



ICE



**ICE
CHEMICAL
DISTRIBUTION
SAFETY AND QUALITY**

ICE - Distribution Emergency Response

Legal and financial aspects of mutual assistance between companies

ICETERMS 1994

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ICE (International Chemical Environment)

Within the framework of the Responsible Care initiative of the chemical industry ICE (International Chemical Environment) is a cooperative programme between chemical companies to prevent chemical transport incidents and to respond effectively if and when they occur.

The aim of ICE Emergency Response is to make competent assistance available to the Authorities in each European country. This is achieved by having national schemes of mutual assistance and a network of national centres which will facilitate assistance across national boundaries.

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1. INTRODUCTION

1.1 SCOPE

This document is intended for parties who may be called upon to assist or who may require assistance with chemical distribution incidents.

1.2 BASIC AIM

The document's aim is to offer guidance to parties assisting each other with a chemicals distribution incident, which may entail exposure to financial and/or legal consequences. The risk of such financial and/or legal consequences can be reduced by the use of suitably worded agreements, disclaimers, confirmatory faxes together with proper insurance coverage. Some suggestions for dealing with these matters are set out below:

It is important to note that the following is intended to offer guidance only and is not intended to represent an exhaustive summary of a party's rights, obligations and liabilities.

It is strongly recommended that companies obtain their own legal advice in this area

1.3 INSURANCE

Any company must be properly insured. It is advisable to ensure that mutual assistance activities as encompassed by this document are also adequately covered.

A list of questions as a basis for discussion with an insurer is set out in Attachment 1 of this document. A written reply from the insurer should be obtained.

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2. ICETERMS 1994

ICETERMS 1994 set out the terms and conditions which shall apply when a party agrees on request to assist another party following a chemical distribution incident. ICETERMS 1994 shall apply to such request unless either party notifies the other prior to the incident, that they do not wish to be bound by the terms of ICETERMS 1994.

ICETERMS 1994 shall not apply in the event of a superseding Agreement in place between the parties.

I. DEFINITIONS

"REQUESTING PARTY" shall mean any company, their agents or their service suppliers who own, control, inspect, transport or who are otherwise interested in the product involved in a chemical distribution incident.

"ASSISTING PARTY" shall mean any company who has been requested to assist the Requesting Party and who has agreed to render such assistance.

"DISTRIBUTION INCIDENT" shall mean any unplanned occurrence during the distribution of chemical products which may pose or cause personal damage, property damage, environmental damage or which may impede the safe transportation of the product(s) involved AND WHICH OCCURS outside the property boundaries of the Requesting Party.

"LEVEL 1 ASSISTANCE" shall mean remote advice.

"LEVEL 2 ASSISTANCE" shall mean advice by competent personnel at the scene of the Distribution Incident.

"LEVEL 3 ASSISTANCE" shall mean active assistance by competent personnel and/or equipment at the scene of the Distribution Incident.

II. AUTHORITY INVOLVEMENT

In any incident in which the Authorities are not involved, the assistance shall be limited to containing any risks, to stabilising the situation pending the arrival at the scene of a representative of the Requesting Party or the Authorities, whichever is sooner.

If the Authorities are in charge of an incident, the role of the Assisting Party is to provide assistance to the Authorities.

III. LEGISLATION

If relevant laws or regulations are in place covering the assistance to be provided by the Assisting Party, then those laws or regulations will supersede the terms of ICETERMS 1994.

IV. MEDIA STATEMENTS

No statements shall be made to the media by the Assisting Party unless specifically authorized in writing by the Requesting Party.

V. SIGNING OF DOCUMENTS

When signing any document at the scene of an incident, the Assisting Party does so on its own behalf and not on behalf of the Requesting Party.

VI. ASSISTANCE CLOSE OUT

The Assisting Party shall notify the Requesting Party when Assistance Party's assistance ceases.

VII. RESOURCES AND LIABILITY

The Assistance Party shall provide assistance to the Requesting Party using its best endeavours. The Assisting Party shall not be held liable by the Requesting Party for any loss or damage, however caused and will be indemnified and held harmless by the Requesting party except in the case of wilful misconduct or wilful omission by the Assisting Party.

VIII. INDEMNITY & COMPENSATION

The requesting Party shall fully indemnify the Assisting Party for all costs which are incurred by the Assisting Party in relation to its efforts to provide assistance to the Requesting Party except for the actual cost of providing assistance by telephone. For the avoidance of doubt such indemnity shall cover all reasonably costs which are incurred by the Assisting Party in the actual effort of providing assistance, and in relation to any litigation, claims or disputes arising out of such effort, irrespective of whether or not the fault on the part of the Assisting Party is alleged or proven. PROVIDED THAT no such indemnity shall apply in the event of wilful misconduct or wilful omission on the part of the Assisting Party.

IX. INSURANCE

Each party will arrange that it has adequate insurances to cover its legal liabilities resulting from its assistance/ involvement in an emergency/ accident situation.

X. APPLICABLE LAW

These ICETERMS 1994 shall be governed by the law of the country where the incident occurs

unless otherwise agreed to by the parties.

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3. ICEFAX I

This facsimile communication would take the form from the party requiring assistance at a chemical distribution incident ("the Requesting Party") to a party from whom he is seeking assistance ("the Assisting Party"). The fax would confirm the request for assistance with details of the incident. Such fax would in the normal course of events have been preceded by an oral request for assistance.

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4. ICEFAX II

This facsimile communication would provide confirmation by the Assisting Party of its willingness to offer assistance under ICETERMS 1994.

It would specify the following:

1. Name, address, with either tel. no. fax. no or telex no. of Requesting Party including contact names acting on behalf of Requesting Party.
2. Reference to the fax received from the Requesting Party (Icefax I) or to initial contact of Icefax I not yet received and re-confirming to Requesting Party the understanding of Assisting Party as far as the incident itself is concerned. This would include matters such as description of the distribution incident, product, location, timing, severity, latest status and any other relevant information which Assisting Party has received from Requesting Party.
3. Confirmation of assistance level (1, 2 or 3) to be provided by Assisting Party and within that timeframe.
4. Statement by Assisting Party; eg. "All assistance rendered in response to your request is subject to ICETERMS 1994 and failure by you to reply to the contrary within one hour of the transmission time of this fax will result in an unconditional acceptance by you that ICETERMS 1994 do so apply".
5. A statement that any changes to the level(s) of assistance shall be confirmed in writing by the party initiating the change.
6. Any special circumstances that apply.

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ATTACHMENT 1

INSURANCE CHECKLIST

1. Does the insurance company understand the country emergency scheme and the international ICE programme ?
2. Does the insurance company know that your company is a participant in those schemes ?
3. Does your employers liability policy provide cover for all your employees outside their normal work places, outside of normal hours, attending other chemical companies' incidents, and maybe even outside their home country ?
4. Do your sickness, pension and life insurance schemes apply under these conditions ?
5. Are third party claims for damages and costs arising from attending other chemical

companies incidents covered under your policies ?

6. Do your responders car insurance policies cover such circumstances ?
7. Are there any other implications for your policies which are not already covered by this list ?

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ATTACHMENT II

Companies may wish to consider use of a letter from the employing company to an employee who may be called upon to assist in chemical distribution incidents of other companies. Such letter could confirm that when attending such third party incidents the employee is deemed to be "on company business" (i.e. on the company business of his own employing company) with all the benefits and protection that implies from both a legal and insurance perspective.

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