DELAWARE COUNTY, IOWA
FILED
1999 FEB 18 PM 2:18
BOOK 1999 PAGE 283
DELAWARE COUNTY RECORDER

Preparer information: Jack Klaus, 319-927-2526, 301 East Main Street, Manchester, Ia. 52057

MUTUAL ASSISTANCE CONTRACT-HAZARDOUS MATERIALS 28-E AGREEMENT

THIS AGREEMENT made and entered into by and between the Linn Metro Hazardous Materials Task Force (the "Task Force") whose address for the purpose of this Agreement is the Linn County Emergency Management Agency, 50 2nd Avenue Bridge, Cedar Rapids, Iowa 52401, and the Board of Supervisors of Delaware County (the "County"), whose address for the purpose of this Agreement is the Delaware County Courthouse, 301 East Main St. Manchester, Iowa 52057 WITNESSETH:

WHEREAS, the parties recognize that advances in modern technology have caused increasingly frequent hazardous substance accidents which endanger the well being of the general public; and

WHEREAS, preservation of the lives and property of the general public in these incidents depends upon the ready availability of properly trained personnel and adequate equipment; and

WHEREAS, the cost of such specially trained personnel and adequate equipment is burdensome, particularly for smaller communities; and

WHEREAS, the Task Force, having such trained personnel and equipment, is willing to assist the County in responding to serious hazardous substance accidents, and the County is desirous of obtaining such assistance;

THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, it is AGREED:

1. The purpose of this Agreement is the establishment of procedures for assistance to the authorities in Delaware County by the Task Force in dealing with emergencies caused by hazardous conditions within Delaware County.
2. No separate entity is created under this Agreement.
3. For purpose of this Agreement, the following definitions shall apply:

a. "hazardous condition" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance

i. within Delaware County which, because of the quantity, strength, toxicity, mobility in the environment, and persistence of the hazardous substance, creates an immediate danger to the public health or safety; or

ii. onto land, into waters within the State of Iowa, or into the atmosphere which, because of the quantity, strength, toxicity, mobility in the environment, and persistence of the hazardous substance, creates an immediate danger to the public health or safety of persons or property within Delaware County.

The term "hazardous condition" shall also include any accident involving hazardous materials required to be reported under Section 321.266(4) of the Code of Iowa.

b. "Hazardous substance" means any substance or mixture of substances which presents a danger to the public health or safety or the environment and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or which is an irritant or which, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity, may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium; arsenic; mercury; lead; and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons; radioactive materials; sludges; and organic solvents. The term "hazardous substance" shall also include any hazardous waste identified or listed by the Administrator of the United States Environmental Protection Agency

under the Solid Waste Disposal Act of 1976, or any toxic pollutant listed under Section 307 of the Federal Water Pollution Control Act of 1976 as amended to January 1, 1977, or any hazardous substance designated by the Secretary of Transportation under the Hazardous Materials Transportation Act, or any hazardous substances listed under the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

c. "Responsible person" means any natural person or corporation, acting as an agent, lessor or tenant, who is in control of a hazardous substance which is being stored, processed, or handled, or who is transporting hazardous wastes or substances, whether on public ways or grounds or on private property.

4. All requests for aid, assistance, manpower, or equipment under the provisions of this Agreement shall be transmitted to the Delaware County Communications Center by the Delaware County Emergency Management Coordinator or his designee, or a fire chief of a community providing coverage to an area within Delaware County. Such requests shall state as specifically as possible the nature and extent of the hazardous substance emergency to enable the Task Force to judge what personnel and equipment is required to be sent. The number of personnel and the nature of equipment sent shall be at the discretion of the Task Force.

5. It is the intent of Delaware County to provide coverage for areas lying within the borders of the county. Fire chiefs responsible for coverage of areas lying outside Delaware County need to make arrangements with that county to provide similar coverage.

6. No provision of this Agreement shall be construed to require the Task Force to respond to a request for assistance or to continue assistance if, in the discretion of the Task Force, its services are considered necessary to deal with a

present emergency in Linn County or if, because of other emergencies or conditions beyond its control, it cannot respond in a timely manner or must withdraw assistance during the course of an emergency in Delaware County.

7. The County shall pay the Task Force a yearly retainer of $2500 plus $250 for each response into Delaware County for a hazardous materials emergency and $25 per hour per person responding for a minimum of two (2) hours. The County shall reimburse the Task Force for the replacement costs of any material or equipment used or expended at an incident that the Task Force deems unrecoverable. The amount of the retainer and/or the per call response fee shall be reviewed by the parties on a yearly basis prior to January 1, and adjusted as needed.

8. The County shall arrange for training of Delaware County fire departments, law enforcement, and other responding county personnel to bring them up to the "operations level" of hazardous materials training. The parties shall determine the need for additional training and the cost of such training.

9. The fire chief in whose district an incident has occurred or his designee shall be in commend of the general operations at the scene of the emergency. The officer in charge of Task Force personnel shall have direct control and supervision of such personnel and of the use of all apparatus, equipment, and material of the Task Force in mutual cooperation and consistent with the spirit of this Agreement.

10. Task Force personnel acting pursuant to this Agreement shall function in accordance with assigned duties as members of their own departments and as employees of the Task Force for purposes of entitlement to benefits and protection associated with their response.

11. The County shall indemnify, save, and hold harmless the Task Force, its officers, members, agents, and representatives from any liability (including

statutory liability and liability under workers compensation or other occupational disease law) arising from:

a. Any claim, action, loss, cost, damage, injury, or expense including attorney fees because of the Task Force's failure to respond to a call or untimely response to a call for assistance for whatever reason, or during a response to Delaware County.

b. The acts or failure to act of any personnel at the scene not under the direct control of the officer in charge of Task Force personnel.

c. The performance or non-performance of discretionary functions by Task Force personnel, including but not limited to the number of personnel and the type of assistance rendered, or

d. Any acts due to the negligence or other faults of its own officers, employees, members, agents, and representatives arising out of or resulting from the rendering of aid during a hazardous substance emergency.

The provisions of this Section shall not extend to the acts or omissions of any officer, employee, member, agent, or representative of the Task Force for damage to property or injury to any person (including him or herself) which results from:

a. The intoxication or use of controlled substances by the officer, member, employee, agent, or representative, or

b. Gross negligence, or reckless, wanton or intentional misconduct of any officer, member, employee, agent, or representative of the Task Force.

In such circumstances, there shall be no obligation on the part of the County to indemnify, save, and hold harmless the Task Force, its officers, employees, members, agents, and representatives from any liability (including statutory liability and liability under workers compensation or other occupational disease

law) for any claim, action, loss, cost, damage, injury or expense including attorney fees.

In addition, the provisions of this Section shall extend only to the acts or omissions of any officer, member, employee, agent, representative of the Task Force when said individual is acting within the scope of his or her duties as a member of his or her own department and as an employee of the Task Force.

12. Nothing in this Agreement shall prevent the County from recovering costs of services rendered and materials used from a third party who is the responsible person as defined herein where such recovery of cost is provided for by law, or from seeking reimbursement from the Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 or as subsequently amended.

13. Either party may unilaterally terminate this Agreement at any time with or without cause, upon written notice either delivered or mailed by ordinary U.S. mail to the address set forth above for such party. Such notice shall be given not less than ninety (90) days before the effective date of termination, which date shall be stated in the notice.

14. This Agreement, unless terminated as stated above, shall be in full force and effect for a period of ten years from the effective date of this Agreement as defined in Paragraph 14 below and shall continue from year to year thereafter until terminated.

15. This Agreement shall be in full force and effect upon the occurrence of all of the following:

a. Its execution by the parties to this Agreement after acceptance and approval by the Delaware County Board of Supervisors and the Oversight Committee of the governing board of the Task Force.

b. An executed counterpart or photocopy of this Agreement is filed with the Iowa Secretary of State.

c. An executed counterpart of this Agreement is recorded in the offices of the Recorders of Delaware and Linn Counties.

16. This Agreement may be amended only by written instrument duly executed by the parties hereto.

DELAWARE COUNTY

by J. Elden Koenecke
Chair, Delaware County
Board of Supervisors

2-8-99
Date

Attest:

Sharon McCrabb
Auditor, Delaware County

Carlyn Glass
Delaware County Emergency
Management Coordinator

2/9/99
Date

LINN METRO HAZARDOUS MATERIALS
TASK FORCE OVERSIGHT COMMITTEE

by
Coordinator, Linn County Emergency
Management

11 Feb 1999
Date