to the extent of such conflict.

Section 9. Effective Date.

This Ordinance shall become effective upon publication.

YEAS:
NAYS:
ABSENT:

Ordinance Declared Adopted on June 5, 2008.

Jolea Mull, Supervisor
Township of Bridgewater

CERTIFICATE OF ADOPTION AND PUBLICATION

I, Cynthia Carver, the duly elected Clerk of the Township of Bridgewater certify that the foregoing ordinance is true copy of the ordinance enacted by the Township Board of the Township of Bridgewater on June 5, 2008, a synopsis of which was published in the Manchester Enterprise a newspaper circulated in the Township of Bridgewater on _____, 2008.

Cynthia Carver, Clerk
Township of Bridgewater