

ORDINANCE NO. 2-1991

AN ORDINANCE OF THE COUNTY OF BERKS, PENNSYLVANIA, PROVIDING FOR THE ESTABLISHMENT OF A HAZARDOUS MATERIAL EMERGENCY RESPONSE ACCOUNT AND THE ESTABLISHMENT OF A LOCAL HAZARDOUS CHEMICAL FEE AND EMERGENCY PLANNING FEE IN ACCORDANCE WITH PROVISIONS OF THE HAZARDOUS MATERIAL PLANNING AND RESPONSE ACT.

WHEREAS, the County of Berks has been operating under the laws of the Commonwealth of Pennsylvania as set forth in the 3rd Class County Code since the inception of the County, and

WHEREAS, each county of the Commonwealth of Pennsylvania has been given the authority by Section 207 of the Hazardous Material Emergency Planning and Response Act (Act of December 7, 1990, No. 165, hereinafter referred to as the "Act") to establish a hazardous material emergency response account, local hazardous chemical fee, and emergency planning fee; and

WHEREAS, the establishment of such an account and fees will serve to reduce and eliminate the health hazards and other risks of harm resulting from or incident to the use, storage, distribution and transportation of hazardous materials by providing needed resources to the County's Local Emergency Planning Committee and emergency response organizations, and

WHEREAS, by the adoption of this Ordinance, the County of Berks desires and intends to fully implement the pertinent provisions of the Acts, and

WHEREAS, this Ordinance was properly advertised and proper notice given as required by law.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Commissioners of the County of Berks, and IT IS HEREBY ENACTED AND ORDAINED by the authority of the same, that:

SECTION 1 - Definitions. As used in this Ordinance, the following terms shall have the meanings indicated:

(a) "Facility" - All buildings, structures and other stationary items which are located on a single site or a contiguous or adjacent site which are owned or operated by the same person and which actually manufacture, produce, use, transfer, store, supply or distribute any hazardous material. The term includes railroad yards and truck terminals but does not

include individual trucks, rolling stock, water vessels, airplanes or other transportation vehicles.

(b) "Family farm enterprise" - A natural person, family farm corporation or family farm partnership engaged in farming which processes and markets its agricultural commodities in either intrastate or interstate commerce.

(c) "Local emergency planning committee" - The local committee within this County responsible for preparing hazardous material plans and performing other functions under SARA, Title III.

(d) "Local government" - A county, city, borough or township and any water or sewage treatment authority that is directly owned and operated by any of these entities and any public school district.

(e) "SARA, Title III" - The Emergency Planning and Community Right-to-Know Act of 1986 (Title III, Public Law 99-499, 42 U.S.C. Section 11001 et seq.)

(f) "Service stations" - A motor vehicle service station, filling station, garage or similar operation engaged in the retail sale of motor fuels that are regulated by the Act of July 6, 1989 (P.L. 169, No. 32), known as the Storage Tank and Spill Prevention Act, or a facility whose primary functions auto body repair.

Unless the context of usage dictates otherwise, the terms and phrases of this Ordinance shall have the meaning(s) accorded them by the Act, SARA, Title III, and the regulations of the United States Environmental Protection Agency.

## SECTION 2 - Account

A county hazardous material emergency response account is hereby established in the Office of the County Treasurer and shall be known as the Hazardous Material Protection Account. Said account shall be a non-lapsing restricted account and shall be considered to have been in existence since the County's adoption of this Ordinance. Said account shall consist of revenue from the fees authorized by Section 3 and 4 of this Ordinance together with any other County, Federal or State funds, grants, loans or penalties and any private donations provided to finance this County's hazardous material safety program. No monies may be expended from this fund until the County Hazardous Material Emergency Response Preparedness Assessment is approved annually by the Council.

### SECTION 3 - Local Hazardous Chemical Fee

By March 1, 1991, and March 1 of every year thereafter, each owner or operator of a facility located in Berks County shall pay to the County Treasurer a local hazardous chemical fee of \$75.00 for each hazardous chemical within the meaning of 29 CFR 1910, 1200(c) or its successor, which is required by Section 312 of SARA, Title III, to be listed on the hazardous chemical inventory form (Tier II) which the owner or operator of the facility submits to the Berks County Local Emergency Planning Committee on or before March 1 of each year.

### SECTION 4 - Emergency Planning Fee

By March 1, 1991, and March 1 of every year thereafter, each owner or operation of a facility located in Berks County that manufactures, produces, uses, stores, supplies or distributes any extremely hazardous substance in quantities larger than the threshold planning quantities listed in 40 CFR Par 355, or its successor, shall pay to the County Treasurer an emergency planning fee of \$100.00.

### SECTION 5 - Credit

The County, acting through its County Commissioners upon the recommendation(s) of its Local Emergency Planning Committee, shall grant a facility owner or operator up to 100% credit toward any local hazardous chemical fee obligation under Section 3 or emergency planning fee obligation under Section 4 for training, equipment or planning fee obligation under Section 4 for training, equipment or other in-kind services donated to the County to support the County's hazardous materials safety program if such training, equipment or in-kind services are accepted by Berks County upon the recommendations(s) of its Local Emergency Planning Committee not later than February 15, 1991, and February 15 of every year thereafter. The credit shall be based on the fair market value of the equipment donated and the agreed-upon value of training or in-kind services donated.

### SECTION 6 - Termination

In accordance with Section 207(j) of the Act, the Local Hazardous Chemical Fee and Emergency Planning Fee established by Sections 3 and 4 of this Ordinance shall terminate ten (10) years after the effective date of the Act unless reestablished by the Pennsylvania General Assembly by statute.

SECTION 7 - Exemptions

The owners or operators of family farm enterprises, services stations and facilities owned by State and local governments shall be exempt from the payment of the fees established under Sections 3 and 4 of this Ordinance.

SECTION 8 - Penalties

Any owner or operator of a facility who fails to comply with either Section 3 or 4 of this Ordinance will be subject to a civil penalty of at least \$1,000 up to \$25,000 for each day of violation. Other penalties as prescribed in Act 165 may also apply to other types of violations.

SECTION 9 - Severability

All ordinances, or portions thereof, inconsistent herewith are hereby repealed. If any term, condition, clause or provision of this Ordinance shall be determined or declared to be void or invalid, then only that term, condition, clause or provision shall be invalid and the remainder of this Ordinance shall be valid and continue in full force, effect and operation.

SECTION 10 - Effective Date

This Ordinance shall be effective on February 28, 1991

The Chief Clerk forthwith upon enactment of this Ordinance is directed to record this Ordinance in the Ordinance book of the County at which time said Ordinance will become effective.

ORDAINED THIS 28th DAY OF February, 1991.

Attest:

Ronald R. Seaman  
Ronald R. Seaman, Chief Clerk

COUNTY OF BERKS  
Glenn B. Reber  
Glenn B. Reber, Chairman  
Anthony J. Carabello  
Anthony J. Carabello, Commissioner  
Michael F. Feeney  
Michael F. Feeney, Commissioner