

# South Dakota Solid Waste Landfill and Restricted Use Sites Mutual Aid Agreement

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## **AGREEMENT**

This Agreement is made and entered into by public Solid Waste Landfills and Restricted Use Sites that have, by executing this Agreement, manifested their intent to participate in an Intrastate Program for Mutual Aid and Assistance.

This Agreement is authorized under SDCL 34-48 of the State of South Dakota, which provides that Solid Waste Landfills and Restricted Use Sites may contract with each other to provide services.

## **ARTICLE I.** **PURPOSE**

Recognizing that emergencies may require assistance in the form of personnel, equipment, and supplies from outside the area of impact, the signatory landfills and restricted use sites established an Intrastate Program for Mutual Aid and Assistance. Through the Mutual Aid and Assistance Program, Members coordinate response activities and share resources during emergencies. This Agreement sets forth the procedures and standards for the administration of the Intrastate Mutual Aid and Assistance Program.

## **ARTICLE II.** **DEFINITIONS**

A. Emergency – A natural or human caused event or circumstance causing, or imminently threatening to cause, loss of life, injury to person or property human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance riot, intentional acts, sabotage and war that is, or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of a Mutual Aid and Assistance Program Member to fully manage and mitigate internally.

B. Members – Any public or non-profit solid waste landfill or restricted use site that manifest intent to participate in the Mutual Aid and Assistance Program by executing this Agreement.

1. Requesting Member – A Member who requests aid or assistance under the Mutual Aid and Assistance Program.
2. Responding Member – A Member who responds to a request for aid or assistance under the Mutual Aid and Assistance Program.
3. Non-Responding Member – A Member who does not provide aid or assistance during a Period of Assistance under the Mutual Aid and Assistance Program.

4. Associate Member – Any non landfill participant, approved by the State Steering Committee, that provides a support role to the mutual aid agreement, for example the Department of Environment and Natural Resources, South Dakota Office of Emergency Management, or the South Dakota Solid Waste Management Association, who are members of the State Steering Committee and do not officially sign the mutual aid agreement.

C. Authorized Official – An employee or officer of a Member landfill or restricted use site who is authorized to:

1. Request assistance;
2. Offer assistance;
3. Refuse to offer assistance or
4. Withdraw assistance under this agreement.

D. Confidential Information – Any document shared with any signatory of this Agreement that is marked confidential, including but not limited to any map, report, notes, papers, opinion, or e-mail which relates to the system vulnerabilities of a Member.

E. Period of Assistance –A specified period of time when a Responding Member Assists a Requesting Member The period commences when personnel, equipment, or supplies depart from a Responding Member’s facility and ends when the resources return to their facility (portal to portal). All protections identified in the agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an emergency, as previously defined.

F. National Incident Management System (NIMS) – A national, standardized approach to incident management and response that sets uniform processes and procedures for emergency response operations.

### **ARTICLE III. ADMINISTRATION**

A. Statewide Committee shall be established to organize and maintain the Mutual Aid and Assistance Program. The Statewide Committee shall consist of one representative from county landfills, one representative from municipal landfills, one representative from landfill districts/non-profit landfills, one representative from restricted use sites, and one representative from tribal landfills. Each representative shall be elected by the Members of their respective group. Each Representative shall have one vote on the Statewide Committee. In addition to representing the interests of the Members, the Statewide Committee shall include representatives from South Dakota Office of Emergency Management, South Dakota Solid Waste Management Association, and the South Dakota Department of Environment and Natural Resources. Representatives of these organizations shall not have voting authority.

B. The Statewide Committee will elect the following officers from among its voting members: a Chair, a Vice Chair and a Secretary. The term of all board members shall be 2 years. A quorum shall be a majority of the voting members of the Statewide Committee.

C. The Statewide Committee shall meet at least twice each year at a meeting place designated by the Committee. The Statewide Committee may make, establish, and alter rules and regulations for its procedure consistent with generally recognized principles of parliamentary

procedure. The Statewide Committee shall have the power to carry out the purposes of this Agreement, including but not limited to the power to: adopt bylaws; develop specific procedures and protocol for requesting assistance; develop specific procedures and protocol for responding to a request for assistance; organize meetings; operate a website; disseminate information; create informational brochures; create subcommittees; maintain membership lists; maintain equipment and supply inventory lists; and deal with membership issues.

#### **ARTICLE IV. PROCEDURES**

In coordination with South Dakota Office of Emergency Management, South Dakota Solid Waste Management Association, and the South Dakota Department of Environment and Natural Resources, the Statewide Committee shall develop operational and planning procedures for the Mutual Aid and Assistance Program. These procedures shall be reviewed and updated if necessary at least annually.

#### **ARTICLE V. REQUESTS FOR ASSISTANCE**

*Member Responsibility:* Members shall identify an Authorized Official and alternates, and provide contact information including 24-hour access; maintain resource information made available by the utility for mutual aid and assistance response. Such contact information shall be updated and provided to the State Steering Committee annually or when changes occur.

In the event of an Emergency, a Member's Authorized Official may request mutual aid and assistance from a participating Member. Requests for assistance can be made orally or in writing. When made orally, the request for personnel, equipment, and supplies shall be prepared in writing as soon as practicable. Requests for assistance shall be directed to the Authorized Official of the participating Member. Specific protocols for requesting aid shall be provided in the operational planning procedures as required in Article IV.

*Response to a Request for Assistance:* Members of the Mutual Aid and Assistance Program are not obligated to respond to a request. After a Member receives a request for assistance, the Authorized Official evaluates whether or not to respond, whether resources are available to respond, or if other circumstances would hinder response. Following this evaluation, the Authorized Official shall inform the Requesting Member as soon as possible whether it has the resources to respond. If the Member is willing and able to provide assistance, the Member shall inform the Requesting Member about the type of available resources and the approximate arrival time of such assistance.

*Discretion of Responding Member's Authorized Official:* Execution of this Agreement does not create any duty to respond to a request for assistance. When a Member receives a request for assistance, the Authorized Official shall have absolute discretion as to whether or not to respond, or the availability of resources to be used in such response. An Authorized Member's decisions on the availability of resources shall be final.

**ARTICLE VI**  
**RESPONDING MEMBER PERSONNEL**

*National Incident Management System:* When providing assistance under this Agreement, the Requesting Landfill/Restricted Use Site and Responding Landfill/Restricted Use Site shall be organized and shall function under the National Incident Management System.

*Control:* Responding Member personnel shall remain under the direction and control of the Responding Member. The Requesting Member's Authorized Official shall coordinate response activities with the designated supervisor(s) of the Responding Member(s). Whenever practical, Responding Member personnel must be self sufficient for up to 72 hours.

*Food and Shelter:* When possible, the Requesting Member shall supply reasonable food and shelter for Responding Member personnel. If the Requesting Member is unable to provide food and shelter for Responding personnel, the Responding Member's designated supervisor is authorized to secure the resources necessary to meet the needs of its personnel. Except as provided below, the cost for such resources must not exceed the State per diem rates for that area. To the extent Food and Shelter costs exceed the State per diem rates for the area, the Responding Member must demonstrate that the additional costs were reasonable and necessary under the circumstances. Unless otherwise agreed to in writing, the Requesting Member remains responsible for reimbursing the Responding Member for all reasonable and necessary costs associated with providing food and shelter.

*Communication:* The Requesting Member shall provide Responding Member personnel with radio equipment as available, or radio frequency information to program existing radio in order to facilitate communications with local responders and utility personnel. Also cell phones may be used if agreeable to the Requesting Member. If cell phones are used, then significant phone numbers will be exchanged, and any costs for roaming charges will be reimbursed by the Requesting Member.

*Status:* Unless otherwise provided by law, the Responding Member's officers and employees retain the same privileges, immunities, rights, duties, and benefits as provided in their respective jurisdictions.

*Licenses and Permits:* To the extent permitted by law, Responding Member personnel who hold licenses, certificates or permits evidencing professional, mechanical, or other skills shall be allowed to carry out activities and tasks relevant and related to their respective credentials during the specified Period of Assistance.

*Right to Withdraw:* The Responding Member's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason in the Responding Member's sole and absolute discretion. Notice of intention to withdraw must be communicated to the Requesting Member's Authorized Official as soon as possible.

## **ARTICLE VII. COST REIMBURSEMENT**

The Requesting Member shall reimburse the Responding Member for each of the following categories of costs incurred during the specified Period of Assistance as agreed by both parties; provided that any Responding Member may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the Requesting Member without charge or cost.

*Personnel:* The Responding Member shall be reimbursed by the Requesting Member for personnel costs incurred for work performed during the specified Period of Assistance. Responding Member personnel costs shall be calculated according to the terms provided in their employment contracts or other conditions of employment. The Responding Member's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Requesting Member reimbursement to the Responding Member should also consider all personnel costs, including salaries or hourly wages, costs for fringe benefits, and indirect costs.

*Equipment:* The Requesting Member shall reimburse the Responding Member for the use of equipment during the specified Period of Assistance, including, but not limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading/unloading of loaned equipment. All equipment shall be returned to the Responding Member in good working order as soon as it is practicable and reasonable under the circumstances. As a minimum, rates for equipment use must be based on the Federal Emergency Management Agency's (FEMA) Schedule of Equipment Rates. If a Responding Member uses rates different from those in the FEMA Schedule of Equipment Rates, the Responding Member must provide such rates orally or in writing to the Requesting Member prior to supplying the equipment. Mutual written agreement on which rates are used shall be completed prior to dispatch of the equipment. Reimbursement for equipment not referenced on the FEMA Schedule of Equipment Rates must be developed based on actual recovery of costs. If Responding Member must lease a piece of equipment while its equipment is being repaired, Requesting Member shall reimburse Responding Member for such rental costs.

*Materials and Supplies:* The Requesting Member shall reimburse the Responding Member in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. The Responding Member shall not charge direct fees or rental charges to the Requesting Member for other supplies and reusable items that are returned to the Responding Member in a clean, damage-free condition. Reusable supplies that are returned to the Responding Member with damage must be treated as expendable supplies for purposes of cost reimbursement.

*Payment Period:* The Responding Member shall provide an itemized invoice to the Requesting Member for all expenses it incurred as a result of providing assistance under this Agreement. The Responding Member shall send the itemized invoice not later than ninety (90) days following the end of the Period of Assistance. The Responding Member may request additional periods of time within which to submit the itemized invoice, and Requesting Member shall not unreasonably withhold consent to such request. The Requesting Member shall pay the bill in full

on or before the forty-fifty (45<sup>th</sup>) day following the billing date. The Requesting Member may request additional periods of time within which to pay the itemized bill, and Responding Member shall not unreasonably withhold consent to such request, provided, however, that full payment shall occur not later than one-year after the date a final itemized bill is submitted to the Requesting Member. Unpaid bills become delinquent upon the forty-sixth (46<sup>th</sup>) day following the billing date, and, once delinquent, the bill accrues interest at the rate of twelve (12%) per cent per annum.

*Records:* Each Responding Member and their duly authorized representatives shall have access to a Requesting Member's books, documents, notes, reports, papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of an invoice. Each Requesting Member and their duly authorized representatives shall have access to a Responding Member's books, documents, notes, reports papers and records which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of an invoice. Such records shall be maintained for at least three (3) years or longer where required by law.

### **ARTICLE VIII. DISPUTES**

Members must first try negotiation for any controversy or claim arising out of or relating to this Agreement, including, but not limited to, alleged breach of an Agreement. If unsuccessful then the members must attempt resolution through mediation by arranged mediator.

### **ARTICLE IX. REQUESTING MEMBER'S DUTY OF INDEMNIFY**

The Requesting Member shall defend and fully indemnify and hold harmless the Responding Member, its officers and employees, from all claims, loss, damage, injury, and liability of every kind, nature, and description, directly or indirectly arising from Responding Member's work during a specified Period of Assistance.

The Requesting Member's duty to indemnify is subject to, and shall be applied consistent with, the conditions set forth in Article X.

### **ARTICLE X. SIGNATORY INDEMNIFICATION**

In the event of a liability, claim, demand, action, or proceeding of whatever kind or nature arising as a result of a response pertaining to this Agreement, the Members who receive assistance and the Members who provide assistance shall have a duty to defend, indemnify, save and hold harmless all Non-Responding Members, their officers, agents and employees from any liability, claim, demand, action, or proceeding of what-ever kind or nature arising out of a Period of Assistance.

**ARTICLE XI.**  
**WORKER'S COMPENSATION CLAIMS**

The Responding Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees. The Requesting Member is also responsible for providing worker's compensation benefits and administering worker's compensation for its employees.

**ARTICLE XII.**  
**NOTICE**

A Member who becomes aware of a claim or suit that in any way, directly or indirectly contingently or otherwise, affects or might affect other Members of this Agreement shall provide prompt and timely notice to the Members who may be affected by the suit or claim. Each Member reserves the right to participate in the defense of such claims or suits as necessary to protect its own interests.

**ARTICLE XIII.**  
**INSURANCE**

Members of this Agreement shall maintain an insurance policy that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program.

**ARTICLE XIV.**  
**CONFIDENTIAL INFORMATION**

To the extent provided by law, any Member or Associate Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information disclosed under this Agreement. If any Member, Associate Member, third party or other entity requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any Confidential Information under this Agreement, the Member or Associate Member shall immediately notify the owner of the Confidential Information and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

**ARTICLE XV.  
EFFECTIVE DATE**

This Agreement shall be effective after the Landfill's authorized official executes the Agreement and the Statewide Committee Chair receives the Agreement. The Statewide Committee Chair shall maintain a master list of all members of the Mutual Aid and Assistance Program.

**ARTICLE XVI  
WITHDRAWAL**

A Member may withdraw from this Agreement by providing written notice of its intent to withdraw to the Statewide Chair. Withdrawal takes effect sixty (60) days after the authorized officials receive notice. Withdrawal from this Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance, which duty shall survive such withdrawal.

**ARTICLE XVII.  
AMENDMENTS**

No provision of this Agreement may be modified, altered or rescinded by individual parties to this Agreement. Amendments to this Agreement may be necessary due to programmatic operational changes, to support the agreement. Amendments require a simple majority vote of Members. The Statewide Committee Chair shall provide written notice to all Members of approved amendments to this Agreement. Approved amendments take effect sixty (60) days after the date upon which notice is sent to the Members.

**ARTICLE XVIII.  
SEVERABILITY**

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

**ARTICLE XIX.  
PRIOR AGREEMENTS**

This agreement supersedes all prior Agreements between Members to the extent that such Prior Agreements are inconsistent with this Agreement.

**ARTICLE XX.**  
**PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**

This Agreement is for the sole benefit of the Members and no person or entity must have any rights under this Agreement as a third-party beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and void.

**ARTICLE XXI.**  
**INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS**

To the extent practicable, Members of this Agreement shall participate in Mutual Aid and Assistance activities conducted under the State of South Dakota Intrastate Mutual Aid and Assistance Program and the Interstate Emergency Management Assistance Compact (EMAC). Members may voluntarily agree to participate in an interstate Mutual Aid and Assistance Program for landfills through this Agreement if such a Program were established.

Now, therefore, in consideration of the covenants and obligations set forth in this Agreement, the Landfill or Restricted Use Site listed here manifests its intent to be a Member of the Intrastate Mutual Aid and Assistance Program for Solid Waste Landfills and Restricted Use Sites by executing this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

Solid Waste Landfill/Restricted Use Site:

\_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Please Print Name