

CHAPTER 90

HAZARDOUS MATERIALS CONTROL AND CONTAINMENT

[HISTORY: Adopted 3-13-1993 Town Meeting Article No. 15. Amendments noted where applicable.]

§ 90-1 Adoption.

The Town of Pembroke ordains that in accordance with the provisions of RSA 31:39 and 41:11, the Town of Pembroke hereby adopts this chapter to regulate and provide for the control, containment and cleanup of hazardous materials.

§ 90-2 Purposes.

The purpose of this chapter is to provide for the control and containment of hazardous materials and to require the users and suppliers or manufacturers of any hazardous materials to pay for all services provided by the Town of Pembroke in relation to the control and containment of hazardous materials. There shall not be imposed upon the Town of Pembroke or any of its officers and agents any obligation to secure or remove any hazardous material from the Town of Pembroke once safe containment of the materials is made, and nothing in this chapter is intended to relieve any owner or person in possession of hazardous material of any obligation imposed by state or federal law, and, specifically, nothing in this chapter shall be deemed to permit the possession, storage or use of hazardous materials except in conformance with all federal, state and local laws.

§ 90-3 Application.

This chapter shall apply to all incidents involving hazardous waste or hazardous materials within the boundaries of the Town of Pembroke and to all persons who may possess such materials found within the Town of Pembroke, 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 chapter is adopted.)

§ 90-4 Definitions.

For the purposes of this chapter, the following definitions apply:

HAZARDOUS MATERIALS - Those substances or materials in such quantity and form which may pose an unreasonable risk to health and safety or property, which may include but are not limited to explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials and compressed gases which are listed by the Materials Transportation Bureau of the United States Department of Transportation in Title 49 of the Code of Federal Regulations and any amendment thereto.

PERSON - Any individual, association, corporation, partnership, trust or other legal entity.

USER - Any person who manufactures or transports or owns, uses, handles, stores or has the legal authority to control hazardous materials, specifically including their officers, directors, employees and agents.

§ 90-5 Duty to report.

Any user or transporter who causes or has knowledge of any discharge or release of hazardous materials under his 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 Pembroke Fire Department.

§ 90-6 Cleanup.

The user or transporter of a hazardous material which is intentionally or accidentally discharged or released within the Town of Pembroke shall, in addition to reporting the accident as required by § 90-5, 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 at his own expense.

§ 90-7 Costs.

The user or transporter of the hazardous material which was discharged or released shall be strictly liable to the Town of Pembroke for all costs incurred in the control, containment and cleanup of the hazardous materials. For this purpose, each user and transporter shall be jointly and severally liable and the costs may be recovered from any of them by a suit in any court with jurisdiction over the parties in the amount claimed.

§ 90-8 Intentional discharge or release.

The intentional discharge or release of a hazardous material within the Town of Pembroke is strictly prohibited.

§ 90-9 Penalties.

Any person, firm or corporation found violating any of the provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall pay a civil fine of not more than five hundred dollars (\$500.) for each offense. Each twenty-four-hour period that an incident is not reported shall constitute a separate offense. Any penalties assessed shall enure to such uses as the Town of Pembroke may direct, pursuant to RSA 31:39(III.) The penalties that may be assessed pursuant to this section shall be deemed separate from and in addition to any costs that may be recovered by the Town of Pembroke pursuant to § 90-7.

§ 90-10 Use of costs and civil forfeiture collected.

All costs and civil fines collected under this chapter shall be placed in the General Fund to offset appropriations used in the control and containment of a hazardous materials incident.

§ 90-11 Enforcement.

A. The Chief of the Pembroke Fire Department shall be responsible for enforcing this chapter, with the exception of § 90-7.

B. The Board of Selectmen shall be responsible for the assessment and collection of costs as provided in § 90-7.

§ 90-12 Severability.

If any section, provision or part of this chapter 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 this chapter are severable.

§ 90-13 Effective date.

This chapter shall become effective upon passage.