

LOCAL RESPONSE AGREEMENT
BETWEEN
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND THE
MUNICIPALITY OF ANCHORAGE

April 16, 1998

PURPOSE

This agreement between the Alaska Department of Environmental Conservation (DEC) and the Municipality of Anchorage (MOA) is intended to (1) facilitate coordinated and effective oil and hazardous substance release responses within the State, and (2) provide for reimbursement by DEC of actual costs, other than normal operating expenses, incurred by MOA in the abatement of a release or threatened release of oil or a hazardous substance as authorized under State law.

BACKGROUND

Under State law, any person who causes or permits a release of oil or a hazardous substance must take proper response action, consisting of containment and cleanup, unless DEC determines that containment or cleanup is (1) technically infeasible, (2) would cause greater environmental damage than if the release were not contained or cleaned up, or (3) in the case of a hazardous substance release, would pose a greater threat to human life or health than if the release was not contained or cleaned up (AS 46.04.020; 46.09.020). All releases of oil or hazardous substances must be reported to DEC by the responsible party. If DEC determines that the responsible party has failed to conduct a proper cleanup, or cannot or will not do so, DEC may direct the person undertaking the response action to cease and may undertake containment or cleanup directly or by contract. These actions are carried out by the predesignated DEC State On-Scene Coordinator (SOSC). DEC maintains access to a wide array of containment and cleanup resources which are available to the SOSC for this purpose.

The Department is seeking to enhance its response capability by executing Local Response Agreements (LRAs), through which local emergency response resources can be used to facilitate coordinated and effective response actions. The SOSC activates and directs these resources through the Incident Command System (ICS). These resources act as an extension of the Department's response capability. The SOSC will select those resources best suited for responding to a particular incident, and will request such services upon the determination that current response actions are inadequate. Through these agreements, DEC intends to develop partnerships through which local resources, experience and knowledge can benefit statewide response actions. State reimbursement of actual costs will make available the combined response resources of local municipalities and the State and will substantially enhance the State's overall response capability.

Response activities will be conducted in accordance with the Alaska Federal/State Preparedness Plan for Response to Oil and Hazardous Substance Discharges/Releases (the "Unified Plan") and its ten regional sub-plans and will be consistent with all applicable local, State and federal response plans and requirements.

GENERAL PROVISIONS

DEC shall reimburse a municipality for actual expenses, other than normal operating expenses, incurred in the abatement of a release or threatened release of oil or a hazardous substance if (1) the municipality has entered into an agreement with the Commissioner under AS 46.04.020(e) or AS 46.09.020(e); (2) the Commissioner determines that the expenses were for a necessary emergency first response to a release or threatened release that posed an imminent and substantial threat to the public health or welfare, or to the environment; and (3) the expenses were consistent with the regional master plan, if any (AS 46.08.070(c)). DEC shall not be obligated to

reimburse any cost incurred by a municipality associated with a response when the municipality is identified as the responsible party (RP).

Under AS 46.09.020(e), the Commissioner of DEC may enter into agreements with municipalities in order to (1) facilitate a coordinated and effective hazardous substance release response in the state; (2) provide for cooperative hazardous substance release notification procedures; or (3) provide for cooperative review of hazardous substance release response contingency plans submitted to the department. DEC may enter into similar agreements with municipalities to facilitate a coordinated response to oil discharges (AS 46.04.020(e)).

The MOA is a municipality created under the laws of the State of Alaska and has all of the powers necessary to enter into agreements and specifically the power to enter into this Local Response Agreement. The MOA is also a local emergency response authority empowered to commit locally available resources to assist DEC in the abatement of a release or threatened release of oil or a hazardous substance for purposes of facilitating a coordinated and effective hazardous substance release response.

Therefore, based on the foregoing and in consideration of a mutual interest in facilitating a coordinated and effective oil or hazardous substance release response, both parties agree to the following:

TERMS OF AGREEMENT

Response to Oil and Hazardous Substance Spills

1. DEC and the municipality shall designate local contact persons who will implement this agreement.
2. DEC and the municipality shall mutually establish, and coordinate, procedures for notification of releases and the callout by DEC of response resources as follows:
 - A. Notification of MOA/Hazardous Materials Response Team (HMRT) - When local emergency responders are on-scene first and decide, based on their level of training, that they cannot handle the emergency, the local on-scene coordinator (LOSC) can request the HMRT. When command level HMRT members determine that a situation poses an imminent and substantial threat to the public health or welfare or to the environment, the HMRT shall, through the MOA Fire Chief or designee, notify the SOSC for activation of the Local Response Agreement for reimbursement purposes. The SOSC must give prior approval for any expenditures submitted for reimbursement. All responses by the HMRT should be reported to DEC as soon as possible.
 - B. Notification of MOA/HMRT by DEC - When DEC has been notified of a release or threatened release which poses an imminent and substantial threat to the public health or welfare or to the environment, and DEC determines the response by the RP is insufficient, DEC may request initiation of the Local Response Agreement to activate the HMRT. The SOSC shall notify the MOA Fire Chief or designee of the request for deployment of the HMRT. The MOA Fire Chief or designee will be responsible for approval or denial of the request. If approved, the HMRT will remain under the control of MOA personnel.
3. DEC, through the SOSC, shall notify the municipality's contact person when the services available from a municipality are needed to assist in responding to an oil or hazardous substance

release. DEC will be responsible for acquiring and providing transportation for the HMRT.

4. The priority of the HMRT is the MOA therefore DEC will return the HMRT to the MOA in the event of an emergency within the MOA that requires the HMRT. The MOA Fire Chief or designee will be responsible for the return request.

5. Termination of the incident shall be a joint decision between DEC and the HMRT with DEC maintaining responsibility for cleanup activities. In the event of a disagreement, the HMRT may choose to cease operations at the site with no penalty being imposed by DEC.

6. DEC may, in emergencies, verbally request specified services from the municipality. All verbal requests will be followed, as soon as possible, with a written description of the scope of services to be provided in the form of a Notice To Proceed (NTP) pursuant to the terms of the agreement.

7. DEC shall reimburse the municipality for actual costs incurred under this agreement, other than normal operating costs, for personnel including MOA retirement contributions, goods and services used during a response. Reimbursement includes actual costs for responses inside and outside of a local jurisdiction when requested by the SOSC. All such reimbursement is subject to the requirements of AS 46.08.070(c).

8. DEC will make no payment for personnel, services, or goods provided during or prior to the incident unless such personnel, services, and goods are requested and approved by the SOSC.

9. The MOA shall provide a list, or description of personnel, equipment and services along with their costs that will be available to respond to an incident. This information shall be updated, as needed, to reflect the current and actual services and costs. Only actual costs incurred for personnel, equipment and services are eligible for reimbursement.

10. The municipality will maintain sufficient records to verify work done by personnel and to document the use of goods and services during an incident.

11. The municipality shall submit to the SOSC for payment timely billings detailing expenditures for each incident. All billings must meet the State's documentation requirements for expenditures from the Oil and Hazardous Substance Release Response Fund.

12. MOA, having entered into a written agreement with the Department to provide response action with respect to a release or threatened release of a hazardous substance, is provided immunity from civil liability to third parties for spill response services to the maximum extent available under AS 46.03.825 - Oil Spill Response Action Contractors. Nothing in this agreement is intended to alter or limit those protections.

Response Preparedness

13. DEC and the municipality agree to identify release response preparedness needs, and to pursue reimbursement of municipalities for preparedness costs, not associated with individual incidents, that will enhance local response capability. The parties acknowledge the unavailability of the Response Fund for this purpose (AS 46.08.070(c)).

General

14. DEC and the MOA agree that nothing in this agreement shall be construed as obligating local government to support the response and preparatory activities should DEC no longer be capable of funding support identified in this agreement.
15. DEC and the MOA mutually agree that nothing in this agreement shall be construed as obligating DEC to the expenditure of funds, or to the future payment of funds, in excess of that authorized by the SOSC under this agreement.
16. DEC may at any reasonable time inspect all records and documentation which support a billing under this agreement. DEC may also request back-up documentation in order to verify billings.
17. DEC and the municipality will execute any other documents reasonably necessary to fully perform the intentions of this agreement.
18. This agreement shall be governed and interpreted by the laws of the State of Alaska.
19. No party may assign this agreement or any interest therein without the written consent of the other party.
20.
 - A. This contract shall only be amended, modified or changed in writing, executed by authorized representatives of the parties, with the same formality as this contract was executed.
 - B. For the purposes of any amendment, modification or change to the terms and conditions of this contract, the only authorized representatives are:

DEC: Michele Brown, Commissioner
Anchorage: Municipal Manager
 - C. Any attempt to amend, modify, or change this contract by either an unauthorized representative or unauthorized means shall be void.
21. Nothing in this agreement shall preclude either party from seeking reimbursement for actual costs from other sources.
22. This agreement shall be in effect on the date of execution. The agreement may be terminated at any time by either party, with or without cause, with 60 days' written notice served upon the other party. If this agreement is terminated the municipality shall have no rights to further reimbursement except for those expenses already approved pursuant to this agreement.

