

ORDINANCE NO. 99-65 AC CMS

AN ORDINANCE APPROVING AN AGREEMENT FOR HAZARDOUS MATERIALS RESPONSE AND MITIGATION IN LORAIN COUNTY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That the proposed agreement for Hazardous Materials Response and Mitigation in Lorain County, a copy being attached hereto and incorporated herein by reference, is hereby approved, and the City Manager is hereby authorized and directed to execute same on behalf of the City.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading - Sept 20, 1999 (E)
2nd Reading -
3rd Reading -

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: Sept 21, 1999.

EFFECTIVE DATE: Sept 21, 1999

In the matter of entering into contractual agreements for Hazardous Materials Response and Mitigation in Lorain County.

WHEREAS, by Resolution No. 89-298 dated April 11, 1989, the Lorain County Board of Commissioners authorized the formation of the Lorain County Emergency Management Agency; and

WHEREAS, by Resolution No. 98-219 dated March 23, 1998, the Lorain County Board of Commissioners entered into agreement between the Lorain County Local Emergency Planning Committee (LCLEPC) and the Lorain County Emergency Management Agency (LCEMA) for a two (2) year period, effective April 1, 1998, terminating March 31, 2000; and

WHEREAS, each Political Subdivision has requested to participate with the LCEMA for the developing of a cost recovery response for Hazardous Materials spills; and

WHEREAS, each jurisdiction has the duty to provide an immediate response to a hazardous materials emergency within their jurisdictional boundaries; and

WHEREAS, Lorain County already has Hazardous Materials Response Units as prescribed by standards in the Code of Federal Regulations 1910.120 and Federal EPA 311;

NOW, THEREFORE, be it resolved by the Board of Commissioners of Lorain County, Ohio, that each political jurisdiction sign an agreement with Lorain County to participate in Hazardous Materials Response at a cost based upon the 1990 Census population, and

FURTHER BE IT RESOLVED that the Contractual Agreement for Hazardous Materials Response and Mitigation in Lorain County reads as follows:

LORAIN COUNTY LOCAL EMERGENCY PLANNING COMMITTEE

CONTRACTUAL AGREEMENT FOR HAZARDOUS MATERIALS RESPONSE & MITIGATION IN LORAIN COUNTY

This agreement is entered into by and among the following political subdivisions for the purpose of Hazardous Material Planning and the response capabilities in your community for the period of 2000 through 2002, at which time the existing agreement will be either rewritten or extended.

1. Amherst
2. Amherst Township
3. Avon
4. Avon Lake
5. Brighton Township
6. Brownhelm Township
7. Camden Township
8. Carlisle Township
9. Columbia Township
10. Eaton Township
11. Elyria
12. Elyria Township
13. Grafton
14. Grafton Township
15. Henrietta Township
16. Huntington Township
17. Kipton
18. LaGrange
19. LaGrange Township
20. Lorain
21. New Russia Township
22. North Ridgeville
23. Oberlin
24. Penfield Township
25. Pittsfield Township
26. Rochester
27. Rochester Township
28. Sheffield
29. Sheffield Lake
30. Sheffield Township
31. South Amherst
32. Vermilion
33. Wellington
34. Wellington Township

WITNESSETH:

WHEREAS, each of the aforementioned parties have either their own or contract fire fighting capabilities and are political subdivisions within Lorain County; and

WHEREAS, each of the political subdivisions have submitted a signed Cost Recovery Ordinance/Resolution in accordance to section 3745.13 of the Ohio Revised Code and 40 C.F.R. 300 of the Federal Registrar; and

WHEREAS, each of the political jurisdictions have existing mutual aid agreements between fire departments for the purpose of providing assistance during times of emergency including threat to life and or property, and shall be expanded to include Hazardous Material Responses as part of this contract, and

WHEREAS, each of the political subdivisions shall meet and maintain proper and fitting hazardous materials training in accordance with the Hazardous Material Plan approved by the Board of County Commissioners, the LCLEPC and accepted by the State Emergency Response Commission; and

WHEREAS, the political subdivisions deem it to be in the public's best interest to contract with Lorain County for Hazardous Material Response support; and

WHEREAS, the political subdivision will maintain direction and control of the incident site and will coordinate with any and all assisting agencies; and

NOW, THEREFORE, in consideration of the promises and agreements herein contained, and not rescinding any fire and emergency protection mutual aid agreements which may exist between any of the parties hereto, except those agreements for cost recovery not prescribed under 40 C.F.R. 300, IT IS NOW AGREED, between the parties as follows.

1. For the purposes of affording and maintaining the additional protection to mitigate and respond to hazardous materials spills within a jurisdiction in 2000 through 2002, each jurisdiction shall pay a set fee of \$0.25 per person (jurisdiction population X \$0.25 per person) to the Lorain County Hazardous Materials Advisory Board, through the Lorain County Local Emergency Planning Committee for the sole purpose of funding the necessary activities and expenses of the Lorain County HazMat Response Team. These fees shall remain the same as determined for the 2000 contract year for the entire length of this contract. At no time shall the annual fee for any political subdivision exceed five thousand dollars (\$5000).
2. Because of the initial and on-going investments for HazMat related training and equipment incurred by the Lorain, Elyria, and Avon Lake Fire

Departments, and the mutual aid provisions among these HazMat Teams and the Lorain County HazMat Response team; a nominal contractual fee of \$1 per contract year, per respective political jurisdictions shall be assessed for this contractual agreement period. Should any given department's HazMat Response personnel and/or capabilities be reduced to a level lower than those recognized and published in the Lorain County Hazardous Materials Response Plan, an assessment shall be made to adjust the \$1 contractual fee to represent an amount based on the standard contractual fee formula prorated on the remaining contract period.

3. That the political subdivision of City of Oberlin agrees to pay Lorain County Hazardous Materials Advisory Board through the Lorain County Local Emergency Planning Committee the sum of \$ 2,047.75 for the Lorain County HazMat Response Team. This cost shall remain constant for the contract years 2000 through 2002, exclusive of any penalties incurred. The said amount of money shall be received at the Lorain County Emergency Management Agency on or before 4:30PM April 10 of each contract year as per the aforementioned cost analysis.
4. Failure to pay the contractual fee on or before 4:30PM April 10 of each year shall result in a late charge of fifteen (15%) percent of the jurisdiction's annual contractual amount or \$250, whichever is greater.
5. That the Lorain County Hazardous Materials Response Team shall respond to any and all requests made by the incident commander of the political jurisdiction having authority for a hazardous materials release.
6. In no case shall the party hereto called upon or rendering such services be liable for damages to any other party hereto or any of its residents, or contractual obligators, for failure to answer any call, or for lack of speed in answering any such call, or for any inadequacy of equipment, negligent operation of equipment, failure to mitigate said situation or for any cause whatsoever growing out of such use of said equipment and/or personnel.
7. The Lorain County Emergency Management Agency (LCEMA) has entered into mutual aid agreements with Emergency Management Agencies in Erie, Huron, and Ashland Counties. The political subdivisions, and the parties listed hereto, agree the LCEMA Director is hereby authorized to activate the Lorain County HazMat Response Team to respond to an incident covered by any of the mutual aid agreements with said counties or any other counties with whom the LCEMA hereafter enters into a mutual aid agreement. The provisions of this agreement shall apply to said incidents in counties outside Lorain County to the same extent as if the incident had occurred within one of the participating political subdivisions.

8. LCLEPC will assist the political jurisdiction(s) where the hazardous materials incident took place in the cost recovery from the spiller or transporter as prescribed in section 3745.13 of the O.R.C. In the event the responsible party is unknown the responsibility ultimately remains with the political jurisdictions in which the incident occurred to pay for all equipment costs associated with said incident. The costs for equipment shall be paid within ninety (90) days of the incident to the HazMat providers. Lorain County LCLEPC will continue to pursue the responsible party with the assistance of the County Prosecutor and the political jurisdiction's legal representative where the incident occurred.
9. The Lorain County LEPC will administer the SERC Grant and all civil penalty monies as prescribed in Section 3750.14 and Section 3750.20 respectively of the Ohio Revised Code only to those jurisdictions participating in the Contractual Agreement for Hazardous Materials Response & Mitigation in Lorain County; having a valid Cost Recovery Ordinance/Resolution, and are participating in the Lorain County EMA Contract.
10. The Lorain County HazMat Response Teams (i.e. Avon Lake, Elyria, Lorain, Lorain County) shall demonstrate capabilities through an exercise at least one (1) time per year. The EMA Director or his designee shall witness these exercises. Failure to conduct an exercise shall be cause for contract cancellation for said jurisdiction. The teams are encouraged to conduct joint drills whenever possible to ensure capability should the need arise. Actual occurrences can be submitted and reviewed by the LCLEPC to fulfill this obligation.
11. The Lorain County HazMat Response Teams (i.e. Avon Lake, Elyria, Lorain, Lorain County) shall provide mutual aid capabilities to each other, upon request, should the need arise. At no time shall the Chief or Officer-In-Charge be required to respond to a mutual aid request if it is determined that said assistance will cause the jurisdiction to be unable to provide for its own protection.
12. This contract shall be effective upon approval of the governing bodies of Lorain County and the political jurisdictions entering into this contractual agreement that is to commence at 12:01AM January 1, 2000, and end 12:00AM, December 31, 2002.
13. At all times copies of this contract shall remain in the offices of the Lorain County Prosecutor, Lorain County Emergency Management Agency and the political jurisdiction's city or village law director/solicitor.
14. It is mutually understood and agreed that any party hereto may cancel and terminate its participation in this said contractual agreement by giving a sixty (60) day written notice to all said parties hereto at the time of said cancellation

by registered mail, return receipt requested to the Lorain County Prosecutor's Office and Lorain County Emergency Management Agency of its intention to do so.

15. All contract monies collected shall be used exclusively by the Lorain County Hazardous Materials Advisory Board for the purpose of enhancing hazardous material response capabilities and maintenance of the Unknown Spiller Fund. Contractual monies shall be disbursed as follows: 10% of the total contractual fee for direct deposit into the Unknown Spiller Fund and 90% of the contractual fee for the operation of the Lorain County HazMat Response Team. If the cities of Avon Lake, Elyria, or Lorain wish to participate in the Unknown Spiller Fund, their annual fee shall be as follows:

Avon Lake:	\$331.45
Elyria:	\$500.00
Lorain:	\$500.00

16. All expenditures and allocations of the contract funds shall be at the direction and discretion of the Lorain County Hazardous Materials Advisory Board. Monies in the Unknown Spiller Fund in the excess of \$25,000 may be appropriated to other HazMat purposes at the discretion of the Lorain County Hazardous Materials Advisory Board.
17. The Unknown Spiller Fund shall be maintained to help reduce a jurisdiction's financial burden for expended hazardous materials equipment in case of a HazMat incident where the spiller is unknown. Only those jurisdictions that contribute to the fund are eligible for fund usage. The maximum amount that a jurisdiction may request from this fund would be \$2,000 per incident, twice a year, for the total amount of \$4,000 per year per jurisdiction. Payments more than \$4,000 per year may be made at the discretion of the Lorain County Hazardous Materials Advisory Board. A written request for funds shall be submitted to the Lorain County Hazardous Materials Advisory Board, with an explanation of the incident and detail of costs.
18. Each contract participant, exclusive of those jurisdictions who maintain a qualified Hazardous Material Response Team, shall provide HazMat Technician Level capabilities for the Lorain County HazMat Response Team based on the following schedule:

<u>Contract & Assessment</u> <u>(exclusive of any penalties)</u>	<u>Minimum Technician Level</u> <u>Responders Required**</u>
\$1,000 or less	1
Each additional \$1,000 increment	1 per each additional \$1,000 value*

*Fraction of \$1,000 increments shall be rounded down to the nearest \$1,000 value.

**Maximum number of required Technicians per jurisdiction shall be no more than five (5)

Fire Departments serving multiple political subdivisions may total the assessments to determine the minimum responders required

18. Should a contract participant fall below the required Technician Level responders during the contractual period, the respective participant shall demonstrate they are attempting to replace the deficient members as listed below.

- Notify Lorain County Hazardous Materials Advisory Board of such deficiency within seven (7) days.
- Present a plan within thirty (30) days, regarding how the deficiency will be filled, for acceptance by the Lorain County Hazardous Materials Advisory Board.

19. Failure to make the seven day notification, or submit a 30 day plan to replace the deficient number of HazMat technicians shall result in following:

- The Lorain County Local Emergency Planning Committee shall forward a letter to the noncompliant Fire Chief and jurisdiction officials by certified mail notifying them of the contractual violation(s).
- The Lorain County Prosecutor's Office will be contacted regarding the noncompliant jurisdiction's violation(s).
- A penalty of 15% of the contractual amount or \$250.00 (whichever is greater) shall result for the following:

1. Failure to comply with the required number of hazardous material technicians.

Failure to pay the penalty within 30 days of issuance will result in cancellation of the Hazardous Materials Contract through the specified contract cancellation process. This penalty clause does not negate the responsibility of the noncompliant jurisdiction to adhere to the requirements of both the Lorain County Hazardous Materials Response Plan and/or this contract within the above-defined period.

IN WITNESS WHEREOF, said political subdivisions have caused this agreement to be executed as provided by ordinance or resolution duly adopted for that purpose, a copy of which is hereto appended.

OBERLIN 9/21/99
Name of Political Subdivision Date

By: [Signature] Title: CITY MANAGER

By: _____ Title: _____

By: _____ Title: _____

Board of Lorain County Commissioners 7/29/99
Date

By: EC Blawie, President

By: [Signature]

By: [Signature]

Lorain County Emergency Management Agency Aug 5, 1999
Date

By: Thomas E. Kelley Title: Director

Local Emergency Planning Committee 8-6-99
Date

By: Bob Roberts Title: LCEPC CHAIRMAN

North Central Fire Chief's Association Aug 6, 1999
Date

By: Robert J. Walther Title: President

Lorain County HazMat Advisory Board Aug 5, 1999
Date

By: [Signature] Title: Chairman