

State of Montana Hazardous Materials (HazMat) Response Plan

Volume XII

Montana Disaster and Emergency
Plan

TABLE OF CONTENTS

TAB	SECTION	PAGE No.
I.	Introduction	
	Purpose	1
	Scope	1
	Authority	1
	Assumptions	2
	Incident Command	2
II.	Implementation	1
III.	State Hazardous Materials Incident Response Teams	
	Mission Statement	1
	Goals	1
	Policies	1
	Coordination with other Agencies	2
	State Hazardous Materials Incident Response Team Membership	2
	Training and Performance	2
	Authorization Process for team members	2
	Financial Management	3
	State Hazardous Materials Incident Response Team Components	3
	Minimum Requirements	3
	Minimum Equipment Standards for Hazardous Materials Response	4
IV.	Response Procedures at an Incident	
	Notification and Communication	1
	State Resource Assistance	1
	Montana State Emergency Response Commission (SERC)	2
	Hazardous Materials Incident Response	2
	State Agency Response	2
	Disaster and Emergency Services Division – Duty Officer	3
	Resource Ordering System	5
	Orphan Material Procedure	6
	Definition	6
	Procedure	6
V.	Responsibilities	
	Functional Responsibilities:	1
	MT-DES Duty Officer	1
	Montana State Hazardous Materials Incident Response Team	1
	Incident Commander	1
	Primary Agencies	1
	Local Governments	1
	Radiation Response Coordinator	2
	Responsibilities Common to All Agencies	2
	Responsibilities of Local Governments and Private Sector Organizations	3
	Responsibilities of State Agencies including Orphaned Hazardous	

Materials and Clandestine Labs	4
Governor's Office	4
Department of Environmental Quality	4
Department of Fish, Wildlife and Parks	5
Department of Justice	5
Department of Military Affairs	5
Montana National Guard	5
Disaster and Emergency Services Division	6
Department of Natural Resources and Conservation	7
Department of Public Health and Human Services	7
Montana Department of Transportation	7
Responsibilities of Federal Agencies	8
Department of Defense	8
National Park Service, Department of Interior	8
Center for Disease Control	8
National Toxic Substances and Disease Registry	8
Environmental Protection Agency	8
Environmental Response Team	9
Coast Guard's National Strike Force	9
National Transportation Safety Board	9
National Railroad Administration	9
Department of Energy	9
VI. Federal Resources Available for Radiological Emergencies	1
VII. Training Specifications	
First Responder Awareness	1
First Responder Operations	1
Hazardous Materials Technician and Specialist	1
Incident Commander	1
Training Levels	2
First Responder Awareness Level	2
First Responder Operations Level	2
Hazardous Materials Technician Level	3
Hazardous Materials Specialist	3
On-Scene Incident Commander	4
VIII. Financial Reimbursement Procedures & Packet	1
Schedule of Costs	2
Cost Recovery Forms	2
Cost Recovery for State Response Personnel	3
Right to Reimbursement	3
Deficiency Warrants for Reimbursement of Response Costs	3
Cost Recovery and Civil Remedies	3
Liability of Persons and Response Personnel Rendering Assistance	4

IX. APPENDIX i		
SERC HAZMAT Standard Cost Recovery Packet		1
Billing Information Worksheet		2
Apparatus/Vehicle Worksheet		3
Personnel Cost Worksheet		4
Equipment Cost Worksheet		5
Miscellaneous Cost Worksheet		6
Cost Summary Sheet		7
X. APPENDIX ii Memorandums of Understanding		
MOU for Hazardous Material Incident Response Team / SERC		1
XI. APPENDIX iii		
Definitions, Explanations and Acronyms		
& Legal Authorities M.C.A.,		
Definitions and Explanations		1
Acronyms		2
Legal Authorities Contents		4
XII. APPENDIX iv		
CONTACT NUMBERS		1

I. INTRODUCTION

Purpose

The primary purpose of this plan is to provide effective coordinated emergency response support to local government by state, federal, and private agencies for incidents involving the release or potential release of hazardous materials in the State of Montana. For the purposes of this plan, "hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, MCA, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material. Other purposes of this plan are to provide guidance to State personnel who may encounter an incident involving hazardous materials and to define the support role of specific state agencies. This state plan can be initiated at the request of local governments.

This plan allows for coordination with local hazardous materials response plans developed by cities, counties, and Local Emergency Planning Committees, hereafter referred to as "LEPC", pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act hereafter referred to as "SARA Title III". Coordination could include out of state entities. This plan provides for response and support of the capabilities of local response personnel when the incident involves hazardous materials as defined in 10-3-1203 Montana Codes Annotated (MCA).

The State of Montana recognizes the wide variation in local hazardous materials response capabilities throughout the state and adjacent states. It is important, therefore, to emphasize that **the state's intent is to SUPPLEMENT local capabilities, not to supplant it.** The Montana Hazardous Materials Response Plan shall be implemented at the request of local government.

Scope

This plan outlines the circumstances under which state support will be initiated. The plan is for the use of state personnel and local jurisdictions that are involved with hazardous material emergency response within the state. The plan covers the procedures, communications, and responsibilities of participating agencies and provides for the follow-up to hazardous material spills or release incidents. The capabilities and responsibilities of the various agencies involved are outlined. This plan addresses transportation and fixed site spills, releases, or threat of release of hazardous materials, and incidents involving orphaned hazardous materials, which may pose a threat to human health or the environment. In accordance with Montana law 10-3-105 MCA, the State may consult and cooperate with agencies in the federal government, other States, and Canadian federal or provincial governments.

Authority

Authority for implementation of this plan is derived from 10-3-1204 (2 through 5), MCA. The Montana Hazardous Materials Response Plan requires the coordinated efforts of all signatory agencies.

Assumptions

The response activities in this plan are based on the **National Incident Management System (NIMS)**. NIMS is a management tool that provides a structure for response to emergency situations, in this case, hazardous materials incidents. It provides a system for federal, state, and private entities to be integrated under local command. SARA Title III, Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency (EPA) rules require use of an Incident Management System for hazardous materials incidents. It is the policy of the Montana State Emergency Response Commission hereafter referred to as the “SERC”, that NIMS will be used when responding to hazardous materials incidents, in conjunction with the State Emergency Coordination Plan hereafter referred to as the “SECP”. NIMS, when implemented by local government during initial response, will allow state resources to become part of the response network without disrupting local effort.

Incident Command and Control

The State Hazardous Materials Incident Response Team hereafter referred to as “SHMIRT” is designed as a support unit to provide 24-hour coverage seven days a week. The SHMIRT operates under the direction of a team leader. When multiple regional components are operating as the state team at the same incident, the first team deployed will have the team leader unless the SHMIRT at a later time agrees to assign that responsibility to another team member. As a support unit, the team operates under the direct authority of the IC. If requested, the team may provide technical guidance to an IC on-scene or by phone. Use of the team does not release the local response agencies from their duty to provide normal response functions.

II. Implementation

The Disaster and Emergency Services Division hereafter referred to, as “MT-DES” is the statutorily assigned agency for notification of reportable hazardous materials incidents as established by 10-3-1211 MCA and Title III of the SARA. This enables MT-DES, to maintain a database of incidents. Reporting hazardous materials incidents to MT-DES also fulfills state reporting requirements as established by 10-3-1211 MCA and Title III of the SARA.

The decision to initiate the request for assistance provided in this plan shall be made by the local Incident Commander according to procedures outlined in their local emergency operations plan, when it is determined that a hazardous material is involved in quantities or conditions exist that may pose an immediate hazard to public health and/or the environment, or when the IC is seeking technical advice or assistance. The plan is initiated by calling MT-DES, at 406-841-3911. MT-DES will notify the appropriate response and support agencies, when requested to do so by the IC.

Summary

Implementation of the Montana Hazardous Materials Response Plan includes creation of a single specially trained and equipped team for hazardous material incident response. The state-wide response SHMIRT is a cooperative effort of regionally located response teams, designated officials of state agencies, and the SERC. The SHMIRT members are strategically located around the state. Each of these regional teams will consist of hazardous materials emergency response personnel with specialized equipment specific to hazardous materials response. The regional teams, when activated, will operate under the direction of the team leader and within NIMS. The teams are intended to respond to the most acute and critical hazardous emergencies in the state. Their primary objective is to protect human life, the environment, and property during the early stages of an emergency. While there is an expectation from the State Emergency Response Commission (SERC) and the MT-DES State Emergency Coordination Center (SECC) that the regional teams comprising the SHMIRT will respond when requested, there is also an understanding that there may be local circumstances that may prevail and prevent them from responding or subject for recall to their home station. In order to accomplish this, the regional teams must remain under local administrative control and not as a state resource.

III. State Hazardous Materials Incident Response Teams

Mission Statement

To create and establish strategically located, specially trained and equipped regional hazardous materials incident response teams (regional teams) using the combined resources of the state of Montana, local governments, and private industry. The state response teams' mission is to protect Montana's citizens, environment, natural resources, and property from the effect of hazardous material releases or the threat of release of hazardous materials.

Goals

Goal 1: To provide emergency responders with timely, up-to-date information, in a readily accessible manner, which may be used as a basis for emergency operations decisions.

Goal 2: To assist local governments in responding to and mitigating the effects of hazardous materials incidents.

Goal 3: To provide emergency responders with appropriate hazardous materials training to meet operational and regulatory requirements.

Goal 4: To provide regional teams with appropriate equipment and training to support other emergency responders at hazardous materials incidents.

Policies

The State of Montana recognizes that local governments have primary responsibility for the mitigation of hazardous materials emergencies. For those incidents where the local officials ask the State for assistance, the State Hazardous Materials Incident Response Team (SHMIRT) will provide emergency hazardous materials incident response coverage.

The regional hazardous materials incident response teams, as components of the SHMIRT, will be strategically located in authorized agencies identified by the SERC.

Trained HAZMAT personnel from host agencies will staff the regional teams. Those agencies at their sole discretion may include members on their team who are not regular members of their organization.

The regional teams will use NIMS and will not respond to an incident until the IC has been established at the incident. The team will work under the direct supervision of a Team Leader.

Administrative and legal operations of the regional response team components and the SHMIRT are to be consistent with administrative rules adopted by the state. Such rules must meet statutory guidelines and operational needs.

The Montana Hazardous Materials Response Plan in addition to CFR 1910.120 and NFPA 472 and other applicable standards addressing will guide response team operations including:

- Personnel
- Regulatory compliance
- Equipment standards
- Insurance requirements
- Training requirements
- Certification requirements
- Records and reporting
- Medical surveillance
- Billing/cost recovery program
- Decontamination Procedures

Coordination with other Government Agencies

The State of Montana and its State Hazardous Materials Incident Response Team is committed to the principles of integrated emergency management. Command and control functions will use NIMS.

SHMIRT Agencies

The SERC will determine what agencies will have SHMIRT Teams and only those agencies will be authorized by the SERC.

Training and performance

The State of Montana will provide specialized training to response team personnel through the SERC. State regional response team training programs will address the federal training levels as outlined in the "Training Specifications" section of this plan. Criteria for the authorization of teams will be defined in the authorization process section of this plan and audited by a committee of the SERC. The teams will be trained in and operate under NIMS.

SHMIRT will be evaluated using the performance criteria established by 29 CFR 1910.120 (q) and National Fire Protection Association (NFPA) Standard 471 and 472.

AUTHORIZATION PROCESS FOR PERSONNEL WITH ADVANCED HAZMAT CAPABILITIES

The following outlines the steps for personnel with advanced hazmat capabilities to become authorized by the SERC:

1. The chief executive of the agency requesting authorization shall submit to the SERC annually, a letter of certification, listing the members of the team, the qualifications of the personnel, and also certification of the minimum required hazardous materials equipment as required by this plan.
2. Once the authorization process has been completed by the SERC, a letter shall be sent to MT-DES validating the agency's team accreditation.

3. Each authorized team will participate, with other regional teams in, at least, one multi-agency hazardous materials exercise a year.
4. The authorized agency will enter into a Memorandum of Understanding with the SERC.
5. If team members change or additional members are added, the chief executive for the agency will submit the changes along with training documentation to the SERC prior to deployment as a team member.

Financial Management

The SHMIRT operates under the administration of the SERC. All fiscal accounting, planning, budgeting, recording, and reporting programs of the team will be the function of the SERC and outlined in memorandums of understanding between the SERC and the response teams.

State Hazardous Materials Incident Response Team Components

A regional SHMIRT consists of a minimum of six members competent at the technician level. Regional teams can be staffed by members of a single agency or may be comprised of personnel from various agencies. Hazardous materials qualified (OSHA 1910.120) positions that are required to be staffed at an incident to which the SHMIRT responds include:

1. Incident Commander - **local agency**
2. Hazmat Team Leader
3. Hazmat Safety Officer - SHMIRT Member
4. Entry Team - SHMIRT
5. Back-up Team - SHMIRT
6. Research - SHMIRT
7. DECON - local agency **or** SHMIRT
8. ALS as defined by state EMT licensing rules - local agency **or** SHMIRT

Depending on the complexity of the incident other positions may be required to provide effective and safe management of the incident.

Minimum Requirements (See Training Requirements – Section VII)

The minimum requirements for regional teams to be considered a component of the SHMIRT include:

1. The chief executive for each regional team will certify training and equipment standards are met for their respective team members.
3. Annual approval as a team by the SERC.
3. Available, 24 hrs/day, 7 days/week for technical assistance by phone.
4. Available to supply 3 team members on-site 24 hrs/day, 7 days/week for initial and extended response for a period not to exceed 10 days. Teams should respond to MT-DES within 30 minutes of the request for a response and advise MT-DES whether they are able/not able to respond.

Minimum Equipment Standards for Hazardous Materials Response

Scope: These standards shall be applicable to the SHMIRT.

Purpose: This standard specifies minimum hazardous material equipment requirements for regional teams involved in mitigating hazardous material related activities. These standards are not intended to restrict jurisdictions from exceeding these minimum equipment standards. It is the intent for a full mobilization of the SHMIRT that this minimum equipment will be on site of the incident and that not every responding team component will be required to bring all of their equipment with them to the incident.

Reference Materials:

NFPA Fire Protection Guide on Hazardous Materials

Condensed Chemical Dictionary

A Farm Chemical Reference Book (Farm Chemical Handbook, AG Products Safety Manual)

CHRIS Manual, Volumes 1, 2, & 3

Merck Index - current edition

Emergency Care for Hazardous Materials Exposure or HAZMAT Injuries

ACRR HAZMAT Spill Control

NIOSH Pocket Guide To Chemical Hazards

DOT Emergency Response Guide “ERG”

“Janes” Chem-Bio handbook

Miscellaneous Equipment:

Protective Clothing Equipment (NFPA-NIOSH-OSHA approved):

4 Flash Protection suits

8 Level "A" suits

Cryogenic gloves

Hard Hats

Chemical resistant boots

Vinyl Boot Covers

Neoprene Boot Covers

Latex Boot Covers

Butyl Rubber Boot Covers

Fire Boots

Butyl Rubber Gloves

Viton Rubber Gloves

Nitrile Rubber Gloves

PVC/Nitrile Gloves

Neoprene Gloves

Silvershield HAZMAT Gloves

4 - Approved Self Contained Breathing Apparatus (SCBA)

6 - 1 hour spare bottles for SCBA

Spill/Leak Control Equipment:

Chlorine kit "A"
Access to a Chlorine "B" & Chlorine "C" kit
Adsorbent booms and sheets
2 Dome Clamp set
Plug/Patch Kits
Plug dike
PVC pipe - assorted sizes
Assorted Plumbing adapters
Non-sparking barrel pump
Funnels - assortment
55 & 85 Gallon over pack drums

Monitoring Equipment:

Binoculars
Gas detection monitor (4 gas minimum)
Extension probes
PH Paper
Radiation detector and monitor
PCB Kit
Spill-Father Chemical Classifier
Weather Station
Mercury Spill Kit
Heinz 5 step Field Identification Kit

Tools:

Non-sparking tool kit
Standard tool kit
Shovel, round point and square point, regular and non-sparking
Bung wrench, non-sparking
Pipe wrenches, non sparking
Push broom
Poly broom
Plastic dustpans
Squeegee
Dolly
Pinch or crow bar non-sparking
Sledgehammer, 8 lb.
24" bolt cutter
Drum lifters

Decontamination Equipment:

Acid neutralizer
Caustic neutralizer
Solvent neutralizer
Plastic sheeting
Disposable trash bags

Salvage Covers

Eyewash kit

Disposable latex gloves

Trash cans

Bleach, vinegar, ammonia, soap

Disinfectant

Scrub brushes with handles

Plastic pails

Disposable coveralls with booties and hoods

Wash, rinse and containment system

Communications/ Command Equipment:

Portable Radios, 5 Watt – Programmable Batteries, Chargers, Belt Clips

Cellular phones

Computer Equipment:

PC of choice – Compatible with Regional Teams

9600 baud or greater modem

Portable printer

Portable Fax

Cameo/Aloha Software

IV. Response Procedures at an Incident

Notification and Communication

Immediate action should be taken to safeguard responders and the public.

Local jurisdiction must operate under NIMS and have an appointed IC.

All responders will report to the designated staging area and check in.

The local jurisdiction is responsible for hazardous materials incident response and does so in accordance with their Local Emergency Operations Plan hereafter referred to as the “LEOP”.

Emergency responders shall evaluate the situation and determine if a hazardous material is present. If hazardous materials are thought to be present in amounts that may pose a threat to persons, the environment, or property the responder shall follow the Standard Operating Procedures (SOP), established by their organization.

The IC may request the activation of the State Hazardous Materials Plan according to procedures established in their LEOP.

The IC may, according to local procedures, request MT-DES to:

- 1) Contact needed resources, and
- 2) Conference the telephone calls between the IC and the resource agency.

If local jurisdictions need State resource assistance:

- Call MT-DES Duty Officer at 406-841-3911
- Identify caller
- Identify jurisdiction
- Identify location of incident

MT-DES at a minimum will contact a hazardous material technician who is a member of the Montana State Hazardous Material Incident Response Team; hereafter referred to as “SHMIRT” and conference the call with the IC. The IC and the hazardous material technician will evaluate the information and if additional support is needed, MT-DES will conference the calls as requested.

If it is determined by the on scene IC that any state agency needs to support the incident on-site, the requested agency shall dispatch personnel according to its SOP. If SHMIRT members are to respond on-site there shall be an agreement by the authority of the IC, Governor’s Office, MT-DES, and the Hazardous Materials technician on the conference call prior to deployment.

MT-DES will continue to contact the supervisors of support services as requested by the IC, which are defined in the responsibilities section of this plan. Each agency is responsible for documentation of their costs for reimbursement.

Montana State Emergency Response Commission (SERC)

MT-DES will notify the SERC chairperson about HazMat incidents that require assistance. The chairperson may notify other SERC members.

Hazardous Materials Incident Response

When requested by the IC, MT-DES will contact the nearest SHMIRT members as needed.

Individual members of the response team will be contacted according to their local SOP.

Responders are required to bring with them equipment practical and necessary for the response.

Response team members work under the direct supervision of their team leader.

The response team leader operates at a designated level in NIMS.

The response team leader and members shall maintain regular contact with MT-DES during travel to and upon arrival at the incident.

The response team leader will check in upon arrival at the designated staging area.

The Response Team Leader will be briefed from the local IC.

The team leader negotiates a written set of rules of engagement and incident action plan with the incident command team and shall be approved by the IC.

The SHMIRT is required to track their expenses and apply for reimbursement according to the plan reimbursement procedure.

SHMIRT members act only in the capacity for which they were requested and shall not be requested to assume the sole responsibility of command of the incident.

State Agencies

Members of state agencies, other than emergency service provider agencies, and their support staff do not normally respond to incidents, but could respond if requested by the IC.

MT-DES notifies state agencies about emergency incidents as needed to support the response.

Members of state agencies are notified about emergency incidents according to procedures outlined in their agency SOP.

Members of state agencies requested to respond to an incident will arrange their own transportation. Responders shall maintain routine contact with MT-DES during travel to and arrival at the incident.

Responders shall check-in upon arrival at the designated staging area.

Members of the state agencies requested to respond must track their expenses and submit them according to the plan reimbursement procedure.

Members of state agencies who respond will act only in the capacity for which they were requested or assigned by the IC.

Disaster and Emergency Services Division

MT-DES DUTY OFFICER

Upon notification of the occurrence of a hazardous materials incident (or a potential hazardous materials incident), MT-DES will perform the following tasks (in accordance with established guidelines in the MT-DES Duty Officer Handbook):

Determine the nature of the incident. Identify the caller, their jurisdiction and the location of the incident. Ascertain whether the IC is requesting assistance from the State, or simply notifying the State Emergency Response Commission (SERC), through MT-DES, of an incident that has occurred and was (or, is being) handled routinely by local responders.

- If the call is for notification purposes only (and the IC indicates that he currently has time to answer questions), MT-DES will collect pertinent information and complete a **Duty Officer Incident Report**.

If the IC does request assistance from the State (under the provisions of this Plan), MT-DES will briefly explain the support process and their role as communications facilitator (during a telephone conference call between the Incident Commander and a hazardous materials technician who is a member of the SHMIRT.

- MT-DES Duty Officer will immediately notify the SECC Manager and activate the SECC to the appropriate level. (Conference Call capability is limited by the DO so it should be conducted from the SECC) MTDES will place a call to the appropriate SHMIRT, explain the situation to the hazardous materials technician handling the call, and introduce the

technician and the IC. **MT-DES will monitor their conversation, listening specifically for the following things:**

- 1.) **Any immediate threats to life, property, or the environment.**
 - a. **Evacuations in progress, pending or already completed?**
 - b. **Evacuation routes defined?**
 - c. **Sheltering in place? Perimeter(s)?**
 - d. **Special Needs population?**
 - i. **Any immediate impacts?**
 - 2.) **Resource needs of the local jurisdiction that the State may be able to support.**
 - 3.) **“Safe Route” to and Exact Location of the incident.**
 - 4.) **Staging Area location.**
 - 5.) **“ALS” ambulance dedicated to the Hazmat Team.**
 - 6.) **“POC” at the Incident Scene.**
 - 7.) **Current weather conditions at incident site.**
 - 8.) **Incident Command structure in place by local jurisdiction.**
 - 9.) **Support capabilities of local jurisdiction to take care of team members while deployed.**
 - 10.) **Local jurisdiction DECON capabilities and needs specific to the incident.**
 - 11.) **What actions have been taken?**
 - 12.) **Who is the responsible party if known or is this orphan material?**
- If the IC’s questions/concerns are not being met, or it becomes clear that additional support will be needed, the MT-DES may introduce additional parties to the conference.

Decisions regarding possible deployment of any component of the SHMIRT will be made jointly by:

- 1.) The on-scene IC.
- 2.) SHMIRT members
- 3.) The MT-DES DO (and the State Emergency Coordination Center (SECC) Manager)
- 4.) A representative from the Governor’s Office

When a course of action has been agreed to, MT-DES will make the appropriate contacts and notifications (per the guidelines established in the MT-DES Duty Officer Handbook).

Once the **State Hazardous Materials Plan** is activated, MT-DES is authorized (by the SERC) to place orders for resources requested by the IC.

The DO will notify the SECC manager and activate the SECC if a hazardous materials event should escalate to the point where: *(any of the following)*

- (1) incident support demands begin to exceed the DO personal span of control;
- (2) **On Site Assistance** has been requested;

Resource Ordering System

1. MT-DES can provide up to three personnel at no cost to local government including:
 - a. MT-DES Advisor (Agency Representative)
 - b. National Incident Management System (NIMS) coach.
 - c. Technical Specialist(s)
2. State and Federal agencies that provide mutual aid are responsible to bill local government, if appropriate.
3. Local government can order any state or federal resource they need through the State ECC. Local governments will be responsible for the cost of such resources. Once local governments' emergency two-mill levy is committed and exhausted, eligible costs may be reimbursed by the state. MT-DES will consolidate the bill to local government for state and federal agencies. Private contractors must bill directly to local government if ordered by local government.
4. If the size of a local incident or many incidents across the state are jamming the resource ordering process, a conference call will be initiated, involving the local EOC, the State ECC, the Northern Rockies Coordination Center (NRCC), zone dispatch centers, Department of Natural Resources and Conservation (DNRC), and Department of Military Affairs (DMA) Centralized Services Division (CSD).
5. ALL SECC Resource orders will be documented using the NWCG Resource Ordering Procedures.

Any and all (legitimate) **Resource Orders** placed by MT-DES, using National Wildfire Coordinating Group (NWCG) resource ordering procedures, should include the following minimum components:

- 1.) Resource Information
 - What (specifically) was ordered? People? Equipment?
 - By whom?
 - For what purpose?
 - When is it needed?
- 2.) Check-In Information
 - Location for "staging" (at the incident)
 - Name of Contact
 - How to reach them (i.e.; phone #, radio frequency, etc.)
 - Responsible jurisdiction requesting assistance
 - Responsible party if known (shipper/owner)

Transportation/Travel Arrangements

- Who is responsible?
 - What is the travel route or plan?
 - Mode of travel and related information (i.e. vehicle description/license plate information)
6. When local EOC's order resources, they should order generically, not agency specific.

Orphaned Material Procedure

Definition:

"Orphaned hazardous material" means hazardous material of which the owner cannot be identified. (10-3-1203(11) MCA)

Procedure:

1. Upon the request of the local IC, who has responded to an orphaned hazardous material, MT-DES will locate and dispatch the nearest SHMIRT.
2. The SHMIRT will attempt to identify the material.
3. If orphaned materials are determined to be hazardous or the SHMIRT is unable to identify the substance, the IC will notify MT-DES.
4. MT-DES in consultation with Department of Environmental Quality (DEQ) and other state and federal agencies, as appropriate, shall determine the appropriate methodology and provide guidance to the IC for securing, transporting, clean up and disposal of an orphaned material.
5. The SHMIRT shall complete appropriate documentation of the response and forward it to MT-DES.

V. Responsibilities:

Functional Responsibilities:

MT-DES Duty Officer will conference any calls the IC requests and moderate those conferences. Other than initial calls, the duty officer will be required to have a presence in the SECC for additional conference call capability and will notify the SECC manager for assistance.

Montana State Hazardous Material Incident Response Team - SHMIRT - is a cadre of trained personnel operating under an emergency response plan and appropriate SOPS. The team is expected to perform work to control the actual release or threatened release of hazardous material requiring close approach to the material; to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident; and to provide technical assistance to local jurisdictions. The SHMIRT is under the direction of the IC. If requested they may provide technical guidance to the IC; however this does not release local response agencies from their duty to provide response functions. Team response functions may not require the team to be on site. Under no circumstances should the local jurisdiction expect the SHMIRT assume management of an incident.

Incident Commander (IC) will be in charge of all efforts at the scene including those of state agencies support personnel. The IC will be designated according to the local response plan. The IC shall be responsible for on-site communications and information releases to the public or press, enforcement investigation and site command and control. The IC has the authority to direct all response activities assuring life safety, environmental, and property protection. The IC determines when the emergency phase of the response should be terminated and when the incident should be assigned to the appropriate agency for follow-up.

Primary Agencies are given a standby notification that a hazardous materials incident has been called into the MT-DES. The standby notification provides the primary agencies with early notice of the incident and that they may be notified to join a conference call at a later time. They include any or all of the State Hazardous Materials Incident Response Team members, and the DEQ Duty Officer, and MT-DES.

Local governments - Local governments are responsible for the safety and welfare of their constituents. Emergency response is based on the principle that local authorities bear initial and continuing responsibility for emergency incident mitigation. Each local discipline is responsible for duties agreed to and defined in the LEOP. Those disciplines include but are not limited to; Law Enforcement, Fire Departments, Emergency Medical Responders, Search and Rescue, Public Works, and Elected Officials.

[Local government is also responsible to the collection of all response and cleanup expenses for the incident from the responsible party and reimbursing any state funding source that covers the initial expense of state response to an incident. (10-3-1216 (1) MCA)]

Responsibilities Common to All Agencies

Designate agency personnel who will be made available and are capable of responding to hazardous materials emergencies, including regular updates as personnel and training levels change.

Designate specific state agency personnel to be on 24-hour call and insure their agency duty officer has this information available for notification and deployment by the MT-DES Duty Officer or the SECC.

Notify the MT-DES Duty Officer (406-841-3911) for reporting hazardous materials incidents.

Adhere to the provisions and procedures of the Montana Hazardous Materials Plan, i.e., this document.

Channel on-site media communications through the IC or the incident's designated Public Information Officer (PIO).

Cooperate with the directions of the IC for on-site emergency response activities.

Educate and train employees in hazardous materials response on a continuing basis as required by OSHA and EPA regulation (29 CFR 1910.120).

Participate in incident critique to aid in future prevention and improved emergency response.

Practice using provisions and procedures of the Montana Hazardous Materials Plan.

Responsibilities of Local Governments and Private Sector Organizations

It is the responsibility of local jurisdictions and private sector organizations to understand and comply with the federal rules and regulations regarding hazardous material and response to hazardous material incidents. Those rules include but are not limited to SARA Title III, OSHA (1910.120) and Title 10 MCA.

While it is the statutory responsibility of the designated local organization or agency, to respond to hazardous material incidents, it ***is not*** the normal responsibility of said organization or agency to conduct removal or remedial action. The responsibility lies with the legally responsible party, be it the land owner, owner, buyer, shipper, manufacturer, or insurance carrier.

Each local government is required under the authority of Title 10-3-401 MCA to have an LEOP. In addition, every local jurisdiction must have completed a Local Emergency Response Plan or Annex for hazardous materials, with up-dates completed annually. A copy

of the plan, or its up-date, must be on file in the state office of MT-DES and be reviewed by MT-DES staff (10-3-401 MCA).

Responsibilities of State Agencies including Orphaned Hazardous Materials and Clandestine Drug Labs

Governor's Office

The Governor has overall responsibility to direct and control state government operations that support local emergency or disaster operations and to mitigate the dangers to the state and its citizens presented by a disaster or emergency. The Governor exercises emergency responsibilities by proclamation, executive order, or directive to facilitate emergency operations. All departments of state government support the Governor's efforts. The Governor or a designee may be requested to, participate in a conference call conducted during a hazardous materials incident. The Governor may authorize the use of the Environmental Contingency Grant Account funds for SHMIRT response. The Governor may determine to apply disaster funds to an incident. The Governor may activate the Montana National Guard, (MTNG) once a disaster is declared.

Department of Environmental Quality (DEQ)

DEQ and its environmental health programs provide a variety of support to hazardous material incidents.

DEQ joins other state agencies in forming a cooperative resource for offering advice, guidance and assistance to hazardous material to the IC during incident stabilization. DEQ will be responsible for assuring the proper management of cleaning up the site and disposal.

As an agency, DEQ has a variety of roles and responsibilities. It advises the governor when an official assistance request might be made to the U.S. Coast Guard to use the Oil Spill Liability Trust Fund. If the governor is unavailable to make the request, the director of DEQ or administrator of MT-DES can make it.

Through its relationship with the EPA, the department can formally request that the EPA lend its expertise and financial resources to assist in emergency situations.

As the state's representative to the Federal Regional Response Team, DEQ can also access the expertise and materiel resources of a number of federal agencies and states in EPA Region VIII (which includes: North Dakota, South Dakota, Colorado, Utah, Wyoming and Montana). The response time for these resources generally will vary from several days to a couple of weeks.

The department's philosophy is the person or entity owning or contributing to the release of a hazardous substance(s) is responsible for properly cleaning up and disposing of the released substance(s). DEQ maintains a contract for hazardous material response and cleanup and has

the spending authority to have its contractor assist in situations if funds are available and the IC or responsible local official(s) formally request assistance. If the DEQ Director officially declares a situation an emergency, the contractor must have the capability to respond upon request.

Since the early 1980's, DEQ has participated with other state agencies in a 24-hour emergency response system. The system requires department volunteers to carry a portable radio for a week. DEQ person on duty acts as a communications link between hazardous material response calls that come into the Montana Highway Patrol's Central Communications Center to the MT-DES and the appropriate DEQ program personnel.

Due to Montana's geographic expanse and DEQ limited resources, the department's initial response is normally that of an advisor. A telephone conversation with the IC can be followed by DEQ personnel going to the accident site, within varying amounts of time, depending on location and weather conditions.

Department of Fish, Wildlife & Parks (FW&P)

The DEQ Duty Officer will contact the department when there is a chance that hazardous material has or is likely to reach surface waters or cause damage to fish and wildlife unless consensus is reached between the DEQ Duty Officer and the MT-DES Duty Officer or SECC for MT-DES to make the notification.

The Department can provide technical information concerning the potential damage to the environment resulting from an incident. They can provide technical information to help minimize the loss of fish or wildlife resources associated with spills, help to ensure timely and effective clean-up, and encourage clean-up techniques that will minimize ancillary damage to fish and wildlife resources.

Department of Justice (DOJ)

A Montana Highway Patrol Officer is often the first law enforcement officer to arrive at the scene of a hazardous materials incident on the highways of Montana. They can provide assistance with the collection of evidence and information necessary to support criminal and or civil proceedings. They possess the authority and have the capability of enforcing the motor carrier safety rules and standards, and any state laws, which govern the transportation of hazardous materials.

Department of Military Affairs

- **Montana National Guard**

The Montana National Guard (MTNG), upon activation by the Governor, may provide assistance to civilian authorities in response to a hazardous materials spill or incident in order to protect the welfare, life, and property of the people of Montana.

The following are potential tasks and/or missions that the MTNG may be asked to provide in support of civilian agencies responding to a hazardous materials incident:

1. Public safety measures:
 - a. Traffic control and roadblocks (assist local law enforcement only).
 - b. Disaster search/relief and recovery.
 - c. Perimeter security and security of critical facilities (assist local law enforcement only).
 - d. Area evacuation (assist local law enforcement only).
2. Public health:
 - a. Emergency medical treatment (limited).
 - b. Limited aero medical evacuation.
3. Public welfare measures:
 - a. Emergency shelter.
 - b. Mass feeding and potable water supply
4. Transportation support.
5. Communication support.
6. Aviation and Logistics support.
7. Confined Space Rescue (Air National Guard)
8. EOD Response (Air National Guard)
9. Hazardous Material Response (Air National Guard)
10. Disaster Preparedness Assistance (Air National Guard)

- **Disaster and Emergency Services Division (MT-DES)**

MT-DES is charged with the responsibility for expediting and enhancing a coordinated State level response to disasters, emergencies, and incidents affecting the citizens of Montana, their property, and/or the environment.

The State Emergency Response Commission (SERC) has authorized the MT-DES to:

- Provide the federally mandated State Point-of-Contact (POC) for notification of reportable hazardous materials incidents.
- Serve as the single POC for a IC requesting activation of the State Hazardous Materials Plan.
- Serve as a clearinghouse regarding resource availability and other emergency-related services available through the State of Montana.

**MT-DES may be contacted, 24 hours-a-day, by simply calling:
(406) 841-3911.**

Upon request of the IC, MT-DES is able to provide any or all of the following services:

1. Notification and Incident Reporting.
2. Limited Communications Services.
3. Resource Ordering of state owned resources and locating private resources for local jurisdictions.

4. Coaching Assistance with a MT-DES Agency Representative (designed to help guide local authorities through the bureaucratic maze surrounding disaster assistance and provide enhanced situational information to the SECC).

Department of Natural Resources and Conservation (DNRC)

The Montana DNRC is assigned stewardship and management of just over 5 million acres of State Lands. Any hazardous materials incident occurring or threatening State Lands will require notification by the IC to the administrative DNRC office. The DNRC office will designate an agency administrator to work with the IC staff to represent the state's stewardship interests. DNRC provides technical incident management system coaching/assistance by phone or on-site at hazardous materials incidents when requested.

Department of Public Health and Human Services (DPPHS)

The DPPHS primarily deals with the health of individuals and the public health of communities. The Department can provide supplemental technical assistance to local health departments and other local agencies and emergency response units. Department services include the services of the public health lab (microbiology and chemistry); epidemiological services to assess and to monitor the short and long-term impact of a hazardous materials spill on public health; specialized assistance regarding food and consumer safety issues; the provision of physician clinical toxicology services regarding the health impact of chemicals on individual and community health; and support of local emergency medical services and provision of a variety of social services functions. The Department serves as the single point of contact for Emergency Support Function of the Federal Emergency Response Plan, and as a conduit for activation of the National Disaster Medical System (NDMS). These services can range from small DMAT (Disaster Medical Assistance Team) to a full-fledged and fully staffed self-supporting medical facility, and transportation to out-of-state, designated NDMS hospitals.

Montana Department of Transportation (MDT)

The MDT responsibility is the preservation of the entire highway system as defined in MCA 60-1-103, including surfaces, shoulders, roadside, structures and such traffic control devices as are necessary for its safe and efficient utilization. MDT's personnel may perform traffic control, statewide communications, signing, flagging, road closures, or provide equipment and material, when called upon by the IC or MT-DES.

Responsibilities of Federal Agencies

Department of Defense (DOD)

Support the IC, if the incident involves defense-related materials. Acts as the lead response agency within designated National Security areas.

National Park Service, Department of Interior (DOI)

All-Hazard jurisdictions for National Parks and Monuments. The DOI manages lands under the jurisdiction of the National Park Service, National Wildlife Refuges and Federal Fish Hatcheries, the Bureau of Indian Affairs (BIA), and the Bureau of Land Management (BLM). DOI is contacted through the regional environmental officer (REO), who is a designated member of the Federal Regional Response Team (FRRT).

The DOI can provide natural resource expertise regarding fish, wildlife, threatened and endangered species habitats, migratory birds, soils, minerals, surface and ground water hydrology. They can also provide technological expertise regarding contaminants affecting habitat resources, analysis and identification of inorganic hazardous substances, metals, metallurgy relevant to site cleanup, coal mine wastes, land reclamation, engineering and laboratory research facilities.

Center for Disease Control (CDC)

The Centers for Disease Control and Prevention (CDC) is recognized as the lead federal agency for protecting the health and safety of people – at home and abroad, providing credible information to enhance health decisions, and promoting health through strong partnerships. CDC serves as the national focus for developing and applying disease prevention and control, environmental health, and health promotion and education activities designed to improve the health of the people of the United States.

Agency for Toxic Substances and Disease Registry (ATSDR)

Agency for Toxic Substance and Disease Registry (ATSDR) is directed by congressional mandate to perform specific functions concerning the effect on public health of hazardous substances in the environment. These functions include public health assessments of waste sites, health consultations concerning specific hazardous substances, health surveillance and registries, response to emergency releases of hazardous substances, applied research in support of public health assessments, information development and dissemination, and education and training concerning hazardous substances.

Environmental Protection Agency (EPA)

The EPA may provide assistance when the responding agency is in a situation beyond the capability of the resources of the local agency. They provide expertise on the effects of hazardous material releases on human life and the environment. EPA may initiate containment and cleanup activities when the responsible party is incompetent, unwilling or unable to initiate a cleanup. The EPA is the Federal On-Scene Coordinator (OSC) as outlined in the National Contingency Plan. The OSC is the primary Federal representative at a response and is the point-of-contact for the coordination of federal efforts with the local response agency.

The following emergency response resources are available through the EPA at the direction of the OSC with a 2 to 18 hour response time, depending on the location of the incident:

- Oil and Hazardous Substance Spill Response
- Air Monitoring Equipment
- Radiological Monitoring Equipment
- Level “A” – “D” Entry Teams
- Air, Water and Soil Sampling
- Spill Containment/Remediation
- Technical Assistance
- Response to Nuclear, Biological and Chemical Incidents.

- **Environmental Response Team (ERT)**

The ERT supports EPA’s OSC’s with expertise in treatment technology, biology, chemistry, hydrology, geology, and engineering. EPA’s ERT can provide 24-hour access to special decontamination equipment for chemical releases and advice to the OSC in hazard evaluation; risk assessment; multimedia sampling and analysis; on-site safety; cleanup techniques; water supply decontamination and protection; application of dispersants; and disposal. ERT support may be request through the Federal OSC.

- **Coast Guard’s National Strike Force (NSF)**

The NSF is composed of three strategically located strike teams, a public information assist team, and a coordination center. The NSF has specially trained personnel and is equipped to respond to major oil spills and chemical releases. NSF response time to an incident is from 12 to 24 hours. The NSF provides response management, entry-level “A – C” site assessments, safety and action plan development, and documentation for both inland and coastal zone incidents. The coordination center maintains a national inventory list of spill response equipment. NSF support may be requested through the Federal OSC.

National Transportation Safety Board (NTSB)

The NTSB has the federal responsibility for conducting transportation related accident investigations.

National Railroad Administration (NRA)

The NRA has the responsibility for conducting investigations into railroad accidents.

Department of Energy (DOE)

The Federal Radiological Emergency Response Plan outlines each federal agency's responsibility. The DOE is the primary agency for providing radiological monitoring and assessment assistance. DOE's support ranges from giving technical advice over the telephone to sending highly trained personnel and state-of-the-art equipment to the accident site to help identify and minimize any radiological hazards.

Radiological information, advice, or assistance can be requested by calling the nearest DOE Regional Coordinating Office (RCO). The DOE Regional Response Coordinator (RRC) decides what action is needed based upon the request. If necessary, the RCO sends a federal team to the accident site to help or advise the IC.

If the emergency escalates to a point that personnel and/or equipment are needed at the accident scene, the RCO coordinates the activation of a DOE Radiological Assistance Program (RAP) team. The RAP team's capabilities include field monitoring, spectrometry, sampling, decontamination, dedicated response vehicles, mobile laboratories, generator, communication, and aerial surveys. Personnel include radiological engineers, health physicists, medical, security, legal, and public information personnel, and industrial hygienists. Should the emergency require monitoring and assessment resources exceeding those of the RAP team, a Federal Radiological Monitoring and Assessment Center, where all the federal agencies provide support, is established.

After the immediate threat of the accident has passed, the lead federal radiological monitoring and assessment role is transferred from DOE to EPA.

VI. Federal resources available for radiological emergencies:

Resource	Specialty	DOE Responsible Organization
Accident Response Group (ARG)	Primary accident response element for events or accidents involving nuclear weapons. Trained in weapon recovery and in evaluation, collection, handling, and mitigating radioactive and other weapons-associated hazards.	Albuquerque Operations Office
Nuclear Emergency Search Team (NEST)	Provide technical assistance to the Federal Bureau of Investigation (FBI). The technical assistance includes such support as locating nuclear or explosive materials or devices that may be lost, stolen, or associated with bomb threats	Nevada Operations Office
Radiological Assistance Program (RAP)	Provides radiological assistance to other federal agencies, state, tribal, and local governments, and NRC Licensees requesting assistance for events involving radioactive materials	Regional Coordinating Offices
Federal Radiological Monitoring and Assessment Center (FRMAC)	Temporary facility for production of complied, quality-controlled monitoring and assessment data for the lead federal agency and state, tribal, or local authorities involved in a radiological event.	Nevada Operations Office

<p>Aerial Measuring System (AMS)</p>	<p>Aerial detection system for measuring extremely low levels of gamma radiation and locating and tracking airborne radiation. The system also includes aerial photography and multi-spectral scanning capabilities.</p>	<p>Nevada Operations Office</p>
<p>Atmospheric Release Advisory Capability (ARAC)</p>	<p>Computer-based, emergency response and preparedness system that provides rapid predictions of the transport, diffusion, and deposition of radio nuclides or other toxic materials released into the atmosphere.</p>	<p>Oakland Operations Office</p>
<p>Radiation Emergency Assistance Center/Training Site (REAC/TS)</p>	<p>24-hour direct or consultative assistance regarding medical and health physics problems associated with radiation accidents. Training in medical management for radiation accidents.</p>	<p>Oak Ridge Operations Office</p>

VII. Training Specifications

Federal regulations specify minimum training levels for responders to hazardous materials incidents. The requirements for each level are detailed in this section the Montana Hazardous Materials Plan. OSHA enforces the requirements for federal and private workers (29 CFR 1910.120). State and local employees must follow the same regulations, but are overseen by the MT Department of Labor. Each responding agency must determine what level of response and training is appropriate. Agencies in the state of Montana, which provide appropriate training courses, including, but not limited to, the Montana Law Enforcement Academy, MSU FTS, and MT-DES.

It is the policy of the State of Montana, that all first responders be trained at least to the **First Responder HazMat Awareness** level. This includes fire fighters, law enforcement, emergency medical, emergency management and health or environmental personnel. This is the training level for those personnel who will initiate an emergency response by notifying the proper authorities, but take no further action. Awareness level training is useful to any person who may encounter hazardous materials, even incidentally, in the course of their work. It is also useful for administrative and support staff who may be involved in planning, preparation, or decision-making on any hazardous materials issue.

The **First Responder HazMat Operations** level is for those personnel who respond on-site to hazardous materials releases (or potential releases). With Operations level training, an individual should be prepared to take necessary defensive actions to protect people, property, and the environment from the effects of a release. The State of Montana recommends that all fire fighters, any law enforcement officer, emergency management, emergency medical, health or environmental personnel or anyone else who may respond to a hazardous materials incident should be trained to the First Responder HazMat Operations level.

Hazardous Materials Technician and Specialist level training is for those personnel who attempt to stop a release of hazardous materials. This training is required for hazardous materials response teams. It is the state's recommendation that fire departments that have identified a serious hazardous materials risk within their jurisdiction train several members of their organization to the technician level, with specialist support if possible.

Individuals who may be called upon to serve as **Incident Commander** for a response beyond the awareness level are required to have special knowledge and training in the NIMS. The State of Montana recommends that the LEOP establish a minimum number of qualified hazardous materials Incident Commanders to be available to provide Command at a hazardous materials incident in the county. These might include a fire chief, county sheriff, emergency services director, or others as appropriate to the county.

The following language is from 29 CFR 1910.120, effective March 6, 1990:

TRAINING LEVELS. Training shall be based on the duties and function to be performed by each responder of and emergency response organization. The skill and knowledge levels required for all new responders, those hired after the effective date of this standard, shall be conveyed to them through training before they are permitted to take part in actual emergency operations at an incident. Employees who participate, or are expected to participate, in emergency response, shall be given training in accordance with the following paragraphs:

[I] **FIRST RESPONDER HAZMAT AWARENESS LEVEL.** First responders at the awareness level are individuals who are likely to witness or discover a hazardous substance release and who have been trained to initiate an emergency response sequence by notifying the proper authorities of the release. They would take no further actions beyond notifying the authorities of the release. First responders at the awareness level shall have sufficient training or have had sufficient experience to objectively demonstrate competency in the following areas:

- (A) An understanding of what hazardous materials are, and the risks associated with them in an incident.
- (B) An understanding of the potential outcomes associated with an emergency created when hazardous materials are present.
- (C) The ability to recognize the presence of hazardous material in an emergency.
- (D) The ability to identify the hazardous materials, if possible.
- (E) An understanding of the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the U.S. Department of Transportation's Emergency Response Guidebook.
- (F) The ability to realize the need for additional resources, and to make appropriate notifications to the Coordination center.

[II] **FIRST RESPONDER HAZMAT OPERATIONS LEVEL.** First responders at the operations level are individuals who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release. They are trained to respond in a defensive fashion without actually trying to stop the release. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. First responders at the operational level shall have received at least eight hours of training or have had sufficient experience to objectively demonstrate competency in the following areas in addition to those listed for the awareness level and the employer shall so certify:

- (A) Knowledge of the basic hazard and risk assessment techniques.
- (B) Know how to select and use proper personal protective equipment provided to the first responder operational level.
- (C) An understanding of basic hazardous materials terms.
- (D) Know how to perform basic control, containment and/or confinement operations within the capabilities of the resources and personal protective equipment available with their unit.

- (E) Know how to implement basic decontamination procedures.
- (F) An understanding of the relevant SOP procedures and termination procedures.

[III] **HAZARDOUS MATERIALS TECHNICIAN.** Hazardous materials technicians are individuals who respond to releases or potential releases for the purpose of stopping the release. They assume a more aggressive role than a first responder at the operations level in that they will approach the point of release in order to plug, patch, or otherwise stop the release of a hazardous substance. Hazardous materials technicians shall have received at least 24 hours of training equal to first responder operations level and in addition have competency in the following areas and the employer shall so certify:

- (A) Know how to implement the employer's emergency response plan.
- (B) Know the classification, identification and verification of known and unknown materials by using field survey instruments and equipment.
- (C) Be able to function within an assigned role in the Command System.
- (D) Know how to select and use proper specialized chemical PPE provided to the hazardous materials technician.
- (E) Understand hazard and risk assessment techniques.
- (F) Be able to perform advance control, containment, and/or confinement operations within the capabilities of the resources and PPE available on the unit.
- (G) Understand and implement decontamination procedures.
- (H) Understand termination procedures.
- (I) Understand basic chemical and toxicological terminology and behavior.

[IV] **HAZARDOUS MATERIALS SPECIALIST.** Hazardous materials specialists are individuals who respond with and provide support to hazardous materials technicians. Their duties parallel those of the hazardous materials technician, however, those duties require a more directed or specific knowledge of the various substances they may be called upon to contain. The hazardous materials specialist would also act as the site liaison with Federal, state, local and other government authorities in regards to site activities. Hazardous materials specialists shall have received at least 24 hours of training equal to the technician level and in addition have competency in the following areas and the employer shall so certify:

- (A) Know how to implement the LEOP
- (B) Understand classification, identification and verification of known and unknown materials by using advanced survey instruments and equipment.
- (C) Knowledge of the state emergency response plan.
- (D) Be able to select and use proper specialized chemical PPE provided to the hazardous materials specialist.
- (E) Understand in-depth hazard and risk assessment techniques.
- (F) Be able to perform specialized control, containment, and/or confinement operations within the capabilities of the resources and PPE available.
- (G) Be able to determine and implement decontamination procedures.
- (I) Understand chemical, radiological and toxicological terminology and behavior.

[V] ON-SCENE INCIDENT COMMANDER. ICs, who will assume control of the incident scene beyond the first responder awareness level, shall receive at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

- (A) Know and be able to implement NIMS.
- (B) Know how to implement the employer's emergency response plan.
- (C) Know and understand the hazards and risks associated with employees working in chemical protective clothing.
- (D) Knowledge of the state emergency response plan and of the Federal Regional Response Team.
- (E) Know and understand the importance of decontamination procedures.

VIII. Financial Reimbursement Procedures & Cost Recovery Packet

Montana Law requires the SERC to “promulgate rules and procedures limited to cost recovery procedures...” (10-3-1204 (2) MCA).

Montana Law allows: “State hazardous material incident response team members (SHMIRT) to submit claims to the commission for reimbursement of documented costs incurred as a result of the team’s response to an incident...” The law also allows a party who is not a member of the organized regional response team to submit a claim if the commission or the state hazardous materials team requested the party to respond (10-3-1214 (1) MCA).

Montana Law establishes time limits for claim submission of no longer than 60 days after the termination of the response to the incident (10-3-1214 (4) MCA).

Montana Law further states:

“Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident and only if adequate funds are available (10-3-1214 (4) MCA)”.

The commission shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken (10-3-1215(1)(a) MCA). The costs of routine firefighting procedures are not reimbursable costs under this part. (10-3-1215 (1)(b) MCA). Reimbursement must be in accordance with the schedule defined in the plan (10-3-1215 (1)(c) MCA). The decision of the governor is final and non-appealable (10-3-1215 (1)(d) MCA).

Local responders and their mutual aid response are not eligible for reimbursement from the state fund. They may be able to collect for eligible expenses under federal and state statutes.

Document all costs.

- Save original receipts.
- Record Mileage.
- Equipment time usage.
- Detail supplies used.
- Record personnel response times.
- Lodging and per diem rates.

Within 60 days of your release from the incident submit to the SERC a detailed invoice and documentation of costs. Charges must be according to this plan’s Schedule of Costs established annually by the SERC State Hazardous Materials Response Team subcommittee.

Invoices can be in any format but must include:

- The date and time of response;
- The names, addresses, and Social Security numbers, completed “I 9” (*INS employee eligibility verification*) and “W 4” (*IRS Withholding form*) forms of all responders if they are to be paid under the state plan;
- The name of the jurisdiction where the response took place; and
- Documentation and receipts of costs, and the name, address of the party requesting reimbursement.

Additionally the applicant must submit a narrative of their activities during the response.

Schedule of Costs

If the SHMIRT is deployed according to this plan, all associated costs of SHMIRT response, including backfilling of personnel to cover for deployed SHMIRT members will be eligible for reimbursement according to the SERC approved schedule of costs. Equipment costs will be at the same rate as used by Northern Rockies Coordinating Group. Personnel costs will be uniform according to a personnel rate annually approved by the SERC and on file with the Division.

Cost Recovery Forms

Provisions for cost recovery for HAZMAT incidents are provided in 75-10-717, MCA.

The SERC has developed a Cost Recovery Packet to assist local agencies in recovering costs from the shipper/owner for expenses incurred during a HazMat emergency.

The following is a guide for completing a Cost Recovery Packet and other related documents.

1. Attach a copy of the NFIRS report and all related documents.
2. Billing Information Worksheets:
 - a. Complete all spiller data.
 - b. Incident report number and names of agencies - law enforcement, fire department, other.
 - c. Exact location of incident.
 - d. Date and time of incident.
 - e. Name of material(s) released.
 - f. Attachments: Resource Order Number(s), Montana Fire Incident Report, invoices for costs of rental equipment, and any other reports that may apply to cost recovery.
 - g. Description of incident activities.
3. Apparatus/Vehicle Cost Worksheet - Fill in the appropriate information.
4. Personnel Cost Worksheet - Fill in the appropriate information.
5. Equipment Cost Worksheet - Fill in the appropriate information.
6. Miscellaneous Cost Worksheet - Fill in the appropriate information.
7. Cost Summary Sheet (transfer sub-totals from cost worksheets to this page).
8. Within fifteen (15) days, forward copy of completed packet to the SERC.

Cost Recovery for State Response Personnel

10-3-1203(3) Duration of Response

“Duration of response” means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

Right to reimbursement (10-3-1214 MCA).

- (1) SHMIRT members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team’s response to an incident. Reimbursement for the costs may not exceed the duration of response
- (2) A party who is not a part of the SHMIRT and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the SHMIRT or the commission.
- (3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.
- (4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident and only if adequate funds are available.

Deficiency Warrants for Reimbursement of Response Costs (10-3-1215 MCA).

- (1)(a) The SERC shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in Sec. 75-1-1101 MCA to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken.
- (1)(b) The costs of non-incident routine firefighting procedures are not reimbursable costs.
- (2) Reimbursement must be in accordance with the schedule defined in the plan.
- (3) The decision of the governor is final and non-appealable.
- (4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

Cost recovery and civil remedies (10-3-1216 MCA).

- (1) Cost recovery including any requested state assistance expenses is the duty of the local jurisdiction having authority where an incident occurred.
- (2) The commission shall ensure the recovery of all state response related expenditures according to the plan.
- (3) The Responsible Party for an incident is liable for attorney fees and costs of any requested state agency response as well as expenses the commission incurred in recovering costs associated with responding to an incident.
- (4) The remedy for the recovery of emergency response costs identified is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

- (5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.
- (6) Except for the commission and the state hazardous material incident response team, the plan does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.
- (7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.
- (8) Recoveries by the state for reimbursed costs must be deposited in the environmental contingency account or the state disaster fund to offset amounts paid as reimbursement.
- (9)(a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost.
- (9)(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be divided as agreed to by the governing bodies equally divided among of the jurisdictions.

Liability of persons and response personnel rendering assistance (10-3-1217 MCA).

The commission and the SHMIRTs are not liable for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release of a hazardous material. The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss. A person becomes a member of the SHMIRT when the person is contacted for response regardless of the person's location.

STATE EMERGENCY RESPONSE COMMISSION (SERC)

HAZARDOUS MATERIALS

STANDARD COST RECOVERY PACKET

RESPONSE AGENCY:	<input type="text"/>	MTDES INCIDENT #:	<input type="text"/>
LOCATION:	<input type="text"/>	DATE:	<input type="text"/>
COMPLETED BY:	<input type="text"/>	TELEPHONE:	<input type="text"/>

STATE OF MONTANA HAZARDOUS MATERIALS RESPONSE PLAN

BILLING INFORMATION WORKSHEET Billing Information - Spiller Information

A) Responsible Party Information:

Spiller Name: _____	Business Name: _____	
Address: _____		
City: _____	State: _____	Zip: _____
Telephone #: _____	Insurance Co.: _____	
Insurance Agent / Adjuster: _____	Policy #: _____	

B) Incident Information:

LEA Incident No.: _____	Fire Incident No.: _____
Your Agency: _____	MTDES DO Incident #: _____
Incident Commander: _____	MTDES Resource Order #s: _____
IC Agency/Dept.: _____	
Incident Date: _____	Incident Time: _____
Incident Location: _____	Lat. _____ Long. _____

Address: _____

Chemicals involved in incident:	Amount:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Actions Taken:

STATE OF MONTANA HAZARDOUS MATERIALS RESPONSE PLAN

HAZARDOUS MATERIALS RESPONSE REIMBURSEMENT FORM

Payee's Name: _____ Date: _____

Payee's Mailing Address: _____

City: _____ State: _____ Zip: _____

Incident: _____

MTDES DO Incident Number: _____

Incident Date: _____ Incident Time: _____

Point of Contact: _____

Payee's EIN/SSN: _____

ITEMIZED COSTS:

Personnel: _____
Vehicles: _____
Equipment: _____
Supplies: _____
TOTAL: _____

(The itemized costs will automatically populate as you fill in the remainder of the worksheets.)

I certify that the claims on this form have been paid by the payee and that this claim will not be duplicated on any other claim:

Signature: _____ Date: _____

Title: _____

Mail completed form to:

Montana Disaster & Emergency Services
P.O. Box 4789
Fort Harrison, MT 59636-4789

If you have any questions, please call (406) 841-3911. Thank You

Appendix II. Memorandum of Understanding for Hazardous Material Incident Response Team Response

THIS AGREEMENT is by and between the State Emergency Response Commission (SERC) and the State Hazardous Material Incident Response Team (SHMIRT) composed of members of the authorized agencies, units of (*state & local*) government (*Department*).

WITNESSETH:

WHEREAS, Montana law allows the SERC to enter into a memorandum of understanding with persons or entities providing equipment or services to the SHMIRT;

WHEREAS, Montana law allows local government entities to enter into agreements for protection against natural and manmade disasters;

WHEREAS, response to hazardous materials incidents is a difficult and dangerous task that requires expertise, training and technical equipment;

WHEREAS, the SERC desires to ensure that the needed technical expertise and equipment responds to hazardous materials emergencies throughout the state of Montana.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein the parties agree as follows:

1. Purpose: The purpose of this agreement is to secure the benefit of aid in hazardous materials emergencies for the protection of life and property of the citizens of the state of Montana when the SERC requests assistance for an incident requiring additional expertise, equipment, or personnel.

2. Request for Assistance. When a designated SERC representative (MT-DES) requests assistance from the SHMIRT for a hazardous materials incident, the SHMIRT will dispatch the equipment and personnel if they are available for use outside the SHMIRT's jurisdiction to any point as the SERC may direct.

3. Assistance not Mandatory. The rendering of assistance under the terms of this agreement shall not be mandatory. However, the SHMIRT will immediately inform the SERC of the reasons assistance cannot be rendered.

4. Procedures. Any request for services shall follow the procedures outlined in the Montana Hazardous Materials Plan. The Plan provides as follows:

The SHMIRT will report to the IC of the incident scene and shall act only upon the orders of that officer. In no case shall the SHMIRT assume responsibility for command of the incident site.

The SHMIRT will be released by the incident commander when its services are no longer required.

The SHMIRT may withdraw its assistance if it deems the actions or directives of the IC or the incident to be unsafe or contrary to accepted hazardous materials response practices. The team leader prior to withdrawing their resources shall notify the IC and MT-DES duty officer.

5. Costs. The SERC will pay the SHMIRT according the requirements of the 10-3-1214, MCA and the procedures for financial reimbursement established in the Plan.

6. Third Party Collections. Nothing in this agreement shall be construed to prevent the SERC from seeking reimbursement and damages from third parties.

7. Duration. This Agreement shall become effective upon the signature of both parties and shall remain in full force and effect until terminated by either party by thirty days written notice, or by failure of the SHMIRT to meet the accreditation criteria.

8. Administration. No new or separate legal or administrative entity is created to administer the provisions of this agreement.

9. Compliance with Legal Requirements. Each party is responsible for compliance with applicable federal, state, tribal and local laws and regulations.

10. Amendments. This agreement may be amended upon the mutual written agreement of the parties.

Authorized Agency Chief Executive
Title:
City/County of

State Emergency Response Commission
Dan McGowan/Tom Ellerhoff
Co-Chair of the SERC

Date Signed:

Date Signed:

Appendix III. Definitions, Explanations, and Acronyms

Definitions

MT-DES DUTY OFFICER - MT-DES personnel with special knowledge of technical equipment used to support this plan, and the Montana Emergency Coordination Plan; who will receive the initial call; serves as the Communications Coordinator. The Communications Coordinator will contact and coordinate any support needed by the IC.

EMERGENCY DUTY ROSTER - A current list of state agency personnel trained and available for hazardous material emergency response support. The roster shall be developed and regularly updated by all participating agencies, shall briefly describe response capabilities, and shall provide 24-hour response within each agency's area of expertise. The roster and updates shall be provided to the MT-DES Coordination Center and be available to the Communications Coordinator.

STATE EMERGENCY RESPONSE COMMISSION - Committee of representatives defined by 10-3-1204 MCA responsible for approval of any Montana Hazardous Materials Plan.

INCIDENT - An event that involves the release or threat of release of a hazardous material that may cause injury to persons, the environment, or to property. This may include either transportation or fixed location spills, leaks, or accidents involving hazardous materials.

INCIDENT COMMANDER - The IC is the designated emergency response officer or official responding to an incident that is responsible for the completion of tactical priorities. This person must be fully trained and knowledgeable in NIMS. The discipline that will serve as the IC will be defined in the LEOP. A local jurisdiction, based on its local plan and resource assessment, may request that the State Emergency Response Commission assume command and designate an on-scene Incident Commander. The Incident Commander shall be in overall charge of all efforts at the scene.

INITIAL RESPONDER - The emergency responder, or group of responders, who take initial action at the scene of a hazardous materials emergency.

LOCAL EMERGENCY RESPONSE AUTHORITY - Person or persons designated by the city, county or commission to be responsible for the management of an incident at the local level.

NATIONAL INCIDENT MANAGEMENT SYSTEM - The Purpose of NIMS is to provide for a systematic development of a complete, functional Command organization designed to allow for a single or multi-agency use which increases the effectiveness of Incident Command and the safety of responding personnel.

PRIMARY AGENCIES - A set of agencies that are given a standby notification that a hazardous materials incident has been received at the State Emergency Coordination Center. The primary agencies consist of: DEQ, MT-DES, the Governors Office and the conference hazardous materials technician.

RADIATION RESPONSE COORDINATOR - Person responsible for coordinating and directing environmental support team actions involving response to radiation, radioactive materials or radioactive waste. This person will be designated by DPHHS. The Radiation Response Coordinator should have emergency response knowledge and training to include NIMS, as well as specialized knowledge and experience in the use, identification, monitoring and control of radiation sources, radioactive materials, and radioactive wastes.

RESPONSIBLE PARTY - The owner, user, site operator, shipping agent or others having custody of hazardous materials as defined by federal and state statute. This includes property or facility owners where hazardous materials have been spilled or released or have the potential to be spilled or released to the environment and/or where the hazardous materials may present a threat to the public health or the environment.

ACRONYMS

AMS: Aerial Monitoring System
ARAC: Atmospheric Release Advisory Capability
ARG: Accident Response Group
ATSDR: Agency for Toxic Substances and Disease Registry
CFR: Codes of Federal Regulations
CGNSF: Coast Guard National Strike Force
DEQ: Department of Environmental Quality
DHS: Department of Homeland Security
DMA: Department of Military Affairs
DMAT: Disaster Medical Assistance Team
DNRC: Department of Natural Resources and Conservation
DO: Duty Officer
DOD: Department of Defense
DOE: Department of Energy
DOERAP: Department of Energy Radiological Assistance Program
DOI: Department of Interior
DOJ: Department of Justice
DPHHS: Department of Public Health and Human Services
EPA: Environmental Protection Agency
EOC: Emergency Operations Center
EOD: Explosive Ordinance Disposal
ECC: Emergency Coordination Center (also known as the SECC)
EPA: Environmental Protection Agency
ERT: Emergency Response Team
FBI: Federal Bureau of Investigation

FEMA: Federal Emergency Management Agency, Division of DHS
FRMAC: Federal Radiological Monitoring and Assessment Center
FRRT: Federal Regional Response Team
FW&P: Montana Fish Wildlife and Parks
HAZMAT: Hazardous Materials
IAP: Incident Action Plan
IC: Incident Commander
ICS: see NIMS
IEDD: Improvised Explosive Device Disposal
LEOP: Local Emergency Operations Plan
MCA: Montana Codes Annotated
MDT: Montana Department of Transportation
MHP: Montana Highway Patrol
MSUFTS: Montana State University-Fire Training School
MT-DES: Disaster Emergency Services Division
MTNG: Montana National Guard
NDMS: National Disaster Medical System
NEST: Nuclear Emergency Search Team
NFPA: National Fire Protection Agency
NIMS: National Incident Management System
NRA: National Railroad Administration
NRCG: Northern Rockies Coordinating Group
NRCC: Northern Rockies Coordination Center
NTSB: National Transportation Safety Board
NWS: National Weather Service
OSC: On-Scene Coordinator
OSHA: Occupational Safety and Health Administration
PC: Personnel Computer
POC: Point of Contact
RCO: Regional Coordinating Office
REAC/TS: Radiation Emergency Assistance Center/ Training Site
REO: Regional Environmental Officer
SARA: Superfund Amendments and Reauthorization Act
SCBA: Self Contained Breathing Apparatus
SECC: State Emergency Coordination Center (also referred to as the ECC)
SECP: State Emergency Coordination Plan
SERC: State Emergency Response Commission
SHMIRT: State Hazardous Materials Incident Response Team
SOP: Standard Operating Procedures
USDA: United States Department of Agriculture

Legal Authorities

(Including Compilers Notes, Cross References,
Attorney General Opinions and other information)

CONTENTS

Code	Description	Page
7-33-2104	Operation of Fire Districts	5
10-3-105	Division of disaster & emergency services – duties	5
10-3-401	Local and interjurisdictional disaster & emergency plan	7
10-3-1203	Definitions	7
10-3-1204	State Emergency Response Commission	9
10-3-1207	Commission budget and expenditures	11
10-3-1211	Notification of release	11
10-3-1214	Right to reimbursement	11
10-3-1215	Deficiency warrants for reimbursement of response costs	12
10-3-1216	Cost recovery and civil remedies	12
10-3-1217	Liability of persons and response team members rendering assistance	13
60-1-103	General definitions	14
75-1-1101	Environmental contingency account objectives	17
75-10-717	Recovery of costs	18
75-10-718	Liability of remedial action contractor	18

Legal Authorities

(Including Compilers Notes, Cross References,
Attorney General Opinions and other information)

7-33-2104. Operation of fire districts. Whenever the board of county commissioners shall have established a fire district in any unincorporated territory, town, or village, said commissioners:

- (1) may contract with a city, town, or private fire company to furnish fire protection for property within said district; or
- (2) shall appoint five qualified trustees to govern and manage the affairs of the fire district.

History: En. Sec. 1, Ch. 107, L. 1911; amd. Sec. 1, Ch. 19, L. 1921; re-en. Sec. 5149, R.C.M. 1921; amd. Sec. 1, Ch. 130, L. 1925; re-en. Sec. 5149, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1947; amd. Sec. 2, Ch. 75, L. 1953; amd. Sec. 2, Ch. 77, L. 1959; amd. Sec. 1, Ch. 118, L. 1959; amd. Sec. 1, Ch. 2, L. 1965; amd. Sec. 1, Ch. 333, L. 1969; amd. Sec. 1, Ch. 120, L. 1973; R.C.M. 1947, 11-2010(part).

Cross References:

Interlocal agreements, Title 7, ch. 11, part 1.

Attorney General Opinions:

Response by Fire Service Organizations to Hazardous Materials Incidents: Unless otherwise provided by law, the decision to order a firefighter to respond to or investigate a hazardous materials incident is within the discretion of the supervising entity of each fire service organization. The State Fire Marshal (now the state fire prevention and investigation program of the Department of Justice) does not have specific rulemaking authority to prescribe which fire service organization should respond to such incidents. 42 A.G. Op. 104 (1988).

Trustee-Operated Fire District Liable for Indemnification: Employees of a fire district operated by trustees must be indemnified under the comprehensive state insurance plan and the Tort Claims Act by the fire district rather than by the county in which the fire district is located. 42 A.G. Op. 84 (1988), overruling a contrary holding in 35 A.G. Op. 71 (1974), and followed in 43 A.G. Op. 2 (1989).

Question of Rural Fire District as Taxing Unit: A rural fire district operated by a board of trustees is a taxing unit within the meaning of 15-10-412 (now repealed); however, a rural fire district operated by the county and not by a board of trustees is not a taxing unit. 42 A.G. Op. 80 (1988).

Rural Fire District Created After 1986 Not Subject to Property Tax Limitations: A rural fire district created after 1986 and established as a taxing unit is not subject to the property tax limitations of Title 15, ch. 10, part 4. There is no provision for new taxing units to limit their levies to their first year of existence or to 1986 amounts levied by another taxing unit. 42 A.G. Op. 80 (1988), followed in 42 A.G. Op. 109 (1988).

10-3-105. Division of disaster and emergency services -- duties. (1) A division of disaster and emergency services is established in the department. The division must have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The department through the division of disaster and emergency services is responsible to the governor for carrying out the planning and program for disaster and emergency services of this state.

(3) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program must be coordinated with the disaster and emergency plans and programs of the federal

government, other states, political subdivisions, and Canada to the fullest extent possible.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program because of limitations of funding, personnel, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of parts 1 through 4 of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(i) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of an actual incident, emergency, or disaster, to ensure the availability of adequately trained and equipped personnel in time of an incident, emergency, or disaster;

(j) direct emergency response and disaster preparation activities as authorized by the governor;

(k) direct disaster response and recovery activities as authorized by the governor;

(l) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with incidents, emergencies, and disasters;

(m) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of parts 1 through 4 of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(n) assume any additional authority, duties, and responsibilities authorized by parts 1 through 4 of this chapter as may be prescribed by the governor.

History: (1), (3), (4)En. Sec. 7, Ch. 335, L. 1977; Sec. 77-2305.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967; Sec. 77-1304, R.C.M. 1947; amd. and redes. 77-2303 by Sec. 10, Ch. 94, L. 1974; amd. Sec. 5, Ch. 335, L. 1977; Sec. 77-2303, R.C.M. 1947; R.C.M. 1947, 77-2303, 77-2305.1(part); amd. Sec. 5, Ch. 430, L. 1983; amd. Sec. 3, Ch. 176, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 176 in (4)(i), in two places, and in (4)(l) inserted references to an incident or incidents; and made minor changes in style.

1983 Amendment: In (4), deleted: "(h) determine the requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of an emergency or disaster;

(i) plan for the procurement of food, clothing, other necessities, supplies, medicines, materials, and equipment that may be necessary in the event of an emergency or disaster and, as funding is authorized, procure and pre-position the same;".

Cross References:

Department of Military Affairs created, 2-15-1201.

Division created, 2-15-1204.

Department power to authorize construction on federal land, 18-2-102.

Attorney General Opinions:

Designation of Fire Service Organization as First Responder to Hazardous Materials Incident:

The designation of a fire service organization as first responder to a hazardous materials incident is a matter to be included in the state and local disaster and emergency plans. 42 A.G. Op. 104 (1988).

"Political Subdivision" to Exclude Indian Reservation: An Indian reservation, represented by a tribal council, is not a political subdivision of the State of Montana for purposes of receiving aid and assistance pursuant to state civil defense law. 36 A.G. Op. 53 (1976).

10-3-401. Local and interjurisdictional disaster and emergency plan -- distribution. (1) Each political subdivision eligible to receive funds under this chapter shall prepare a local or interjurisdictional disaster and emergency plan and program covering the area for which that political subdivision is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(2) The political subdivision shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of:

- (a) the emergency responsibilities of all local agencies, if any, and officials;
- (b) the disaster and emergency chain of command;
- (c) local evacuation authority and responsibility; and
- d) local authority and responsibility for control of ingress and egress to and from an emergency or disaster area.

History: En. 77-2307.1 by Sec. 8, Ch. 335, L. 1977; R.C.M. 1947, 77-2307.1(5), (6); amd. Sec. 9, Ch. 430, L. 1983; amd. Sec. 4, Ch. 71, L. 1987.

Compiler's Comments:

1987 Amendment: Inserted (2)(c) referring to local evacuation authority and responsibility; and inserted (2)(d) referring to local authority over ingress and egress to emergency or disaster area.

1983 Amendment: At beginning of (1), substituted "Each political subdivision eligible to receive funds under this chapter shall prepare a local" for "Each local and interjurisdictional agency shall prepare and keep current a local"; near end of (1) substituted "political subdivision" for "agency"; at beginning of (2) substituted "The political subdivision" for "The local or interjurisdictional agency"; and in (2)(a) inserted "if any" after "the emergency responsibilities of all local agencies".

Cross References:

Local and interjurisdictional emergency and disaster agencies and services, 10-3-201.

Mutual aid and cooperation, 10-3-202.

State disaster and emergency plan, 10-3-301.

Attorney General Opinions:

Designation of Fire Service Organization as First Responder to Hazardous Materials Incident:

The designation of a fire service organization as first responder to a hazardous materials incident is a matter to be included in the state and local disaster and emergency plans. 42 A.G. Op. 104 (1988).

10-3-1203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means the division of disaster and emergency services in the department of military affairs.

(3) "Duration of response" means a period of time beginning when an emergency responder is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Incident commander" means the person who is designated in the local emergency operations plan.

(9) "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

(10) "Local emergency response authority" means the agency designated by the city, county, or commission to be responsible for the management of an incident at the local level.

(11) "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.

(12) "Plan" means the Montana incident management and hazardous material response support plan.

(13) (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive by the U.S. environmental protection agency or the U.S. occupational safety and health administration.

(14) "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include members of the commission and local and state government responders.

(15) "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment.

History: En. Sec. 3, Ch. 270, L. 1995; amd. Sec. 2, Ch. 520, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 520 inserted definition of incident commander; in definition of local emergency response authority substituted "agency" for "person or persons"; and made minor changes in style. Amendment effective October 1, 1999.

10-3-1204. State emergency response commission. (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission consists of 27 members appointed by the governor. The commission must include representatives of the national guard, the air force, the department of environmental quality, the division, the department of transportation, the department of justice, the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns, and the office of the governor. Members of the commission serve a term of 4 years and may be reappointed. The members shall serve without compensation. The governor shall appoint two presiding officers from the appointees, who shall act as co-presiding officers.

(2) The commission shall implement the provisions of this part, and in so doing, the commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its designee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state hazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan, which coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) The commission shall act as an all-hazard advisory board to the division by:

(a) assisting the division in carrying out its responsibilities by providing the division with recommendations on issues pertaining to all-hazard emergency management; and

(b) authorizing the establishment of subcommittees to develop and provide the recommendations called for in subsection (13)(a).

(14) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part.

History: En. Sec. 4, Ch. 270, L. 1995; amd. Sec. 1, Ch. 45, L. 1999; amd. Sec. 1, Ch. 37, L. 2003.
Compiler's Comments:

2003 Amendment: Chapter 37 in (1) in second sentence increased the number of commission members from 19 to 27 and in third sentence after "air force" deleted "state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state", after "department of justice" deleted "department of fish, wildlife, and parks", inserted "the department of natural resources and conservation, the department of public health and human services, a fire service association, the fire training school, the emergency medical services and injury prevention section of the health policy and services division in the department of public health and human services, the department of fish, wildlife, and parks, Montana hospitals, an emergency medical services association, a law enforcement association, an emergency management association, a public health-related association, a trucking association, a utility company doing business in Montana, a railroad company doing business in Montana, the university system, a local emergency planning committee, a tribal emergency response commission, the national weather service, the Montana association of counties, the Montana league of cities and towns", and at end after "governor" deleted "and any other representatives that the governor appoints"; inserted (13) describing the duties of the commission acting as an all-hazard advisory board; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 45 in (1) in second sentence reduced number of appointed members from 20 to 19, in third sentence near middle substituted representative from department of environmental quality for representative from department of public health and human services and deleted representative from department of administration, inserted fourth sentence establishing 4-year terms and allowing reappointment, and in sixth sentence substituted requirement for two co-presiding officers for former requirement for one presiding officer; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 2, Ch. 45, L. 1999, provided: "[Section 1] [amending 10-3-1204] applies to members of the state emergency response commission who are members on October 1, 1999."

Code Commissioner Change: Pursuant to sec. 3, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Health and Environmental Sciences.

10-3-1207. Commission budget and expenditures. (1) The commission shall submit its budget to the division.

(2) The commission shall expend any funds appropriated to it in the following priority:

(a) payment of workers' compensation premiums for coverage of state hazardous material incident response team members;

(b) training activities for the state hazardous material incident response team;

(c) equal payments to each hazardous material incident response team as compensation for duties established in the plan; and

(d) any remaining funds to be used at the discretion of the commission for programs related to the plan.

History: En. Sec. 5, Ch. 270, L. 1995.

10-3-1211. Notification of release. (1) A person responsible for reporting a release under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9603, shall, as soon as practicable after obtaining the knowledge of a required reportable release, other than a permitted release, notify the division of the release.

(2) The division shall notify the commission of releases or threatened releases as defined in the plan.

(3) The division shall immediately notify the department of environmental quality of any release reported and who will respond according to the plan.

(4) Any person who does not make notification in accordance with the provisions of this section is liable for a civil penalty not to exceed \$10,000 for each day the violation continues to a maximum of \$100,000. These penalties are in addition to any other penalties imposed by law. All penalties collected must be deposited in the environmental contingency account provided for in 75-1-1101.

(5) Compliance with the reporting requirements of this section does not relieve any person of the obligation to report the same incident under any other applicable state or federal law, regulation, or other requirement.

History: En. Sec. 9, Ch. 270, L. 1995.

Compiler's Comments:

Code Commissioner Change: Pursuant to sec. 568, Ch. 546, L. 1995, the Code Commissioner substituted Department of Environmental Quality for Department of Health and Environmental Sciences.

10-3-1214. Right to reimbursement. (1) State hazardous material incident response team members may submit claims to the commission for reimbursement of documented costs incurred as a result of the team's response to an incident. Reimbursement for the costs may not exceed the duration of response.

(2) A party who is not a part of the state hazardous material incident response team and is not liable under federal or state law may submit a claim to the commission for costs if the claim is associated with a request by the state hazardous material incident response team or the commission.

(3) Claims for reimbursement must be submitted to the commission within 60 days after termination of the response to the incident for the state's determination of payment, if any.

(4) Reimbursement may be made only after the commission finds that the actions by the applicant were taken in response to an incident as defined in this part and only if adequate funds are available.

History: En. Sec. 10, Ch. 270, L. 1995.

10-3-1215. Deficiency warrants for reimbursement of response costs. (1) (a) The commission shall review all claims for reimbursement and make recommendations to the governor as to payment or nonpayment of the claims within 90 days of receipt. The governor may authorize the issuance of warrants to be paid from the environmental contingency account provided for in 75-1-1101 to the limit of the fund balance for the purpose of reimbursing reasonable and documented costs associated with emergency actions taken pursuant to this part.

(b) The costs of routine firefighting procedures are not reimbursable costs under this part.

(2) Reimbursement must be in accordance with the schedule defined in the plan.

(3) The decision of the governor is final and non-appealable.

(4) This section may not be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

History: En. Sec. 11, Ch. 270, L. 1995.

10-3-1216. Cost recovery and civil remedies. (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission, the state hazardous material incident response team, and the local emergency response authority, this part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et

seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not been reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to this part.

(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions.

History: En. Sec. 12, Ch. 270, L. 1995; amd. Sec. 3, Ch. 520, L. 1999.

Compiler's Comments:

1999 Amendment: Chapter 520 in (6) after "team" inserted "and the local emergency response authority"; and made minor changes in style. Amendment effective October 1, 1999.

Cross References:

Costs, Title 25, ch. 10.

Availability of remedies -- liability, Title 27, ch. 1.

Nuisances, Title 27, ch. 30.

Environmental contingency account, 75-1-1101.

10-3-1217. Liability of persons and response team members rendering assistance. (1) The following are not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release or remedial action resulting from the release or threatened release of a hazardous material:

- (a) the state or a political subdivision of the state;
- (b) the commission;
- (c) the local emergency response authority;
- (d) the state hazardous material incident response team;
- (e) a private emergency response team dispatched by the state, a political subdivision of the state, or a local or tribal emergency response authority for emergency response activities; and

(f) an employee, representative, or agent of any of the entities listed in subsections (1)(a) through (1)(e), except for willful misconduct or gross negligence.

(2) The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss.

(3) A person becomes a member of the state hazardous material incident response team when the person is contacted, dispatched, or requested for response regardless of the person's location.

History: En. Sec. 13, Ch. 270, L. 1995; amd. Sec. 4, Ch. 520, L. 1999; amd. Sec. 1, Ch. 517, L. 2003.

Compiler's Comments:

2003 Amendment: Chapter 517 inserted (1)(e) relating to private emergency response team dispatched by governmental entity for emergency response activities; in (1)(f) after "gross negligence" deleted "bad faith"; and made minor changes in style. **Amendment effective April 25, 2003.**

1999 Amendment: Chapter 520 in first sentence at beginning inserted "The state or a political subdivision of the state", after "commission" inserted "the local emergency response authority", after "team" inserted "or, except for willful misconduct, gross negligence, or bad faith, an employee, representative, or agent of the state or a political subdivision of the state, the commission, the local emergency response authority, and the state hazardous material incident response team", and near end after "release" inserted "or remedial action resulting from the release or threatened release"; in third sentence after "contacted" inserted "dispatched, or requested"; and made minor changes in style. Amendment effective October 1, 1999.

60-1-103. General definitions. Subject to additional definitions contained in this title that are applicable to specific chapters or sections and unless the context otherwise requires, the following definitions apply:

(1) "Abandonment" means cessation of use of right-of-way or an easement or cessation of activity on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes called vacation.

(2) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in connection with the bridge, and improvements incidental or integral to the bridge.

(3) "Commission" means the transportation commission provided for in 2-15-2502.

(4) "Condemnation" means taking by exercise of the right of eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title.

(5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(6) "Control of access" means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(7) "County road" means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(8) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(9) "Director" means the director of transportation, a position provided for in 2-15-2501.

(10) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(11) "Eminent domain" means the right of the state to take private property for public use.

(12) "Federal-aid highway" means a public highway that is a portion of any of the federal-aid highway systems.

(13) "Federal-aid highway systems" means all of the systems named as part of the systems and their urban extensions.

(14) "Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) "Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) "Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(17) "Fee simple" means an absolute estate or ownership in property, including unlimited power of alienation.

(18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(19) "Highway", "road", and "street", whether the terms appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(20) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(21) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the highway.

(22) "Public highways" means all streets, roads, highways, bridges, and related structures:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain, as provided in Title 70, chapter 30, and chapter 4 of this title; or

(d) acquired by adverse use by the public, with jurisdiction having been assumed by the state or any political subdivision of the state.

(23) "Right-of-way" is a general term denoting land, property, or any interest in land or property, usually in a strip, acquired for or devoted to highway purposes.

(24) "Scenic-historic byway" means a public road or segment of a public road that has been designated as a scenic-historic byway by the commission, as provided in 60-2-601.

(25) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department.

History: En. Sec. 2-101, Ch. 197, L. 1965; amd. Sec. 69, Ch. 316, L. 1974; R.C.M. 1947, 32-2203(part); amd. Sec. 2, Ch. 23, L. 1979; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 2, Ch. 75, L. 1995; amd. Sec. 1, Ch. 546, L. 1999; amd. Sec. 34, Ch. 125, L. 2001.

Compiler's Comments:

2001 Amendment: Chapter 125 in definitions of condemnation and public highways inserted "as provided in Title 70, chapter 30, and chapter 4 of this title"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 546 inserted definition of scenic-historic byway; and made minor changes in style. Amendment effective July 1, 1999.

Severability: Section 6, Ch. 546, L. 1999, was a severability clause.

1995 Amendment: Chapter 75 near beginning of definition of abandonment, before "easement", inserted "or an" and at beginning of second sentence inserted "Abandonment is"; in definition of Commission substituted "transportation" for "highway"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways and reference to Director of Transportation for reference to Director of Highways. Amendment effective July 1, 1991.

Section Not Codified: Section 32-2203 (part), R.C.M. 1947, including definitions of "auditor", "clerk", "committee", "superintendent", "supervisor", "surveyor", and "treasurer", was not codified in the MCA because it is no longer relevant. This part of the section has not been repealed and is still valid law. Citation may be made to sec. 2-101, Ch. 197, L. 1965, as amended by sec. 69, Ch. 316, L. 1974.

Cross References:

Powers and duties of Governor, 2-15-201.

Administrative Rules:

ARM 18.5.103 Highway approaches -- definitions.

ARM 18.6.102 Junkyards -- definitions.

ARM 18.6.202 Outdoor advertising -- definitions.

ARM 18.8.101 Gross vehicle weight -- definitions.

Case Notes:

"Heavy or Highway" Construction Construed -- "Utility Rights-of-Way" Construed: After receiving complaints about the wages being paid to workers constructing tunnels for heating and electric utilities on the Montana State University-Bozeman campus, the Montana Department of Labor and Industry (DLI) held that the construction projects were "heavy" construction within the meaning of 18-2-401(5) and (7) and that a higher wage should be paid. The DLI also held that the contracting state agency, the Department of Administration (DA), was liable for back wages. The DA appealed the DLI decision to the District Court, which held that the project was not "heavy" construction because it was not a utility "right-of-way". The Supreme Court held that the District Court erred in applying the definition of "right-of-way" found in this section and in holding that a "right-of-way" is only an interest in land. The Supreme Court pointed out that 18-2-401 sets out a listing of projects that are to be built or constructed. The Supreme Court noted that not only could an interest in land not be "constructed" but that the inclusion of "rights-of-way" in the list of types of projects listed in 18-2-401(5) was not intended by the Legislature, because of the use of the phrase "such as", to be an exclusive list of projects. The Supreme Court therefore held that the tunnels were "utility rights-of-way", that they qualified as "heavy construction" within the meaning of 18-2-401(5), and that a higher wage should have been paid by the DA. *Dept. of Administration v. Ekanger*, 284 M 151, 943 P2d 994, 54 St. Rep. 821 (1997).

Abandonment of State Highway -- Statements by State Field Supervisor Contemporaneous With Removal of Asphalt Held Not Evidence of Official Act by State Evidencing Clear Intent to Abandon Easement -- Asphalt Alone Not "Highway": DeVoe brought a declaratory judgment action against the state, claiming that the removal of asphalt from a curving intersection and statements by a supervisor of a crew removing the old roadway evidenced an intent by the state to abandon its easement granted in 1937. DeVoe argued that statements by James Williams, the state's field project manager in charge of removal of the asphalt from the section of highway on the state's easement claimed by DeVoe to have been abandoned, showed that the state intended to abandon the easement. The Supreme Court held that the statements by Williams, to the effect that the state might give up the easement, were evidence of an intent to abandon but did not constitute evidence of an official act by the state indicating a clear intent to abandon the 1937 easement. The Supreme Court also noted that a "highway" is defined as including the highway right-of-way and that, for this reason, removal of asphalt does not constitute removal of the highway. The Supreme Court held that the District Court properly granted summary judgment against DeVoe because the District Court properly found that the easement was still subject to highway-related uses. *DeVoe v. St.*, 281 M 356, 935 P2d 256, 54 St. Rep. 207 (1997).

Attorney General Opinions:

Municipal Construction of Storm Sewers With Gas Tax Revenues Allowed: A city may use its gas tax allocation to construct streets and highways, and because a highway is defined as including "drainage structures", the city may use its share of gasoline tax allocation for construction of storm sewers and drains in and under city streets for removal of runoff water. 40 A.G. Op. 19 (1983).

Maintenance of Bridge Utilized by the Public but Not Located on a County Road

Maintained by the County: Prior to July 1, 1979, by analogy to the definition of "public highway" in 60-1-103, it would appear that a bridge on a road utilized by the public, which was located over a boundary between two counties, would be the common responsibility of the two counties. However, by adding a definition of "public bridges", the 1979 Legislature made it clear that counties are not responsible for maintenance of bridges that are utilized by the public but which are not located in a city or town in the county or on a county road maintained by the county. 38 A.G. Op. 50 (1979).

Forest Service Development Road: Because a United States Forest Service development road is not, by statutory definition, a highway, the provisions of law regarding license plates do not apply to vehicles operated solely on Forest Service development roads. 37 A.G. Op. 9 (1977).

Application of Traffic Laws Upon Forest Service Development Roads: Only the traffic laws regulating parking, moving, safety, and related areas are enforceable by the Highway Patrol and county Sheriffs against vehicles operating on United States Forest Service development roads. 37 A.G. Op. 9 (1977).

Forest Service Development Roads: The laws applicable to vehicle size and weight are enforceable upon highways but not upon Forest Service development roads. This chapter, however, generally extends its jurisdiction over these roads. 37 A.G. Op. 9 (1977).

Collateral References:

39 Am. Jur. 2d Highways, Streets, and Bridges §§ 1 through 8, 11, 12.

75-1-1101. Environmental contingency account objectives. (1) There is an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, \$175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds \$750,000, allocation may not be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than \$750,000, then an amount less than or equal to the difference between the unobligated cash balance and \$750,000, but not to exceed \$175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support renewable resource development projects in communities that face an emergency or imminent need for the services or to prevent the physical failure of a project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development;

(d) to respond to an emergency or imminent threat to persons, property, or the environment caused by a hazardous material; and

(e) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to

actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the general fund.

(5) The governor shall submit, as a part of the information required by 17-7-111, a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report.

History: En. Sec. 4, HB 922, L. 1985; amd. Sec. 5, HB 30, Sp. L. June 1986; amd. Sec. 138, Ch. 370, L. 1987; amd. Sec. 13, Ch. 418, L. 1987; amd. Sec. 48, Ch. 112, L. 1991; amd. Sec. 43, Ch. 349, L. 1993; amd. Sec. 15, Ch. 270, L. 1995; amd. Sec. 263, Ch. 42, L. 1997; amd. Sec. 4, Ch. 444, L. 1997.

Compiler's Comments:

1997 Amendments: Chapter 42 in (4) substituted "general fund" for "resource indemnity trust interest account"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 444 at end of (4) substituted "general fund" for "resource indemnity trust interest account"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 270 inserted (3)(d) regarding responses to emergencies caused by hazardous materials. Amendment effective March 28, 1995.

Code Commissioner Correction: The Code Commissioner substituted reference to renewable resource for reference to water development. Chapter 478, L. 1993, combined the water development and renewable resource development programs. The Code Commissioner has made the change to reflect changes made by Ch. 478. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

1993 Amendment: Chapter 349 in (5), after "shall", substituted "submit, as a part of the information required by 17-7-111" for "as provided in 5-11-210, submit to the legislature"; and made minor changes in style.

1991 Amendment: Near beginning of (5) inserted reference to 5-11-210 and after "legislature" deleted "at the beginning of each regular session". Amendment effective March 20, 1991.

1987 Amendments: Chapter 370 near beginning of former (2) (now deleted) changed "subsection (5)" to "subsection (4)".

Chapter 418 substituted (2) relating to environmental contingency account exceptions for former (2) that read: "Except as provided in subsection (5), at the beginning of each fiscal year, 5% of the funds appropriated to the department of natural resources and conservation from the resource indemnity trust interest account, not to exceed \$175,000 in fiscal year 1987, must be allocated to the environmental contingency account"; and deleted former (4) that read: "(4) The environmental contingency account may receive no additional allocation for any fiscal year in which the balance in the account exceeds \$1,000,000 at the beginning of that fiscal year."

Severability: Section 19, Ch. 418, L. 1987, was a severability section.

Saving Clause: Section 20, Ch. 418, L. 1987, was a saving clause.

1986 Amendment: In (2) following "indemnity trust interest account" inserted "not to exceed \$175,000 in fiscal year 1987".

Cross References:

Resource indemnity trust, Art. IX, sec. 2, Mont. Const.

Department of Natural Resources and Conservation, 2-15-3301.

Resource indemnity trust tax, Title 15, ch. 38.

Abatement of environmental emergencies, 82-4-357.

75-10-717. Recovery of costs. An emergency responder has the right to recover from the responsible party the emergency responder's full costs directly related to a hazardous material incident.

History: En. Sec. 2, Ch. 464, L. 1991.

75-10-718. Liability of remedial action contractor. (1) A person who is a remedial action contractor with respect to a release or threatened release of a hazardous or deleterious substance is not liable under this part to any person for injuries, costs,

damages, expenses, or other liability that results from the release or threatened release, including but not limited to claims for indemnification or contribution and claims by third parties for death, personal injury, illness, loss or damage to property, or economic loss.

(2) Immunity from liability, pursuant to subsection (1), does not apply in the case of a release that is caused by conduct of the remedial action contractor that is negligent or grossly negligent or that constitutes intentional misconduct.

(3) This section does not affect the liability of a person under a warranty under federal, state, or common law or the liability to an employee of an employer who is a remedial action contractor under any provision of law, including any provision of a law relating to workers' compensation.

(4) A state agency or state employee or an employee of a political subdivision who provides services relating to remedial action while acting within the scope of the entity's or individual's authority as a governmental agency or employee has the same exemption from liability as is provided to the remedial action contractor under this section.

(5) The defense provided by 75-10-715(5)(c) is not available to a person liable under 75-10-715(1) with respect to remedial action costs or damages caused by an act or omission of a remedial action contractor.

(6) Except as provided in subsections (4) and (5), this section does not affect the liability under this part of a person other than a remedial action contractor.

(7) This section does not affect the plaintiff's burden of establishing liability under this part.

(8) This section does not minimize the liability, lessen the standard of liability, or otherwise shield from liability a potentially liable person under 75-10-715 or section 107 of CERCLA for costs or damages incurred as a result of a release or threatened release of a hazardous or deleterious substance.

History: En. Sec. 8, Ch. 709, L. 1989; amd. Sec. 54, Ch. 16, L. 1991; amd. Sec. 4, Ch. 490, L. 1995.

Compiler's Comments:

1995 Amendment: Chapter 490 in (4), near middle after "scope of", substituted "the entity's or individual's" for "its or his"; and made minor changes in style. Amendment effective April 14, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 490, L. 1995, provided: "A statement of intent is included with this bill because of the authorization granted to the department in 75-10-702 to adopt rules to implement Title 75, chapter 10, part 7, including implementation of the exemption from liability for persons holding indicia of ownership primarily to protect a security interest. To date, the department has not adopted rules under this section.

The legislature finds that existing state law related to the liability of persons holding security interests for environmental contamination is unclear and that this lack of clarity has created uncertainty on the part of security interest holders as to whether they are liable for environmental contamination caused by their borrowers or other third parties. The uncertainty has negatively affected the availability of credit in Montana.

In enacting Montana's Comprehensive Environmental Cleanup and Responsibility Act (CECRA), the legislature modeled the statute after and borrowed many terms from the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The legislature specifically borrowed the term "own or operate", which excludes from liability those persons who, without participating in the management of the facility, hold indicia of ownership merely to protect a security interest.

When significant questions arose under CERCLA as to the scope of the terms "indicia of ownership" and "participating in the management of the facility", the federal government devoted substantial effort to developing a federal policy and a rule that employ a framework of specific tests to provide clearer articulation of a lender's scope of liability under CERCLA, both to governmental agencies and to third parties. The April 1992 rule, which appears at 40 CFR 300.1100, et seq., was preceded by many public hearings and public comment periods. Although the rule was recently judged to be technically beyond EPA's rulemaking authority, the contents of the rule still constitute EPA policy on the scope of the secured creditor exemption under CERCLA and the legislature finds that the rule in its current form provides a well-reasoned basis for interpreting the identical language in CECRA.

Therefore the legislature finds that the clarification of potential liability in a manner consistent with federal statutes, current EPA policy, and the regulations at 40 CFR 300.1100, et seq., is desirable in order to provide certainty for security interest holders, including persons engaged in lease financing, to enhance the availability of credit, and to encourage responsible practices by those security interest holders and borrowers to protect the public health and environment.

The legislature also finds that uncertainty exists in state law regarding the potential liability of certain fiduciaries for environmental contamination on property held in their fiduciary capacity and determines that a limited exemption from liability, comparable to the one being proposed for action by congress under CERCLA, should apply to fiduciaries and that it is necessary to add language concerning fiduciaries to Title 75, chapter 10, part 7.

Therefore, in adopting rules under 75-10-702 to implement the exemption under 75-10-701(10)(b) for holders of "the indicia of ownership", the department of health and environmental sciences [now department of environmental quality] shall adopt rules consistent with the revisions to CECRA contained in this bill, including rules that address fiduciaries within the exemption. The rules also must be consistent with the federal regulations set forth at 40 CFR 300.1100, et seq.

Finally, the legislature intends that the limited exemptions for secured creditors and fiduciaries that are clarified and granted by this legislation extend not only to liability asserted by governmental entities but also extend to claims by any third parties for cleanup or for cost recovery or contribution."

Applicability: Section 6, Ch. 490, L. 1995, provided: "[This act] does not apply to civil actions commenced prior to the [effective date of this act] or to the claims upon which such civil actions are based." Effective April 14, 1995.

1991 Amendment: In (8) substituted "liable person" for "responsible party".

Effective Date: Section 22, Ch. 709, L. 1989, provided that this section is effective May 22, 1989.

