

ORDINANCE NO. 1673

ORDINANCE REGULATING HAZARDOUS MATERIALS

The Board of Supervisors of the County of Amador County ordains as follows:

Section 1. Chapter 7.25, "Hazardous and Infectious Waste," is hereby repealed.

Section 2. A new Chapter 7.25, "Hazardous Materials," is hereby added to the Amador County Code as follows:

"Chapter 7.25

HAZARDOUS MATERIALS

7.25.010 Short title—Definitions.

This chapter is known and may be cited as the "Amador County Hazardous Materials Ordinance." Except as expressly provided to the contrary, those terms referred to and defined by Sections 25501 through 25501.4 of the California Health and Safety Code shall be ascribed the same meaning as used in this Chapter.

- A. "Board" means the Board of Supervisors of Amador County.
- B. "Business" means an entity as defined in Section 25501(d) and in Section 25501.4 of the Health and Safety Code.
- C. "Certified Unified Program Agency" or "CUPA" means an agency certified by the Secretary to implement the unified program specified in Chapter 6.11 of the Health and Safety Code. The Environmental Health Department is the CUPA for both the incorporated and unincorporated areas of Amador County.
- D. "County" means the County of Amador.
- E. "Director" means the Director of the Amador County Environmental Health Department or his/her designee.
- F. "Environmental Health Department" means the Amador County Environmental Health Department.
- G. "Facility" means a "Unified Program Facility" as defined in Section 25501(x) and in Section 25404(c) of the Health and Safety Code.
- H. "Hazardous Material" means any material that, as defined in Section 25501(o) of the Health and Safety Code, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be

injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment.

I. "Hazardous Materials Release Response Plans and Inventory Law" means Health and Safety Code Section 25500 *et seq.*

J. "Hazardous Substance" means any substance or chemical product, as defined in Section 25501(p) of the Health and Safety Code, for which one of the following applies:

1. The manufacturer or producer is required to prepare a MSDS for the substance or product pursuant to the Hazardous Substances Information and Training Act (California Labor Code Section 6360 *et seq.*) or pursuant to any applicable federal law or regulation.

2. The substance is listed as a radioactive material in Appendix B of Chapter 1 of Title 10 of the Code of Federal Regulations, maintained and updated by the Nuclear Regulatory Commission.

3. The substance is listed pursuant to Title 49 of the Code of Federal Regulations.

4. The material is listed in Section 6382(b) of the Labor Code.

K. "Hazardous Waste" means hazardous waste, as defined in Section 25501(q) of the Health and Safety Code. Hazardous waste is defined as the end product of a specific process or as having specific hazardous characteristics.

L. "Hazardous Waste Control Law" means Health and Safety Code Section 25100 *et seq.*

M. "Health and Safety Code" means the California Health and Safety Code.

N. "Hearing Authority" means any person or persons, qualified by training or experience, who the Board of Supervisors may appoint to conduct such hearings; or an Administrative law judge assigned to the State of California Office of Administrative Hearings.

O. "Operator" means any person in control of, or having daily responsibility for, daily operations that result in the storage and /or management of hazardous materials.

P. "Owner" means the owner of a facility that stores and/or manages hazardous materials.

Q. "Permitting Authority" means the Amador County Board of Supervisors or its designee.

R. "Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. "Person" also includes any city, county, district, the state, federal government, or any department or agency thereof.

S. "Petroleum Underground Storage Tank Cleanup Law" means Health and Safety Code Section 25299.10 *et seq.*

T. "Secretary" means the Secretary of the California Environmental Protection Agency.

U. "Storage Tank" or "Aboveground Storage Tank" means a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground.

W. "Tank Facility" means any one, or combination of, aboveground storage tanks, including any piping that is integral to the tank, that contains petroleum and is used by a single business entity at a single location or site.

X. "Underground Storage of Hazardous Substances Law" means Health and Safety Code Section 25280 *et seq.*

Y. "Unified Hazardous Waste and Hazardous Materials Management Regulatory Program Law" means Health and Safety Code Section 25404 *et seq.*

7.25.020 Purpose.

It is the purpose of this Chapter to incorporate and implement the Hazardous Waste Control Law, Above Ground Petroleum Storage Act, the Underground Storage of Hazardous Substances Law, the Petroleum Underground Storage Tank Cleanup Law, the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, and Articles 1 and 2 of the Hazardous Materials Release Response Plans and Inventory Law, which establish standards and procedures regarding the reporting of the location, type, quantity, and health risks of hazardous materials handled, used, stored or disposed; establishes standards and procedures regarding regulation and permitting of above ground petroleum storage tanks and underground storage tanks to prevent and control unauthorized discharges of hazardous substance stored underground; and establishes standards and procedures for the regulation and permitting of facilities that generate, store or treat hazardous wastes within the unincorporated area of Amador County, and within the incorporated territory of each municipality within Amador County. It is also the purpose of this Chapter to establish the procedures for the enforcement of these laws.

7.25.030 Administration.

Except as otherwise provided, the Director, or his/her designee, is charged with the responsibility of administering this Chapter, and shall be authorized from time to time to promulgate and enforce such policies, rules or regulations consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement such purposes, intent and express terms. No policies, rules or regulations promulgated by the Director or amendments thereof shall be enforced or become effective until thirty (30) calendar days following the date on which the proposed policies, rules or regulations are approved by the County Board of Supervisors and filed with the Clerk of the Board of Supervisors.

7.25.040 Incorporation and Implementation of State Laws and Regulations.

Except as otherwise expressly provided by this Chapter, all requirements, limitations and exemptions contained in the Hazardous Waste Control Law and Title 22, California Code of Regulations; the Above Ground Petroleum Storage Act; the Underground Storage of Hazardous Substances Law and Petroleum Underground Storage Tank Cleanup Law and Chapters 16 and 18 of Division 3, Title 23, California Code of Regulations; the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program law and Title 27 California Code of Regulations (commencing with Section 15100); and Articles 1 and 2 of the Hazardous Materials Release Response Plans and Inventory Law are hereby incorporated herein by reference. The Environmental Health Department, as the CUPA, is hereby designated:

A. Pursuant to Section 25404(a)(1)(C) of the Health and Safety Code as the agency responsible for implementation and enforcement of the Hazardous Waste Control Law and the regulations adopted pursuant thereto, with the exception of sections applicable to persons operating transportable treatment units;

B. Pursuant to Section 2525270.4. of the Health and Safety Code as the agency responsible for implementation and enforcement of the Above Ground Petroleum Storage Act and the regulations adopted pursuant thereto;

C. Pursuant to Section 25283 of the Health and Safety Code as the agency responsible for implementation and enforcement of the Underground Storage of Hazardous Substances Law and the regulations adopted pursuant thereto; and

D. Pursuant to Section 25404(a)(1)(C) of the Health and Safety Code as the agency responsible for implementation and enforcement of the Hazardous Materials Release Response Plans and Inventory Law, and the regulations adopted pursuant thereto.

7.25.050 Operations Permit Required.

A. No person shall own or operate a business within the County of Amador that stores or manages hazardous materials in quantities that are in excess of threshold levels stipulated in Section 25503.5 of the Health and Safety Code unless by authority of a valid, unexpired, unsuspended and unrevoked unified program facility permit for such ownership or operation issued to the business owner or operator pursuant to the provisions of this Chapter.

B. No person shall own or operate a tank facility within the County of Amador with a storage capacity of 1320 gallons or more of petroleum without preparing a spill prevention control and countermeasure plan and conduct periodic inspections in accordance with Section 25270.4.5 of the Health and Safety Code.

C. No person shall own or operate an underground storage tank within the County of Amador unless by authority of a valid, unexpired, unsuspended and unrevoked permit for such ownership or operation, and a unified program facility permit for the unified program facility on which the tank is located, issued to the owner or operator pursuant to the provisions of this Chapter, except as otherwise provided in Sections 25284(c) and (d), and Section 25283.5 of the Health and Safety Code.

D. No person shall own or operate a business within the County of Amador that generates, handles, or stores hazardous waste unless by authority of a valid, unexpired, unsuspended, and unrevoked unified program facility permit for such ownership or operation issued to the business owner or operator pursuant to the provisions of this Chapter.

E. No person shall own or operate a business within the County of Amador that generates, handles, stores, and treats hazardous waste unless by authority of a valid, unexpired, unsuspended, and unrevoked permit for such ownership or operation and a unified program facility permit for such ownership or operation issued to the business owner or operator pursuant to the provisions of this Chapter.

F. All permits are site, business, facility, business operator, and business owner specific and may not be transferred to other business operators and business owners or locations. Any

person assuming ownership or operation of a unified program facility or business for which a valid operating permit has been previously issued shall have thirty (30) days after the date of assumption of ownership or operation to apply for a new permit. During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this Chapter.

G. A person shall be deemed to operate a business, underground storage tank, or hazardous waste facility as described in this Section, if the person in effect supervises, directs, organizes, manages, or controls or is in any way responsible for or in charge of a facility for which a permit is required.

H. Compliance with this Section does not obviate the obligation to obtain valid permits otherwise required by this Code, or compliance with other applicable ordinances, including but not limited to the Amador County Zoning Code.

7.25.060 Application Filing.

All applications for a permit under this Chapter, including applications for renewal or extension of permits, shall be filed with the Director.

7.25.070 Application Content.

Application for a permit under this Chapter, including application for renewal or extension of a permit, shall be filed on a form or forms provided by and containing such information as prescribed by the Director.

7.25.080 Permit Issuance.

The Permitting Authority hereby designates the Director as its designee for issuance of permits. The Director shall act upon the application not later than thirty (30) days after the date it is accepted as complete unless the applicant has filed with the Director written notice of a request, and received written approval for, an extension of time within which action on the application is to be taken on the grounds that additional time is required to prepare or present plans or other information, obtain zoning variances or other permits, or make other corrections remedying inconsistencies with the provisions of this Chapter.

7.25.090 Permit Denial.

A permit will not be issued, renewed, or extended if the Director, upon inspection of the business or facility, determines that it does not comply with the provisions of this Chapter and of the Hazardous Waste Control Law, the Above Ground Petroleum Storage Act, the Underground Storage of Hazardous Substances Law, the Petroleum Underground Storage Tank Cleanup Law, the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, and Articles 1 and 2 of the Hazardous Materials Release Response Plans and Inventory Law, and the regulations implementing each of the foregoing laws. A permit shall not be issued, renewed, or extended if the application and other local fees, state surcharges, or any other charges assessed pursuant to Chapter 7.42 of this Code have not been paid.

7.25.100 Permit Conditions.

Permits issued pursuant to this Chapter shall be subject to such conditions as the Director determines are necessary to comply with the provisions of this Chapter and of the Hazardous Waste Control Law, the Above Ground Petroleum Storage Act, the Underground Storage of Hazardous Substances Law, the Petroleum Underground Storage Tank Cleanup Law, the Unified

Hazardous Waste and Hazardous Materials Management Regulatory Program, and Articles 1 and 2 of the Hazardous Materials Release Response Plans and Inventory Law, and the regulations implementing each of the foregoing laws. Access to all businesses and facilities subject to regulation by this chapter for purposes of compliance inspections during normal business hours is a condition of all operating permits.

7.25.110 Permit Terms and Renewal

The term of each permit issued pursuant to the provisions of this Chapter shall be three years from the date on which the permit is issued. Unified program facility operating permit fees shall be assessed annually as proscribed in Chapter 7.42 of this Code.

7.25.120 Grounds for Revocation, Modification, or Suspension of Permit.

Any permit issued pursuant to this Chapter may be revoked, modified or suspended by the Director during its term, upon one or more of the following grounds:

- A. Violation of any of the terms or conditions of the permit, including nonpayment of fees;
- B. Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts;
- C. A change in any condition that results in or requires modification or termination of the operation of the facility; or
- D. Violation of any provision of this Chapter, including the state laws and regulations incorporated by reference in this Chapter.

7.25.120 Method of Permit Revocation, Modification, or Suspension.

The Director may revoke, modify, or suspend a permit by issuing a written notice stating the reasons therefore, and serving same together with a copy of the provisions of this Chapter, upon the holder of the permit. The revocation, modification, or suspension shall become effective fifteen (15) days after service of the notice, unless the holder of the permit enters into a settlement agreement with the Director or appeals the notice in accordance with the provisions of Section 7.25.260 of this Chapter.

7.25.130 Number of Permits.

A business that operates or conducts an enterprise utilizing hazardous materials at or above threshold quantities at more than one address or location shall apply for and comply with all requirements necessary to obtain a separate permit issued pursuant to this Chapter for each location where such an enterprise is maintained. Each place where a different street address is assigned to an enterprise utilizing hazardous materials at or above threshold quantities shall be deemed to constitute a separate location. With respect to an enterprise conducted at a single location whose operation involves the handling of different and multiple types of hazardous materials at or above threshold quantities in functions that are different from each other, or involves functions that are separated by significant physical distances, the Director may require more than one Permit and as many Permits as are necessary and appropriate to effectively administer the provisions of this Chapter.

7.25.140 Inspections.

Following the filing of a completed application, the Director shall conduct an on-site inspection of the applicant facility if a successful inspection has not been conducted within the previous 90 days.

7.25.150 Time of Issuance.

Decisions on permit applications shall be issued not later than thirty (30) calendar days following the date on which a completed application is filed. An application shall not be deemed complete within the meaning of this Chapter until the date on which the applicant has provided all information required by this Chapter and by the Hazardous Waste Control Law, the Above Ground Petroleum Storage Act, the Underground Storage of Hazardous Substances Law, the Petroleum Underground Storage Tank Cleanup Law, the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, and Articles 1 and 2 of the Hazardous Materials Release Response Plans and Inventory Law, and the regulations implementing each of the foregoing laws. An application shall not be deemed complete until the Applicant has corrected all deficiencies in its submitted application; and all fees prescribed pursuant to Chapter 7.42 of this Code have been paid.

7.25.160 Fees.

Fees for the Permits and other regulatory functions associated with this Chapter as determined in Chapter 7.42 of this Code shall be assessed annually.

7.25.170 Advisory Committee

A Hazardous Materials Advisory Committee shall be appointed by the Board of Supervisors to advise the CUPA on the implementation of hazardous materials programs in Amador County. The Committee shall be composed of a representative from the Amador County Fire Chiefs Association, the Amador County Office of Emergency Services, the Amador County Health Officer, a large business, a small business, agriculture, and the general public. The committee shall make recommendations to the Director and the Board of Supervisors on proposed ordinance or policy changes.

7.25.180 Exemptions.

Pursuant to subdivision (c) (2, 3, and 4) of Section 25503.5 of the Health and Safety Code, a handler may, upon application to the Director, request an exemption from any portion of the business plan or for an exemption from the inventory provisions of the business plan for any hazardous material or hazardous substance. All requests for exemption will be evaluated by an advisory committee, as described in Section 7.25.170, who will make a recommendation to the Director and the Board of Supervisors as to whether the requested exemption meets the requirements of subdivision (c) (2, 3, and 4) of Section 25503.5 of the Health and Safety Code. The advisory committee, after notice and public hearing, shall specify in writing the basis for recommending an exemption for approval by the Board of Supervisors.

7.25.190 Violations.

It shall be unlawful for any person to violate any provision of this Chapter or of the Hazardous Waste Control Law, the Underground Storage of Hazardous Substances Law, the Above Ground Petroleum Storage Act, the Petroleum Underground Storage Tank Cleanup Law, the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, and Articles 1 and 2 of the Hazardous Materials Release Response Plans and Inventory Law, and the regulations implementing each of the foregoing laws. Each and every day such a violation

continues shall constitute a separate offense. The person committing or permitting such offenses may be charged with a separate offense for each such violation and punished accordingly.

7.25.200 Administrative Enforcement.

A. Pursuant to Section 25404.1.1 of the Health and Safety Code, if the Director determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the Director is authorized to enforce or implement pursuant to this Chapter, the Director may issue an administrative enforcement order requiring that the violation be corrected and impose an administrative penalty as specified in Section 7.25.210 of this Code.

B. By written policy, the Board shall adopt procedures for implementing administrative enforcement actions. Such procedures shall contain those elements required by, and shall be consistent with the provisions of, Section 25404.1.1 of the Health and Safety Code or any successor statute thereto. The administrative enforcement procedures adopted shall not be exclusive, but shall be cumulative with all other remedies available by law and under this Chapter, including referral to the District Attorney.

7.25.210 Penalties.

Criminal, civil, and administrative penalties as specified in this Chapter and in the Hazardous Waste Control Law, the Above Ground Petroleum Storage Act, the Underground Storage of Hazardous Substances Law, the Petroleum Underground Storage Tank Cleanup Law, the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program, and Articles 1 and 2 of the Hazardous Materials Release Response Plans and Inventory Law, and the regulations implementing each of the foregoing laws, apply to violations defined by Section 7.25.190 of this Code.

7.25.220 Injunctions.

When any person has engaged in, is engaged in, or threatens to engage in, any acts or practices, which violate this Chapter, or any resolution, rule, or regulation adopted pursuant to this Chapter, the Director may apply to any court of competent jurisdiction for an order enjoining those acts or practices, or for an order directing compliance.

7.25.230 Cease and Desist Orders.

A. The Director may issue a cease and desist order requiring the owner or operator of any business or facility, or any other person responsible for any violation of this Chapter, to take any of the following actions:

1. Immediately discontinue any prohibited discharge of hazardous waste or hazardous substance.
2. Immediately discontinue any other activity that constitutes a violation of this Chapter.
3. Satisfactorily remediate the area affected by the violation.

B. The Director may issue an administrative enforcement order, as specified in Section 7.25.200 of this Code, if it has been determined that an owner or operator has not complied in full with the provisions of a previously issued cease and desist order.

7.25.240 Appeals.

Pursuant to Sections 25404.1.1(d) through (h) of the Health and Safety Code, any person served with an order pursuant to this Chapter who has been unable to resolve any violation with the Director, may within fifteen (15) days after service of the order, request a hearing by filing a Notice of Defense with the Director. Upon receiving a Notice of Defense, the Director shall convene a Hearing Authority as prescribed in this Chapter and in the procedures for implementing administrative enforcement actions. If an appeal is not filed within the time or in the manner prescribed above, the right to review of the action against which the complaint is made shall be deemed to have been waived.”

7.25.250 Remediation of Property Contaminated by Methamphetamine Production Related Activities.

Pursuant to Section 25400.17(b) of the Health and Safety Code, the Amador County Health Officer has delegated authority for the regulatory oversight of these contaminated properties to the Amador County Environmental Health Department. Fees for regulatory services by the Environmental Health Department under the Methamphetamine Contaminated Property Cleanup Act of 2005 (Health and Safety Code Section 25400.10 *et seq.*) shall be payable in the amounts established pursuant to Chapter 7.42 of this Code.”

Section 3. This ordinance or a summary thereof shall be published within fifteen days after the date hereof in a newspaper of general circulation printed and published in the County of Amador, State of California, and shall become effective thirty days after the date hereof.

The foregoing ordinance was duly passed and adopted by the Board of Supervisors of the County of Amador at a regular meeting thereof, held on the 15th day of April 2008 by the following vote:

AYES: Louis D. Boitano, Richard M. Forster, Theodore Novelli, and Brian Oneto

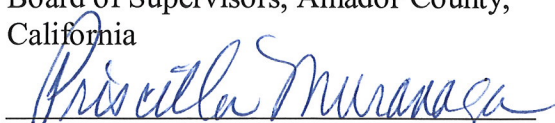
NOES: None

ABSENT: Rich F. Escamilla


Chairman, Board of Supervisors

ATTEST:

JENNIFER BURNS, Clerk of the
Board of Supervisors, Amador County,
California


Deputy