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Tennessee Code Annotated (TCA) and the United States Code of Federal Regulations permit the recovery of reasonable costs incurred responding to a hazardous materials (Hazmat) incident. Your County, through its Emergency Management Agency (EMA), has the right to recover the reasonable costs of a Hazmat incident. Your municipality may also recover reasonable costs as well. Before proceeding further in local cost recovery efforts, if you do not already have a policy, I recommend that your department develop a standard operating guideline/standard operating procedure (SOG/SOP) on the department's response to a Hazmat incident. The policy should incorporate the use of an incident command system (ICS) that complies with the National Incident Management System (NIMS) guidelines, the level of response the department provides, and how the Hazmat team will integrate with other agencies. I also recommend that you consult with your municipal attorney for legal advice on the interpretation of TCA and Federal Regulations.

TCA 58-2-604

Reasonable costs are just that: actual, provable, costs incurred as part of the response effort. Your county, by simple resolution, can authorize the city to recover these costs directly from the liable party.

TCA 58-2-604(a) "or other body authorized by the county legislative body." There is no prohibition in the law from your EMA Director recovering these costs for you and turning your city's share of the costs over to your city. This can be accomplished with an interlocal agreement approved prior to the emergency.

These costs can include attorneys' fees for collection or recovery.

There is an exception to this cost recovery. If the liable party is a holder of a permit from the Dept. of Environment and Conservation, then the State of Tennessee is responsible for the costs of clean-up and response and must pay the reasonable costs of a local government from the "Hazardous Waste Trust Fund" TCA 68-212-108(c)(6).

If the Hazmat spill is the result of a motor vehicle accident, the driver and his employer are, "jointly and severally responsible" for the clean-up costs.

TCA 68-212-121

You asked how this related to the Federal Regulation, 40 CFR 300. This is the Federal Government's contingency plan of how to clean up spills. If you follow any nationally recognized training standard on how you handle the response and clean-up, you should not have any of your costs refused.

With some negotiations and preplanning, your city should be able to recover the costs of response to almost all incidents involving hazardous materials.

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