
MEMORANDUM OF AGREEMENT
BETWEEN
COLORADO STATE PATROL
AND
COLORADO DEPARTMENT OF TRANSPORTATION
AND
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

**PROCEDURES FOR RESPONDING TO AND REMEDIATING SPILLS OF
HAZARDOUS SUBSTANCES THAT OCCUR ON STATE AND FEDERAL
HIGHWAYS WITHIN COLORADO AS A RESULT OF A HIGHWAY
TRANSPORTATION INCIDENT**

February 1, 2017

WHEREAS, all transportation related spills of hazardous substances on state and federal highways in Colorado (“hazardous substance incidents”) require a rapid, efficient and coordinated response and clean up by State agencies to minimize the deleterious effects on human health and the environment; and

WHEREAS, the Parties recognize the critical roles each play within their respective areas of authority in responding to hazardous substance incidents on state and federal highways; and

WHEREAS, the Parties recognize cooperation between them in the implementation and exercise of their respective statutory authority and regulatory authority is essential to avoid conflict and unnecessary duplication; and

WHEREAS, the Parties believe and intend that by acting in a cooperative and coordinated manner they will significantly enhance their response efforts to hazardous substance incidents.

NOW THEREFORE, the Parties agree, to the extent permitted by law, and consistent with their respective policies and available resources, to cooperate and to coordinate their efforts in implementing and exercising their respective statutory and regulatory duties related to responding and remediating all hazardous substance incidents.

I. PARTIES

This Memorandum of Agreement (“MOA”) is entered into by and between the Colorado State Patrol (“CSP”), the Colorado Department of Transportation (“CDOT”) and the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division (“CDPHE”) (hereinafter referred to individually as “Party” and collectively as “the Parties”).

II. PURPOSE

The purpose of this MOA is to clarify the roles and responsibilities of each Party to facilitate the effective response, evaluation and remediation of all hazardous substance incidents to ensure protection of public health and safety and the environment. A further purpose of this MOA is to guide how the Parties communicate with each other and exchange information following a hazardous substance incident.

III. AUTHORITY

CSP enters this MOA under the authority of the Designated Emergency Response Authority (“DERA”) statute under section 29-22-102 *et seq.*, C.R.S.

CDOT enters this MOA under the authority of the Colorado Transportation Act, section 43-1-101 *et seq.*, C.R.S.

CDPHE enters this MOA under the authority of the Colorado Hazardous Waste Act, section 25-15-101 *et seq.*, C.R.S., and the Colorado Solid Wastes Disposal Sites and Facilities Act, section 30-20-100.5 *et seq.*, C.R.S.

IV. DEFINITIONS

The term "hazardous substance" shall have the same meaning as set forth in section 29-22-101(a), C.R.S.

The term "Right-of-Way" shall mean the land roadways are built upon as well as the land immediately adjacent to the Right-of-Way.

The terms "roadways" or "highways" shall include bridges on the roadway, culverts, sluices, drains, ditches, waterways, embankments, retaining walls, trees, shrubs, and fences along or upon the same and within the Right-of-Way.

V. RESPONSIBILITIES

In the event of a hazardous substance incident, the responsibilities of each Party to this MOA are presented below. Attachment A to this MOA sets forth the general structure and activities of each Party with respect to hazardous substance incidents.

- A. When a hazardous substance incident occurs on any federal, state, or county highway located outside of a city limit, CSP shall be responsible for the emergency response and, as necessary, providing continuing supervisory authority in consultation with other federal, state and local agencies having regulatory authority for the cleanup or remediation of the hazardous substance(s) involved in the hazardous substance incident.
- B. CSP will notify CDOT of any hazardous substance incident that occurs within or impacts CDOT's Right-of-Way as soon as practicable.
- C. CSP will notify CDPHE of any hazardous substance incident that may impact or has impacted groundwater and surface water, or that may pose an immediate and substantial threat to public health and safety or the environment as soon as practicable. Attachment B to this MOA sets forth instances where notification to CDPHE is generally required.
- D. CSP will provide the party responsible for a hazardous substance incident with CDPHE's and the National Response Center's contact information and inform the responsible party they are required to immediately notify both CDPHE and the National Response Center of the hazardous substance incident. CSP will notify the National Response Center if the responsible party is unable to immediately do so.
- E. For any hazardous substance incident that occurs within or impacts CDOT's Right-of-Way, but does not impact or have the potential to impact groundwater or surface water, and does not pose an immediate and substantial threat to public health and safety or the environment, CDOT, through its Hazardous Waste Management Unit, may perform all necessary cleanup or remediation work, repair damaged infrastructure and restore the road or highway to a safe and usable condition, only in the event that the responsible party cannot be located. In the event the

responsible party is known, the responsible party responsible for the hazardous substance incident shall be responsible to do the same. CDOT shall be responsible for overseeing any work performed by the responsible party and for verifying the state standards specified below in Paragraph F have been met.

- F. Any cleanup or remediation of hazardous substances performed by CDOT, a party responsible for a hazardous substance incident, and/or any contractor engaged to perform the cleanup or remediation of a hazardous substance incident, shall meet the following standard cleanup values established by CDPHE:
- i. Cleanup standards for groundwater may be found in the Water Quality Control Commission's Regulation 41 available at <https://www.colorado.gov/pacific/sites/default/files/Regulation-41.pdf>;
 - ii. Cleanup standards for surface water may be found in the Water Quality Control Commission's Regulation 31 through 39 available at <https://www.colorado.gov/pacific/cdphe/water-quality-control-commission-regulations>; and
 - iii. Soil screening levels prepared by EPA are available at <https://www.colorado.gov/pacific/cdphe/approach-soil-screening-values>.
- G. CSP will advise any cleanup contractor it engages of CDPHE's standard cleanup values identified above in Paragraph F and will request the cleanup contractor to provide CSP and CDOT with their final report which must include lab samples.
- H. CSP and CDOT will consult with cleanup and remediation specialists at CDPHE whenever CDOT and/or CSP staff believes it necessary or when requested by CDPHE.
- I. For a hazardous substance incident that impacts or may impact groundwater or surface water, or is of such a volume or toxicity that it poses an immediate and substantial threat to public health and safety or the environment, CDPHE, in conjunction with CSP and/or CDOT, shall take action to have the responsible party promptly investigate, evaluate, and remediate the hazardous substance(s). In these instances, investigation, evaluation and remediation activities will be performed, as required by CDPHE, inside and/or outside the Right-of-Way, even if these activities may damage the road or highway. Furthermore, in these instances, CDPHE shall be responsible for overseeing any cleanup or remediation work performed by the responsible party and for verifying the state standards specified above in Paragraph F have been met.
- J. For a hazardous substance incident that impacts CDOT's Right-of-Way, CDPHE and CSP shall defer to CDOT's decisions regarding the repair of damaged infrastructure and the restoration of the road or highway to a safe and usable condition, following remediation.
- K. A hazardous substance incident may result in the involvement of the U.S. EPA's Emergency Response Program ("EPA"). Generally, when EPA becomes involved, the size and magnitude of the hazardous substance incident and the resulting threats to public health and safety or the

environment will also trigger the involvement of CDPHE. In these instances, EPA will initially be actively involved in the response and remediation efforts, but their role will diminish overtime as the response and remediation activities progress. As EPA's involvement lessens, CDPHE will be expected to provide regulatory oversight over long term monitoring and groundwater remediation in cases where there is a viable PRP.

- L. The Parties will advise their personnel of this MOA and promote implementation at every level of their organizations through established channels and protocol.

VI. CONTACTS

The following are the general points of contact for each Party:

CSP: Hazardous Materials Section Captain
Colorado State Patrol
15065 S. Golden Road
Golden, CO 80401

CDOT: Hazardous Waste Management Supervisor
Property Management
Colorado Department of Transportation
15285 South Golden Road, Building 47
Golden, CO 80401

CDPHE: Hazardous Materials and Waste Management Division Director
4300 Cherry Creek Drive South
Denver, CO 80246-1530

VII. LIMITATIONS

This MOA represents a statement of cooperative intent among the Parties and is not an enforceable agreement. Nothing in this MOA alters, modifies, abridges, or in any way affects the statutory or regulatory authority of the Parties. This MOA does not establish a standard of care or in any way create third party beneficiary rights.

VIII. EFFECTIVE DATE

This MOA shall become effective on the date when the last Party to sign has executed this MOA.

IX. TERM

This MOA shall remain in effect until terminated by any Party in accordance with Part XI of this MOA.

X. MODIFICATIONS

Any Party to this MOA may propose modifications by submitting them in writing to the other Parties. No modification may be adopted except with the consent of all Parties. All parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt.

XI. TERMINATION

The MOA may be terminated by any Party upon a 30-day advance written notification to the other Parties.

SIGNATURES

Colorado State Patrol

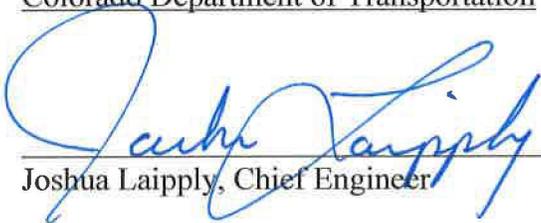


Mark Savage, Deputy Chief

3/31/17

date

Colorado Department of Transportation



Joshua Laipply, Chief Engineer

3/20/2017

date

Colorado Department of Public Health and Environment



Ann Hause, Director
Office of Legal and Regulatory Affairs

3/31/17

date

ATTACHMENT A

MEMORANDUM OF AGREEMENT BETWEEN

CSP, CDOT AND CDPHE

Colorado State Patrol (CSP)

Structure:

CSP employs a full-time, hazardous materials team focused on the safe transportation of hazardous substances on Colorado's roadways. The section consists of three sergeants, and 25 certified hazardous materials technicians (troopers) each responsible for a geographic section of the state. Sergeants are assigned to Golden, Pueblo and Grand Junction and oversee a team of hazmat technicians across Colorado. Staffing levels and areas of geographic responsibility are subject to change depending on operational needs of the agency.

Authority:

CSP is the Designated Emergency Response Authority (DERA) for spill/discharges that occur within the boundaries of any publicly maintained highway not within a municipality's corporate limits. As such, CSP is responsible for taking the initial emergency action necessary to minimize the effects of a hazardous substance incident. Initial emergency action to minimize the effects would ordinarily include confining, containing and controlling the product involved.

Notes:

By agreement, CSP is not the DERA for a hazardous substance incident occurring within the boundaries of publicly maintained highways in Arapahoe, Larimer and Mesa Counties.

The fire department is ordinarily the DERA for a hazardous substance incident that occurs within the limits of a town, city, or city and county.

The sheriff is ordinarily the DERA for all hazardous substance incidents not covered by CSP or the fire department.

Hazardous substance incidents occurring on private property are the responsibility of the property owner, who must either notify the pertinent DERA (municipal or county) and coordinate a response or effect a response independently.

Usual response action:

CSP provides emergency response when a hazardous substance incident occurs and has the authority to supervise cleanup and/or remediation activities as necessary. CSP "releases" the incident to a contractor, and will check back on the site as necessary to verify the cleanup is completed.

Enforceable document for cleanup:

CSP has a release form the contractor must sign to do the cleanup. The ultimate responsibility is to the driver or the company that owns the vehicle.

Required documentation, where stored/distributed:

Like CDPHE, CSP requires analysis of confirmation samples to verify that cleanup is complete and the required remediation standards have been met. CSP may require submittal of additional supporting documentation when appropriate, given the type and scope of the incident. CSP maintains case files electronically on each hazardous substance incident response.

Colorado Dept. of Transportation (CDOT)

Structure:

Composed of the following five regions, each with separate Transportation Directors: Aurora, Pueblo, Grand Junction, Greeley and Durango. Each region reports to CDOT HQ in Denver.

Each of the five CDOT regions has its own small crew capable of providing basic, non-technical emergency response assistance, cleanup oversight and road repairs.

The Hazardous Waste Management Unit is a statewide program that provides technical emergency response assistance to the regions on an as-needed basis. This program reports to CDOT HQ but works closely with the regions. The program has environmental contracts with various commercial entities who conduct cleanup operations as directed by the program.

Authority:

Can require cleanup as a property owner for hazardous substance incidents within CDOT's Right-of-Way.

Usual response action:

Issue Permit to responsible party allowing equipment and access to the highway to perform cleanup.

Enforceable document for cleanup:

Main objective of Permit is to ensure that people working in the Right-of-Way have the right equipment to perform the job they are doing.

Required documentation, where stored/distributed:

All documentation of the work is stored in a project numbered file at CDOT HQ Central Files. Additional copies are sent to the appropriate regulatory agency and the regional CDOT offices.

Colorado Dept. of Public Health and Environment (CDPHE)

Structure:

The environmental side of the Colorado Department of Public Health and Environment (CDPHE) is composed of two environmental divisions that typically respond to spills: The Water Quality Control Division (WQCD); and the Hazardous Materials and Waste Management Division (HMWMD). The HMWMD addresses the cleanup of hazardous substance incidents within the state, and coordinates with the WQCD to ensure water users in the area are not exposed to the released materials.

The HMWMD is composed of a Solid Waste and Materials Management Program and a Hazardous Waste Program. Hazardous substance incidents involving diesel are generally handled by the Solid Waste and Materials Management Program while incidents involving ignitable materials, such as gasoline or crude oil, are handled by the Hazardous Waste Program. Both programs generally respond to incidents in the same fashion, using the same cleanup numbers and guidelines.

Authority:

The HMWMD, pursuant to the Colorado Hazardous Waste Act and the Colorado Solid Waste Disposal Sites and Facilities Act, has authority to require the cleanup or remediation of hazardous substance incidents.

Usual response action:

The HMWMD becomes involved in the cleanup of a hazardous substance incident generally after initial emergency response actions have been completed. Involvement usually includes working with an environmental contractor to dispose of any accumulated wastes, to determine the nature and extent of contamination from the incident and to perform remediation activities as necessary. All groundwater, surface water and soil data collected by the HMWMD, is shared with the WQCD. The WQCD will then, as necessary, notify water users in the area of any potential contamination and coordinate with the HMWMD to ensure that the water users are not exposed to the contamination.

Enforceable document for cleanup:

The Hazardous Waste Program of the HMWMD has the option of approving a Corrective Action Plan submitted by the responsible party to complete the cleanup or remediation of the hazardous substance incident or issuing an administrative order. The Solid Waste and Materials Management Program of the HMWMD can only issue administrative orders to require cleanup.

Required documentation, where stored/distributed:

For a typical hazardous substance incident, the HMWMD will require an analysis of confirmation samples to verify that cleanup is complete and state standards have been met, in addition to the submittal of other supporting documentation such as waste disposal manifests, photographs, site figures, etc. The amount of documentation required is directly related to the magnitude of the hazardous substance incident. Documentation regarding small hazardous substance incidents is filed with the state spill line, while files for larger incidents are stored as a site remediation in the HMWMD's records center.

ATTACHMENT B

MEMORANDUM OF AGREEMENT BETWEEN

CSP, CDOT AND CDPHE

The CDPHE must be notified of any hazardous substance incident that impacts or may impact groundwater or surface water, or is of such a volume or toxicity that it poses an immediate and substantial threat to public health and safety or the environment. For the purpose of this MOA, the requirement to provide notification to CDPHE of a hazardous substance incident will generally be triggered under the following circumstances:

- The hazardous substance released could not be fully recovered and penetrated unsaturated soil and/or rock to a depth that will require remedial activities to be conducted in a phased manner over an extended period of time (months/years).
- The hazardous substance released could not be fully recovered and penetrated unsaturated soil and/or rock and potentially reached groundwater where it may do the following: (1) degrade water quality to the degree that it exceeds state standards, (2) reach surface water, (3) affect water quality in nearby public and private water wells, or (4) cause a vapor intrusion concern due to the proximity of inhabited buildings.
- The hazardous substance released is determined to have reached surface water, either as a result of having been spilled directly into the surface water body or through its migration via groundwater.
- The concerns noted above will typically involve the following situations:
 - (1) The release of large quantities of hazardous substances. Cleanups initiated by CSP or CDOT involving spills of fuel (gasoline and diesel blends) under 100 gallons that don't impact surface water or groundwater do not require CDPHE involvement, unless CDOT or CSP request CDPHE's assistance.
 - (2) The spill of a solid hazardous substance that can easily dissolve because of its physical/chemical characteristics in an area that might allow for its mobilization (e.g., damp areas or into standing water, such as a puddles following a storm event or into snow) or in conditions that may cause them to be mobile (e.g., during a rain event or into snow). Otherwise, all solids that are released that can readily be recovered, regardless of their quantity, do not require CDPHE involvement, unless CDOT or CSP request CDPHE's assistance.
- With regard to hazardous substances that are determined to pose an immediate and substantial threat to public health and safety or the environment, CDPHE will always defer to the first responders. However, in these situations CDPHE may choose to immediately become involved for the purpose of using its enforcement authority to require the responsible party to apply more resources to expedite remedial activities.