

1000 FOLLOW-UP MANUAL

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1001 AFTER ACTION REVIEW

The After Action Review (AAR) is an analysis in the form of a documented verbal review of actions taken during an incident, group of incidents, or daily operational procedures. It is a tool used to capture and disseminate critical organizational knowledge. The process will help individuals hone their fire management skills, knowledge, and abilities.

The AAR is conducted in a four-question format (see 1001.3) that captures the actions and lessons learned. This information is used to assist in the improvement of the Fire and Aviation Program at all levels. The AAR may vary in detail based on the type and complexity an incident.

The After Action Review may be attached to the individual fire report, but does not replace the written narrative. Written AARs are required at the Division level. The documentation form can be found in Appendix A.

The AAR process assists the manager in identifying operational efficiencies and implementation of a “best value system.” When reviewing daily operations or incident management, a key factor to consider in the discussion is the use of equipment and personnel in the most efficient and cost-effective manner. The review should identify the events and decision points throughout an incident that lead to the utilization of the specific resources ordered, assigned, and demobilized. The AAR should be completed daily during complex situations and as soon after an incident or incident within an incident as possible.

In the case of pre-suppression/preparedness, the hiring and utilization of severity resources should be analyzed based on the specific values at risk.

Items to be considered in either case include but are not limited to, immediate threats to human life and property, public and firefighter safety, recent observed fire behavior and the contributing factors involved, resource availability, environmental conditions, the necessity to stabilize incidents based on aggressive initial attack requirements, and the conservation of natural resources. This will assist the manager in determining the correct timing upon which to reduce the number of high cost resources, i.e., aviation, private sector, and out-of-region resources.

The point to be stressed is to utilize the After Action Review system at all levels to improve all facets of the Fire and Aviation Program.

1001.1 **Levels of After Action Review**

Various levels of After Action Review are provided to allow involvement of all personnel in the AAR process. This does not mean that an AAR of a certain size fire is limited in the scope of those that can be involved. In fact, it is considered best that all parties involved in an incident be involved in the AAR. In reality, it is not feasible to include everyone in every ARR; however, an attempt should be made to include the key individuals involved in the incident, i.e., the Incident Commander and staff, Line Officers, Fire Supervisor, Area Fire Program Manager, IAIC, local, state, and federal Cooperator Representatives, Dispatch Organization, and any other cooperators.

The following guideline only attempts to provide a suggested format and designate the individual who will facilitate the After Action Review.

1001.11 **Unit After Action Review and Individual Fire Narratives**

Fires that are less than 10 acres are reviewed at this level. This involves the basic initial attack system. The Initial Attack Incident Commander and the Unit Fire Supervisor normally complete this review. Class A and B fires may be reviewed individually, or in groups (i.e., weekly) The AAR consists of a verbal review that may help produce the written narrative of actions taken on a single A or B fire, or on a group of Class A or B fires. Fires above Class B must be reviewed individually - see 1001.12, below.

Proposed items to cover in an AAR and captured at this level:

- Prevention.
- Pre-suppression Preparedness.
- Detection and Reporting.
- Communications.
- Dispatching and Initial Attack.
- Safety and Training.
- Cost Containment.
- Recommendations for:
 - » Unit Level.
 - » Land Office Level.

1001.12 **Land Office After Action Review**

Fires that are 10 acres or greater in size must be reviewed individually. The review involves the Unit initial attack system and support actions by the Land Office. The review may include the Fire and Aviation Management Bureau.

The Land Office Fire Program Manager and/or Area Manager, working with the Unit Fire Supervisor and/or Unit Manager, will conduct the AAR. This process will capture the specific items "formalized" in the verbal AAR.

This level of AAR will consist of a more formalized verbal and written review of actions taken on the incident.

Proposed items to cover in an AAR and captured in the written report at this level:

- Prevention.
- Pre-suppression Preparedness.
- Detection and Reporting.
- Communications.
- Dispatching and Initial Attack.
- Transportation Systems.
- Support Activities.
- Cooperative Agreements.
- Safety and Training.
- Cost Containment.
- Recommendations for:

- » Unit Level.
- » Land Office Level.
- » Forestry Division and Department Level.

1001.13 **Forestry Division After Action Review**

Involves the Unit initial attack system and heavy support actions by the Land Office and the Forestry Division.

The Fire and Aviation Management Bureau Chief, working with the Land Office Area Manager, will determine when a Division Level After Action Review is necessary. The AAR will be conducted by the Supervisor - Fire Suppression Section, Fire and Aviation Management Bureau with assistance from the Land Office Fire Program Manager.

The AAR will result in a written report including recommendations and, as a minimum, the following items should be considered:

- Actions taken by the Land Office to suppress the fire.
- Support actions taken by the Forestry Division.
- Follow-up actions necessary in:
 - » Law Enforcement.
 - » Training.
 - » Safety.
 - » Pre-suppression and Detection.
 - » Suppression Measures.
 - » Master Agreements.
 - » Environmental Protection.
 - » Dispatch/Communications.

1001.2 **Routing of After Action Reviews**

1001.21 **Class A & B Fires – When Written**

One copy each to the Unit Manager, Land Office Area Manager, and Supervisor of the Fire Suppression Section. The Unit will retain their copy in their fire files.

1001.22 **Land Office After Action Reviews**

One copy each to the Unit Manager, Land Office Area Manager, and the Supervisor of the Fire Suppression Section. The Unit and Land Office will retain their copies in their fire files for follow-up actions, identified in the After Action Review.

1001.23 **Forestry Division After Action Reviews**

One copy each to the Unit Forester, Land Office Manager, and Chief of the Fire and Aviation Management Bureau. All levels will retain their copies.

1001.3 **After Action Review Format**

1001.31 **What was planned?** (Spend about 25% of total time on this question and the next.)

- Review the primary objectives and expected action plan.
- What did we set out to do?
 - » Establish the facts.
 - » Purpose of the mission and definition of success.
 - Key tasks involved.
 - Conditions under which each task may need to be performed.
 - Acceptable standards for success.

1001.32 **What actually happened?**

- Review the day's actions.
 - » Identify and discuss effective and non-effective performance.
 - » Identify barriers that were encountered and how they were handled.
 - » Discuss all actions that were not standard operating procedure, or those that presented safety issues.

- Continue to establish the facts.

If available, it is best to pool information from three diverse/objective sources:

- » Observer-controller.
- » Instrumentation (voice records from dispatch, RAWs data, etc).
- » Video taping.
- Participants should come to agreement on what actually happened.
- Pool multiple perspectives in a process that resembles “majority rules.”

1001.33 **Why did it happen?** (Spend about 25% of total time on this question.)

- Discuss the reasons for ineffective or unsafe performance. Concentrate on WHAT, not WHO, is correct.
 - » Analysis of cause and effect.
 - » Provide progressive refinement within the context of this question to bring out explanations of what occurred. This will lead into developing possible solutions.

1001.34 **What can we do next time?** (Spend about 50% of total time on this question.)

- Determine the lessons learned and how to apply them in the future.
 - » Solutions will arise naturally once problems are identified and understood.
 - » Focus on items you can fix, rather than external forces outside of your control.
 - » Identify areas where groups are performing well and should sustain. This will help repeat success and create a balanced approach to the AAR.
 - Sustain/Maintain.
 - Improve.

See Appendix A – Sample Form.

1001.4 **After Action Review Strategy**

- Schedule shortly after the activity is completed.
- Remember the 25, 25, 50 suggested time allotment.
- Focus on WHAT not WHO.
- Establish clear ground rules: encourage candor and openness, this is dialog – not lecture or debate, focus on items that can be fixed, keep all discussions confidential.
- Skilled facilitation is recommended (an individual with less at stake like a staff member outside of the chain of command. Also see Appendix B - AAR Facilitation Techniques.
- Identify lessons learned, trends, concerns, processes or ideas to share immediately within DNRC and with DNRC cooperators, partners, and stakeholders.
- What was the most notable success at the incident that others may learn from?
 - » What were some of the most difficult challenges faced, and how were they overcome?
 - » What changes, additions or deletions are recommended to wildland fire training?
- What issues were not resolved to your satisfaction?
- Identify the level of detail required to adequately review the incident.
 - » Issue, Discussion, Recommendation
 - » Concept of the Operation, Results, Trends, Recommendation

1002 FIRE SEASON REVIEWS

The fire season review is a means of consolidating data from all activities on fires during a particular season in an attempt to continue those actions which are beneficial and pinpoint those actions which need modification. All reviews should be conducted in a positive atmosphere and ask, "What can we do to be more efficient, effective, and economical in our fire management systems?"

1002.1 Levels of Reviews

As in the case of individual After Action Reviews, the review of season actions is broken into several levels. Each of these has a definite purpose, and should help foster improvement with a minimum of duplication of efforts.

- **Land Office Reviews**

The Land Office fire season review involves the Land Office attack systems, local cooperators and agencies, and cooperative counties if applicable. The Land Office Review is scheduled and conducted by the Land Office Fire Program Manager. The Land Office may wish to have the individual Units review the Fire Unit activities with seasonal firefighters prior to their separation date and provide their inputs for the Land Office. By design, this review will identify topics for the Forestry Division Review. This review should be conducted annually.

- **Forestry Division Review**

The Forestry Division Fire Season Review attempts to tackle those recommendations received via the Land Office Reviews and from Fire Staff. The Forestry Division Review will normally involve Land Office Area and Fire Program Managers, staff support personnel, and other supportive fire organizations. Non-wildfire organizations may be included in this review as appropriate. They are scheduled and conducted by the Division Fire Staff along with other Forestry Staff. This review should be conducted when significant issues (severe injury/fatality, significant safety deficiencies are discovered, cooperator relationships are threatened, etc.) have evolved throughout the fire season; when initial attack, extended attack, or large fire occurrence exceeds the current staffing level; or when fires of 10 acres or more exceed the 95% suppression requirement.

- **Statewide Fire Protection Inter-Agency Review**

This review is normally called and hosted by the Forestry Division. It will involve all fire-related organizations in the state and is conducted primarily to resolve specific issues. Ad Hoc work teams are assigned, with instructions to report back annually with recommendations to the individual agencies. This review should be conducted when deemed necessary by the Division Administrator.

1002.11 **Land Office Fire Season Review**

The format and content of material for a Land Office Review should be altered to fit local conditions. The Land Office Fire Program Manager should prepare a report of the Land Office Review with one copy for the Land Office files, one copy to the Land Office Manager, and one copy to Fire Staff. The due date for this report to Fire Staff is no later than January 1. The following is a listing of various items that the Land Office may want to include:

- Statistics by Fire Organization
 - » Current Year
 - » Trends
- Cost Containment
- Fire Prevention Results
- Detection Coverage
- Reporting Procedures
- Pre-suppression Activities
- Dispatching and Initial Attack Coordination
- Cooperative Agreements
- Communications Systems
- Transportation Networks
- Roads
- Trails
- Airstrips and Helispots
- Air Operations
- Support Capabilities
- Training Procedures
- Safety
- Equipment and Manpower
- Suitability
- Needs

- Environmental Concerns
- Proposed Future Adjustments
- Recommendations for Forestry Division Review

1002.12 **Forestry Division Fire Review**

The Forestry Division Fire Review will be structured to review the topics proposed by the Land Office Reviews and Fire Staff. The Division Review should attempt to identify solutions to issues, establish means of rectifying the issues identified, appoint ad hoc committees to resolve differences in solutions, and set definite time tables for accomplishing these actions. The Chief, Fire and Aviation Management Bureau will prepare a report of the review with one copy to each Land Office, one copy to each Bureau Chief, one copy to Administrators and Director, and one copy for the files.

The meeting may be structured to include:

- Land Office Reports.
- Forestry Division and Department Support Report.
- Other Fire Organizations Inputs.
- Listing of Issues and Discussion of Alternatives.
- Establishment of Committees, Timetables, etc.
- Report of Actions taken and Recommendations.

1002.13 **Statewide Fire Protection Inter-Agency Review**

The Statewide Review will include a two-fold purpose: one, to review recommendations from ad hoc committees on solutions to problems, and two, to attempt to delineate additional areas of cooperative effort. A report of the review will be prepared by the Chief of Fire and Aviation Management Bureau with copies to each Land Office Manager, Administrator, fire files, and to each participating agency. The review will be structured to fit the nature and degree of inputs annually, but should cover:

- Agency reports of fire activities.
- Reports from Ad Hoc Committees.
- Discussion of alternatives.
- Enumeration of additional cooperative needs.
- Appointing of Committees.

1003 INSPECTIONS

Inspections are normally conducted for a combination of three purposes:

- As a preventive maintenance tool, to catch things before they become problems.
- To see if present regulations and procedures actually fit the field situation, or need to be modified.
- To see if rules, regulations, and procedures, etc., are being followed.

Inspections should always be conducted in the positive realm; in other words, how can the inspector help induce improvement?

Inspections should always be documented, with a copy of the inspection report going to the Division, Bureau, Land Office, Unit, and individual that participates in the inspection.

An inspection, without follow-through, is worthless. Unless you are prepared to follow up on discrepancies, differences, needs, etc., that are uncovered by the inspection procedure, you should not inspect. Inspect, and then follow up with definite proposals to improve, and then check back to see if improvement has occurred.

1003.1 **Federal Inspections**

Inspections associated with the federal fire program are conducted periodically, as scheduled by the federal agency in charge of the program. These inspections may vary and look at the total Forestry Division fire program; may look at Land Office operations; or the inspection may focus on specifics such as excess property use, etc.

Federal inspections are normally conducted by federal personnel along with Department staff.

1003.2 **Preseason Readiness Inspections**

Two levels of preseason readiness inspection are conducted annually. The first of these is an inspection by the Land Office, followed by the second at Forestry Division level.

1003.21 **Land Office Readiness Inspection**

1. Conducted by - Land Office Fire Program Manager with Unit Fire Supervisors and Dispatchers.
2. Schedule - Prior to June 10.
- 3.. Report - A written report of Land Office Readiness. One copy to the Land Office Manager and one copy to the Supervisor, Suppression Section by June 15.
4. Inspection Format - Utilize the form F-1005 for a tickler list. Expand as necessary to cover all aspects of the Fire Unit operations. Report on:
 - a. Unit Readiness

- b. Land Office Support Capability
- c. Present Status of the Fire Season
- d. Deficiencies that need immediate action
- e. County Co-op. Program

1003.22 Forestry Division Readiness Inspection

1. Conducted by - The Fire and Aviation Management Bureau Staff, with Land Office Fire Program Managers and Division support personnel.
2. Schedule - Prior to June 10.
3. Report - A written report of Division Readiness to the Chief, Fire and Aviation Management Bureau, by June 30.
4. Inspection Format:
 - a. Review Land Office Readiness Reports with Land Office Fire Program Managers.
 - b. Air Operations Support.
 - c. General Services Support.
 - d. Coordination Center Operations and Communications Systems.
 - e. Equipment Development and Warehouse Support.
 - f. Training Status.
 - g. Present status of fire season and expected hot spots.
 - h. Deficiencies that need immediate action.

1003.23 Statewide Readiness Report

The Chief of Fire and Aviation Management Bureau, upon receipt of the Forestry Division Readiness Report, will prepare, by July 5 annually, a report of the Statewide Division Status for the State Forester. This report will include a brief review of the present fire conditions, the fire season to date, expected problem areas, and those items that call for immediate action to prevent serious fire problems.

1003.3 Specific Item Inspections

1003.31 Vehicles (Except Engines)

Vehicles are to be inspected:

1. Annually using form F-1006.
2. Periodically according to established DNRC maintenance schedules and the vehicles manufacturers recommended replacement schedules.

1003.32 Engines

Engines are to be inspected:

1. Annually using Form F-1006.

2. Daily, weekly, and monthly inspections:
 - a. Direct Protection Engines
 - 1) Daily – During fire season using Form F-1007.
 - 2) Weekly – Pre- and post-season “Shoulder Seasons” using Form F-1007.
 - 3) Monthly - During fire season and one pre- and one post-season mechanical inspection should be performed to identify possible major mechanical deficiencies. Use Form F-1006 as it applies to current year model of the vehicle and fire package. Personnel who are not trained mechanical technicians cannot determine the actual condition of some items on the F-1006; however, these items should be considered and any obvious damage reported.
 - b. County Co-op. Engines placed within the County (County Responsibility)
 - 1) Daily – After each use using Form F-1007.
 - 2) Weekly – When the Northern Rockies Geographic Area reaches Planning Level 4/5 using Form F-1007.
 - 3) Monthly – Year round for readiness and inventory accountability using F-1006 and F-1007.

The County should submit the completed forms to the Unit or Land Office to assist in tracking the status of the apparatus.
3. Periodically according to established maintenance schedules to ensure replacement of parts, oil, greases, etc. Utilize the vehicle manufacturer’s schedule and DNRC published standards.

1003.33 **Lookouts**

Lookout stations will be inspected:

1. Normally at least once each season.
2. Periodically when delivering supplies, etc.

1003.34 **Cooperative Counties**

Land Offices will conduct an inspection of all Cooperative County Fire Programs:

1. Annually, using as guides:
 - a. County Fire Plan
 - b. Cooperative Agreement
 - c. Form F-1006 for vehicles and engines

2. Periodically, following fire actions.
3. The Land Office Fire Program Manager will prepare two copies of the report--one for the county, and one for Land Office files.

1004 F1000 FIRE REPORTS

1004.1 **Individual Fire Reports**

The F-1000 fire report will be completed and “reviewed” by the Units for the Land Offices and for Forestry Division as current with fire actions as is feasible.

The **Fire Unit** will enter and “review” the online F1000 fire report for the Land Office within one week of declaring the fire out. In cases where a fire is left in patrol status for an extended period, “review” the F1000 within one week of entering patrol status. Then notify the appropriate person (approver) with the declared out date later.

The Land Office will “approve” their online F1000 fire report within one week of receiving the “reviewed” e-mail. The hard copy original report and supplementals will be sent within one week of receiving the final “approval” email to the Fire Management Bureau, Suppression Section, complete with “reviewed” and “approved” signatures. Keep a copy of the hard copy F1000 and supplementals at the unit. These hard copies must be kept for 10 years.

All fire reports must be “reviewed” electronically by the Unit-level reviewer and the hard copy signed to indicate concurrence with the data.

When we respond to a fire within DNRC protection but on another agency’s ownership, we are required to notify them and give them a copy of our fire report as specified in the operating plans and agreements.

Fire Report Data is collected to:

- Provide a summary of the fire action for immediate analysis of fire suppression systems and allow adjustments where indicated.
- Point out human-caused and possibly preventable fires.
- Trigger the necessary follow-up enforcement actions on billable fires.
- List data for annual fire statistics to allow the study and development of more efficient fire suppression systems.
- Provide a document to be used in the billing process for reimbursement fires.

NOTE: The SABHRS reporting system will be used to collect fire cost data for fire billings. The F1021, a supplemental form submitted with the fire report, will be used to collect non- SABHRS fire cost data. The F-1021 can also be utilized to estimate SABHERS costs if suppression costs are \$1,000 or less.

The individual fire report is used in billing procedures on reimbursement fires, and in fact may become an item utilized in Court and settlement cases. For these reasons, the document should be professional and not contain superfluous comments. Also, since the fire report is an "official" position, care should be taken to include correct data, totals, etc.

If a structure is involved in a Department of Natural Resources and Conservation fire

response, the responsible structural fire reporting agency (i.e., Rural Fire District, Vol. Fire Department, County, etc.) should be reminded that they are to file a report with the State Fire Marshal on that structural loss.

1004.2 **Cooperative County Fire Report**

Local government fire service entities should be encouraged to report their wildland fires into the National Fire Incident Reporting System (NFIRS). NFIRS is managed by the State Fire Marshals office.

1004.3 **Annual USFS Fire Reports**

One report, the CM2 Report, is prepared by Fire staff at the beginning of the year and submitted to the U.S. Forest Service annually as per current instructions from the Forest Service. Data for this report comes from the F1000 Fire Report historical fire database.

1004.4 **Billable Fires**

It is the practice of the Department to bill all wildland fires started intentionally or as a result of negligence on the part of the landowner, landowner's agent or other igniter. The goal of the Department, with respect to the recovery of suppression costs for these fires, is:

- To strengthen and support the Department's Fire Prevention Program by ensuring all billable fires are routinely billed. Later sections allow Land Offices to not bill some fires under \$1,000.00 in total suppression costs. The decision to bill or not bill these fires rests with the Land Office and should be based on the individual situation surrounding the fire incident. When appropriate, the Land Office shall consult with Department legal counsel to ensure that all billed fires were either intentionally or negligently set. The basic philosophy to bill all legally billable fires remains a cornerstone of the Fire Prevention Program. However, Land Offices are not required to bill fires less than \$1,000.00 if in their opinion it will cost the Department more money to collect the bill than the bill amount.
- To return dollars spent on suppression of intentionally ignited and/or negligently ignited fires to the General Fund.

The primary factor the Department looks for when making a determination of whether or not to bill for suppression costs for a particular fire is INTENT with respect to intentionally ignited fires, and an act that deviates from that which is reasonable under the circumstances with respect to negligently ignited fires.

Montana Code Annotated 50-63-103, Liability of offender for damages and costs, designates fire situations for which reimbursement may be sought by fire protection agencies. These are person-caused fires which are ignited intentionally, but which are not kept under control by the landowner/landowner agent or other igniter (see Appendix G - legal staff memo dated 10/6/94).

Intent is defined as having the purpose to cause something to happen, e.g., purposefully lighting a fire to burn debris.

Under the interpretation of Mont. Code Ann. § 50-63-103, anyone who INTENTIONALLY lights a fire for any purpose is strictly liable for any and all damages caused to another's property by that fire and is strictly liable for the cost of suppressing said fire. Intent is the operative word here. If it can be demonstrated that a fire was

intentionally started, for whatever purpose, the person who ignited the fire is strictly liable. Even in circumstances in which the wind causes a fire to spread and cause damage to adjacent property, the burner is liable, under the law, for all damages and suppression costs resulting from the fire. The fact that a person has a burning permit would be indicative of intent to start a fire.

Conversely, a fire may be ignited without intent. Responsibility for a fire ignited without intent necessarily hinges on two additional factors, i.e., NEGLIGENCE or NO NEGLIGENCE (see Appendix G - legal staff memo dated 3/11/88).

Negligence is defined as the failure of a reasonable and prudent person acting in his or her own concern to use ordinary care. Put another way, whenever a person takes action that may affect the well-being or the property of others, that person has a legal duty to exercise a proper degree of care to ensure that his or her actions do not adversely affect others. A breach of that duty may constitute negligence.

Look for negligence when suppression costs are incurred on fires for which no permit was obtained, or when an intent to light the fire cannot otherwise be legally ascertained. If the burner breaches his or her duty of care, a negligence action may exist against the burner, and the Department may recover its suppression costs.

Failure to obtain a permit is not negligence. It is a violation of Mont. Code Ann. § 76-13-121, Permit for burning required, and is legally referred to as **negligence per se**, as the failure to obtain the permit represents the violation of a statute designed for the protection of others. A burner who has a permit but who has not followed the recommendations of the permit may be cited under MCA 76-13-122, Failure to comply with permit, even though the fire has not escaped control. **Citations cannot be issued unless a complaint is filed with the appropriate authority, usually the county sheriff's or county attorney's office.**

In addition, MCA 7-33-2205, Establishment of fire season - permit requirements, addresses a county's authority to establish burning seasons and permit requirements. Some of our Land Offices may be involved in writing and enforcing these permits outside of the legal State forest fire season. Citations for failing to obtain a permit required by the county are written under the authority of MCA 7-33-2206 Violations.

The billing chart (ref. Section 1004.45, Billing Chart) provides a visual display of how the Department approaches fires started with intent and those started without intent. The Department approaches all fires, 365 days per year, as diagrammed on this billing chart. But the only time the Department writes burning permits is during the legal State fire season, unless the area for which the permit is sought is subject to the county permit authority. What happens during the rest of the year? Example: for a fire started in April, the Department may not have the luxury of a burning permit to aid in the establishment of intent. In such circumstances, the Department will have to depend upon the investigation of the fire to discover whether there was intent. If the Department can show that the fire was intentionally set, Mont. Code Ann. § 50-63-103 applies (see Section 1004.44).

Conversely, if the Department cannot show that the fire was intentional, but can show negligence on the part of the landowner/landowner-agent or igniter, the Department can still bill under a common law negligence theory. **The only fires for which the Department cannot bill are those that are purely accidental (i.e., ignited without intent or negligence). The completeness and accuracy of the investigation of the fire will be the determining factors.**

An accident is an event that occurs even though a person is using the care that a reasonable and prudent person would use. In such a case, there is no demonstrable breach of the duty of care, and the event is not intentional.

1004.41 Procedure for Billing Fires With Suppression Costs of \$1,000 or Less

1. The Land Office will review the Fire Report and/or Squad Record of Incident Action (F-1000/F-1001) for completeness and accuracy. It is at the discretion of the Land Office whether to bill or not bill for fires with costs totaling \$1,000 or less.
2. If the Land Office elects to bill for the fires, then the Land Office will prepare the fire billing letter and transmit it to the person or business being billed within ten (10) working days of receiving the completed fire report, (see Appendix C, Standard Letter 1004.41A). Payments are to be made to **State Treasurer** and mailed to the Forestry Division.
 - a. A copy of side 2 (Investigation Short Form, etc.) of the F-1001 may be mailed along with the billing letter to the party being billed. An itemized listing of all costs being billed should be included with the billing letter (see Appendix E). A copy of the F-1001 report should be filed with the Land Office copy of the billing letter.
 - b. Copies of the billing letter are sent to:
 - Original—Billee
 - Photocopies to:
 - » Land Office
 - » Fire Training and Prevention Section (Forestry Division)
 - c. Forestry Division will process fire billing payments and transmit them to Helena. A photocopy of the payment check will be sent to the Fire Training and Prevention Section by the Forestry Division as the payment is being processed. This photocopy is filed with the Fire Training and Prevention Section's copy of the billing letter.
 - d. Billing status summaries for all fires will be issued by the Fire Training and Prevention Section semi-annually at the FAC. Additional updates are available upon request.
 - e. The Department will not submit joint bills to billees on behalf of other fire management entities. (i.e., federal agencies, counties, etc). Each party responding to a fire incident will be responsible for their own bill submission and negotiations with billable parties and/or their insurance companies.

1004.42 Procedure for Billing Fires With Suppression Costs Exceeding \$1,000

1. Upon receipt of each individual fire report, the Land Office will determine if the fire is billable (see Section 1004.45).

If the fire is billable, the Land Office will:

 - a. Review the fire report (F-1000) and all related documents for completeness and accuracy.

b. Obtain accurate costs for fire expenses by consulting:

- 1) The State Accounting Budgeting and Human Resource System (SABHRS) printouts, which will reflect most fire costs (by fire number), including overtime and regular wages. Do not bill these higher-cost (\$1,000+) fires using estimated costs. If necessary, write a letter of intent to the billee explaining your intentions to bill once the costs are tallied. Use Form F-1021 to gather non-SABHRS costs.
- 2) The Land Office will prepare the fire billing letter and transmit it to the person or business being billed. A itemized listing of all costs being billed should be included with the billing letter (see attached example in Appendix E). Certain information must be contained in the letter for use in the database used by the Fire Training and Prevention Section, Fire & Aviation Management Bureau, Forestry Division (see Appendix C, Standard Letter 1004.41A).

This information includes:

- Date of the fire's occurrence.
 - Complete fire number (e.g., 57001-CES-001).
 - Cause of the fire (debris, campfire, etc.).
- 3) Prior to issuing the first billing letter for fires costing ten thousand dollars (\$10,000) or more, the Land Office will forward a packet containing all information regarding the fire to the Fire Training and Prevention Section for review. The Fire Training and Prevention Section will forward this information to the Department legal staff for its review and a decision as to whether or not the Land Office should send a billing letter. These reviews will be completed within fifteen (15) working days of the date that the information is received by the Fire Training and Prevention Section.

The Land Office will be notified by the Fire Training and Prevention Section as to whether or not to proceed with the billing. If billable, proceed as in 1004.41. Subsequent billing letters will be issued by the Fire Training and Prevention Section as required.

- 4) Payments are to be made to **State Treasurer** and mailed to the Forestry Division (see Standard Billing Letter 1004.41A in Appendix C). Copies of the billing letter are sent to:
 - Original – Billee
 - Photocopies to:
 - » LandOffice
 - » Fire Training and Prevention Section (Forestry Division)
- 5) Forestry Division will process fire billing payments and transmit them to Helena. A photocopy of the payment check will be sent to the Fire Training and Prevention Section by the Forestry Division as the payment is being processed. This photocopy is

filed with the Fire Training and Prevention Section's copy of the billing letter.

- 6) Fire suppression billings for Montana Rail Link, Northwestern Energy, BNSF, Flathead Electric Coop and certain large land-owners such as Plum Creek, Stoltze Land and Lumber Company, R.Y. Timber Company, and Turner Ranch will be billed solely by the Fire Training and Prevention Section.
- 7) Timeframes for the billing of more costly fires are difficult to establish, as it may take some time before costs are rolled into SABHRS. It will be necessary to monitor SABHRS and bill when the majority of costs are in. A second billing for late costs may be indicated in some instances, and this should be mentioned in the first billing letter.

1004.43 **Delinquent Payments or Refusal to Pay Fire Suppression Costs**

1. The Fire Training and Prevention Section will issue a second billing letter (Certified) for all bills which have not been paid within 30 days of the first billing letter. A copy of this letter will be sent to the Area Office. The Area Office may wish to forward a copy to the Unit Office. See 1004.43A - Standard Format of this letter in Appendix C.
2. For bills not paid within 30 days of the second billing letter, the Fire Training and Prevention Section will draft a final, certified billing letter to be signed by a Department attorney (see Appendix C, Standard Letter 1004.43B). Department legal staff wishes to review each billing that is not paid. The Department will mail this final demand for payment to the billee.

The Fire Training and Prevention Section will provide the legal staff with the necessary documentation for each fire under review. Some assistance from the appropriate Area Office may be required to assemble this documentation.

3. If there is no response from the billee following the third letter, the Department has two choices:
 - a. The Fire Training and Prevention Section can turn the bill over to the Department of Revenue (DOR) for collection. The Fire Training and Prevention Section will complete the Bad Debt Certification and Transfer Form (Form 9000-0550) and forward the form with copies of all the correspondence with the billee to the Department of Revenue. If DOR can obtain a Social Security or Taxpayer ID Number, and DOR accepts the debt, DOR can garnish any proceeds due from the State to the billee. DOR will retain ten per cent (10%) of the collected monies and transfer the remaining to the DNRC to be returned to the General Fund.
 - b. Turn the bill over to the legal staff. Legal staff and the Director will decide upon an appropriate course of action based upon the strength of the Department's case. Should it decide to pursue the billing, the legal staff will file a claim in the appropriate court (District or Justice Court) and will take the lead from there. The legal staff will notify

the Fire Training and Prevention Section of the disposition of each bill so that each billing file may be amended accordingly.

Land Offices may learn the status of each bill by examining the billing summary reports, or by contacting the Fire Training and Prevention Section.

1004.44 Fire Suppression Billings in Co-op Counties, NFZ Areas, and Lands Protected by the Forest Service, Confederated Salish and Kootenai Tribes, US Fish and Wildlife Service, and Bureau of Land Management Under Contract, Mutual Aid Fires, Etc.

The guidelines issued in Section 1004.4, Billable Fires, apply in all areas of Montana, not just areas of direct protection. In those areas that do not issue DNRC burning permits, the counties may require permits prior to burning. These permits are a matter of public record and may be used to establish intent. In some counties these permits are required on a year-round basis. If no permits have been issued, the investigation may be able to discover intent and/or negligence and bill or prosecute accordingly. If DNRC incurs costs on a fire, it needs to know, in all instances, if those costs are recoverable, and from whom. The counties themselves may be billed only under prior agreement or statutory authorities, and then only by the Forestry Division.

On those lands for which DNRC contracts protection through the Forest Service, fire billing letters will be issued by the Forest Service. The Forest Service is also responsible for the investigation of these fires. Under an agreement between DNRC and the Forest Service, the Forest Service must request and receive DNRC's endorsement on any billing letter sent out for a fire occurring on lands which the Forest Service protects for DNRC under contract. Under the terms of this agreement, if DNRC does not agree that intent or negligence existed in the starting of a particular fire, the Department may refuse to endorse the billing, and it will be dropped. Any of these types of fires that are to be litigated must be filed in the name of the State of Montana.

In the future, DNRC may be pursuing similar agreements with other federal agencies with contracted suppression duties.

Where mutual aid fires are concerned, DNRC has some discretion in billing when the fire is not within DNRC's protection and DNRC is responding in a mutual aid capacity where DNRC's commitment is limited. This does not include fires where DNRC may receive a request for assistance from a county. DNRC will bill any request from a county using its existing guidelines.

Here are some guidelines to follow when considering whether DNRC should bill or not on mutual aid assistance fires:

- Use DNRC's guidelines to determine if the fire is billable (negligence, etc.).
- Consider billing if the local fire jurisdiction will be billing, discuss the billing option with the local fire department.
- Consider how much commitment DNRC had on the incident.
- Keep in mind that DNRC has statutory authority to bill Mont. Code Ann. § 50-63-103, Liability of offender for damages and costs).

- Whether or not to bill is at the discretion of the Area Manager.

1004.45 **Fire Billing Chart**

The Billing Chart (see Appendix D) is designed to serve as a guide for the fire billing process.

If evidence is available for billing, simply follow the chart based upon the information you have regarding the circumstances surrounding the fire.

Area Offices are free to make "adjustments" in their bills for fires with suppression costs ranging up to \$10,000. The Area Offices, therefore, have some latitude in dealing with the biller in an effort to elicit some repayment of the cost of suppressing his/her fire. If adjustments are made to a fire suppression bill, the Fire Training and Prevention Section must be notified.

You will notice that the Billing Chart mentions "complaints." If the landowner/landowner agent or igniter fails to obtain the proper permit(s) to burn, or is in violation of other burning laws, DNRC may file a complaint, in writing, with the county attorney's office stating which laws have been violated. The county attorney's office may or may not pursue the matter. DNRC's concern is to simply report the violation so that it becomes a matter of record. These complaints are documented, and citations may be issued in addition to any DNRC bill sent for recovering suppression costs.

The statutes with which DNRC deals most frequently are:

- 7-05-2112 Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited
- 76-13-112 Penalty for violation (violation of any of the Rules and Regulations)
- 76-13-121 Permit for burning required
- 76-13-122 Failure to comply with permit
- 76-13-123 Failure to extinguish campfire
- 76-13-124 Throwing lighted materials
- 76-13-125 Spark arresters required
- 76-13-126 Restrictions on sawdust piles
- 45-06-102 Negligent arson
- 45-06-103 Arson
- 50-63-103 Liability of offender

Remember, it is the DNRC legal staff that makes the final determination of intent vs. no intent and negligence vs. no negligence. The thoroughness and accuracy of the fire investigation report allows DNRC legal staff to do that.

1004.46 **Billing Procedure for Assistance to State and Federal Agencies**

State and Federal assistance fires (assistance to the FEMA, U.S. Forest Service, Bureau of Land Management, Bureau of Indian Affairs, the National Park Service, Fish Wildlife Service and states other than Montana) and other in-state incidents are billed by the Fire and Aviation Management Bureau (FAM) Fiscal Officer. This includes all DNRC cost-share incidents with other agencies. Assistance to other states is billed through the USDA Forest Service per the Montana Cooperative Fire Protection Agreement. Periodically, an incident occurs in Montana (i.e., the Alberton Derailment, Freeman Standoff,

etc.) in which another state agency, such as DES or DOJ, may have control. In the event that DNRC lends assistance to another Montana state agency, DNRC's costs will be billed to that agency by the FAM Fiscal Officer.

1. Where billable assistance is rendered to federal agencies and other state agencies, and for other in-state incidents, the FAM Fiscal Officer will:

a. Obtain accurate costs for incident expenses by consulting:

- The SABHRS printouts, which reflect most incident costs including overtime and regular wages and all supplies, materials and contracts paid for by the State of Montana.
- All DNRC Fire Forms relevant to the incident, including:

DNRC		Federal
<u>Form #</u>	<u>Form Name</u>	<u>Form #</u>
F-323	Emergency Equipment Use Invoice	OF-286
F-304	Crew Time Reports	OF-261
F-322	Emergency Equipment Shift Tickets	OF-297

(See 1004.47, **Guidelines for Federal Fire Reimbursement Funds**, for tracking F-323 costs.)

2. The FAM Fiscal Officer will prepare the fire billing letter and transmit it to the federal agency being billed within 60 days of the conclusion of the incident or at a time specified by the Montana Cooperative Fire Protection Agreement between the agencies, whichever pertains. Form and content of the billing letter will follow the accepted format (see Standard Letter 1004.46A in Appendix C). Payments are to be made to **State Treasurer** and are normally done by electronic transfer. Copies of the billing letter are sent to:

- Original – Billee
- Photocopies to:
 - » Chief, Fire and Aviation Management
 - » Supervisor, Fire Suppression Section
 - » Administrator, Central Services Division
 - » Chief, Business Management Bureau

1004.47 Guidelines For Federal Fire Reimbursement Funds (FFR)

1. FY98 Additional \$250,000 in Authorization (DNRC Equipment Charges, better known as the Zook County Co-op Equipment funding)-- Funding is earned through billing for the use of State and State-owned County Cooperative equipment to assist other agencies on fire suppression and other types of all risk responses.

- a. Request must be justified based on a need to repair, maintain, or replace State/County Cooperative fire equipment.
- b. Only fire equipment in the State/County Cooperative Fire Program may be considered as the basis for a justification to use these funds. Funding will not be authorized for direct protection fire equipment.

- c. Priority will be placed on rolling stock and slip-on units. County Cooperative cache equipment (i.e., tool caches) will have a lower priority.
 - d. Funds will be used to repair or replace existing fire equipment.
 - e. The FAM Bureau Chief will designate the time each fall that proposals must be submitted to him/her.
 - f. Allocation of funds will be made by the FAM Bureau Chief.
 - g. Allocations of funds will be decided by December 25.
 - h. **All funds must be expended or encumbered by May 1.**
2. Non-Fire Suppression \$21,000 in Authorization (Support of Interagency Operations Involving Dispatching, Training, and Prescribed Fire – 03 Centers)--Funding is earned by billing federal agencies for Department costs associated with the operation and support on interagency fire management activities (billed by Area Offices).
3. General Provisions
- a. Income from spending authorization sources will be kept separate in Organization Report Number 15.
 - b. Use of the \$250,000.00 authorization is qualified by reporting the use of Department equipment (State-owned and Federal Excess Personal Property) on other agency support fires and DNRC cost-share fires with other agencies. Reporting the use of this equipment cannot be done by submitting charges through SABHRS. Instead, all equipment use will be recorded on the Emergency Equipment - Use Invoice, Crew Time Reports and Emergency Equipment Shift Tickets.
4. Tracking Costs on State-Purchased and FEPP Equipment
- a. The following information is intended to provide instructions on tracking costs on State-purchased and Federal Excess Personal Property (FEPP) vehicles. Each year, a significant number of State-purchased and FEPP fire vehicles are being dispatched to cooperator fires, cost-share and other incidents. Tracking equipment use on these incidents will be accomplished by using the existing Emergency Equipment - Use Invoice, which is presently used to track equipment contracted through DNRC; Crew Time Reports; and Emergency Equipment Shift Tickets.

When DNRC contracts and pays for fire vehicles, the agency can track and record these costs in SABHRS using the Emergency Equipment Use Invoice, as they represent a payment to a contractor. These costs are then passed on to the agency that used the fire vehicles DNRC contracted and paid for. The problem is that SABHRS is not structured to allow DNRC to track and record its own costs on State-purchased and FEPP vehicles. The only way DNRC can track its own costs is to do so outside the SABHRS

system. The following information explains how DNRC will now do that.

- b. Non-DNRC Incidents and Cost-Share Incidents Using State-Purchased and FEPP Vehicles: Use the Emergency Equipment Use Invoice, Crew Time Report, and Emergency Equipment Shift Ticket to track costs on all State-purchased and FEPP vehicles dispatched from DNRC or out of cooperative counties to incidents that are not the responsibility of DNRC or are DNRC cost-share incidents with other agencies. You should complete the Crew Time Report and Emergency Equipment Shift Ticket on all equipment going to other agencies such as the USFS, BLM, BIA, USFWS, NPS and other states, and on all DNRC cost-share incidents with other agencies.

State-purchased and FEPP vehicles dispatched from cooperative counties and DNRC equipment will submit Emergency Equipment Use Invoice, Crew Time Report and Emergency Equipment Shift Ticket to the FAM Fiscal Officer. The Area Offices and Units should work with the appropriate county personnel to immediately obtain any needed repairs to vehicles returning from a dispatch. Repairs to DNRC vehicles should also be attended to immediately upon return. Repair costs will be billed against the appropriate fire center, if applicable, upon approval by the Area Office, and be forwarded to Helena for payment. Copies of the approved repair bills must be attached to the OF-286 for submission to the FAM Fiscal Officer. These should be submitted in a timely fashion upon return of the equipment.

To determine the rates to be applied, use the rates from Chapter 50 of your Interagency Incident Business Management Handbook. Be sure to take into consideration that if the equipment is foam capable or is FEPP equipment, these items will adjust the rates either up or down.

Put only one piece of equipment on each F-323 and fill in the form like the example in Appendix F.

Appendix A

After Action Review Format

The format below is the basic format for the After Action Review as described in the NWCG Incident Response Pocket Guide.

What was planned?

Review the primary objectives and expected action plan.

What actually happened?

Review the day's actions:

- Identify and discuss effective and non-effective performance.
- Identify barriers that were encountered and how they were handled.
- Discuss all actions that were not standard operating procedure, or those that presented safety problems.

Why did it happen?

Discuss the reasons for ineffective or unsafe performance. Concentrate on WHAT, not WHO, is right.

What can we do next time?

Determine lessons learned and how to apply them in the future.

Source - NWCG Incident Response Pocket Guide

Remember to address items appropriate to the level of the After Action Review being conducted. The minimum recommended items may be found in the DNRC 1000 Follow-up Manual.

After Action Review Documentation Form

Date: _____

Incident Name: _____

Incident Number: _____

Incident Complexity: _____

Incident Commander: _____

Line Officer (if required): _____

Review Level: _____

Facilitator: _____

What was planned?

What actually happened?

Why did it happen?

What can we do next time?

Appendix B

After Action Review Facilitation Techniques

Setting Up AAR Discussion:

“This is not a critique, not meant to assign blame. It’s an open, honest and professional discussion.”

Restating a Point:

This is used to summarize a point that a participant made that may have not been clear to everyone. “So you’re saying you think the helitorch should have started higher up the ridge, and that would have prevented.....”

Handling the Upward Delegation of Blame:

Participants will often blame the “system” for being broken, and that causes failures at their level. “OK, I agree, but that’s above our pay grade. We still have to live with the fact that this issue places us in increased risk. So what can we work on at our level to improve?”

Bringing Out the Opinion of the “Quiet Ones”:

Some people just don’t process through discussion, but they usually are listening closely and when asked have good insights. Wait until a little later in the AAR and then ask them by name open ended questions. “Well Ken, you were up on the road, what was your perspective on this?”

Interrupting a Dominant Member of the Group:

Some people just naturally like to talk. There is also a tendency for a leader to give all the answers. Interrupt them tactfully with a comment like: “I’m concerned we’re going too deep into this issue without getting any additional input. Let’s hear from....”

When the Group is in Denial:

One or more people think (let’s use communications) went fine and are not discussing the issues. In order:

1. Act somewhat surprised. “Really? Interesting. Are there any other thoughts on how communications went today?”
2. Spur discussion with one of your own observations: “OK, I saw a couple messages that didn’t get passed to the folks holding the road. What was the plan there?”
3. Press a bit firmer: “OK, what I’m hearing is that you would do this exactly the same way again?”
4. Do one of two things. If the issue is minor, let it pass. If the issue is important, then you may have to make the point blank observation yourself: “OK. You’re saying communications went fine. I saw two specific instances where we were right on the edge of the prescription and that

did not get to either Mike or Susan. You're telling me that is not a problem? What would have happened if we didn't get that bucket drop?"

Pursuing an Issue to its Root Cause:

The Japanese say always ask why five times. It's a good technique to make sure that you're really getting to the root cause of an Issue. "So...the torches weren't ready because they didn't get fueled. And we've heard they didn't have fuel because the fuel cans were on the other rig. What caused that to happen?"

Using "Negative Polling" to Ask Questions:

This is an effective way to get quick agreement/consensus. It is faster than making sure everyone agrees. "Is anyone opposed to moving on to question #3 now?" or "Does anyone disagree that that was the plan, yet this is what really happened?"

Building Up or Eliminating Ideas:

This technique merges complimentary pieces from different ideas or highlights agreement on pieces of an idea when total idea is not agreed upon. "So is there anything you could add to that suggestion to make it work for you?" or "What could we delete from the idea to make it work better?"

Avoiding Win/Lose Decisions:

Look for a win-win situation with the group. "Does it have to be one way or the other? Could we agree to both?"

Asking Open-Ended Questions:

This allows for a variety of possible responses while inviting involvement and participation. "Why do you think that happened?" or "What could we do differently next time?"

Prepared by: Mark Smith/Mission-Centered Solutions & Mike DeGrosky/The Guidance Group,
December 2003

**Appendix C
Standard Letters**

1004.41A **Standard Letter**

Date

216

Landowner's Name
Address
City, State Zip

RE: STATE FIRE #54321-CLO-123

Dear Mr./Ms. _____:

On July 4, 1997, the Department of Natural Resources and Conservation responded to a fire which was ignited by you when you were attempting to burn debris created by your land clearing activities.

Based upon the events surrounding your fire, the Department of Natural Resources and Conservation has decided to seek reimbursement for its costs based on the authority of 50-63-103 MCA, Liability of Offender for Damages and Costs and/or common law theories of negligence whereby a person who does not use the ordinary care that a reasonable person would use, and allows a fire to escape, is responsible for the payment of the suppression costs of the fire.

Because a fire ignited by you required action by the Department of Natural Resources and Conservation, you are hereby billed the amount of Four Hundred Thirty Dollars and Fifteen Cents (\$430.15) for suppression costs incurred by the State of Montana. Your check or money order should be made payable to **State Treasurer** and mailed to the Montana Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199.

You may wish to check with your insurance company to determine if you are covered for this type of liability. I have enclosed an itemization of the costs involved in extinguishing your fire.

Please remember that a burning permit is required during the legal fire season (May 1 through September 30). Thank you.

Sincerely,

Signature Block

FOR:mat
Enclosure
cc: Area Office
 Fire Training and Prevention Section

Date

216

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Billee Name
Billee Address
City, State, Zip

RE: STATE FIRE #54321-CLO-123

Dear Mr./Ms. _____:

On July 10, 1997 you were issued a billing statement in the amount of \$___ for fire suppression costs incurred by the State of Montana for a debris fire that you ignited on that same day. To date, we have not received payment or a response from you concerning this bill.

Please remit the above stated amount with your check made payable to **State Treasurer** and mail to the Department of Natural Resources and Conservation at 2705 Spurgin Road, Missoula, MT 59804-3199. I must hear from you by August 10, 1997, or I will be required to turn this billing over to Department legal staff for further action. If you have any questions regarding your fire or this bill, please feel free to contact me at (406) 542-4223. Thank you for your attention to this matter.

Sincerely,

Signature Block

FOR:mat

cc: Area Office
Fire Training and Prevention Section

Date

216

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Billee Name
Billee Address
City, State Zip

RE: STATE FIRE #54321-CLO-123

Dear Mr./Ms. _____:

On July 10, 1997 and on August 10, 1997, you were issued billing statements in the amount of \$ _____ for costs incurred by the Montana Department of Natural Resources and Conservation for the suppression of a fire started by your activities on _____ . To date, you have not responded to these statements.

Please be advised that if the Department has not received a written response from you within 15 days of the date of this letter, the Department may begin legal action to recover its suppression expenses.

Please make your check payable to **State Treasurer** and mail it to the Montana Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199.

Thank you for your attention to this matter.

Sincerely,

Mark Phares (or Tom Butler), Attorney
Dept. of Natural Resources and Conservation

FOR:mat

cc: Area Office
Fire Training and Prevention Section

Date

216(CY20__)

XXXX, Director
Financial Resources
USDA Forest Service, Region 1
P.O. Box 7669
Missoula, MT 59807

Dear Mr. XXX:

Please consider this our preliminary billing statement for fire suppression costs incurred by the Montana Department of Natural Resources and Conservation during the CY 20__ fire season on Region 1- U.S. Forest Service, out-of-state federal and other States fires per the Montana Cooperative Fire Protection Agreement. This billing statement includes no costs incurred on Montana Bureau of Land Management or other Montana USDI agencies incidents. Copies of our Montana State Accounting reports (SABHRS) support documentation for the SABHRS reports and Equipment Use Invoices (OF286s) in support of State owned and FEPP equipment use are enclosed. As in past years, we expect that there will be a revised billing in the near future as additional costs arrive and adjustments are made to the attached figures.

Please remit "Dollar and cents amount written out" (Dollar and cents amount in numbers) in payment of these costs. Your direct your electronic transfer payable to Montana State Treasurer. If you have any questions regarding these figures, please call me at (406) 542-XXXX.

Thank you.

Sincerely,

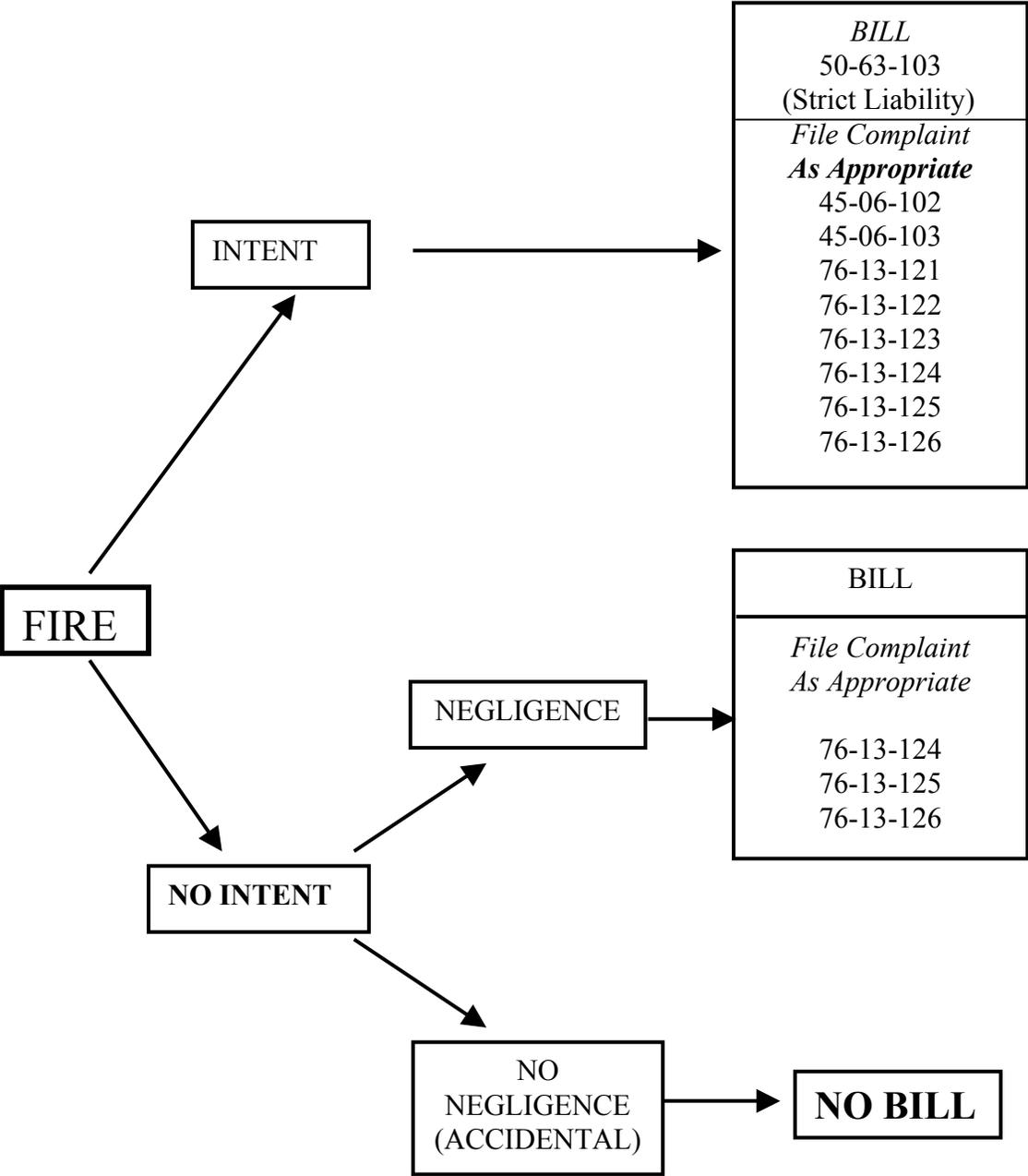
Signature Block

:XX

cc: Chief, Fire and Aviation Management
Supervisor, Fire Suppression Section
Administrator, Central Services Division
Chief, Budget & Finance Management Bureau

Enclosures

**Appendix D
Billing Chart**



**Appendix E
Fire Bill Itemization**

**ACME SCHOOL
MT-SWS-009 (YR 2003)
FIRE BILL ITEMIZATION**

MT-SWS-009	10/08/03	SABHRS 56209
<i>AGENCY</i>	<i>NAME/DESCRIPTION</i>	<i>AMOUNT BILLED</i>
DNRC	Jim Lodgepole/6.5 hrs OT @ \$22.82	\$148.33
DNRC	Iron Man/5 hrs OT @ \$25.10	\$125.50
DNRC	Brian Brain/6 hrs @ \$11.89	\$71.34
DNRC	Danny Boy/4 hrs OT @ \$14.91	\$59.64
DNRC	Bambi Dearborn/4 hrs @ \$10.99	\$43.60
DNRC	Cindy Smoke/4 hrs OT @ \$12.12	\$48.48
DNRC	Ashley Trees/9 hrs OT @ \$14.36	\$129.24
		<i>Subtotal: \$626.13</i>

DNR 1166 Type VI Engine	3 hrs @ \$36.00 hr	\$108.00
DNR 1176 Type VI Engine	4.5 hrs @ \$36.00 hr	\$162.00
DSL 304 4x4 Pickup	.5 day @ \$46.00 day	\$23.00
DSL 304 4x4 Pickup	20 miles @ \$0.21 mile	\$4.20
Supplies	Incident Meals	\$28.90
Supplies	Gasoline	\$34.26
		<i>Subtotal: \$360.36</i>

TOTAL DUE \$986.49

**Appendix F
EMERGENCY EQUIPMENT – USE INVOICE**

1. CONTRACTOR a. name and address Montana DNRC (Land Office, Unit, Division, Bureau) Street or mailing address City, MT Zip b. EIN/SSN					2. INCIDENT OR PROJECT NAME Incident Name and FS or BLM Management Code									
					3. AGREEMENT NUMBER (from OF-294) MT Cooperative Fire Protection Agreement FS #05-FI-11015600-014									
					4. EFFECTIVE DATES OF AGREEMENT a. beginning 1/1/05					b. ending 12/31/05				
					5. EQUIPMENT (list make, model, serial number, etc.) Year, Make, Model Type (T6WE, Pantry Truck, etc.) DNR or DSL number Vehicle Identification Number					6. POINT OF HIRE (location when hired)				
9. ADMINISTRATIVE OFFICE FOR PAYMENT For Fire Record Only As per Montana Cooperative Fire Protection Agreement					7. DATE OF HIRE					8. TIME OF HIRE				
					10. THE WORK RATE IS BASED ON ALL OPERATING SUPPLIES BEING FURNISHED BY: <p align="right">CONTRACTOR (wet) GOVERNMENT (dry)</p>									
					11. OPERATOR FURNISHED BY <p align="right">CONTRACTOR GOVERNMENT</p>									
12. RESOURCE ORDER NUMBER E-XXXXX														
13. YEAR 2005		14. WORK OR DAILY RATE			15. SPECIAL RATE			16. TOTAL AMOUNT EARNED (14c + 15c)		17. GUARANTEE		18. AMOUNT (COLUMN 16 OR 17, WHICHEVER IS GREATER)		
MO DA		a. UNITS WORKED (MI/HR/DA)	b. RATE	c. AMOUNT		a. UNITS WORKED (MI/HR/DA)	b. RATE	c. AMOUNT						
8 15		DA	754.00	754.00								754.00		
19. CHARGE CODE SABHRS #				20. OBJECT CODE				23. GROSS AMOUNT DUE 754.00						
21. EQUIPMENT WAS ___ RELEASED ___ WITHDRAWN DATE: _____ TIME: _____								24. ITEM 23 FROM PREVIOUS PAGE						
22. REMARKS If equipment is Federal Excess Property (FEPP) indicate that here in remarks and reduce rate above to 67% of the IIBMHB rate in Chapter 50.								25. TOTAL AMOUNT DUE 754.00						
								26. DEDUCTIONS (attach statement) SUBTRACT Oil/Gas costs – subtract if purchased thru Wright Express, repairs Out of pocket costs						
								27. ADDITIONS (attach statement)						
								28. NET AMOUNT DUE 754.00						
29. NOTE: CONTRACT RELEASE FOR AND IN CONSIDERATION OF RECEIPT OF PAYMENT IN THE AMOUNT SHOWN ON "NET AMOUNT DUE" LINE 28. CONTRACTOR HEREBY RELEASES THE GOVERNMENT FROM ANY AND ALL CLAIMS ARISING UNDER THIS AGREEMENT EXCEPT AS RESERVED IN "REMARKS" BLOCK 22.														
30. CONTRACTOR'S SIGNATURE						31. DATE		32. RECEIVING OFFICER'S SIGNATURE				33. DATE		
34. PRINT NAME AND TITLE						35. PRINT NAME AND TITLE Sam Smith Unit Fire Supervisor								

Appendix G
Legal Staff Memos
Legal Staff Memo – Fire Lighted with Intent

DEPARTMENT OF STATE LANDS



MARC RACICOT, GOVERNOR

P.O. BOX 201601

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620-1601

October 6, 1994

MEMORANDUM

TO: Tim Murphy, Fire Management Bureau Chief
Steve Jorgenson, Fire Investigator

FROM: Tommy Butler, Staff Attorney *TJB*

RE: Any conflict between §50-63-103, MCA, and §76-13-201, MCA.

You've requested a legal opinion as to whether §76-13-201(3), MCA, conflicts and controls over §50-63-103, MCA, thus preventing the Department from recovering its suppression costs for intentionally-lit fires occurring within the confines of a forest fire protection district. It is my legal opinion that no such conflict exists and the Department is not prevented from recovering its suppression costs for such fires.

Section 76-13-201, MCA, provides as follows:

76-13-201. Duty of owner to protect against fire. (1) An owner of forest land classified as such by the department shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board.

(2) If the owner does not provide for the protection and suppression, the department may provide it at a cost to the landowner of not more than \$30 for each landowner in the protection district and of not more than an additional 20 cents per acre per year for each acre in excess of 20 acres owned by each landowner in each protection district, as necessary to yield the amount of money provided for in 76-13-207. The owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department in accordance with this part and part 1.

(3) No other charges may be assessed those landowners participating except in cases of proven negligence on the part of the landowner or his agent.

(Emphasis added.)

"AN EQUAL OPPORTUNITY EMPLOYER"

Section 50-63-103, MCA, in turn, provides that:

50-63-103. Liability of offender for damages and costs. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property shall be liable for all costs and expenses incurred by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such fire.

(Emphasis added.)

Section 50-63-103, MCA, grants fire suppression agencies a statutory right to recover suppression costs via a civil action for intentionally-lit fires upon all lands. It imposes a form of strict liability upon persons igniting such fires. The recovery of suppression costs as damages in civil litigation do not constitute "assessments or charges" recoverable through the county treasurer's office.

Section 76-13-201(3), MCA, allows the State to recover suppression charges from participants in a fire protection district in cases of negligence. Negligence involves the breach of a duty owed to another. Under §76-13-201, MCA, owners of classified forest lands "...shall protect against the starting or existence and suppress the spread of fire on that land.

Where owners allow hazardous flammable materials to accumulate upon their lands, or fail to take actions to suppress a fire, they breach that duty. Moreover, when owners of classified forest lands intentionally ignite a fire, they automatically violate that duty to prevent against the starting or existence of fire upon their lands. Section 50-63-103, MCA, then operates to make such owners strictly liable for any damages the intentionally lit fire may cause.

In short, §76-13-201(3), MCA, does not prevent the Department from recovering suppression costs for intentionally lit fires under §50-63-103, MCA.

Legal Staff Memo – Fire Lighted Without Intent

DEPARTMENT OF STATE LANDS



TED SCHWINDEN, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE
HELENA, MONTANA 59626

March 11, 1988

MEMORANDUM

TO: Steve Jorgenson
FROM: Tommy Butler THB
RE: Fire Suppression Billing

Issue: Whether DSL may recover its suppression costs in three fact situations.

1. A county which has entered into a cooperative agreement requests assistance in suppression;
2. DSL suppresses a fire on its own initiative; and
3. DSL suppresses a fire while participating in an area of dual protection.

Brief Answer: DSL need not limit its legal theories for recovery of fire suppression costs to statutory authority. DSL will, in most cases, base its claims upon theories of common-law negligence. The four basic elements of a "tort" are:

1. The duty of reasonable care owed to the Plaintiff;
2. A breach of that duty;
3. Proximate cause; and
4. Proof of damages.

There are three main Common Negligence Theories.

Creation or Maintenance of Hazardous Artificial
Conditions by Possessors of Land

Liability for fire damages is frequently found in acts or omissions which create a fire hazard despite the defendant's lack of responsibility for the actual start of the fire. Section 364 of the Restatement 2nd of Torts imposes liability upon a landowner who unreasonably creates, or allows to be created, artificial conditions or structures which pose an unreasonable risk of physical harm to persons outside the land. This section provides as follows:

Section 364 Creation or Maintenance of Dangerous
Artificial Conditions.

A possessor of land is subject to liability to others

outside of the land for physical harm caused by a structure or other artificial condition on the land, which the possessor realizes or should realize will involve an unreasonable risk of such harm if,

- (a) the possessor has created the condition, or
- (b) the condition is created by a third person with the possessor's consent or acquiescence while the land is in his possession, or
- (c) the condition is created by a third person without the possessor's consent or acquiescence, but reasonable care is not taken to make the condition safe after the possessor knows or should know of it.

Typical conditions warranting such a legal theory would be poor slash management; partially dismantled buildings attracting vagrants; or untended garbage dumps. Aetna Insurance v. 3 Oaks Wrecking and Lumber Co., 382 N.E.2d 283 (Ill.App., 1978); Ford v. Jeffries, 379 A.2d 111 (Pa. 1977)

Liability for Spread of Fire Purposefully
and Lawfully Lit by Possessor of Land

In order to impose liability upon an owner of property who sets a fire for a lawful purpose, it must be shown that the owner was negligent in starting it or controlling it.

For example, in Criscola v. Guglielmelli, 308 P.2d 239 (Wash, 1957) the defendant lawfully burned trash in a trash receptacle on premises specifically licensed for that purpose. The defendant left the fire believing it was out, but did not put dirt or water on it. When the fire in the trash spread to adjoining property, the defendant was held liable for negligent failure to ensure the fire was out. See also Douglas v. Nielsen, 409 P.2d 240 (Wyo. 1965) (Town held liable for burning of refuse where dump was a high elevation which exposed burning trash to high winds.)

Doctrine of Res Ipsa loquitor

Res ipsa loquitor (literally "the thing speaks for itself") is an evidentiary doctrine based on exclusive control by the defendant that establishes a presumption of negligence by the defendant. The Plaintiff must prove four elements:

1. The event is of a kind which does not occur ordinarily in the absence of negligence;
2. Other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence;

Steve Jorgenson
March 11, 1988
Page 3

3. The indicated negligence is within the scope of the defendant's duty to the plaintiff; and
4. The defendant was in the exclusive control of the instrumentality which caused the fire.

In fire cases, the use of res ipsa loquitor is often warranted when the exact cause of the fire cannot be determined, but all other non-negligent causes can be eliminated. Res ipsa loquitor has been applied to a number of factual circumstances: smoking [Olswanger v. Funk, 470 S.W.2d 13 (Tenn.App. 1970)]; the use of flammable materials [Megee v. Reed, 482 S.W.2d 832 (Ark. 1973)]; appliances and machinery [Granata v. Schaefer's Bake Shop, Inc., 232 A.2d 513 (Conn.Cir. 1967)]; and electrical wiring [Evans v. VanKleek, 314 N.W.2d 486 (Mich.App. 1981)].

The key to the application of res ipsa loquitor may depend upon the testimony of an expert that it was probable that the fire started by the defendant's negligence, including the expert's elimination of all other potential fire sources: Lanza v. Poretti, 537 F.Supp. 777 (E.D.Pa. 1982), affd, 696 F.2d 983 (3rd Cir., 1983); Gichner v. Antonio Troiano Tile and Marble Co., 410 F.2d 238 (D.C. Cir. 1969). It is not sufficient, however, if the expert testifies that it was merely possible, rather than probable, that the plaintiff's negligence caused the fire. Federal Rule of Evidence 705; Breider v. Sears, Roebuck and Co., 722 F.2d 1134 (3rd Cir. 1983).

If res ipsa loquitor is applied, a legal presumption arises that the fire occurred as a result of the defendant's negligence. However, this is a rebuttable presumption, and the defendant still has the opportunity to show that the presumption is incorrect.

cfb