

## **Article 24. – REGIONAL HAZARDOUS MATERIALS RESPONSE**

**22-24-1. Definitions.** (a) “Chemical assessment team” (CAT) means either of the following:

(1) A type of emergency response team whose primary objective is the assessment of chemical hazards; or  
(2) those members of a hazardous materials response team whose primary objective is the assessment of chemical hazards.

(b) “Division” means the hazardous materials response division of the Kansas state fire marshal’s office.

(c) “Emergency response team” means a hazardous materials response team or chemical assessment team that has entered into a contract with the state fire marshal’s office to provide a response to hazardous materials incidents.

(d) “Local authority” means the local unit of government’s public safety agency that is in overall command at the scene of a hazardous materials incident.

(e) “Local authority” means the local unit of government’s public safety agency that is in overall command at the scene of a hazardous materials incident.

(f) “Management system” means a combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure with responsibility for the management of assigned resources to effectively accomplish stated objectives at the scene of an incident.

(g) “Mitigation” means the actions taken by an emergency response team to lessen the severity or intensity of a hazardous materials incident. Mitigation shall not include restoration of the scene to its preaccident condition and shall not be interpreted as including cleanup procedures, remediation, or both.

(h) “NFPA” means the national fire protection association.

(i) “Primary response area” means the geographic portion of the state to which an emergency response team has been assigned to provide the principal response to incidents occurring in that area.

(j) “Regional response team program” means the system of regionally located emergency response teams who have contracted with the state fire marshal to provide a response to hazardous materials incidents occurring in that area.

(k) “Response area” means the primary or secondary response area of an emergency response team.

(l) “Secondary response area” means the geographic portion of the state to which an emergency response team has been assigned to provide the alternate response to incidents occurring in that area.

(m) “State fire marshal” means the state fire marshal or the state fire marshal’s designee. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-2. Team response areas.** (a) The primary and secondary response areas for each emergency response team shall be established by the state fire marshal. Each team shall be assigned at least one secondary area.

(b) The factors used by the state fire marshal in establishing these primary and secondary response areas shall include the following:

(1) The number and geographic location of fixed facilities manufacturing, using, or storing hazardous materials that may pose a threat to life or property if released;

(2) the number of miles of primary transportation routes in a given area, including highways, rail lines, commercially navigable waterways, pipelines, and airports;

(3) the population of each county;

(4) any special conditions that may be present in a given area of the state and the need for specialized equipment unique to those conditions that might affect emergency response capability;

(5) the existing local capabilities for dealing with hazardous materials incidents; and

(6) any other factor that could contribute to the potential for a hazardous materials release that could threaten life or property, thus meriting an emergency response.

(c) The boundaries of each response area shall be reviewed and, if needed, adjusted by the state fire marshal at least every two years. The adjustment of boundaries shall not be modified, conditioned, or limited by any collective bargaining agreement or memorandum of agreement.

(d) Each emergency response team shall respond to any area of the state when directed to do so by the state fire marshal. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-3. Adoption by reference.** (a) The following nationally recognized standards are hereby adopted by reference:

(1) “Recommended practice for responding to hazardous materials incidents,” national fire protection association pamphlet no. 471 (NFPA 471), including appendices, 1997 edition;

(2) “standard on professional competence of responders to hazardous materials incidents,” national fire protection association pamphlet no. 472 (NFPA 472), including appendices, but excluding chapters 7, 8, 9, 10, and 11, 1997 edition; and

(3) “standard for competencies for EMS personnel responding to hazardous materials incidents,” national fire protection association pamphlet no. 473 (NFPA 473), including appendices, 1997 edition.

(b) Each team member shall comply with the provisions of “hazardous waste operations and emergency response,” 29 C.F.R. 1910.120(q), as in effect on March 7, 1996, and hereby adopted by reference. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-4. Qualifications of team members.** (a) Each member of each emergency response team shall successfully complete annual refresher training that meets or exceeds the continuing education requirements of 29 C.F.R. 1910.120(q)(8).

(b) Each employer of one or more emergency response team members shall document all hazardous material training and continuing education, and these records shall be made available to the state fire marshal upon request. Each employer of one or more emergency response team members shall annually certify to the state fire marshal in writing that each team member has met the medical requirements of 29 C.F.R. 1910.120(q)(9) and the educational requirements of 29 C.F.R. 1910.120(q)(6)(I), (ii), and (iii).

(c) Any of the training or educational requirements identified in these regulations may be waived by the state fire marshal, and a substitute requirement or standard issued by the occupational safety and health administration or the NFPA may be approved by the state fire marshal, if the substitute requirement or standard is equivalent to, meets, or exceeds the requirement to be replaced. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-5. Composition of teams.** (a) Each hazardous materials response team shall consist of at least nine members who possess the qualifications established by K.A.R. 22-24-3 and K.A.R. 22-24-4. A minimum of four members shall be available for response at any time.

(b) Each chemical assessment team shall consist of at least six members who possess the qualifications established by K.A.R. 22-24-3 and K.A.R. 22-24-4. A minimum of three members shall be available for response at any time.

(c) Each emergency response team member shall be certified by that individual's employer as meeting the qualifications for hazardous materials technicians established by NFPA 472. Each emergency response team member assigned to provide emergency medical support shall be certified by that individual's employer as meeting the qualifications for a level II responder or a higher level as defined by NFPA 473 and shall be currently certified or registered as an emergency medical technician by the state of Kansas board of emergency medical services.

(d) Emergency response teams may consist of personnel from one or more public or nonpublic entities. Each team shall designate a single point of contact for purposes of emergency dispatch, a single authority for contract administration, and the employer responsible for the employer requirements set out in these regulations. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-6. Responsibilities of teams.** (a) As its primary responsibility, each hazardous materials response team shall assist local authorities by recommending emergency actions necessary to protect life and property from the effects

of a release of a hazardous material. These emergency actions may include preventing releases, mitigating a release, stabilizing the situation, and any other actions necessary to control the incident.

(b) As its primary responsibility, each chemical assessment team shall assist local authorities by providing technical advice and recommending mitigation actions to local incident commanders. Each chemical assessment team may assist the hazardous materials response team by responding in conjunction with them, assessing the chemical issues, and assisting in the formulation of strategies to mitigate or prevent incidents. The chemical assessment team may mitigate the effects of a release and stabilize the situation after contacting the hazardous materials response team and obtaining advice when necessary.

(c) When requested by the local incident commander and approved by the emergency response team commander, the emergency response team may remain at the scene and provide continuing assistance by monitoring cleanup activity conducted by local, state, or federal agencies or private entities for the purpose of ensuring public safety. The emergency response team shall not be required to remain at the scene. If the emergency response team remains, the team's costs shall be recoverable costs against the responsible party as provided in K.A.R. 22-24-14.

(d) An emergency response team shall not take any of the following actions:

(1) Transport, store, dispose of, or perform remedial cleanup of hazardous materials, except as may be incidentally necessary to mitigate an emergency;

(2) assume overall command of the hazardous materials incident, except that the team shall establish a joint command comprised of the local incident commander and the emergency response team commander if local authorities do not have incident command training; or

(3) mitigate incidents involving explosives, explosive devices, incendiary devices, shock-sensitive explosive chemicals, or clandestine drug labs, except to respond to the effects of a hazardous materials release that has occurred as a consequence of these incidents. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-7. Reporting and documentation.** (a) Each emergency response team shall submit to the state fire marshal's office a detailed report of its response to each incident. The report shall be prepared in a manner and on a form prescribed by the state fire marshal and shall include the following data:

(1) A list of all equipment used and the personnel who responded;

(2) a description of all emergency actions taken;

(3) a copy of the site safety plans developed during the response; and

(4) completed cost-recovery forms.

(b) When an emergency response has been activated, the emergency response team commander shall notify the Kansas department of health and environment and

the Kansas division of emergency management that an incident has occurred. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-8. Emergency preplanning.** (a) Any emergency response team may submit a request to the state fire marshal for information concerning hazardous materials that are stored or used by a state agency. Upon request of the state fire marshal, the state agency shall furnish the requested information to the division.

(b) Each government agency, including any county, city, township, or school district, shall provide information relating to its storage or use of hazardous materials when requested by an emergency response team. The local government agency shall furnish the requested information directly to the requesting team.

(c) Information that may be requested under either subsection (a) or (b) shall include the following:

- (1) A copy of any facility preplans;
- (2) a copy of the state or local agency's hazardous materials emergency response plan;
- (3) a statement describing the local agency's level of hazardous materials training;
- (4) a description of the resources available locally to support hazardous materials response actions; and
- (5) any other information reasonably needed by the requesting team. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-9. Emergency response assistance.** Any emergency response team may secure for use during an emergency response any technical assistance or specialized equipment necessary to safely and properly respond to an incident. When the incident involves explosives, explosive devices, incendiary devices, or shock-sensitive explosive chemicals, the team shall request assistance from a qualified bomb squad, an explosive ordnance disposal unit, or an alcohol, tobacco, and firearms unit. No emergency response team member shall take any action except as directed by the responding explosives unit. The costs associated with the activation of a bomb squad, an explosive ordnance disposal unit, or an alcohol, tobacco, and firearms unit shall not be recoverable from the hazardous materials emergency response program. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002)

**22-24-10. Review and evaluation of response.** Each emergency response team shall conduct an evaluation of its response to each incident after termination of the team's response. The team shall give all public and private agencies involved in the response the opportunity to participate in the evaluation. The team shall prepare a written report following completion of the evaluation, a copy of which shall be provided to the state fire marshal within 45 days after termination of the team's response. For good cause

shown, the length of the time in which the report is submitted may be extended by the state fire marshal for an additional 90 days. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-11. Supplies, equipment, and vehicles for hazardous materials response teams.** Each hazardous materials response team shall have immediate access to the following general categories of supplies and equipment in suitable quantities to respond to anticipated hazardous materials incidents: (a) Chemical reference and emergency response manuals;

- (b) personal protective equipment;
- (c) decontamination equipment and supplies;
- (d) leak-control supplies and equipment;
- (e) radios and other forms of communications equipment;
- (f) computer equipment and supporting software;
- (g) monitoring and detection equipment;
- (h) basic suppression equipment;
- (i) spill containment supplies and equipment;
- (j) assorted nonsparking hand tools;
- (k) basic first aid supplies; and
- (l) related incident management and administrative supplies and equipment. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-12. Equipment for chemical assessment teams.** Each chemical assessment team shall have immediate access to the following general categories of supplies and equipment in suitable quantities to respond to anticipated hazardous materials incidents: (a) Chemical reference and emergency response manuals;

- (b) personal protective equipment;
- (c) decontamination equipment and supplies;
- (d) leak-control supplies and equipment;
- (e) radios and other forms of communications equipment;
- (f) monitoring and detection equipment;
- (g) assorted nonsparking hand tools;
- (h) basic first aid supplies; and
- (i) related incident management and administrative supplies and equipment. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002)

**22-24-13. Emergency response criteria and dispatch.** (a) Each emergency response team shall engage in an emergency response only if it is authorized by the state fire marshal. An emergency response may include technical assistance provided by a team via telephone or other means of communication or the deployment of team personnel and equipment to the scene of a hazardous material incident. An emergency response team response shall be authorized by the state fire marshal whenever it appears necessary to

protect life or property from the effects or potential effects of a hazardous materials release.

(b) Each decision to authorize an emergency response shall be based on consideration of all of the following criteria:

(1) A hazardous materials release has occurred, or there is a significant potential for release.

(2) The release or threat of release poses a significant threat to life or property.

(3) Local authorities on the scene have determined that the situation exceeds their capabilities.

(4) Local authorities are requesting a team response.

(c) Only the local incident commander or designee for the jurisdiction in which the scene of the hazardous materials incident is located shall be authorized to request an emergency response team. Each request for an emergency response team shall be made to the state fire marshal. The communications arrangements provided by the state fire marshal shall allow 24-hour-a-day notification of a request for a response.

(d) Each team, when authorized to respond under subsection (a), shall evaluate the situation, determine if an emergency response is needed, and act accordingly. Any question or concerns arising out of the team's decisions may be relayed to the division.

(e) An emergency response team may be authorized by the state fire marshal to provide standby technical assistance in support of a bomb squad response. A response under this subsection shall be limited to incidents involving explosives, explosive devices, incendiary devices, or shock-sensitive explosive chemicals. A bomb squad, an explosive ordnance disposal unit, or an alcohol, tobacco, and firearms unit shall be on the scene. When an emergency response team responds under this subsection, its costs shall be recoverable under the provisions of these regulations. The costs of activation of a bomb squad, an explosive ordnance disposal unit, or an alcohol, tobacco, and firearms unit shall not be recoverable expenses.

(f) If an emergency team is en route to an incident, the team's response may be cancelled only by the state fire marshal or by the local incident commander.

(g) The emergency response team commander or safety officer may terminate any response action at the scene of a hazardous materials incident when it is determined that response action would place any personnel in imminent danger. A team response may also be terminated at the scene of an incident by order of the local incident commander. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-14. Cost recovery.** (a) When an emergency response team is activated to respond to a hazardous materials incident, the party responsible for the hazardous materials shall be responsible for paying the costs incurred as a result of the team's emergency response. The responsible party shall be billed by the state fire marshal for these costs in a

summary order. If the responsible party fails to pay the bill in full within 30 days of its issue, a second billing shall be issued by the state fire marshal. The second billing and any subsequent billings shall include interest on the unpaid balance. If payment is not made in full within 60 days of the initial billing, the responsible party shall be contacted by the state fire marshal in an effort to obtain payment. If the matter remains unresolved, legal action shall be brought to recover the costs of the response, any legal fees, and other related expenses, including reasonable attorney's fees.

(b) Within 30 days of the original billing issued as a summary order, any responsible party who disagrees with a billing for costs incurred as a result of an emergency response may request a hearing, which shall be conducted in accordance with the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto. The request for a hearing shall specifically identify the portion of the billing that is disputed and the factual basis of that dispute. Any remaining portion of the bill that is undisputed shall be paid in accordance with subsection (a). (Authorized by and implementing K.S.A. 310133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002)

**22-24-15. Coordinating emergency response activities.**

(a) The local authority that has jurisdiction and that requested the emergency response shall provide all necessary assistance to the emergency response team. The emergency response team commander shall coordinate with those local, state, or federal agencies, or other organizations that are on the scene or providing assistance.

(b) Mutual aid agreements, interlocal agreements, or other forms of written agreements with local, state, or federal agencies within and without this state may be entered into by the state fire marshal to mutually support and foster assistance in response to hazardous materials incidents. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-16. Liability.** Each member of each emergency response team shall be considered a state employee for purposes of coverage under the tort claims act, K.S.A. 75-6101 et seq. and amendments thereto, upon activation by the state fire marshal for an emergency response or in connection with authorized training. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-17. Workers compensation.** For the purposes of workers compensation coverage, each member of each emergency response team shall at all times be considered an employee of the public or nonpublic entity contracting with the state fire marshal to provide emergency response team services. (Authorized by and implementing K.S.A. 31-133; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)

**22-24-18. Advisory committee.** A hazardous materials advisory committee may be appointed by the state fire marshal to provide input and assistance to the hazardous materials program and act as advisor to the state fire marshal and the director of the division. The committee shall meet periodically as determined by the state fire marshal. (Authorized by and implementing K.S.A. 31-133 and 31-135; effective, T-22-10-25-01, Oct. 25, 2001; effective Feb. 15, 2002.)