

RESOLUTION NO. 05-05

A RESOLUTION PROVIDING FOR THE RECOVERY OF EXPENSES INCURRED IN AN EMERGENCY ACTION IN RESPONSE TO THE RELEASE OR THREATENED RELEASE OF HAZARDOUS MATERIALS OR POLLUTANTS INTO OR UPON THE ENVIRONMENT.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Franklin County, Kansas as follows:

It shall be unlawful for any person or entity to permit the discharge, whether intentionally or unintentionally and whether knowingly or unknowingly, of hazardous material or pollutant as such materials may be defined by the Kansas Department of Health and Environment, the Environmental Protection Agency, the Health Department, or the Franklin County Emergency Operations Plan, into or upon the air, waterways, or ground in Franklin County, Kansas.

Upon the discharge of such materials or upon reaching a determination that the discharge of such materials is likely, the Board of County Commissioners of Franklin County, Kansas acting through its Emergency Management Department, or any other department or any other entity contracting with Franklin County, shall be permitted to take any and all steps necessary to confine, contain, and limit pollution to the environment of Franklin County, Kansas and shall be further authorized to take such steps as may be reasonable and necessary to clean the area of such discharge materials and dispose of such materials in such fashion as may be permitted by law.

Any and all persons or entities who are determined to be the owner of a material or materials so discharged or determined to be responsible for the release or threatened release of such materials which results in governmental action to confine such discharge or clean the environment following such discharge shall be strictly liable to the county for the recoverable expenses resulting from the governmental action. In general, recoverable expenses are those expenses which are reasonable and necessary for the emergency action. Recoverable expenses may include, but are not limited to:

(A) The costs of disposable materials and supplies acquired, consumed and expended specifically for the purpose of emergency action.

(B) Compensation of employees for the time and efforts devoted specifically for the purpose of emergency action that is not otherwise provided for in the governmental entity's operating budget.

(C) Rental or leasing of equipment used specifically for the emergency action (e.g., protective equipment or clothing, scientific and technical equipment).

(D) Replacement cost for equipment owned by the county that is contaminated beyond reuse or repair, if the county can demonstrate that the equipment was a total loss and that the loss occurred during the emergency action (e.g. self-contained breathing apparatus irretrievable or contaminated during the response).

(E) Decontamination of equipment contaminated during the response.

(F) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts or specialists not otherwise provided for by the governmental entity).

(G) Other special services specifically required for the emergency action.

(H) Laboratory costs for purposes of analyzing samples taken during the emergency action.

(I) Any costs of clean-up, storage, or disposal of the released material.

(J) Costs associated with the services, supplies, and equipment procured for a specific evaluation.

(K) Medical expenses that may be incurred as a result of response activity.

(L) Legal expenses that may be incurred as a result of the emergency action, including efforts to recover expenses pursuant to this section.

(M) All expenses assessed to Franklin County by any party or parties including governmental agencies who contract with Franklin County for the purpose of providing the services contemplated herein.

(N)Discharge shall mean any release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, infecting, escaping, leeching, dumping, or disposing into or upon the environment. Franklin County shall keep a detailed record of its recoverable expenses resulting from the emergency action. Promptly after completion of the emergency action, such expenses shall be certified to the county's legal counsel who shall bring a civil action for the recovery of such expenses against any and all persons responsible for the emergency action. Not less than 30 days before filing such civil action, the county's legal counsel shall submit a written, itemized claim for the total certified expenses to the responsible party or the owner of the material discharged as well as a written notice that unless the amounts are paid in full to Franklin County within 30 days after the date of mailing of the claim and notice, that a civil action for the stated amount shall be filed. Monies recovered under this resolution shall be credited to the appropriate fund of the county from which monies were expended in performing the emergency action.

In addition to the foregoing remedy, Franklin County may cause a lien in the amount of the recoverable expenses provided for herein to be placed against any real property located within Franklin County owned by the person owning such discharged material or found to have caused or be responsible for the emergency action.

This Resolution shall be in full force and effect from and after its adoption and publication in the official county newspaper.

ADOPTED By the Board of County Commissioners on this 12th day of January, 2005.

/s/ Donald R. Stottlemire Donald R. Stottlemire, Chairman

/s/ Shari Perry
Shari Perry, County Clerk