

AN ORDINANCE

TO IMPLEMENT HAZARDOUS SUBSTANCE REPORTING REQUIREMENTS AND HAZARDOUS SUBSTANCE USER FEES IN GREENVILLE COUNTY; TO PROVIDE FOR THE DISPOSITION OF FEES COLLECTED TO BE USED EXCLUSIVELY FOR HAZARDOUS SUBSTANCE PURPOSES; AND TO PROVIDE FOR THE ENFORCEMENT AND ADMINISTRATION OF THE ORDINANCE.

WHEREAS, the General Assembly of South Carolina, in enacting South Carolina Code Ann. § 4-9-25, has authorized counties to enact regulations, resolutions and ordinances in order to safeguard the health, security and general welfare of its citizens; and

WHEREAS, the General Assembly of South Carolina, in enacting South Carolina Code Ann. § 4-9-30, has authorized counties to assess uniform service charges for public safety and to implement and enforce the powers granted to counties; and

WHEREAS, Greenville County Council recognizes the potential threat of harm to the environment and to the health of citizens if a hazardous chemical substance is accidentally released in Greenville County; and

WHEREAS, Greenville County Council recognizes the need to enact an ordinance which implements user fees for entities that store Hazardous Substances in Greenville County,

NOW, THEREFORE, BE IT ORDAINED by Greenville County Council:

Section 1. Findings. It is hereby found and declared by Greenville County Council:

(1) The storage, handling, and dispensing of hazardous substances in the County has the potential for creating a dangerous situation that may adversely affect the health, safety and general welfare of the citizens of the County.

(2) There is the need to utilize and take advantage of the existing data base concerning the location and use of hazardous substances in the County.

(3) It is important to identify those facilities that pose a significant risk to the community. This shall be accomplished by determining those facilities that under the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Title III, annually submit to the local fire services, the LEPC and the SERC, Tier II reports concerning hazardous chemicals which the facility stores.

(4) Information provided to the County through the implementation of this Ordinance will be used to protect County citizens and emergency response personnel from the detrimental effects of the explosion, fire, or release of hazardous substances.

(5) The implementation of a hazardous substances user fee will generate the funds necessary to provide a county-wide comprehensive response capability to the hazardous substances problem, and such fee is authorized by Section 4-9-30(5), Code of Laws of South Carolina, 1976, which section permits the County to establish uniform user fees.

(6) The implementation of a comprehensive hazardous substance response capability in the County necessitates the training of personnel and the purchase of specialized equipment to combat hazardous substances emergencies in the County.

(7) In the event of a hazardous substances emergency, it is necessary to be able to provide proper and effective planning and response which specifically addresses the particular hazardous substance or substances being released.

Section 2. Scope. This Ordinance shall apply to all substances within the County that, if accidentally released, may pose a threat or be harmful to human health, safety, animals, crops, water systems or other elements of the environment. Substances so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable and combustible liquids, solids and gases, poisons, oxidizing substances, and corrosive substances.

Section 3. Definitions. For the purposes of this Ordinance, the following definitions shall apply:

(A). *Extremely hazardous substances ("EHS")* are those substances designated as such by the Administrator of the United States Environmental Protection Agency as listed in Title 40, Part 355 of the U.S. Code of Federal Regulations.

(B). *Facility* means all buildings, equipment, and other fixed structures that are located on a single site, or on contiguous or adjacent sites, and which are owned or operated by one person or entity (or by any person or entity which controls, is controlled by, or under common control with, such person or entity). "Facility" includes manmade and natural structures in and from which chemicals are intentionally placed or removed, thus rendering such structures chemical depositories.

(C). *Hazardous substance ("HS")* means any chemical substance in liquid, solid, or gas form that, if accidentally released, may pose a threat or risk or be harmful to human health, safety, animals, crops, water systems, or other elements of the environment. Substances so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable and combustible liquids, solids and gases, poisons, oxidizing substances and corrosive substances.

(D). Local Emergency Planning Committee ("LEPC"): appointed by the State Emergency Response Commission ("SERC").

(E). Office of Emergency Management ("OEM") is a department of Greenville County Government charged with coordinating available resources to plan, prepare for, respond to and recover from, medium to large scale community emergencies. OEM receives copies of Tier II reports from companies in Greenville County which are required annually to file a Tier II report to the SCDHEC, Bureau of Air Quality. OEM also oversees and coordinates the activities of the Local Emergency Planning Committee.

(F). Tier II Report: Under SARA, Title III, within the State of South Carolina, any facility located in Greenville County which stores, at any time during the calendar year, 10,000 pounds or more of a hazardous substance, or threshold planning quantities ("TPQ") or more of an extremely hazardous substance.

Section 4. Reporting Requirements. Tier II Report: Any facility located in Greenville County which stores, at any time during the calendar year, 10,000 pounds or more of a hazardous substance, or threshold planning quantities ("TPQ") or more of an extremely hazardous substance, must submit, by March 1 of the following year, a Tier II report to SCDHEC Bureau of Air Quality, the facility's jurisdictional fire department, and the Greenville County LEPC c/o the Office of Emergency Management.

Section 5. Hazardous Substances User Fee Schedule. Any facility required to annually file a Tier II report with the SCDHEC Bureau of Air Quality, and by extension, the Greenville County LEPC, shall be covered by this Ordinance and must pay a hazardous substance user fee according to the following schedule. The listed fees are *per* chemical or substance reported in the Tier II report. The Tier II report must be submitted prior to March 1 of each year. A listing of facilities, mailing addresses, and applicable fees will be provided by the LEPC to the Greenville County Department of General Services, Financial Operations Division, by April 15th. The Financial Operations Division shall create Hazardous Substance User Fee Invoices. Hazardous Substance User Fee Invoices shall be mailed no later than June 1st.

\$25.00 per Hazardous Substance

\$50.00 per Extremely Hazardous Substance

The maximum total fee for any facility reporting under Tier II shall be \$2,500.00.

Section 6. Hazardous Substances User Fee Exemptions. Under *EPCRA Section 311* the following chemicals are exempt from the reporting requirements and as such shall be excluded from this Ordinance:

(1). Any food, food additive, color additive, drug or cosmetic regulated by the Food and Drug Administration ("FDA").

(2). Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3). Any substance to the extent it is used for personal, family, and household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4). Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual. Substances such as fuel oil, natural gas, etc. used for normal facility operations are not exempt. Exterior storage of TPQ or above are not exempt.

(5). Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer. Pesticides and Herbicides are not exempt for retailers. Agricultural hazardous substances that are being transported over a public highway to an agricultural location are not exempt.

Section 7. Administration and Enforcement. The Greenville County LEPC in conjunction with the Office of Emergency Management shall be responsible for overseeing and implementing the administration and enforcement of this Ordinance.

Section 8. Disposition of Fees Collected. All fees collected shall be paid to the Greenville County Treasurer and placed in an account established exclusively for use by the LEPC. The funds generated by this Ordinance will be disbursed in accordance with a budget developed annually by the LEPC and adopted by Greenville County Council. Prior to Greenville County Council's adoption of the recommended LEPC budget, the following procedure shall be utilized:

(A). The Greenville County LEPC will propose a budget to the Greenville County Office of Emergency Management for review and recommendation.

(B). The recommended budget will be submitted to Greenville County Council for approval.

(C). The LEPC's proposed budget must identify an intended operational plan and the specific use of the funds, including but not limited to:

- (1) Long-term planning and development of a county-wide emergency notification system(s);
- (2) Use of funds for hazardous substance training and/or equipment;
- (3) Use of funds for Community Awareness activities related to emergency preparedness and safety, and

- (4) Administrative/Personnel costs of administering the collection and disposition of fees.

Section 9. Right to Hearing/Appeals. A facility regulated by this Ordinance that disagrees with the assessment of the hazardous substances user fee may appeal the assessment to the County Administrator or his designee. A user fee may be appealed only by payment in full of the user fee under protest by August 1 of the billing year. A written Notice of Appeal must be received by the Greenville County Administrator's Office no later than August 15 of the billing year and be accompanied by a \$25.00 fee that will be used to partially defray the cost incurred in connection with the administration of appeals. This fee will be refunded in the event of final resolution in favor of the Appellant.

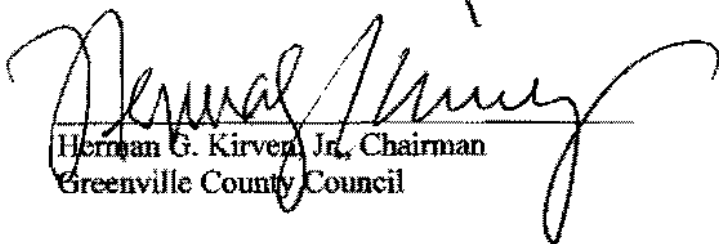
Section 10. Late Payment Penalty. Failure to pay all of any part of the correct hazardous substance user fee by August 1 of each year will result in a 5 percent late penalty of the unpaid fee each month or portion thereof after the due date until paid. Penalties shall not exceed 100 percent of the original hazardous substance user fee. If a facility or person fails to make full payment, including late fees, after 60 days, Greenville County may proceed to collect in the same manner as prescribed by law for the collection of other fees.

Section 11. Severability. Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

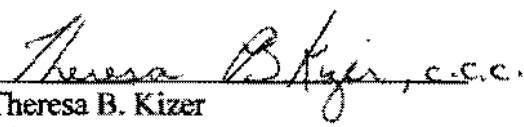
Section 12. Repeal. All ordinances or parts of ordinances in conflict with this Ordinance, or inconsistent with its provisions, are hereby repealed or superseded to the extent necessary to give this Ordinance full force and effect.

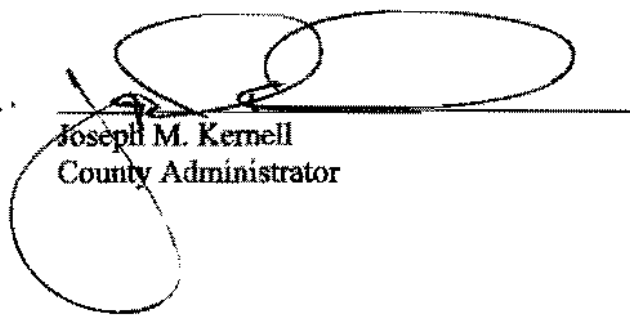
Section 13. Effective Date. This Ordinance shall take effect upon the date of its adoption.

DONE IN REGULAR MEETING THIS 16th DAY OF JUNE, 2009.


Herman G. Kirven, Jr., Chairman
Greenville County Council

ATTEST:


Theresa B. Kizer
Clerk to Council


Joseph M. Kernell
County Administrator