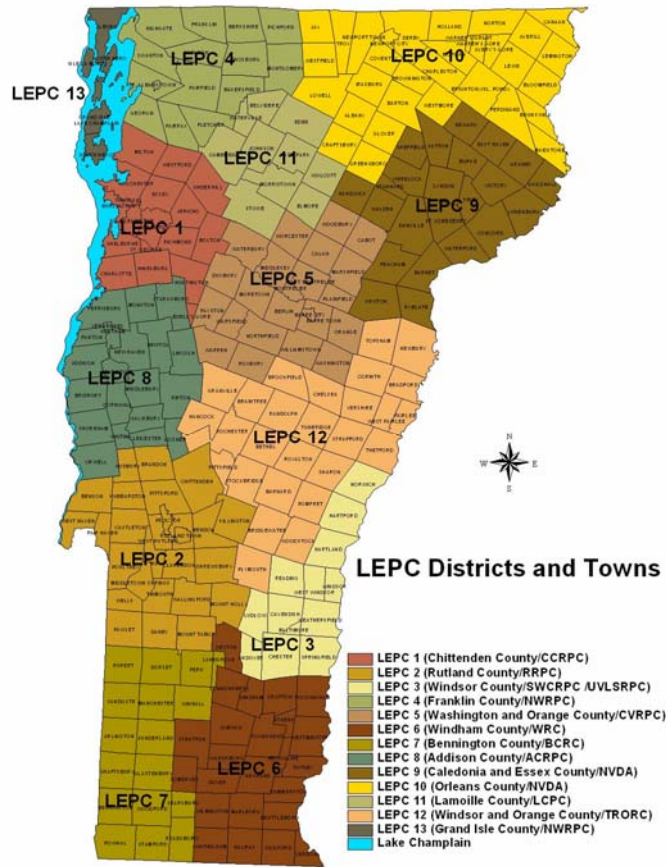


State of Vermont

Emergency Management

SERC and Local Emergency Planning Committee (LEPC) Handbook



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Parts of this handbook have been extracted from the State of Texas: "*A Local Emergency Planning Committee (LEPC) Handbook: A Primer for Local Planning for Hazardous Materials*" developed by the Texas State Emergency Response Commission, Texas Department of Public Safety, Division of Emergency Management and the guidebook developed by EPA Region VI

The Vermont SERC is grateful for the use of this material in the development of this handbook.

Additionally, this handbook has information obtained from Handbooks of the States of Arkansas, Kansas, Nebraska, Ohio, Massachusetts, Missouri, Florida, Wyoming, and Maine.

SECTION I: INTRODUCTION

A. History and Background

This handbook is designed for the State Emergency Response Commission (SERC) and Local Emergency Planning Committees (LEPCs) in Vermont. The SERC and LEPCs are a product of federal legislation passed in the wake of the Bhopal disaster in India, where thousands of people died because of an accident involving hazardous chemicals. To prevent similar occurrences in our communities, Congress passed the [Emergency Planning and Community Right-to-Know Act \(EPCRA\), also known as Title III of the Superfund Amendments and Reauthorization Act \(SARA\), in 1986 \(42 USC Chapter 116\).](#)

EPCRA establishes requirements for businesses and for federal, state, and local governments regarding emergency planning and community right-to-know (CRTK) reporting for hazardous chemicals. The CRTK provision in EPCRA helped increase awareness about the presence of chemicals in their communities and releases of these chemicals into the environment.

Many State legislatures also enacted CRTK laws that are consistent with federal law. As a result, States and communities, working with industry, are better able to protect public health and the environment. Congress enacted the EPCRA regulations to benefit communities. Two of the main goals of this law are to:

1. Provide a basis for each community to develop and tailor a chemical emergency planning and response program to suit the community's needs
2. To provide the public with a right-to-know attitude to identify, quantify, locate, and determine the physical and chemical properties of hazardous substances in the community.

B. Why this handbook ?

The U.S. Environmental Protection Agency (EPA), other federal agencies, state agencies, and the chemical industry are cooperating with local communities to make EPCRA and related state laws effective. However, the ultimate responsibility for the success of EPCRA rests with the SERC and LEPCs. The SERC and LEPCs are the link between citizens, industry, and the government.

Because the SERC, from a state perspective, and LEPCs, from a local perspective, are most familiar with the hazards in their state and communities, and because state and local citizens tend to be the first responders for chemical emergencies, the SERC and LEPCs are in the best position to assist local governments in developing plans to respond to hazardous material emergencies. This handbook has been developed to provide the SERC and LEPCs with the guidance needed to make EPCRA work.

This SERC and LEPC Handbook, while not a regulation, represents current policy regarding the role of the SERC and LEPCs for the implementation of EPCRA and also the relationship of the LEPC to the State Emergency Response Commission (SERC). The complete EPCRA should be used by the SERC and LEPC when making decisions regarding actions of both. The Federal Register and any other appropriate documents should be used by the SERC and LEPC to keep abreast of any changes that may be made in the future.

SECTION II: State Emergency Response Commission (SERC)

A. General

The state emergency response commission was created as a result of federal [EPCRA \(42 USC Chapter 116\)](#). The commission, as established in [Vermont Statute 20 VSA Chapter 1](#), consists of 11 members, six ex officio members, including the commissioner of public safety, the secretary of natural resources, the secretary of transportation, the commissioner of health, the commissioner of agriculture and the commissioner of labor and industry, or their designees; and five public members, including two representatives of local government, one of which shall represent the fire service and one shall represent the police, a representative of the transportation industry, a representative of an industry required to report to the commission and one representative of the public. The director of emergency management shall be the secretary of the commission without vote.

The five public members are appointed, by the governor, for staggered three year terms. The governor appoints the chair of the commission.

B. Primary SERC Responsibilities

1. Carry out all the requirements of a commission under Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and as hereafter amended.
2. Adopt rules necessary for the implementation of [EPCRA \(42 USC Chapter 116\) SARA 1986](#) and for the reporting of hazardous chemicals or substances, including setting minimum limits on the level of hazardous chemicals to be reported.
3. Designate local emergency planning districts and to appoint local emergency planning committees. To the extent practicable, local emergency planning districts may coincide with the emergency management districts designated by the governor.
4. Oversee the development and implementation of local emergency response plans by committees and provide assistance to committees in executing their duties.
5. Develop and maintain a plan for providing state assistance to local government in an emergency involving hazardous chemicals or substances.
6. Review and comment on local emergency response plans.
7. Develop a plan for coordinated disaster response operations to supplement, aid or advise local and state jurisdictions or other parties involved when there has been an accident involving the transportation of hazardous materials.
8. Meet with interested parties, which may include representatives of the carrier industry shippers, and state and local agencies, having an interest, responsibility or expertise concerning hazardous materials.
9. Maintain a state plan to go into effect when an accident occurs involving the transportation of hazardous materials. The plan shall be field tested at least once annually.

Any rules adopted concerning reportable quantities of economic poison, as defined in [6 V.S.A. § 911\(5\)](#), shall be jointly adopted by the commission and the department of agriculture, food and markets. The commission may enter into contracts with governmental agencies or private organizations to carry out the duties of this section.

SECTION III: LOCAL EMERGENCY PLANNING COMMITTEES (LEPCs)

A. General

The role of LEPCs is to form a partnership with local governments and industries as a resource for enhancing hazardous materials preparedness.

Local governments are responsible for the integration of hazmat planning and response within their jurisdiction. This includes ensuring the local hazard analysis adequately addresses hazmat incidents; incorporating planning for hazmat incidents into the local emergency management plan and annexes; assessing capabilities and developing hazmat response capability using local resources, mutual aid and contractors; training responders; and exercising the plan. It's necessary for industry to be a part of that planning process to ensure facility plans are compatible with local emergency plans.

Every regulated facility is responsible for identifying a facility emergency coordinator; reporting hazmat inventories annually to the LEPC, SERC, and local fire department; providing material safety data sheets (MSDS) or a list of hazardous chemicals; allowing local fire departments to conduct on-site inspection of hazmat facilities; and providing annual report of toxic chemicals released to EPA and the State. LEPCs are crucial to local hazardous materials planning and community right-to-know programs. The membership comes from the local area and should be familiar with factors that affect public safety, the environment, and the economy of the community. That expertise is essential as the LEPC advises the writers of the local emergency management plan, so that the plan is tailored to the needs of the planning district.

In addition to its formal duties, the LEPC can serve as a focal point in the community for information and discussion about hazardous substance emergency planning, and health and environmental risks. Citizens may expect the LEPC to reply to questions about chemical hazards and risk management actions. Members of the LEPC represent the various organizations, agencies, departments, facilities, and/or other groups within the district. Each member must realize that he or she represents their organization on the LEPC and that they are responsible for coordinating information and activities from the LEPC to their organization and for providing accurate feedback from their organization back to the LEPC.

The LEPC has many responsibilities, mandates, and deadlines. The membership should organize to handle these various tasks by utilizing individual efforts, sub-committees, or contracted assistance.

B. Primary LEPC Responsibilities

As mentioned in Section I, the [Emergency Planning and Community Right-to-Know Act \(EPCRA\) \(42 USC Chapter 116\)](#) establishes the LEPC as a forum at the local level for discussions and a focus for action in matters pertaining to hazardous materials planning. LEPCs also help to provide local governments and the public with information about possible chemical hazards in their communities. The major legal responsibilities of LEPCs are listed below. The citations are from [EPCRA, 42 USC Chapter 116](#).

Each LEPC:

- Shall review local emergency management plans once a year, or more frequently as circumstances change in the community or as any facility may require ([Section 11003\(a\)](#)).
- Shall make available each MSDS, chemical list described in [Section 11021\(a\)\(2\)](#) or Tier II report, inventory form, and follow up emergency notice to the general public, consistent with [Section 11042](#), during normal working hours at a location designated by the LEPC ([Section 11044\(a\)](#)).

- Shall establish procedures for receiving and processing requests from the public for information under Section [11044](#), including Tier II information under Section [11022](#). Such procedures shall include the designation of an official to serve as coordinator for information (Section [11001](#)).
- Shall receive from each subject facility the name of a facility representative who will participate in the emergency planning process as a facility emergency coordinator

(Section [11003](#)(d)).

- Shall be informed by the community emergency coordinator of hazardous chemical releases reported by owners or operators of covered facilities (Section [11004](#)(b)(1)(a)).
- Shall be given follow-up emergency information as soon as practical after a release, which requires the owner/operator to submit a notice (Section [11004](#)).
- Shall receive from the owner or operator of any facility a MSDS for each such chemical (upon request of the LEPC or fire department), or a list of such chemicals as described (Section [11021](#)(a)).
- Shall, upon request by any person, make available an MSDS to the person in accordance with (Section [11044](#) and Section [11021](#)(a)).
- Shall receive from the owner or operator of each facility an emergency and hazardous chemical inventory form (Section [11022](#)(a)).
- Shall respond to a request for Tier II information no later than 45 days after the date of receipt of the request (Section [11022](#)(e)).
- May commence a civil action against an owner or operator of a facility for failure to provide information under Section [11003](#)(d) or for failure to submit Tier II information under Section [11022](#)(e)(1) (Section [11046](#)(a)(2)(B)).

C. Additional LEPC Responsibilities

- Shall appoint a Chairperson, an Information Coordinator, and establish rules by which the committee shall function (Section [11001](#)(c)). Rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, and response to such comments by the committee.

Other considerations that the LEPC should make in rulemaking are:

- Term of office
- Removal from the LEPC
- Authority of the LEPC
- Immunity for LEPC Members
- Shall notify the SERC of nominations for changes in the LEPC.
- The LEPC shall notify the SERC of address changes for LEPC chairpersons.
- Shall evaluate the need for resources necessary to develop, implement, and exercise the emergency management plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources (Section [11003](#)(a)).

- Shall annually publish a notice in local newspapers that the emergency management response plan, MSDS, follow up release notifications, and inventory forms have been submitted (Section [11044\(b\)](#)).

D. LEPC Structure

1. Membership

As prescribed under Section [11001](#) of EPCRA, as a minimum, the LEPC shall include representatives from the following groups or organizations:

- Elected state or local officials
- Emergency medical personnel
- Fire fighting
- Health officials
- Emergency management personnel
- Law enforcement
- Community groups
- Local environmental groups
- Transportation personnel
- Broadcast and/or print media
- Hospital personnel
- Owners and operators of covered facilities

A single member may represent more than one of the above groups or organizations. Likewise, a group may be represented by more than one member. Ideally, members should be interested in emergency programs and community right-to-know activities. Members who do not have a background in hazardous materials should be encouraged to attend a hazardous materials awareness course.

2. Appointments

The LEPC shall appoint a Chairperson and may appoint a vice-Chairperson and other officers. A term of office should be set, but may vary in length according to the needs of each LEPC. The Chairperson can be any LEPC member.

Some LEPCs have chosen political leaders; others have selected chairpersons from emergency management, environmental groups, industry, or civic organizations. Important factors to consider are the leader's availability, credibility, management skills, commitment to the program, and respect from other LEPC members and the community.

EPCRA requires the LEPC to appoint an Information Coordinator. The Information Coordinator's job is to process requests from the public for information under Section [11044](#), including Tier II information under Section [11022](#). The Information Coordinator can also assist other committee members. Positions not required by law, but which have proven useful are: Vice-Chairperson, Secretary-Treasurer, and Chairpersons of standing committees (See [Appendix C](#) for sample position descriptions).

Involving individuals who have expertise in areas of LEPC concern as at large members can be very effective. Although not official members, they can expand the LEPC knowledge base significantly. These individuals need not be carried on official LEPC membership rosters.

The SERC is responsible for maintaining a listing of LEPC memberships. The SERC provides this information to the public, industry, federal agencies, and other state agencies and states. It is therefore important that your LEPC membership is current and the SERC is kept abreast of all membership changes (See [Appendix M](#) for information about updating your LEPC membership information).

3. Subcommittees

Dividing the work among subcommittees can facilitate planning and data management. Subcommittees allow members to specialize and help the process move forward more quickly, because the LEPC can work on several projects at one time. The appointment of a subcommittee chairperson may ensure that work progresses efficiently.

The number and type of subcommittees that an LEPC creates depends solely on the needs of the LEPC and its members. Subcommittees may be formed and disbanded as occasions arise to accomplish initial and on-going tasks. Subcommittee membership need not be limited to LEPC members. The LEPC is encouraged to invite persons from various sectors of the jurisdiction for additional input and enhanced expertise. In determining the type and number of subcommittees to establish, the LEPC should examine a number of factors regarding current LEPC status and future expectations and goals. For example, LEPC members should try to answer the following questions:

- What are the goals of the LEPC this year?
- Do certain topics require much discussion or research?
- Is it necessary to establish subcommittees?
- Are there enough people, expertise, and leadership among LEPC members to maintain subcommittees?

On larger LEPCs, subcommittee chairpersons may sit on an Executive Committee with the LEPC Chairperson. The LEPC might appoint subcommittees for the following:

- gathering and reviewing existing community and facility emergency plans annually
- coordinating emergency response capabilities of LEPC member organizations
- checking existing response equipment in the community
- identifying financial resources
- coordinating with other LEPCs and the SERC
- conducting a hazard analysis
- managing and providing information for citizens
- providing information to facilities
- promoting public awareness of EPCRA, community chemical hazards, and emergency response expected from the public.

Suggested subcommittees for the LEPC are:

1. A Planning Subcommittee, whose responsibilities may include:
 - developing and assisting in the revision of the hazardous material response portion of the emergency operations plan
 - establishing a vulnerability zone determination methodology
 - reviewing the site-specific Hazardous Materials Response Plans submitted for each facility with EHS's

- reviewing the LEPC plan annually.
2. A Public Information Subcommittee, whose responsibilities may include:
 - writing and publishing public notices
 - establishing an information retrieval system
 - performing citizen and neighborhood outreach to inform them of plans and other information that is available
 2. A Training and Exercising Subcommittee, whose responsibilities may include:
 - conducting a training needs assessment
 - requesting training grants to provide needed training
 - coordinating training programs
 - establishing an exercise schedule.

Once an assessment has been done by the LEPC and basic subcommittees have been formed, the LEPC may desire to create additional subcommittees to respond to expanded needs / ideas generated from the current LEPC membership. Some examples include:

1. An Executive Subcommittee, whose responsibilities may include:
 - appointing chairpersons for each subcommittee
 - developing LEPC long-term goals
 - tending to LEPC member needs;
 - reviewing LEPC membership terms and soliciting volunteers to fill vacancies
 - being familiar with state, local, and federal laws which impact the hazardous material planning process developing a work plan with timetables for the other subcommittees.
2. A Resource Development Subcommittee, whose responsibilities may include:
 - researching the community's resources for emergency response (e.g., various types of equipment, facilities, and expertise available)
 - identifying alternative resources upon which the community may draw in time of emergency or disaster
 - updating the local Resource inventory
 - identifying other volunteer or in-kind assistance contributions (e.g., private sources such as local business / industry, non-profit agencies, etc.), which may be used for various types of response.
3. An Emergency Response Subcommittee, whose responsibilities may include:
 - developing emergency response procedures for local government personnel that may be utilized in hazardous materials responses
 - establishing local Incident Command System (ICS) procedures to strengthen and coordinate local government emergency response.
4. A Finance Subcommittee, whose responsibilities may include:
 - management of the LEPC budget
 - examining and recommending the use of funds.
5. A Business / Industry Outreach Subcommittee, whose responsibilities may include:
 - developing initiatives that will encourage active participation by the community's commercial businesses and industrial facilities.

Updating reports on Sub- Committee meetings can be made at the regularly scheduled LEPC meetings.

E. By-laws

Rules or by-laws for the LEPC should be established as set forth in [EPCRA Section 11001](#). The by-laws should include the following minimum provisions:

- Public notification of committee activities;
- Public meetings to discuss the emergency plan
- Public comment and response to these comments
- Distribution of the emergency plan;
- Election of officers.

F. Meetings

The frequency of LEPC meetings is not mandated. In order to keep the LEPC functioning effectively, regularly scheduled meetings which address diverse issues, and work toward progress on key concerns are essential. Circumstances may change frequently, along with key phone numbers and contacts.

Regular meetings also offer the opportunity for the LEPC to broaden its role in the community. A meeting of the LEPC may be subject to the State Open Meetings Act. LEPCs should confer with their county attorney on the requirements of Open Meetings, as appropriate. Meetings should follow an organized format. Robert's Rules, or some other guidelines, can be utilized.

A well-planned agenda is an important tool for conducting effective meetings. The agenda should identify specific issues to be discussed at the meeting. If time constraints are a factor, each agenda item may be assigned a time limit. The key to this strategy is adhering to the time limit assigned for each issue. Each committee member should be sent, if feasible, a copy of the agenda one-to-two weeks prior to the scheduled meeting. Additionally, send any information pertinent to the upcoming meeting along with the agenda. This way, members can prepare themselves for the meeting in advance and meetings should be more productive.

Again, LEPC chairpersons should determine how requirements under State Meeting rules apply to LEPC meetings. Posting of meeting times and locations, oral public comments, and recording of meeting minutes may all be subject to State rules.

LEPCs are encouraged to seek topics, speakers, invitations from facilities and response organizations and opportunities to expand knowledge from a wide variety of sources.

While LEPCs should strive to establish a regularly scheduled meeting, LEPCs can also benefit from moving meetings to different locations and times. Some LEPCs meet at industry sites where a regular meeting is held, followed by a tour of the site's operations. This has proved to be a very successful LEPC activity for those LEPCs who have embraced the facility visit approach. Additionally, meetings may be held alternatively during the day and evening to accommodate the needs of committee members and the interested public.

G. Administration

LEPCs are challenged with having to administer a program with little or no budget (in many cases), and no fixed facility provided to work from. Despite this, they are required by law to respond to public inquiries about hazardous chemicals in their communities within a reasonable amount of time, no later than 45 days. They can accomplish this through efficient record keeping and using suitable work space

provided by government or industry members on the committee. Co-locating the LEPC with the Emergency Management Agency office, Regional Planning Commission, a local fire or police department, can be beneficial to each organization.

1. Maintenance of Records

At a minimum, LEPCs should maintain the following records:

- Copy of local emergency management plans and pertinent annexes
- Material Safety Data Sheets (MSDS) or information on where to obtain them
- Initial and follow-up hazardous chemical spill release reports;
- Records of LEPC and committee meetings
- LEPC membership list
- Tier II reports for covered facilities.

2. Information Resources

The EPCRA law has existed for over ten years. During this period, the resources available to the LEPCs have increased greatly. Today, assistance is available from all levels of government and from industry in various media formats. The good news is, that with the exception of some computer software, most of this information is available free to LEPCs. See [Appendix G](#) for an extensive listing of resources available to LEPCs.

H. Public Inquiries and Awareness

EPCRA requires LEPCs to establish procedures for receiving and processing requests from the public for information under Section [11044](#) within 45 days after date of receipt of the request. This includes responding to requests for Tier II information under Section [11022](#).

We have seen that EPCRA was specifically written with the citizens in mind. It is based on the principle that the more known about hazardous chemicals in the community, the better prepared the community will be to manage these potential hazards and to improve public safety and health. According to a national LEPC survey conducted by George Washington University in 1994, LEPCs generally receive few requests for data submitted by industries. There appears to be minimal public interest in the data generated under EPCRA. Therefore, LEPCs must strive to devise more creative ways to disseminate and interpret information on chemical risk to the public. [Appendix H](#) provides ideas on how to conduct awareness projects for the public.

I. Funding LEPC Activities

When Congress passed EPCRA, it did not provide funding for LEPCs. In 1991, Vermont established, in statute, a fee structure for storage of hazardous materials by facilities. These fees were used to provide a yearly \$1,500 allotment to the LEPCs to be used in support of LEPC activities. The cost of implementing EPCRA at the LEPC level will vary, depending on the extent of program development, as well as other factors. Communities have found a wide range of solutions to the funding problem.

Examples of some can be found in [Appendix D](#).

J. Maintain a Healthy LEPC

Research shows that the most successful LEPCs have the following attributes:

- they have clearly defined goals
- members are trained in the law and know what is expected of them
- the right people with responsibilities and interests from broad-based community

- representation (not dominated by one segment)
- are appointed members are committed and interested
- feel useful and believe they are helping the community;
- have been given tasks according to their interests and expertise
- have been given challenging tasks
- are recognized for their contributions
- have a chance to develop their own skills.
- they have packaged themselves as to their purpose and value and sold this package to the executive level to gain its support
- they maintain a working relationship with the state level agencies responsible for the program, and with their peers in other districts
- meetings are scheduled at regular, convenient times
- the meetings adhere to the agenda and are concerned with common interests
- they have strong leadership and designated staff.

SECTION IV: REPORTING REQUIREMENTS FOR FACILITIES WITH HAZARDOUS MATERIALS

A. What Hazardous Materials are subject to regulation?

There are five groups of chemicals subject to reporting under the [Emergency Planning and Community Right-To-Know Act \(EPCRA\)](#) and the Risk Management Plans (RMP) under the Clean Air Act of 1990 (112R). Some chemicals appear in several of these lists. These lists are:

- EXTREMELY HAZARDOUS SUBSTANCES (EHSs)
- HAZARDOUS SUBSTANCES
- HAZARDOUS CHEMICALS
- TOXIC CHEMICALS
- LIST OF TOXICS AND FLAMMABLES

Each of these is described in detail in [Appendix E](#).

B. Hazardous Chemical Inventory Reporting

1. General

There are fixed facilities in almost every county which use, produce, and/or store hazardous chemicals. LEPCs need to be aware of all the facilities in their district, and especially the ones handling EHSs. These facilities may be privately or government owned and all may be subject to some provisions of the law. Federal facilities also must comply with the provisions of EPCRA.

2. Hazardous substance inventory reports

a. Emergency Preparedness Phase

- (1) Identification of facilities subject to Special Planning Requirements:

- Emergency planning letter submitted to the SERC and the LEPC when the facility has sufficient EHS's to warrant reporting.
 - All facilities must submit information about the types and amounts of chemicals present if requested by the fire chief or the LEPC.
- (2) Annual Chemical Inventory Reporting
- Covered facilities must submit Tier Two forms to the SERC, LEPC, and to local Fire Departments (by March 1 of each calendar year)
 - If requested, covered facilities must submit MSDS's to the above agencies.
- (3) Annual Toxic Chemical Release Reporting
- Covered facilities must submit written Toxic Chemical Release Inventory Form R (TRI) by July the 1st of each calendar year to EPA Headquarters and to the SERC.

b. Emergency Response Phase

Spill or Release Reporting by the Covered Facilities or Transporters

- Covered facilities or transporters must make immediate notification to an emergency 24-hour phone number designated by each LEPC, the SERC, and the NRC. Written follow-ups must be filed with the SERC and LEPC. See [Appendix E](#) for a detailed description of reporting.

C. Risk Management Programs [Clean Air Act]

Section 112R

Important provisions in the 1990 amendments of the Clean Air Act advance the process of risk management planning. The amendments include specific provisions addressing accidental releases of hazardous chemicals. On June 20, 1996, EPA promulgated rules and guidance for chemical accident prevention. These rules include requirements for sources (facilities) to develop and implement risk management programs that incorporate three elements: a hazard assessment, a prevention program, and an emergency response program. These programs are summarized in a risk management plan (RMP), which was to be submitted to EPA by June 21, 1996.

It is important for LEPCs to be familiar with these federal rules since they will clearly be affected by them. See [Appendix E](#) for a detailed description of reporting requirements.

As a minimum, LEPCs can expect to get involved in the following areas of the RMP rule:

- Emergency Response Program of the final rule, which requires the owner or operator of a covered facility to provide the name and telephone of the local agency with which the facility emergency response plan is coordinated. Facilities may have approached LEPCs with requests for the mentioned coordination. LEPCs should familiarize themselves with those emergency response plans.

- LEPCs should make a point of reviewing at least the executive summary of all the risk management plans submitted by facilities within their LEPC planning areas. Not only will you find a short summary of the entire facility plan, but you will read about future changes planned to improve safety.
- LEPCs should review the hazard assessments provided by the facilities. The vulnerable zones may add significantly to the planning efforts of the LEPC. Because of security concerns, these assessments are not included on the Internet. LEPCs should discuss these directly with the facility.

SECTION V: EMERGENCY MANAGEMENT PLAN DEVELOPMENT

A. Minimum Requirements for the Plan

1. State law

Under the federal EPCRA law, each LEPC was to develop an emergency response plan and review it at least annually thereafter. Section [11041](#) of EPCRA states that nothing in EPCRA will preempt any state or local law. Thus, existing State law governs local emergency management planning as long as it meets the requirements of EPCRA.

Prior to the enactment of EPCRA, most State emergency management statutes tasked cities and counties with providing for emergency management planning within their jurisdictions. Local jurisdictions were therefore responsible for integrating the EPCRA planning requirements into existing multi-hazard plans. Under State guidelines, communities develop emergency management plans to meet the response and recovery needs during emergencies involving natural hazards, national security, and technological and man-made hazards.

2. Federal requirements

States in FEMA Region 1 have determined that planning by local emergency management jurisdictions will meet the requirements of EPCRA if it integrates EPCRA requirements into the existing multi-hazard functional plan. A basic emergency management plan and the following suggested annexes that meet state planning standards normally will fulfill the requirement for local emergency planning under Section [11003](#) of EPCRA:

- Annex : Warning
- Annex : Shelter and Mass Care
- Annex : Evacuation
- Annex : Emergency Public Information
- Annex : Resource Management
- Annex : Hazardous Materials Response

3. State / Federal requirements

The LEPC planning envisioned by EPA and the SERC was intended to complement the existing planning that state law already required instead of creating a separate process. In most situations, the LEPC did not develop a separate plan, but assisted local governments in carrying out emergency planning related to hazardous materials. In this capacity, the LEPC is an important ingredient useful to all local responders.

EPCRA requires that each emergency response plan include:

- identify facilities and transportation routes of extremely hazardous substances
- describe emergency response procedures, on-site and off-site
- designate a community emergency coordinator and facility coordinator(s) to implement the plan
- outline emergency notification procedures
- describe methods for determining the occurrence of a release and the probable affected area and population
- describe community and industry emergency equipment, and facilities, and the identity of persons responsible for them
- outline evacuation plans
- describe a training program for emergency response personnel (including schedules)
- present methods and schedules for exercising emergency response plans to emergency medical personnel, fire service, and law enforcement agencies.

B. Hazards Analysis

As you will notice while reading the criteria for developing a hazardous materials response annex, some of your key tasks will be to identify facilities containing extremely hazardous substances or to identify transportation routes likely to be used for the transportation of these substances. A hazard analysis will help you identify these and other hazards in your community.

Planner should try to answer the following questions:

- What are the major chemical hazards in our community?
- How can we determine the area or population likely to be affected by a release?
- What emergency response resources (personnel and equipment) does our community need?
- What kind of training do local responders need?
- How can we help prevent chemical accidents?

The hazard analysis process can assist local planners in answering these and other important planning questions. See [Appendix I](#) for more details on conducting an analysis.

SECTION VI: HAZMAT RESPONSE OPTIONS

A. Local Government Response to Hazardous Substance Incidents

1. General

Both federal and state statutes indicate the person responsible for the spill must respond and remove the hazardous materials. Local governments, however, must be prepared to implement appropriate notification and response actions in order to save lives and property during a spill involving hazardous materials. The capabilities to do this vary greatly; however, state and federal resources are available to assist local governments.

2. Local response

a. Firefighters and HAZMAT teams

Most jurisdictions assign the responsibility of hazardous substance spills response to the local or district fire department. Proper training and equipment necessary for hazardous substance response is costly in manpower and dollars, so capabilities varies considerably throughout Vermont.

A cautionary approach is taught to emergency responders whereby they should recognize immediately whether their team has the proper training or protective equipment to handle the incident. Vermont has established a special HAZMAT team which can respond to incidents where general firefighters cannot at the request of the incident commander.

The maintenance of this team is costly. Vermont utilizes Tier II fees collected from businesses which use, store, transport, or generate hazardous materials in order to fund this specialty team. These State hazardous substance experts can be called in to provide supplemental technical advice to local responders upon request.

b. Incident Command System (ICS)

Under 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, VOSHA requires the use of the Incident Command System (ICS) by private organizations responding to hazardous substance spills. EPA's 40 CFR 311 refers response actions and related worker safety and health for state and local employees to the VOSHA citation.

The designated, or local senior emergency response official on-scene, is usually the Incident Commander (IC). State and federal On-Scene Coordinators (OSC), if applicable, are expected to work within the Incident Command System at all incidents, and are considered to be resources for the IC.

c. HAZMAT contractors

Some jurisdictions have contracted with private industry for the provision of emergency response or remediation services at hazardous substance spill sites. If the jurisdiction is willing to bear the cost of these contracts, they should arrange for them prior to an incident, and incorporate these contracted services into the local emergency management plan.

Many states maintain a contractor database of companies that have requested to be listed as providers of various HAZMAT services within the state. Although they usually do not license, certify, recommend, or otherwise regulate these vendors, the state may be able to provide a list of contractors.

B. Reimbursement to Local Governments for Emergency Response to Hazardous Substance Incidents

[LEPCs can be reimbursed for expending any funds in a hazardous materials Incident as stated in 20VSA Chapter 1.](#) It may also be useful for them to know about the following program. Section 123 of CERCLA authorizes EPA to reimburse local governments for expenses incurred in carrying out temporary emergency measures in response to hazardous substance threats. These measures must be necessary to prevent or mitigate injury to human health or the environment from a release or threatened release of a hazardous substances, pollutant, or contaminant.

This specific program is called the Local Governments Reimbursement (LGR) Program. Through this program, EPA has reimbursed local governments for releases from transportation accidents, dumped wastes, tire fires, and contamination from drug labs. Release of oil or oil-related products are not covered, unless the oil is mixed with a hazardous substance. For a fact sheet on this program, or to obtain an application for reimbursement, call the EPCRA hotline.

SECTION VII: EXERCISING THE PLAN AND EXERCISE EVALUATION

EPCRA requires each LEPC plan to present methods and schedules for exercising emergency response plans to emergency medical personnel, fire service, and law enforcement agencies. Each LEPC, therefore, must develop and conduct an exercise to test and validate the various plan sections which relate to the local agencies, departments, and organizations within the district to satisfy exercise requirements. The LEPC must decide what objectives to test, select the type of exercise, the basic scenario, the participants, and when to conduct the exercise.

The LEPC should appoint an Exercise Design Team to actually develop the exercise, including the scenario, messages, incident site, and control measures. The Team should consist of individuals experienced with the functions of the organizations, agencies, and facilities involved in the exercise. One member should be designated as Team Chief or Leader and be responsible for submitting appropriate progress reports to the LEPC.

The Team may want to meet initially with the Exercise Training Officer for [Vermont Emergency Management](#) to seek guidance and to ensure that exercise directives and procedures are understood. Obviously, the local Emergency Management Officer will also have a major impact and input into this process.

The LEPC should provide the SERC notice of the exercise. This permits the State to participate, as appropriate. There are various courses, exercise guidance, and evaluation documents available to assist the LEPC with exercises. The primary federal guidance documents that can be obtained are:

- FEMA's CHER-CAP Hazardous Materials Exercise Evaluation Manual
- NRT-2: Developing a Hazardous Materials Exercise Program

An LEPC can obtain a copy of each of these from the Vermont Emergency Management Office.

A. Exercise Development Suggestions

Utilize the training and experience of all representatives of the LEPC and of others in the community in the planning of the exercise. The LEPC should start planning many months prior to the expected date of the exercise to determine the type, scale, and objectives of the exercise.

Appoint an Exercise Design Team and provide them guidance on what type of exercise the LEPC wishes them to develop. Have the Team Leader provide the LEPC periodic briefings and identify any needs or requirements the LEPC should know. Note: The Team members should not participate directly in the exercise as players, but should serve as Controllers during the exercise. Arrange for a meeting between the Team and the Vermont Emergency Management Office for guidance to insure the exercise meets all applicable State planning and exercising requirements. Insure that all participating departments, agencies, and organizations:

- are aware of the exercise
- wish to participate
- receive general information on the exercise
- know what will be expected of them during the exercise.

The LEPC may wish to schedule pre-exercise training and/or drills to assist individuals or organizations prepare for the exercise.

B. Exercise Design Course, Review of Exercises, Credit

The [Vermont Emergency Management](#) Office periodically teaches a FEMA certified course in designing, conducting, and evaluating exercises. Interested individuals can contact their Vermont Emergency Management Training Officer for course information, dates, and applications.

Vermont Emergency Management will normally provide an evaluator for exercises conducted in communities. However, the LEPC should provide sufficient evaluators, who are

qualified by training and/or experience to conduct an evaluation of the objectives they will be assigned to review.

LEPCs may request exercise credit for their local emergency management office for an actual incident which occurred in, or affected, the district. This credit, if granted, may be used to satisfy the annual exercise requirement for emergency management offices. When the LEPC conducts a Full-Scale exercise, there should be an announced public critique. This critique should be scheduled by the LEPC, and could be done in conjunction with another LEPC function, such as a LEPC meeting, or it could be scheduled separately.

Critiques and debriefings are important to the participants as well as the LEPC. The participants want to know what the evaluator(s) observed and the recommendations they have. Debriefings should be conducted immediately following the exercise, usually at the site while all participants are still present. Critiques bring the participants together and allow them to listen to the comments of the evaluators as they critique all participating organizations. A public critique is required after each full-scale exercise.

Finally, the LEPC should assemble the various heads of the participating agencies, departments, groups, or organizations to discuss the exercise. They should discuss how the exercise actions met or conflicted with procedures outlined in the plan. They should identify any plan shortcomings or errors in their areas and what changes, if any, to the plan are in order. Any changes recommended will be presented to the LEPC, and should be reviewed for possible inclusion in the next plan update.

SECTION VIII: LEPC TRAINING AND EDUCATION PROGRAMS

A. General

EPCRA requires that each LEPC plan describe a training program for emergency response personnel (including schedules). These programs should be made available for all emergency response, management, and facility personnel. Additionally, the LEPC should train its own members in their respective areas of responsibility. It should also provide assistance to the Community Emergency Management Office in training such groups as the EOC staff, officials, and others regarding hazardous materials plans, exercises, and other activities.

B. Program Considerations

The LEPC must:

- determine what training needs exist,
- identify personnel to be trained,
- obtain funding,
- identify training facilities
- identify instructors available to best meet and accomplish the training requirements for its community.

The LEPC should consider the implementation of a training and education program for the district which includes training already scheduled and conducted by the Community Emergency Management Office, the various first response agencies and organizations, as well as other training activities relating to hazardous materials preparedness and response. The LEPC should coordinate with the various district associations (Fire, EMS, Law,

medical), to combine training efforts. Combining training sessions has many benefits, such as:

- attracting more participants
- cost savings
- training more people with fewer instructors
- the students become acquainted with other individuals with their organization's roles and responsibilities.

C. Organization for Training

Each LEPC will have to determine how the district can best organize, set-up, and conduct a productive training and education program. Each district is different, and each LEPC should develop a program which benefits its people in accordance with State and Federal training standards.

The following is one way a LEPC might approach the establishment of the training and education program. This concept is offered to help LEPCs design a program to fit their situation.

1. Appoint a Training and Education Sub-Committee. This group should contain, at least, representatives from the Fire, Law Enforcement, Facility, EMA, and EMS organizations. The Sub-Committee might be chaired by the Vice-Chair of the LEPC. Their task is to:
 - identify what the district's training needs
 - what training is currently available
 - what the training goals are of the various organizations
 - present their recommendations to the entire LEPC.

The LEPC should consider its direct and indirect roles in training and education within the District.

Direct role

The LEPC should:

- Provide appropriate orientation and training of the LEPC's members, explaining their duties and responsibilities.
- Identify training requirements of the various agencies, organizations, departments, and groups within the district that they represent so they can consider how to meet these needs.
- Identify the training goals for the various organizations, agencies, departments, and groups within the district.
- Survey the district to identify the current training levels of the various agencies, departments, organizations, and groups within the district to accurately estimate the type, cost, and availability of training needed.
- Identify training programs available to support these requirements, including training to be provided by the local instructors, state and federal agencies, and the private sector.
- Provide training and/or orientation for public officials, first response type organizations, churches, schools, service organizations, and others.
- Provide a schedule for training activities for the current year and at least a rough outline of plans and goals for the following year.

- Provide funding support for training through the use of LEPC training funds and by obtaining additional funds from grants, private or industrial sources.
- Provide a reference library containing publications, audio-visual material, and other items for training use. It should be at a location available during normal working hours. A current listing of reference and training documents available should be provided to the various emergency response organizations, agencies, and departments.

Indirect role

The LEPC should:

- Assist the leadership of the various response and support organizations, within the district to meet training standards prescribed for their personnel.
- Ensure that these employers are aware of training requirements and standards, and that they maintain appropriate training records for their personnel.
- Assist these organizations by obtaining training funds for their use by applying for various grants under programs, such as SERC and HMEP grants.

The LEPC role should include the following:

- Establish liaison, through the appropriate LEPC members, with the various agencies, departments, organizations, and other groups (amateur radio, community groups, and others) within the district to
 1. determine their training interests;
 2. to discuss training requirements, and
 3. determine needs and goals for the groups.
- The LEPC Training and Education Sub-Committee should keep the LEPC's membership advised of their activities and findings. Regularly discuss training needed, planned courses, and requests from the groups.
- The LEPC could create and make available a consolidated training schedule of the district on a quarterly or bi-annual basis. They may be able to assist agencies with training records for the individuals in an agency.
- Assist all emergency response organizations to obtain training information through Fire Associations, EMA Director's office, the SERC, and other State, Federal, and private sources. The LEPC might decide to utilize its own funds to purchase training materials, aids, and/or equipment for various organizations, agencies, departments, or groups.

D. Continual Training and Education Programs

The various training and education programs conducted or arranged by the LEPC for EMA and LEPC staff and officials should be considered as on-going programs based on the assessment of the need.

The Training and Education Sub-Committee should carefully review training already provided, assess current/future needs and develop their programs accordingly.

The Training Sub-Committee should be familiar with 29 CFR 1910.120(e) which requires initial, management and supervisor, emergency response, and refresher training.

Scheduling of Training

The LEPC should develop, maintain, and distribute a schedule of all Sub-Committee meetings and training sessions hosted or conducted by the LEPC or others. (All training which could be of interest to LEPC members, or other individuals, groups, departments, organizations, or agencies affected by hazardous materials matters should be included).

The LEPC should also request that other departments, organizations, and agencies within the district provide them with copies of their training schedules. This procedure will keep the LEPC informed of on-going training programs within the county and would in turn help the LEPC recognize how the organizations are training and who may need attention and/or assistance from the LEPC.

Summary

Training of all personnel is important, but the training of individuals that must respond to a hazmat incident is critical. This is not only because of concern for the individual responder's health and welfare, but for the communities as well. All emergency responders must be properly trained and equipped if they are to successfully handle chemical accidents. The LEPC has a responsibility to coordinate, support, and assist the various agencies, departments, organizations, and groups with their training programs.

A P P E N D I C E S

Appendix A: Planning Principles and Perils: A Guide to Effective Planning

EMERGENCY RESPONSE PLAN DEVELOPMENT

Section 1. Minimum Requirements For The Plan

Under the federal law each local emergency planning committee (LEPC) is required to develop an emergency response plan and review this plan at least annually thereafter. In developing this plan, the local committee should evaluate the available resources for preparing for and responding to a potential chemical accident, or an act of nature which involves the spillage of chemical materials into the environment. The plan should:

- Identify facilities and transportation routes of EHSs and other chemicals
- Identify additional facilities which could be subjected to additional risk due to their proximity to facilities subject to the requirements mentioned above, such as hospitals, nursing homes, schools, prisons, or others
- Describe emergency response procedures for handling chemical releases at a facility, both onsite and off-site. These procedures should be followed by facility owners and operators, local emergency responders, and medical personnel responding to the incident.
- Designate a community emergency coordinator and facility coordinator(s) to implement the plan.

- Develop reliable, effective, and timely notification procedures for facility emergency coordinators to convey information to community emergency coordinators and to the public, that a release has occurred.
- Describe methods for determining the occurrence of a release and the probable affected area and population.
- Describe community and industry equipment available for response operations, and identify the persons responsible for the equipment.
- Define training programs for emergency response personnel, and the schedules of training for emergency response and medical personnel.
- Present methods and schedules for exercising emergency response plans to emergency responders, emergency medical personnel, fire service, and law enforcement agencies.

The plan thus developed shall be reviewed at least once a year, or more often as circumstances within the community or facilities changes.

Section 2. Reviewing And Testing The Local Emergency Planning Committee Plan

The LEPC Plan is required to be reviewed at least once a year. Most planners agree that the best way to review a plan is to test, or exercise, it. There is no requirement that the plan must be tested each year; however, the LEPC is required to establish a schedule for testing the plan. Obviously, the level of review and testing is dependent on many factors, including cost, personnel required, and other reasons. Each LEPC, in conjunction with the [Vermont Emergency Management](#) Office, should determine the level of review and exercise to be conducted each year. In testing the Plan, the following areas should be evaluated to represent the minimum requirements for qualification as an exercise. In addition, jurisdictions are encouraged to test areas particular to their part of the plan. Reviewers of the Plan should examine the Plan for the following items:

- Does the Plan attempt to reduce the unknown in a situation.
- Are the aims of the Plan to evoke appropriate actions.
- Is the Plan based on what is likely to happen.
- Are the basic tenets of the Plan based on knowledge of actual problems and solutions or upon myths and misconceptions.
- Does the plan operate as a continuous process.
- Does the plan focus on principles rather than concrete details.
- Does the plan overcome resistance in thinking and established methods of response because of limitations of money, time and effort.
- What parts of the Plan are an educational activity.

Section 3. Characteristics of a Good Plan

A good plan should have the following characteristics:

- It should be simple.
- It should provide for accomplishing the mission.
- It should be flexible.
- It is based on facts and solid assumptions.
- It provides for continuity.
- It provides for the use of existing resources.
- It delegates authority while maintaining necessary control.
- It provides for the necessary organization.
- It coordinates all elements of the response.
- It establishes relationships and responsibilities.

Section 4. Common Pitfalls in the Planning Process

- Lack of integration of emergency planning into the facility's total management system.
- Lack of understanding about the different dimensions of emergency planning.
- Managers not involved.
- Top management inflexibility.
- Top management expects immediate results from the planning process.
- Confusing financial projects.
- Planning responsibility wrongly placed in a separate department rather than coordinated through several departments.
- Too much is attempted too soon.
- Failure to operate by the planning process action plan.
- Lack of broad input into the planning process.
- Failure to see the big picture.

Section 5. The Top Ten Common Weaknesses of Disaster Planning

- No systematic collection of information.
- No systematic dissemination of information.
- No provision for establishing on-scene command or management.
- Not able to achieve inter-organizational coordination.
- Specific responsibilities are not described
- Incomplete hazard assessment and analysis.
- The Plan is not exercised.
- No provision for updating or revising the Plan.
- No concern for the users of the Plan.
- Plan is not distributed to agencies involved.

Section 6. Warning Signs of Insufficient Preparedness

- A lack of urgency or priority about emergency planning among management and employees.
- Confusion about roles and commitment to emergency planning.
- Confusion about community roles and responsibilities regarding disaster planning.
- Lack of a viable disaster plan that is part of the daily facility process.

Section 7. LEPC Tasks for Emergency Planning

- Develop a good working relationship between the LEPC and the local fire departments, police departments, emergency medical services, and public works departments.
- Develop a good working relationship between the LEPC and the Local Emergency Management Agency Directors.
- Develop a good working relationship with the Facility Emergency Coordinators.
- Research community capabilities.
- Review, and update, the Resource Management Annex of the local plan.
- Review and suggest revisions to the Communities Emergency Operations Plan.
- Identify all facilities in the district with chemicals of concern.
- Compile information about transportation routes and facilities within the district.
- Identify facility information necessary for planning.

- Perform community outreach.
- Perform a hazards analysis for chemicals of concern at each facility.
- Call together the relevant parties.
- Become familiar with LEPC plan review standards.
- Divide up the work
- Coordinate with other jurisdictions.
- Exercise the plan.
- Get plan signed.
- Submit the plan to the SERC.
- Annually review and update the plan.
- Give Public Notice and hold a meeting.

Appendix B: Emergency Management

Planning Standards and Criteria

The following information is derived from various state planning standards and criteria, and is provided as a reference for developing an Annex for Hazardous Materials Response and Recovery Plan.

Authority and References

- Identifies local, state, and federal authorities providing a basis for carrying out actions in the annex and pertinent references.

Purpose

- Includes a mission or purpose statement that describes the reason for development of the annex.

Explanation of Terms

- Includes a list of acronyms used in the annex and definitions of essential terms.

Situation and Assumptions

- Includes a situation statement describing potential hazards and factors affecting emergency planning and response.
- Provides summary of the local capability to respond to hazmat incidents, and includes assumptions used in planning.
- Identifies local regulated facilities and primary hazard(s) at such facilities.
- Identifies local transportation routes for hazardous materials, including any approved hazardous cargo routes.
- Identifies facilities (special facilities, population support facilities, and population concentrations) that may be vulnerable during a hazmat incident due to their proximity to regulated facilities or a hazmat transportation route.
- Includes a map showing the location of regulated facilities, hazmat transportation routes, and vulnerable facilities.
- Identifies evacuation routes from risk areas surrounding regulated facilities.
- Includes a format for receiving and disseminating essential information regarding a hazmat incident.

Concept of Operations

- Describes the procedures for receiving timely reports of hazmat incidents, and actions taken to mitigate a hazmat incident.

- Includes a hazmat incident classification scheme.
- Describes methods for disseminating incident notification to local emergency response elements.
- Describes methods for determining the area of population affected by a hazmat release.
- Describes methods to determine appropriate protective actions for the public in the event of a hazmat incident.
- Describes procedures for warning the public of a hazmat incident and communicating appropriate protective actions.
- Describes obligations of the responsible party and of local government in the recovery from a significant hazmat incident.

Organization and Assignment of Responsibilities

- Designates and describes responsibilities of the community emergency coordinator required by [EPCRA](#).
- Outlines hazmat response actions to be carried out by local officials, departments, and agencies.
- Outlines response actions expected of regulated facilities and hazmat transporters and responsibilities of other hazmat incident responders.

Direction and Control

- Identifies by position the individual responsible for overall management of emergency planning and response activities.
- Identifies by position the individual(s) responsible for providing direction and control for the response to hazmat incident.
- Describes the interface between the Incident Commander and the Emergency Operations Center.
- Identifies by position the individual(s) authorized to recommend large scale evacuation.

Increased Readiness Actions

- Describes actions for increased readiness.

Continuity of Operations

- Identifies lines of succession for each department head.

Administration and Support

- Describes procedures for requesting assistance from the State.
- Describes local methods of communications during a hazmat incident and identifies local hazmat response resources.
- Describes mutual aid, industry, and contractor resources which may be available for use during the response to a hazmat incident and who, by position, can activate or request those resources.
- Describes who is responsible for ensuring emergency responders receive specialized hazmat training and are equipped with personal protective equipment appropriate to their responsibilities in a hazmat incident.

Annex Development and Maintenance

- Identifies by title the person responsible for maintaining/revising this annex, and provides for a periodic review of the annex.

For a more detailed review of local emergency plans under the provisions of [EPCRA](#), obtain a copy of the **Review of Hazardous Materials Plans (NRT-1a)**, developed by the National Response Team.

CHECKLIST FOR THE REVIEW OF FACILITY EMERGENCY RESPONSE PLANS

YES NO

- ___ ___ A. Designation of the facility emergency coordinator and the alternate
- ___ ___ B. Description of facility emergency warning systems
- ___ ___ C. List of nearby emergency and health personnel
- ___ ___ D. Description of employee training and testing programs as they apply to hazardous materials
- ___ ___ E. List of available response equipment and protective garments
- ___ ___ F. Describe the emergency health treatment procedures for exposure victims
- ___ ___ G. Include notification, facility, and community evacuation and shelter-in-place procedures
- ___ ___ H. Identify transportation means and routes for extremely hazardous substances to the facility
- ___ ___ I. List the names of all companies providing sudden and non-sudden accidental coverage to the facility
- ___ ___ J. List all mutual aid agreements between the facility and emergency responders or public safety agencies.
- ___ ___ Pursuant to 29 CFR 1910.120
 - ___ ___ [i] Pre-emergency planning and coordination with outside parties.
 - ___ ___ [ii] Personnel roles, lines of authority, training, and communication.
 - ___ ___ [iii] Emergency recognition and prevention.
 - ___ ___ [iv] Safe distances and places of refuge.
 - ___ ___ [v] Site security and control
 - ___ ___ [vi] Evacuation routes and procedures.
 - ___ ___ [vii] Decontamination
 - ___ ___ [viii] Emergency medical treatment and first aid.

- ___ ___ [ix] Emergency alerting and response procedures.
- ___ ___ [x] Critique of response and follow-up.
- ___ ___ [xi] Personal protective equipment and emergency equipment.
- ___ ___ [xii] Emergency response organizations may use the local emergency response plan as part of their emergency response plan to avoid duplication.

Appendix C: Sample By-Laws and Rules

MODEL BYLAWS OF THE _____ COUNTY OR DISTRICT

EMERGENCY PLANNING COMMITTEE

Article I

This organization shall be known as the _____ (Regional, County, Tribal) Local Emergency Planning Committee

Article II

The purpose of the LEPC are those set out in [SARA Title III/EPCRA](#) and any other lawful purposes which are assigned to it or permitted by the County, Tribe, or District Commissioners, and/or the State Emergency Response Commission. In keeping with the intent of the [SARA Title III/EPCRA](#) regulations, all activities of the Committee will be conducted in a manner encouraging input and participation from all segments of the community. The LEPC will develop a chemical emergency response and preparedness plan for the planning district and establish procedures for conducting its public information and education responsibilities. The plan shall be reviewed and updated as necessary on a regular annual basis, in accordance with Section [11003](#) of [EPCRA 42USC Chapter 116](#).

The LEPC shall, in addition:

1. Receive and process requests for information from the public;
2. Notify the public of all LEPC meetings or activities;
3. With the information and reports from facilities operating within the jurisdiction of the LEPC, and analysis of the district’s transportation risks, the LEPC will perform a hazard analysis;
4. Establish and maintain a data base of hazardous chemical locations and quantities in the district;
5. Establish and maintain a computerized system of data management;
6. Maintain information on ALL facilities which manufacture or store, EHSs, and include this information within the emergency response and preparedness plan. The LEPC will establish, and notify the public, that all meetings, including sub-committee and ad hoc committee meetings, are open to the public. The LEPC will implement such other and related activities, as may hereafter be legally required by the federal government, or the State Emergency Response Commission (SERC).

The LEPC will make assessments of resources necessary to implement the emergency response and preparedness plan, and make recommendations to appropriate people, agencies, and organizations regarding additional resources needed to implement the plan. The LEPC shall be instrumental in fulfilling the purpose of the Community Right-To-Know laws to increase the protection of the community from exposure to chemicals produced, used, stored and/or transported within the Planning District. Transportation hazards analysis will include those risks to the district from commercial transportation by rail, highway, aircraft, and waters of commerce.

Article III

MEMBERSHIP

Membership will at all times include, at a minimum, representatives of the groups listed in Section 301 of SARA, Title III. This include equal representation of elected state and local officials; law enforcement, emergency management, fire -fighting personnel, first aid/EMS personnel; health personnel, local environmental personnel; hospital personnel, transportation personnel, broadcast and print medial personnel; community groups and owners or operators of local facilities. The members will be nominated by LEPC

and will be approved by SERC OF A GIVEN STATE . Members of the LEPC shall be residents or conduct business in the jurisdictional area of the LEPC. The membership of the LEPC shall consist of OFFICERS and a Staff. The officers shall consist of a Chairperson, a Vice-Chairperson, an Information Coordinator, and a Secretary-Treasurer. The LEPC staff members may be either salaried or volunteer personal. Most LEPC's do not have a pay salaried for the staff.

TERMS OF MEMBERSHIP. The LEPC may request that the SERC appoint members for specific terms of office, or the membership of the LEPC may select their officers by ballot or voice vote at a preselected vote event.

TERMS OF OFFICE. Membership of an LEPC may select the terms of office to be either one or two years. Existing officers may be re -elected to their existing offices if they so indicate a willingness to continue.

THE CHAIRPERSON. The Chairperson shall preside at all meetings of the LEPC unless they cannot be present at an announced meeting. An alternate representative can be named to fulfill the obligation by the existing Chairperson. The Chairperson shall serve as an ex-officio member of all committees, and shall perform such duties and acts as necessary to accomplish the goals of the LEPC. The Chairperson shall be empowered to create such other ad hoc committees as necessary to accomplish the goals of the LEPC.

THE VICE-CHAIRPERSON. Upon the resignation, or death, or on the advice of the Chairperson, the Vice-Chairperson shall perform the duties of the Chairperson. The Vice-Chairperson shall perform such other duties as may be assigned by the Chairperson.

THE SECRETARY-TREASURER. The Secretary-Treasurer in cooperation with the Information Coordinator shall be the custodian of all books, papers, documents, and other property of the LEPC. The Secretary-Treasurer shall attend to the business needs of the LEPC and shall maintain an accurate record of all monies received and expended for the use of the LEPC.

THE INFORMATION COORDINATOR. The LEPC will appoint an Information Coordinator. This person will process requests from the public for information under Section 324, including Tier Two information under Section 312. The Coordinator will assist the Secretary-Treasurer in records management and financial matters. The Information Coordinator will be a non-voting member of all committees of the LEPC.

INACTIVE MEMBERS. Appointed members shall be considered inactive when they have missed more than _____(insert number) consecutive Committee meetings without notification to the Committee Chair or staff office of significant reasons why they were unable to attend the meetings. An annual report listing members declared inactive will be provided to the LEPC membership and the SERC.

REMOVAL OF MEMBERS. The LEPC may ask that the SERC remove a member.

VACANCIES. Any vacancy occurring in the LEPC by reason of resignation, death, or disqualification of a member will be filled by appointment of the Chairperson, or by identification of a qualified replacement and nominated, by vote of the membership to fill the position in which such a vacancy exists. The LEPC Secretary shall submit that person's name, with the recommendation that the person serve the balance of the unexpired term, to the LEPC Membership requesting that they nominate this person to the SERC for appointment to the LEPC.

Article IV

COMMITTEES

Section 1. Executive Committee.

The Executive Committee will consist of Chairperson, Vice-Chairperson, Secretary-Treasurer, and Chairpersons of the four Standing Committees as describe in Section 2. The Information Coordinator shall serve as a nonvoting member of this Committee. The duties of the Executive Committee shall be to coordinate activities of the Standing and Ad Hoc Committees.

Section 2. Standing Committees.

The following Standing Committees shall be established:

(a) Right-To-Know Committee.

This Committee shall be responsible for the formulation of all policies and procedures concerning the public's Right-To-Know program; the formulation of all chemical release reporting procedures the establishment of trade secret protection procedures, and the formulation of all record keeping and information dissemination procedures for the LEPC.

(b) Public Education and Information Committee

This Committee shall be responsible for reviewing the public alert and notification program; public relations with affected communities and the public at large; all publicity of the LEPC; development of public education and information program.

(c) Hazardous Materials Facilities Liaison Committee

This Committee shall be responsible for procedures for identification and communication with affected facilities. This Committee shall work with the

Emergency Response and Resources Committee and with affected facilities to review and help the local emergency management office(s) test a hazardous substance emergency response plan for the planning district as required by law.

(d) Emergency Response and Resources Committee

This committee will work with the Hazardous Facilities Liaison Committee and with existing emergency response organizations in jurisdictions with the planning district to review and help local emergency management offices(s) test a hazardous substance emergency response plan for the planning district as required by law. This Committee shall review existing federal, state, and local plans for the purpose of coordination with the LEPC planning process.

Section 3. Ad Hoc Committees.

The Chairperson may create Ad Hoc Committees as necessary to perform the functions of the LEPC. Chairpersons of Ad Hoc Committees shall be appointed by the Chairperson of the LEPC.

Section 4. Chairperson of the Standing Committees.

The Chairperson of the Standing Committees shall be nominated and elected by their respective committees. The election shall be by ballot, except that when there is only one nomination for each office, election may be by voice vote.

Section 5. Membership in Standing Committees.

All members must volunteer to serve on at least one Standing Committee and shall not serve on more than two Standing Committees. Final membership of the Standing Committees shall be determined by the Chairperson after consultation with the Executive Committee to ensure that all Committees have sufficient manpower to carry out their assigned tasks.

Section 6. Meetings.

Meetings of the Standing and Ad Hoc Committees may be called by the Chairperson of the LEPC or the Chair of the Committee as deemed necessary. All meetings are open to the public. LEPC meetings are typically held on a once a month basis. This monthly meeting format is so stated in the bylaws.

(a) Regular meetings.

The committee shall meet at least semi-annually.

(b) Special meetings.

The Chairperson may call such special meetings as may be deemed necessary to carry out the duties of the Committee. Upon the written request of at least ____ (insert number or percentage) members the Chairperson shall call a meeting with ten (10) days.

(c) Hearings.

The LEPC shall hold such public hearings or forums as it may deem necessary and desirable at such time and places as may be determined by a majority vote of the Committee. At least one such public hearing, or forum, shall be held each year for the purpose of discussing the Committee's emergency plan with the public, receive and respond to the public comments of the presented plan.

Section 7. Quorum.

A quorum shall consist of a majority of Committee members, excluding those members declared to be inactive. A quorum shall be required to transact business.

Section 8. Agenda.

Any member may request that the Chairperson place an item on the meeting agenda. If the Chairperson should decline to do so, a member may have such item placed on the agenda by submitting it in writing to the Chairperson with support signatures of _____(insert number) of the membership.

Section 9. Rules of Order.

The deliberations of all meetings of the LEPC and its subcommittees shall be governed by Robert 's Rules of Order, Newly Revised.

Section 10. Notice of Meetings.

Notice of time, date, place of meeting, and agenda items to be considered at each meeting shall be given in writing to all members at least two weeks prior to each meeting by the staff or Chairperson. An annual notice of the regular meeting schedule of the LEPC shall be published in a newspaper with regular circulation in the LEPC District in accordance with [SARA, Title III \(EPCRA\)](#) This notice shall specify the meeting designated specifically for receipt of public comments on the emergency plan.

Article V

MISCELLANEOUS PROVISIONS

Section 1. Fiscal year.

The fiscal year shall be considered to run in conjunction with the Vermont State Fiscal Year, from July 1 to June 30.

Section 2. Indebtedness.

All indebtedness incurred by the LEPC shall be approved by the Chairperson before payment by the Secretary-Treasurer.

Section 3. Approval of Bylaws.

These bylaws shall become effective upon approval by a majority by those in attendance at the organization meeting.

Section 4. Disqualification.

Any member who is unable to attend a meeting of the LEPC may notify the Secretary-Treasurer or Information Coordinator. Any member with five or more absences is subject to disqualification at the request of the LEPC to the SERC.

Article VI

AMENDMENTS

Section 1. Amendments.

These bylaws may be amended by a two-thirds vote of members present and voting at any meeting of the LEPC provided that any proposed amendments to these bylaws be submitted to the members in writing at least one week in advance of the meeting. Any member of the LEPC shall have the right to comment on or suggest revisions to the bylaws.

Article VII

RULES

EPCRA requires that the LEPC shall establish rule by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan.

Section 1. Adoption of Rule; Publication of Proposals.

The LEPC may, as necessary and proper, adopt rules of general application governing the execution of responsibilities under EPCRA and related applicable regulations.

Any such rules must first be published in proposed form not less than 10 days prior to final adoption by the LEPC.

Section 2. Method of Initiating Proposed Rule-Making.

Any member of the LEPC may recommend the initiation of proposed rule-making.

Any

proposed rules shall be initially considered by the Executive Committee, unless otherwise decided by the LEPC. If the Executive Committee, by majority vote approves the proposed rule, it shall thereafter proceed to publication as provided in the preceding section.

Section 3. Method of Adopting Final Rules.

Following the expiration of the 10 day comment period, the Executive Committee shall review all public comments and prepare a statement which responds to comments raised and discusses the basis for any appropriate changes to the proposal. The Executive Committee shall present such statement to the LEPC. The LEPC shall then vote on the adoption of the proposed rule. If the vote is favorable, the rule shall take effect immediately upon the time and date the notice of adoption is first published.

Section 4. Notice of Adoption.

Upon adoption of any rule by the LEPC, the Information Coordinator also shall publish the LEPC's response to comments received and any changes to the proposal made in response to such comments. Publication of the final rule shall be in the same manner as that for the proposed rule.

Section 5. Emergency Rules.

In emergency circumstances, the LEPC may adopt rules without prior public notice and comment, provided that no such rule will remain in effect for more than 90 days.

FINAL RULES

PUBLIC ACCESS TO INFORMATION

In accordance with Section [11044](#) of the [EPCRA 42 USC Chapter 116](#), also known as SARA Title III Act, all information obtained from an owner or operator pursuant with EPCRA and any requested Tier Two forms or the MSDS otherwise in possession of the Committee shall be made available to any person submitting a request under this section. If the owner should request the location of a specified chemical not be identified, the LEPC shall withhold that information. All information request to the photocopied by a member of the public, shall be provided at the sole expense of the requestor(s). The cost of such reproductions shall be set by the Information Coordinator, with the approval of the Executive Committee, at a level which will

enable the LEPC to recover all reasonable expenses associated with the processing of the request.

Requests for MSDS's and Other Non-Confidential Information.

Any person may obtain an MSDS with respect to a specific facility by submitting a written request to the Committees Information Coordinator. The facility shall provide the MSDS copy with _____ days of the written request. Any person may request any other non-confidential information concerning a facility which may be held by the

Committee by submitting a written request to the Committee's Information Coordinator.

Requests for Tier Two Information.

Any person may request Tier Two information with respect to a specific facility by submitting a written request to the committee in accordance with the following requirements:

- a. If the committee does not have in its possession the Tier Two information as requested, it shall request a submission of the particular Tier Two form from the owner or operator of the facility subject to the request, provided that the request is from a state or local official acting in his or her official capacity or the request is limited to hazardous chemicals stored at the facility in an amount in excess of the threshold planning quantity.
- b. If the request does not meet the requirements of subsection D1 the Committee may request submission of the Tier Two form from the owner or operator of the facility subject to the request if the request includes a general statement of need.

THIS DOCUMENT , THE CONSTITUTION AND BY-LAWS OF LEPC District _____,
ADOPTED AT THE REGULAR MEETING OF THE LEPC ON THIS _____ DAY OF _____,
_____ YEAR).

LEPC CHAIRPERSON PRESIDENT

DATE SIGNED

Appendix D: Examples of LEPC Funding

1. Volunteers and Donated Services

Much of the LEPCs' work can be accomplished with little or no funding. Committee members often donate time and other resources. Local businesses and agencies have also contributed their services. Some LEPCs have found that volunteers can be a great source of manpower. Senior citizens, for example, have the time to help and their knowledge and experience is invaluable. Prison honor inmates have also been enlisted in LEPC activities with good results.

2. Funding from Local Government

Although LEPCs can accomplish much by using the resources already present in the community, there will still be a need for some funding. Some counties and municipalities have appropriated money from general revenues for this purpose. City governments may also want to consider the possibility of implementing inspection fees for facilities covered by hazardous material reporting requirements to assist with LEPC expenses.

3. Grants

a. General

There are limited state and federal funds available to local emergency planners through grant programs. Authorized by the 1990 Hazardous Materials Transportation Uniform Safety Act, the Hazardous Materials Emergency Preparedness (HMEP) program provides approximately \$5 million a year nationally for emergency response planning and training at the local level. The U.S. Department of Transportation (DOT) administers this program. The funds come from a yearly registration fee required of transporters of hazardous materials in interstate, intrastate, and international commerce. The state share of this federal grant is administered by the [Vermont Emergency Management](#) office.

b. Other Federal Assistance

DHS/FEMA. The Federal Emergency Management Agency (FEMA) also provides funds for local emergency management through its Emergency Management Performance Grant (EMPG). For information about obtaining EMPG grants, contact the Vermont Emergency Management Office. EPA. In June of 1996, EPA published a pamphlet entitled 'Chemical Safety for Your Community—Grant Products You Can Use' (EPA-550-K-96-001). They were mailed to all LEPCs and it can be a useful guide for innovative LEPC grant projects. Order additional copies from the EPCRA hotline.

4. Supplemental Environmental Projects (SEPs)

Once an action has been commenced by EPA against a facility for not submitting a Tier Two Chemical Inventory Report (Section [11022](#)) or emergency release notification (CERCLA Section 103/EPCRA Section [11004](#)), there is an alternative to simply imposing fines on the non-complying facility. Current federal enforcement policy authorizes consideration for mitigating the fines imposed if the offending facility agrees to perform a supplemental environmental project (SEP). Enforcement actions provide an opportunity for the facility to become actively involved in the local planning and response process and to assist the LEPCs in their activities. These agreements are an appropriate way to enforce EPCRA, since the SEPs can be arranged to aid in its implementation. Through the use of SEPs, facilities have:

- provided emergency or computer equipment to the LEPC
- provided training to local emergency or planning personnel
- become active members in the LEPC
- prepared compliance articles developed by the facility, which were reviewed by EPA Region 1 for accuracy, and submitted to trade journals.

5. Industry Donations

Some of the most active funding programs in the country for LEPCs, is where industry is present. As an example, each year, four subcommittees of an LEPC, communications, emergency response, awareness, and transportation, could prepare and submit a budget to the finance subcommittee for review and/or revision. After approval, the budgets are presented to the LEPC for approval. \$1,500 would be provided by the SERC as provided for in [Vermont Statute 20 VSA Chapter 1](#). The remaining balance could be billed to facilities located within the LEPC. This process has been used since 1988 in many areas. In these areas, the process is based on a head count formula where larger plants pay the majority of the donations. The money is used for outreach projects each year (bookcovers, calendars, newspaper ads, media training, fall festival, report card envelopes), installing and maintaining alarm systems, and computer equipment.

If LEPCs incorporate as a non-profit corporation ([501 c](#)) and receive tax-exempt status, this step improves the LEPC's ability to solicit monies from facilities and from the district directly. To provide an indication of what each facility's "fair share" of the industry contribution should be, the LEPC should analyze Tier II forms and prepare a scale of suggested contribution amounts. These voluntary contributions can be solicited by sending a letter to each facility and municipality annually. This money does not include a number of "in -kind" donations of equipment and services that may be given to the LEPC each year.

6. Other Sources

EPA has developed and published booklets titled "Successful Practices in Title III Implementation" that document successes and lessons learned from LEPCs all across the country. From New York to Hawaii, from Florida to Alaska, there are examples of what to do and what not to do when establishing an active LEPC. Contact your Region 1 EPA office for information on these publications. There is no question that funds provided to the LEPC can be used for different purposes such as computer equipment, training, exercising, or response equipment. EPA Region 1 and the SERC are committed to supporting LEPCs by providing funding obtained through Vermont Statute, enforcement actions, EPCRA grants, assisting in getting DOT HMEP planning and training grants to LEPCs, and assisting with [11005\(a\)](#) training grants for local officials.

Appendix E: Description of Chemicals and Substances and Reporting Requirements Under EPCRA and CAA 112r

EXTREMELY HAZARDOUS SUBSTANCES

(EHSs). This list currently contains 356 chemicals. Because of their extremely toxic properties these chemicals were chosen to provide an initial focus for chemical emergency planning. The presence of EHSs in quantities above the threshold planning quantity (TPQ) or Vermont's reporting threshold of 100 pounds, whichever is less, requires the submission of a chemical inventory report to the LEPC, local fire department, and SERC. The EHS list, with TPQ's and RQ's (reportable quantity) are listed in 40 CFR Part 355, Appendices A and B. Because of the hazards they pose, any release of an EHS, greater than the RQ, must be reported immediately to designated federal, state, and local emergency response officials.

HAZARDOUS SUBSTANCES

These are listed under the Superfund hazardous waste cleanup Act (Section 103 (a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The current list contains approximately 720 chemicals (40 CFR Part 302). Release of these chemicals above certain RQ amounts must be reported immediately to federal, state, and local agencies because they may represent an immediate hazard to the community or environment.

HAZARDOUS CHEMICALS

These are not included on a specific list, but are defined by the OSHA Hazard Communication Standard in 29 CFR Section 1910.1200, as chemicals which represent a physical or health hazard. Inventories of these chemicals must be submitted to the SERC's, LEPC's, and local fire department if they are present at the facility in quantities of 100 pounds or more at any one time during the year. Petroleum products (gasoline, kerosene, #2 Fuel Oil, Propane, #6 Fuel Oil, aviation fuel, and diesel) must be reported if they exceed 10,000 pounds or more. These chemicals are reported on March the first as the annual TIER II report. MSDSs for these chemicals must also be submitted if requested. EPCRA lists some exemptions to inventory reporting for certain foods, household items, products used in routine agricultural operations, and other substances.

TOXIC CHEMICALS

There are now more than 700 chemicals or chemical categories identified as toxic chemicals. They were selected by Congress primarily because of their chronic or long-term adverse effects on human health. Estimates of the releases of these chemicals into the environment (air, land, or water) must be reported annually to the SERC and the EPA. The list of toxic chemical is contained in 40 CFR Part 372.

RISK MANAGEMENT PLAN LIST OF TOXICS and FLAMMABLES

There are a total of 140 regulated substance on the list promulgated in 1994 (77 toxics and 63 flammables). Inventories of these chemicals above established thresholds in a process at a facility trigger the development and submittal of risk management plan (RMP). The list is found in 40 CFR Part 68.

HAZARDOUS MATERIALS REPORTING REQUIREMENTS

A. Emergency Preparedness Phase

1. Identification of Facilities Subject to Special Planning Requirements

a. What?

Facilities must report that they are subject to the EPCRA emergency planning requirements if they have certain extremely hazardous substances (EHS) listed in 40 CFR 355. Also, facilities subject to special planning requirements must identify who will participate in the emergency planning process as the facility representative and facility emergency coordinator.

b. By Whom?

Any facility that produces, uses or stores any of the more than 356 EHSs in quantities greater than the threshold planning quantity (TPQ) listed in 40 CFR 355 at any time. Transportation vessels are exempt.

c. Why?

[EPCRA Section 11002](#), 40 CFR 355.

d. How?

Submit an emergency planning letter (sample can be obtained from State or EPA Region 1).

e. To Whom?

The LEPC and the SERC.

f. By When?

Within 60 days after a facility acquires EHSs in a quantity greater than the TPQ.

2. Annual Chemical Inventory Reporting

a. What?

- (1) EHSs in quantities equal to or greater than the TPQs listed in 40 CFR 355, or 100 pounds, whichever is less.
- (2) Other hazardous chemicals as defined by OSHA in the Hazard Communication Standard (29 CFR 1910.1200) as representing a

physical or health hazard present in quantities of 100 lbs. or more. No specific list of chemicals is cited, but chemicals are covered if the owner/operator must maintain an MSDS on the material under OSHA rules. Petroleum products (gasoline, kerosene, #2 Fuel Oil, Propane, #6 Fuel Oil, aviation fuel, and diesel) must be reported if they exceed 10,000 pounds or more.

- (3) Note: All facility operators are required to provide hazardous chemical information at zero threshold quantities to a fire chief/marshal or representative of a LEPC, upon request.

b. *By Whom?*

Private industry. In some states, public entities are also subject to reporting, based on State reporting requirements. Certain substances are exempt from reporting. Refer to the Tier Two Reporting Forms & Instruction booklet.

c. *Why?*

Section [11021](#) & [11022](#) of EPCRA, 40 CFR 370.20

d. *How?*

[Section 11021](#) - A facility should complete a list of chemicals (the Federal or State Tier II form or the EPA application Tier2Submit can be used for this purpose) for submission as their EPCRA Section 11021 Chemical List Inventory (for first time and update filings). MSDSs for specific substances should only be submitted upon request of the LEPC, the fire department, or SERC.

[Section 11022](#) - A facility should complete a Tier Two form for submission, as their EPCRA Section 11022 Emergency and Hazardous Chemical Inventory (at the end of the calendar year).

e. *To Whom?*

Original Tier Two report to the SERC with copies to the LEPC and to the local fire department having jurisdiction over the facility.

f. *By When?*

[Section 11021](#) Within 90 days of acquiring new hazardous chemicals.

[Section 11022](#) By March 1 of each year for the preceding calendar year. Changes must be submitted within 60 days.

3. *Yearly Toxic Chemical Release Reporting*

a. *What?*

Facilities must complete a Toxic Chemical Release Inventory Form R with estimates of releases of specifically cited toxic chemicals which enter the environment.

b. *By Whom?*

Manufacturers (SIC Codes 20-39), and other selected industries, which make, process, import or otherwise use a listed toxic chemical in excess of specified quantities and have 10 or more full-time employees. Toxics are chemicals which have a chronic or long-term adverse effects on human health. Quantities are 25,000 lbs. over a year for usage in the direct processing or manufacturing. The threshold is 10,000 lbs. Over a year for substances used in other than direct processing or manufacturing.

c. *Why?*

[Section 11023 of EPCRA](#); 40 CFR 372

d. *How?*

File a Form R, available from EPA Region 1 and the State.

e. *To Whom?*

EPA National Headquarters and the State.

f. *By When?*

By July 1 of each year, reporting on emissions and usage for the preceding year.

B. Emergency Response Phase: Reportable

Spills or Release Reporting by Facilities

a. *What?*

Make notification of any release of a EHS listed in 40 CFR 355 or a hazardous substance listed in 40 CFR 302 which meets or exceeds the threshold reportable quantity (RQ). The owner/operator shall immediately provide the information required under 40 CFR 355.

b. *By Whom?*

(1) For Fixed Facilities.

Any facility that releases a listed hazardous substance that exceeds the RQ for that substance. This applies to the list of 356 EHSs and CERCLA 302(a) hazardous substances.

(2) For Transportation Accidents

The carrier that releases a listed hazardous substance that exceeds the RQ for that substance. This applies to the list of 356 EHSs and CERCLA 302(a) hazardous substances.

c. *Why?*

[Section 11004 of EPCRA](#); 40 CFR 355, CERCLA 40 CFR 302

d. *To Whom?*

The facility must report to:

- (1) The 24-hour emergency phone number designated by the SERC and LEPC (800-641-5005)
- (2) The SERC at its emergency response number (800-641-5005)
- (3) The National Response Center (NRC) at 800/424-8802.

e. *By When?*

- (1) Fixed Facilities must make notifications as soon as they ascertain that a spill or release exceeds the RQ for a substance covered by the law. Follow-up notifications must be made as soon as practical after the release.
- (2) Transportation Carriers can report a release by notifying 911 or a telephone operator.

f. *How Made?*

Initial notifications should be made by phone. If the release occurs from a fixed facility, all three agencies listed above must be notified. If the release is transportation related, then a call to 911 or the telephone operator will suffice for LEPC and SERC notification requirements. The NRC must still be notified by the owner/operator. Copies of written follow-up reports must go to the LEPC and SERC.

Appendix F: Computer Applications in Hazardous Chemical Emergency Management

Local Emergency Planning Committees were created into the age of hazard communication, and into an era of tremendous data storage requirements. The most convenient method for data storage is by computer hard drive and diskette retention. There is no such thing as the perfect state of the art personal computer available for purchase in the marketplace today. It is advisable to purchase a computer which:

- Has a very large hard drive memory storage, e.g. > 20 gigabytes, and
- Has a high speed microprocessor (Pentium or faster) e.g. > 2.0 ghz speed
- Operates on a Windows XP, 2000 platform
- Can utilize either Microsoft WORD or Corel WORDPERFECT word processing application
- Operates with a 24-36X CD ROM/DVD that has built in burner for CDs
- Functions with a 56K Hz or high speed modem, or a wireless Air-Card
- Can use either a Laser or Ink Jet printer
- Can be used as an INTERNET data receiver
- Can utilize data entry via a page scanner (optional).

Pricing for a computer system as described above continues to decrease on a month to month basis. The speed of the microprocessor continue to increase, as does the speed of modem transmission, and the size of the hard drive data storage.

SOFTWARE

GENERAL INFORMATION

LEPC's, emergency planners, local fire departments, and emergency responders at local levels have a variety of computer programs and communication means available which can enhance efforts to build a comprehensive emergency plan, improve response capabilities, and increase the understanding of current EPCRA issues. Following this paragraph are a listing of many different computer programs and how they may be used by emergency management staff of a local Emergency Management Branch of local city governments, or members of the LEPC itself. Most computer programs are expensive, but some are free or can be purchased by the most budget constrained LEPC. Some Internet sites may offer free programs. Care must be taken when downloading information from the Internet because of the constant threat of downloading information which contains imbedded viruses.

Care must be taken in the collection of software programs which have been purchased, downloaded, or obtained from the graciousness of friends that newly acquired programs do not consume too much space in the computer hard drive. Some programs may be read only, but most computer programs available for hazardous material evaluation or data maintenance require large sections of hard drive space. Certain programs require certain quantities of hard drive storage space for the program/s themselves, and the program in turn reserves another section of hard drive space for work space in performing calculations for which the program was designed

AVAILABLE PROGRAMS

1. ARCHIE

The acronym stands for Automated Resource for Chemical Hazard Incident Evaluation. This program is available from FEMA through the State Emergency Management Offices at no cost to LEPC's. The program does not have a chemical database, so a large amount of informational input is required. Data output is NOT set up for mapping. The printout of tables containing distances of chemical concentrations is very helpful in determining vulnerability zones which can later be transposed onto maps. ARCHIE has the capability to determine blast effects for flammable and explosive substances. A more detailed discussion of ARCHIE is found in chapter 12 of the Handbook of Chemical Hazards Analysis Procedures which is also available from FEMA.

2. CAMEO_{fm}

The acronym stands for Computer Aided Management of Emergency Operations. Cameo is usually obtainable as part of a suite of three interrelated programs designated as the CAMEO-MARPLOT-ALOHA program. This suite as a joint effort program created by the EPA and NOAA. The suite is available to LEPC's FOR FREE. Sets of this program are available for either Macintosh computers or computers which operate in a WINDOWS operating system. Operating instructions are available on CD-ROMs or downloadable from the web. CAMEO is designed to display projections onto a U.S. Census Bureau Map of any given county showing the vulnerability zone around a hazardous chemical release. A linkage with the ALOHA program will permit an overlay of a plume or footprint of the chemical release onto the map. In addition CAMEO has the capability to map other hazards onto Census Bureau maps such as flood plains, dams, and diking. CAMEO not only has hazard mapping capability, but also has chemical databases with screens similar to MSDS's available for printout.

MARPLOT is CAMEO's mapping application and operates on both Macintosh and Windows environments. MARPLOT employs area maps under either digitized data generated from the U.S. Bureau of Census TIGER Files, or scanned or drawn images which can be geo-referenced. When using TIGER/Line data, MARPLOT allows users to search and display roadways, street addresses, waterways, railroads, and census blocks and other political boundaries. Users may design custom map overlays to display facilities and chemical information, evacuation zones, special populations, and hazards analysis vulnerability zones.

ALOHA is designed especially for use by people responding to chemical accidents, as well as for emergency planning and training. ALOHA can predict the rates at which chemical vapors may escape into the atmosphere from broken gas pipes, leaking tanks, and evaporating puddles. It can then predict how a hazardous gas cloud might disperse in the atmosphere after an accidental chemical release.

Free copies of the CAMEO program for your LEPC can be obtained by calling (Vermont Emergency Management) 1-800-347-0488 or by connecting to the VEM homepage of http://www.dps.state.vt.us/vem/index_hazmat.htm or CEPPPO homepage on the Internet address of <http://www.epa.gov/ceppo/>

Once at the cover page go to Resources, then to Data Base and Software. Then ask for the New Cameo Website, and click on Request Cameo. You have the ability to download CAMEO-Marplot-Aloha.

3. *LandView*

LandView's a Community Right-To-Know software tool in the format of an electronic atlas, with both geographic and tabular information from selected EPA databases and the Census Bureau. These databases were originally published on CD-ROM, but now available on RTK-Net sorted by individual county. RTK-Net users of LandView must download files on a county by county basis, and then run the actual program in DOS on their own computer. Users will also need to download the program needed to access the LandView files, installation file, and instruction file. Like the CD-ROM version of the software, LandView files must be run on a personal computer.

To access LandView through RTK-Net, use the Web address of: <http://rtk.net/landview>
If you need technical assistance while downloading LandView from RTK-Net, call the RTK-Net helpline at (202) 234-8494.

Appendix G: Listing of Publications and Other Materials

LISTING OF REFERENCES

The references noted below are a small portion of materials that are available from various private and/or government sources. This list was developed from listings published by the EPA and FEMA. The LEPC needs to develop its own listing of publications, documents, audio-visual materials, etc. that it has available or intends to put in its library. Internet Resources A source of information is the Internet. A vast amount of information is available through bulletin boards and Internet home pages. The LEPC user must still purchase, or borrow, a computer system equipped with a large volume printer and pay for telephone line usage or a monthly fee for access to these information sources. The EPA, as an administrator of EPCRA, has taken the lead in providing electronic information assistance to the SERCs, LEPC's, industry, and the public.

The Chemical Emergency Preparedness and Prevention Office (CEPPO) has developed an extensive home page and bulletin board system. Websites of interest to LEPC's include (obviously, this is not all that is out there—this is meant to simply get an LEPC started):

- CEPPO HOMEPAGE
<http://www.epa.gov/ceppo/>
CEPPO provides leadership, builds partnership, and offers technical assistance to prevent and prepare for chemical emergencies, respond to environmental crisis and inform the public about chemical hazards in their community. From this website, you can also request a copy of CAMEO, download the chemical reactivity datasheet, and link to many other important sites for hazardous materials preparedness and response.
- DEPT OF TRANSPORTATION
<http://hazmat.dot.gov/>
DOT is responsible for coordinating a national safety program for the transportation of hazardous material by air, rail, highway and water.
- OSHA HOMEPAGE
<http://www.osha.gov/>
OSHA is responsible to save lives, prevent injuries and protect the health of American's workers.
- NIOSH HOMEPAGE
<http://www.cdc.gov/niosh/homepage.html>
NIOSH is the only federal institute responsible for conducting research and making recommendations for the prevention of work - related illness and injuries.
- NOAA HOMEPAGE
<http://response.restoration.noaa.gov/>
NOAA provide information for emergency responders and planners, and working to understand and mitigate the effects of oil and hazardous materials in our waters and along our coasts.
- EMERGENCY RESPONSE TO CHEMICAL, BIOLOGICAL , and TERRORIST INCIDENTS
<http://www.emergency.com/cbwlesn1.htm>
ERCBTI web site was developed by the International Associations of Fire Chiefs (IAFC) to investigate the responsibility of local firefighting, police and emergency medical units to cope with a terrorist attack that used nuclear or chemical weapons.
- ERNS ON THE INTERNET
<http://www.epa.gov/ERNS/>
ERNS is a database used to store information on notifications of oil discharges and hazardous substances releases.
- FEMA HOMEPAGE
<http://www.fema.gov/>
Provides valuable information and publications concerning emergency management issues, including hazardous materials preparedness at the local level.
- CHEMICAL SAFETY BOARD
<http://www.csb.gov>
Site dedicated to the investigation of major chemical accidents, and information on the causes of accidental releases.
- VERMONT EMERGENCY MANAGEMENT
<http://www.dps.state.us/vem/>

Appendix H: Community Awareness Projects

1. General

EPCRA does not require LEPCs to conduct public awareness programs, but it is desirable that LEPCs carry out such programs. The public needs to be aware of the dangers of hazardous substances and the procedures they need to follow in the event of orders for in-place sheltering or evacuation. Special facilities, such as nursing homes, schools, hospitals, public buildings, senior citizen housing, and others should also be included in emergency planning and awareness programs. If not already in place, the LEPC needs to develop a program to provide for public education regarding hazardous substances. An important part of this program is the identification and education of administrators of special facilities and with the education of special populations living independently, such as the hearing impaired, the blind, and the home-bound. This program could include presentations, audio-visual programs, written notices, pamphlets, and other materials to insure that community residents are aware of actions that may be required in the event of a hazardous materials incident. The LEPC is encouraged to sponsor speakers for schools, clubs, and other groups, provide written or audio-visual programs, assist local response organizations with their public information programs, and coordinate other activities to take advantage of ongoing special events in the area.

The EPA Region 1 and state agencies may from time to time conduct workshops in your area designed to improve hazardous materials reporting; the EPA will even mail invitations to the facilities for these workshops. FEMA has several instructional programs on the subject, to include a home study course entitled ‘Hazardous Materials: A Citizen’s Orientation’ (IS-5), a four hour course entitled “Hazardous Materials Introduction for Public Officials” (G300), and others. Federal and state governments and industry can provide LEPCs with a considerable number of documents related to hazardous materials and appropriate community preparedness. Remember, the Federal EPCRA law has not changed much since it was written. In addition to large quantities of written material about hazardous materials, numerous videos and slide shows have been produced showing the importance of planning for chemical emergencies. These presentations demonstrate successful training and public awareness programs throughout the country. As a general rule, videos and slide shows can be borrowed or copied for presentation to specific audiences. Many LEPCs and State and Federal agencies have produced their own public awareness videos and will give copies of these tapes to other LEPCs for the asking.

2. Ideas for Outreach

The following are outreach ideas arranged by potential cost to the LEPC.

EXPENSIVE

- Newspaper advertisements (other than classified section)
- Slide shows
- Video programs
- Brochures- multi -page, high quality paper, in color
- Public service announcements (PSAs) professionally written and taped
- Posters
- Telephone book insert
- Billboard messages (or on structures such as oil storage tanks)
- School/day care educational programs (team effort by teachers & outside trainers)(e.g., ‘Wally Wise’ shelter-in-place program & ‘Kids CAER’ educational program)

LOW COST

- Pamphlets - two sides, inexpensive paper, in black & white

- Classified newspaper advertisements
- Fact sheets
- Utility bill inserts
- Supermarket bag inserts
- Bumper stickers
- Peel-off stickers
- Brochures
- Gas pump “toppers” (announcement displayed on the pumps)

FREE

- Newspaper press releases, articles and special features
- Newsletter articles in publications of other organizations
- School poster contest
- Photo display (using donated photos)
- PSAs on radio or TV (other than by professional production co.)
- Speeches to other community organizations
- Radio, TV interviews, talk programs, community bulletin boards
- Slide shows, video tapes or films that are borrowed
- Store window displays
- Anything borrowed, donated, or distributed free

Appendix I: Description of Hazard Analysis

1. GENERAL

In developing a hazardous materials response annex, the LEPC will need to identify facilities which contain extremely hazardous substances and/or identify transportation routes which are likely to be used for the transportation of these substances. A hazards analysis will help the LEPC identify these and other hazards in your community. Planners should try to answer the following questions:

- What are the major chemical hazards in our community
- How can we determine the area or population likely to be affected by a release
- What emergency response resources(personnel and equipment) does our community need
- What kind of training do local responders need
- How can we help prevent chemical accidents?

The three basic references used for hazards analysis are:

- OFF-SITE CONSEQUENCE ANALYSIS GUIDANCE: EPA CEPPPO
- HANDBOOK OF CHEMICAL HAZARDS ANALYSIS PROCEDURES: FEMA/US DOT/EPA
- TECHNICAL GUIDANCE FOR HAZARDS ANALYSIS: FEMA/US DOT/EPA.

The HANDBOOK OF CHEMICAL HAZARDS ANALYSIS PROCEDURES is designated as the Brown Book and the TECHNICAL GUIDANCE FOR HAZARDS ANALYSIS is designated as the Green Book because of the color of the cover.

2. PURPOSE AND METHOD

Hazard analysis is a way of identifying the threats that hazardous substances such as ammonia, chlorine, nitrogen tetroxide, hydrofluoric acid, petroleum, or phosphorous pose in the community. Under EPCRA, communities conduct hazards analysis to develop and revise emergency plans. Emergency plans focus on facilities when

EXTREMELY HAZARDOUS SUBSTANCES (EHS's) are present in amounts exceeding the threshold planning quantity (TPQ). Emergency plans also address other facilities, transportation routes, or hazardous substances that the LEPC has identified as a worthy focus of planning efforts.

The Green Book identifies three steps to a community level hazards analysis. These steps are:

1. Hazards Identification:

Identifies the location, quantity, storage conditions, and the specific hazards posed by the hazardous chemicals transported, manufactured, stored, processed, and used in the community.

2. Vulnerability Analysis:

Locates geographical areas and the people, property, services, and natural areas which may be affected by a release.

3. Risk Analysis:

A judgement made of specific release scenarios based on the likelihood and severity of the release.

The Brown Book describes four steps within the hazards analysis process. The extra step, consequence analysis, is simply the elaboration of the risk-analysis step as mentioned above. To be successful, hazards analysis MUST be an ongoing process. The three steps should be repeated to address changes in the hazards and other circumstances in the community that affect emergency planning and response. Coordination among facilities, local emergency planners, and responders during the review process will ensure a thorough evaluation of the community's hazards and allow planners to focus their efforts on the greatest potential threats to the community.

3. A PHASED APPROACH TO HAZARDS

ANALYSIS

Local emergency planner should consider conducting hazard analyses in phases. Such an approach will allow planners to reduce the initial expenditure of valuable resources on analyzing less significant hazards and instead focus their efforts on the most important hazards of the community. There are three phases to this type of phase evaluation, which are:

1. Screening phase: Using readily available information and worst -case assumptions, determine which facilities and hazards in the community should be the subject of a more detailed analysis. LEPC's can use the TECHNICAL GUIDANCE FOR HAZARD ANALYSIS to complete this phase rather quickly.
2. Planning phase: Refining the initial (worst - case) assumptions and get up-to-date information from the priority facilities identified in the screening phase and begin the develop the local emergency plan.
3. Scenario phase: For priority facilities and transportation routes, develop a range of specific release scenarios that could pose the highest risk to the community. These more detailed scenario scan be used to develop site-specific emergency response plans.

4. MAJOR STEPS IN HAZARD ANALYSIS

Members of the LEPC HAZARDS ANALYSIS COMMITTEE should follow the outline as presented in Section 2 of this appendix. The committee should first determine the hazards which

pose a serious threat to the community. After identifying the chemical hazards in a community, the committee should conduct a vulnerability analysis to estimate who and what is at risk from a potential chemical incident.

Once the chemical hazards and the potential areas of impact for their release have been identified, the third stage in a hazards analysis, risk analysis, can be conducted. Risk analysis is a judgement made by the LEPC based upon estimates of:

- Likelihood of accidental releases from fixed facilities and in transport, and
- The severity of consequences to people, places, and things located within the vulnerable zone.

Risk analysis need not be an extensive exercise in mathematical analysis, but should rely on the knowledge, experience, and common sense of local planners and responders using data gained from hazards identification and vulnerability analysis. Once the LEPC has completed evaluating the hazards to the community, the information derived from this study can be used to support other local chemical emergency preparedness and chemical accident prevention efforts. Some of the facilities within the community may be submitting vulnerable zones under the provisions of the RISK MANAGEMENT PROGRAM (CAA 112r). LEPC's can use that information to validate their work.

Appendix J: Holding an Effective LEPC Meeting

1. PUBLIC MEETINGS

Public meetings should be used sparingly. There are times when a public meeting does offer a clear and immediate benefit. LEPCs should hold public meetings to present or review emergency plans. A large public meeting could be useful after an accident when many people have questions. If a current emergency plan has become controversial, a meeting could offer the community a chance at wider participation in revising it.

The LEPC has many tasks it must perform, the members are volunteers, their time is valuable and to be successful the LEPC must operate in a businesslike manner. Whenever possible, the site of the meeting should be the same, month after month. A well thought out agenda is an important tool for conducting effective meetings. The agenda should identify specific issues to be discussed at the meeting. If time constraints are a factor, each agenda item may be assigned a time limit. Send each committee member a copy of the completed agenda prior to the scheduled meeting. The advanced time necessary for the members to review the agenda is one to two weeks. Send any information pertinent to the upcoming meeting along with the agenda. This way, members can prepare themselves for the meeting in advance. In order to keep LEPC members motivated, regular scheduling of meetings is essential.

Regular meetings offer members the opportunity to continue contingency plan review and revision. Regular meetings also offer the opportunity for the LEPC to broaden its role in the community to meet the capabilities and the commitment of its members. The following guidelines for conducting a meeting are presented for your review and consideration:

BEFORE THE MEETING

- Have a specific purpose/objective for each meeting
- Identify topics and material to be covered.
- Invite key people, guest speakers / presenters

- Establish an appropriate time frame
- PREPARE AN AGENDA
- Notify membership of meeting times and distribute the agenda (early)
- Make logistical arrangements, space, seating, audio/video, etc.

AT THE BEGINNING OF THE MEETING

- Start on time
- Clarify the purpose/objective of the meeting
- Introduce guests or new personnel
- Clarify ground rules, I.e. one topic/speakers at a time, etc.
- Establish time objective

DURING THE MEETING

- Make an opening statement, review the minutes of the last meeting
- Focus on one agenda item at a time, keep the meeting on track
- Collect and clarify relevant information
- Maintain control over time and discussions
- Record ideas and action items
- Summarize information discussed
- Reach agreement on specified decisions and actions

AT THE END OF THE MEETING

- Review action items and responsibilities (who will do what, when)
- Summarize and set follow-up date(s)

AFTER THE MEETING

- Prepare minutes and/or follow-up correspondence if necessary
- Follow-up on action items
- Ask yourself, “What went well?”, “What could be improved?”

2. GUIDELINES FOR INDIVIDUAL LEPC MEMBER IN BECOMING A BETTER PARTICIPANT AT MEETINGS

The LEPC is composed of individuals that represent various types of agencies, departments, organizations, groups or occupations within the planning district, whether the district is a County or a zonal district based upon a regional planning commission geographic boundary. These members must represent their constituents in ALL LEPC activities and must provide a channel of information and coordination. The following guidelines outline action each individual member should consider in order to become a better informed and more productive participant in the activities of the committee.

BEFORE THE MEETING

- Review the agenda items, clarify the purpose of the meeting
- Consider your input in regards to agenda items
- Gather/prepare any materials/information you may need
- Arrange material to present in a clear and concise manner
- Take writing materials with you to the meeting

DURING THE MEETING

- Arrive on time
- Be seated and ready to go at the start time
- Participate in discussions and activities
- LISTEN
- Stay on the subject being presented
- Present your information and ideas clearly/concisely
- Avoid side conversations, pay attention, be polite
- Take your own notes, don't rely on the minutes of the meeting

AT THE END OF THE MEETING

- Clarify items requiring your actions
- Ask yourself "Did I represent my constituents?"

Appendix K: LEPC Self-Evaluation Check

1. Identification of Hazards

- a) Our LEPC has identified facilities with extremely hazardous substances.

YES NO N/A

- b) Our LEPC has identified facilities with hazardous chemicals.

YES NO N/A

- c) Our LEPC has identified major transportation routes for extremely hazardous substances and hazardous chemicals.

YES NO N/A

- d) Our LEPC has identified other facilities contributing to or subjected to risk that are in close proximity to those facilities with extremely hazardous substances or hazardous chemicals.

YES NO N/A

2. LEPC Local Emergency Plan Development

- a) Our LEPC has included Emergency Response information on those facilities identified in **1a** and **1b** in our Local Emergency Plan.

YES NO N/A

- b) Our LEPC has included emergency response methods and procedures of first responders into our Local Emergency Plan.

YES NO N/A

- c) Our LEPC has included emergency response measures used by medical personnel in our Local Emergency Plan.

YES NO N/A

- d) Our LEPC has identified emergency equipment available in the community and at the facilities identified in **1a** and **1b**, as well as the persons responsible for them, and has included this information in our Local Emergency Plan.

YES NO N/A

- e) Our LEPC has established plans for shelter-in-place or evacuation. It has established early warning systems and has identified emergency shelters. This information has been included in our Local Emergency Plan.

YES NO N/A

- f) Our LEPC has designated emergency coordinators within the community and at facilities having extremely hazardous substances or hazardous chemicals, who will be responsible for implementing the Local Emergency Plan. This information is included in our Local Emergency Plan.

YES NO N/A

3. Implementing the Local Emergency Plan

- a) Our LEPC has established notification procedures by which facility coordinators, identified in **2f**, will notify first responders in the event of an extremely hazardous substance or hazardous chemical emergency.

YES NO N/A

- b) Our LEPC has established notification procedures by which the public will be notified in the event of an extremely hazardous substance or hazardous chemical emergency.

YES NO N/A

- c) Our Local Emergency Plan describes the incident command system to be used in responding to hazardous chemical emergencies.

YES NO N/A

4. Hazard Analysis

- a) Our LEPC has established a process to determine whether extremely hazardous substances or hazardous chemicals have been involved in past accidents.

YES NO N/A

- b) Our LEPC has established a process to determine the level of risk if extremely hazardous substance or hazardous chemicals are involved in an accident.

YES NO N/A

- c) Our LEPC has established a process to determine the areas and populations that will be affected in the event that extremely hazardous substances or hazardous chemicals are released.

YES NO N/A

5. Emergency Response Exercises

- a) Our LEPC has developed emergency response drills and exercises to evaluate the effectiveness of our Local Emergency Plan.

YES NO N/A

- b) Our LEPC has established a schedule to regularly conduct drills and emergency response exercises.

YES NO N/A

6. LEPC Organizational Maintenance

- a) Our LEPC regularly schedules, announces, and holds meetings.

YES NO N/A

b) Our LEPC annually reviews, and revises if necessary, our Local Emergency Plan.

YES NO N/A

c) Our LEPC regularly conducts exercises and tests emergency procedures.

YES NO N/A

d) Our LEPC has developed procedures for responding to inquiries concerning extremely hazardous substances or hazardous chemicals in the community.

YES NO N/A

7. Facility Compliance

a) Our LEPC actively seeks to increase the number of facilities in our community that must annually report extremely hazardous substances or hazardous chemicals.

YES NO N/A

b) Our LEPC regularly contacts each reporting facility to promote better understanding of EPCRA requirements by the facility owner or operator.

YES NO N/A

c) Our LEPC provides both basic and detailed EPCRA information to new businesses.

YES NO N/A

8. Public Awareness

a) Our LEPC develops articles about EPCRA and prints an annual notice for local news releases.

YES NO N/A

b) Our LEPC provides public service announcements concerning EPCRA to local radio and television stations.

YES NO N/A

Appendix L: Detailed A Report Card for Your LEPC

By Paul Orum, Working Group on Community Right-to-Know & Susan Greenberg, Environmental Health Watch

In 1986, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA), which established several thousand LEPCs across the United States. These LEPCs were intended to identify chemical hazards, plan for emergencies, convey public information, and include all citizens.

But are the LEPCs working ?

Below are some criteria for evaluating a LEPC.

Check each item completed by the LEPC. Items completed:

| | | |
|----------|-------|-------------|
| 51 to 60 | | Outstanding |
| 41 to 50 | | Good |

| | | |
|----------|-------|----------------|
| 31 to 40 | | Progressing |
| 21 to 30 | | Mediocre |
| 11 to 20 | | Inadequate |
| 0 to 10 | | Non-functional |

1. Goals

Established measurable outcome goals for

- reducing accidents ?
- reducing vulnerability zones and accident potentials ?
- improving emergency response and mitigation ?
- established goals for public access to chemical hazards information ?
- set process objectives (for funding, participation, communication, etc.) and annually evaluated progress toward achieving goals?

2. Structure and Process

- achieved genuinely broad-based and balanced membership ?
- secured adequate funding sources and professional staffing (through legislation, agency budgets, donations, etc.) ?
- adopted a mission statement and by-laws ?
- held regular, well-attended meetings (at least quarterly) ?
- held formal meetings (advance agenda, written minutes) ?
- organized active subcommittees and established clear member roles ?
- maintained policy independence from the host agency ?
- produced an annual report (covering trends in accidents, hazards, enforcement, drills, site-specific risk reduction, etc.) ?
- utilized external resources such as other LEPCs and government agencies (e.g., to obtain training materials) ?

3. Community Hazards Analysis (For facilities with extremely hazardous substances, EHSs):

- developed easily understood community maps showing EHS facilities, vulnerability zones, and transportation routes ?
- obtained needed EHS facility data through questionnaires, site visits, and document requests (using EPCRA [11003](#)(d)(3) authority)?
- obtained EHS facility process hazard analysis (prepared under OSHA's Process Safety Management regulations) ?
- asked transportation carriers to identify chemicals and volumes moving through the community ?
- prepared or obtained a worst-case and lesser release scenarios at each EHS facility and for transportation ?
- identified critical facilities, vulnerable environments, and potentially exposed populations (e.g., schools, nursing homes, residential areas, workers on site) ?
- reviewed hazard analysis with EHS facility managers and workers (including shelter-in-place and evacuation needs) ?
- established computerized hazards analysis capabilities ?
- prioritized hazards (e.g., by vulnerability zone) ?

4. Emergency Response Planning

- () submitted a site-specific emergency plan to the State Emergency Response Commission ?
- () exercised the emergency plan and corrected identified weaknesses ?
- () ensured coordination between EHS facilities and fire departments, as well as other response organizations (police, hospitals, etc.) ?
- () sponsored training for fire, medical, police, hazmat teams, and other response personnel ?
- () ensured that hazards analyses are incorporated into fire pre-plans ?
- () established alert and warning systems (and coordinated systems among facilities) ?
- () established means to determine the severity of a release, and the area and population likely to be affected ?
- () planned shelters and evacuation routes ?
- () designated community and facility emergency response coordinators ?
- () maintained an inventory of emergency response resources (equipment, facilities and expertise) ?
- () provided education on protective actions (evacuation/shelter-in-place) ?
- () evaluated the protective capacity of shelter-in-place structures?
- () acknowledged the limits of emergency response capabilities for protecting people, property, and the environment ?

5. Accident Prevention

- () promoted exploration of inherently safer technologies (involving safer chemicals, lower pressure or temperatures, less storage, fewer shipments, etc.) ?
- () promoted other facility safety improvement (e.g., secondary containment, automatic shutoffs, alarms, etc.) ?
- () provided the hazard analysis to planning commissions, zoning boards, public works, citizen advisory councils, and other local entities ?
- () acquainted facilities with hazard reduction resources (e.g., financing) ?
- () held seminars for facility personnel, union health and safety committees, etc. ?
- () analyzed spill reports for response and prevention lessons ?
- () publicized lessons learned and best practices ?
- () given recognition for hazard reduction efforts (e.g., annual awards) ?

6. Community Right-to-Know

- () publicized availability of right-to-know information ?
- () computerized data for ease of access and analysis ?
- () established a convenient information request process ?
- () provided Tier II chemical storage information as required ?
- () publicized community hazard maps with vulnerability zones through libraries and news media ?
- () publicized options for reducing vulnerable zones (e.g., through safer technologies) ?
- () ensured that meetings are accessible and well-publicized (time, place, publicity) ?
- () worked with communities concerned about specific sites (e.g., through good neighbor agreements) ?

7. Enforcement

- () publicized reporting requirements to covered facilities and transportation carriers ?
- () provided compliance to facilities and carriers ?

- () uncovered and prosecuted non-reporting firms ?
- () pursued beneficial expenditures in settling citizen suits against non-reporting firms ?

8. Risk Management Planning

- () evaluated its own capacity to review hazards and communicate RMP information to the public ?
- () offered compliance assistance to covered facilities ?
- () prepared to incorporate options for reducing vulnerability zones into public communications ?

Appendix M: LEPC Membership Update Form

INSTRUCTIONS: When submitting this information to the State Emergency Response Commission (SERC), always provide the information requested in Section 1. Section 2 information is required if you are submitting a change for the LEPC Chairperson or Section 3 if you are submitting a change for the Vice Chairperson, if you have one. Complete Section 1 and the next page(s) to add a new member or members or to update information for an existing member or members of your LEPC.

SECTION 1: LEPC Information

County:

Date:

Area (if applicable):

Is this your Entire LEPC Yes / No
Membership Listing ?

LEPC Chairperson (print name):

LEPC Approval (signature of Chairperson):

LEPC MEMBERSHIP CATEGORIES (In accordance with EPCRA 42 USC Chapter 116, Section 11001(c))

State / local Official
Emergency Medical Service
Print Media
Emergency Management
Facility Owner / Operator
Law Enforcement
Health
Transportation Personnel
Broadcast Media
Other
Fire-fighting
Hospital
Local Environmental Group
Community Group

ADVISORY NOTICE: This information may be made available to the public under the State Open Records Act. DO NOT include home addresses or telephone number(s).

SECTION 2 : CHAIRPERSON UPDATE

Name:

Title:

Employer:

Address:

City, State, Zip:

Telephone Number:

Membership Category:

Fax Number:

EMAIL Address:

SECTION 3 : VICE - CHAIRPERSON UPDATE (if appropriate)

Name:

Title:

Employer:

Address:

City, State, Zip:

Telephone Number:

Membership Category:

Fax Number:

EMAIL Address:

Did this person replace a previous member?

If so, who?

Is this person a new member on your LEPC?

SECTION 4: GENERAL MEMBERSHIP UPDATES (See Next Pages)

***** Complete SECTION 1 when submitting the following pages *****

Reproduce the following pages as needed for memberships to be updated

Name:

Title:

Employer:

Address:

City, State, Zip:

Telephone Number:

Membership Category:

Fax Number:

EMAIL Address:

Did this person replace a previous member?

If so, who?

Is this person a new member on your LEPC?

Name:

Title:

Employer:

Address:

City, State, Zip:

Telephone Number:

Membership Category:

Fax Number:

EMAIL Address:

Did this person replace a previous member?

If so, who?

Is this person a new member on your LEPC?

Name:

Title:

Employer:

Address:

City, State, Zip:

Telephone Number:

Membership Category:

Fax Number:

EMAIL Address:

Did this person replace a previous member?

If so, who?

Is this person a new member on your LEPC?

Name:

Title:

Employer:

Address:

City, State, Zip:

Telephone Number:

Membership Category:

Fax Number:

EMAIL Address:

Did this person replace a previous member?

If so, who?

Is this person a new member on your LEPC?

Name:

Title:

Employer:

Address:

City, State, Zip:

Telephone Number:

Membership Category:

Fax Number:

EMAIL Address:

Did this person replace a previous member?

If so, who?

Is this person a new member on your LEPC?

Name:

Title:

Employer:

Address:

City, State, Zip:

Telephone Number:

Membership Category:

Fax Number:

EMAIL Address:

Did this person replace a previous member?

If so, who?

Is this person a new member on your LEPC?

Appendix N: EPCRA 42 USC Chapter 116

42 USC CHAPTER 116

CHAPTER 116 - EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

- [SUBCHAPTER I](#) EMERGENCY PLANNING AND NOTIFICATION
- [SUBCHAPTER II](#) REPORTING REQUIREMENTS
- [SUBCHAPTER III](#) GENERAL PROVISIONS

42 USC Chapter 116 SUBCHAPTER I

SUBCHAPTER I - EMERGENCY PLANNING AND NOTIFICATION

- [Sec. 11001](#). Establishment of State commissions, planning districts, and local committees

- [Sec. 11002](#). Substances and facilities covered and notification
- [Sec. 11003](#). Comprehensive emergency response plans
- [Sec. 11004](#). Emergency notification
- [Sec. 11005](#). Emergency training and review of emergency systems

Sec. 11001. - Establishment of State commissions, planning districts, and local committees

(a) Establishment of State emergency response commissions

Not later than six months after October 17, 1986, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) of this section and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.

(b) Establishment of emergency planning districts

Not later than nine months after October 17, 1986, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.

(c) Establishment of local emergency planning committees

Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information.

(d) Revisions

A State emergency response commission may revise its designations and appointments under subsections (b) and (c) of this section as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee

Sec. 11002. - Substances and facilities covered and notification

(a) Substances covered

(1) In general

A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).

(2) List of extremely hazardous substances

Within 30 days after October 17, 1986, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".

(3) Thresholds

(A)

At the time the list referred to in paragraph (2) is published the Administrator shall -

(i)

publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and

(ii)

initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.

(B)

The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(C)

If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after October 17, 1986, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

(4) Revisions

The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

(b) Facilities covered

(1)

Except as provided in section 11004 of this title, a facility is subject to the requirements of this subchapter if a substance on the list referred to in subsection (a)

of this section is present at the facility in an amount in excess of the threshold planning quantity established for such substance.

(2)

For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

(c) Emergency planning notification

Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) of this section shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subchapter. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) of this section first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.

(d) Notification of Administrator

The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of -

(1)

each notification received from a facility under subsection (c) of this section, and

(2)

each facility designated by the Governor or State emergency response commission under subsection (b)(2) of this section

Sec. 11003. - Comprehensive emergency response plans

(a) Plan required

Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

(b) Resources

Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

(c) Plan provisions

Each emergency plan shall include (but is not limited to) each of the following:

(1)

Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or

subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.

(2)

Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3)

Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4)

Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).

(5)

Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6)

A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7)

Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8)

Training programs, including schedules for training of local emergency response and medical personnel.

(9)

Methods and schedules for exercising the emergency plan.

(d) Providing of information

For each facility subject to the requirements of this subchapter:

(1)

Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

(2)

The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

(3)

Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

(e) Review by State emergency response commission

After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

(f) Guidance documents

The national response team, as established pursuant to the National Contingency Plan as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

(g) Review of plans by regional response teams

The regional response teams, as established pursuant to the National Contingency Plan as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan

Sec. 11004. - Emergency notification

(a) Types of releases

(1) 11002(a) substance which requires CERCLA notice

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9603(a)) (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section.

(2) Other 11002(a) substance

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA (42 U.S.C. 9603(a)), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section, but only if the release -

(A)

is not a federally permitted release as defined in section 101(10) of CERCLA (42 U.S.C. 9601(10)),

(B)

is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

(C)

occurs in a manner which would require notification under section 103(a) of CERCLA (42 U.S.C. 9603(a)). Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b) of this section.

(3) Non-11002(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 11002(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA (42 U.S.C. 9603(a)), the owner or operator shall provide notice as follows:

(A)

If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA (42 U.S.C. 9602(a)), the owner or operator shall provide notice as described in subsection (b) of this section.

(B)

If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA (42 U.S.C. 9602(a)) -

(i)

Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA (42 U.S.C. 9603(a)).

(ii)

On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b) of this section.

(4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

(b) Notification

(1) Recipients of notice

Notice required under subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(2) Contents

Notice required under subsection (a) of this section shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

(A)

The chemical name or identity of any substance involved in the release.

(B)

An indication of whether the substance is on the list referred to in section 11002(a) of this title.

(C)

An estimate of the quantity of any such substance that was released into the environment.

(D)

The time and duration of the release.

(E)

The medium or media into which the release occurred.

(F)

Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.

(G)

Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).

(H)

The name and telephone number of the person or persons to be contacted for further information.

(c) Followup emergency notice

As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to -

(1)

actions taken to respond to and contain the release,

(2)

any known or anticipated acute or chronic health risks associated with the release, and

(3)

where appropriate, advice regarding medical attention necessary for exposed individuals.

(d) Transportation exemption not applicable

The exemption provided in section 11047 of this title (relating to transportation) does not apply to this section

Sec. 11005. - Emergency training and review of emergency systems

(a) Emergency training

(1) Programs

Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.

(2) State and local program support

There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, \$5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.

(3) Other programs

Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).

(b) Review of emergency systems

(1) Review

The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section 11002(a) of this title for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and recommendations to the Congress not later than 18 months after October 17, 1986. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

(2) Report

The report required by this subsection shall include the Administrator's findings regarding each of the following:

(A)

The status of current technological capabilities to

(i)

monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances,

(ii)

determine the magnitude and direction of the hazard posed by each release,

(iii)

identify specific substances,

(iv)

provide data on the specific chemical composition of such releases, and

(v)

determine the relative concentrations of the constituent substances.

(B)

The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface

water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.

(C)

The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

(3) Recommendations

The report required by this subsection shall also include the Administrator's recommendations for -

(A)

initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and

(B)

improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances

42 USC Chapter 116 SUBCHAPTER II

SUBCHAPTER II - REPORTING REQUIREMENTS

- [Sec. 11021](#). Material safety data sheets
- [Sec. 11022](#). Emergency and hazardous chemical inventory forms
- [Sec. 11023](#). Toxic chemical release forms

Sec. 11021. - Material safety data sheets

(a) Basic requirement

(1) Submission of MSDS or list

The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

- (A) The appropriate local emergency planning committee.
- (B) The State emergency response commission.
- (C) The fire department with jurisdiction over the facility.

(2) Contents of list

- (A) The list of chemicals referred to in paragraph (1) shall include each of the following:

- (i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).

- (ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.

- (iii) Any hazardous component of each such chemical as provided on the material safety data sheet.

- (B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

(3) Treatment of mixtures

An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

- (A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.

- (B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Availability of MSDS on request

(1) To local emergency planning committee

If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section, the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.

(2) To public

A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 11044 of this title. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

(d) Initial submission and updating

(1)

The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of -

(A)

12 months after October 17, 1986, or

(B)

3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act.

(2)

Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a) of this section, a revised sheet shall be provided to such person.

(e) "Hazardous chemical" defined

For purposes of this section, the term "hazardous chemical" has the meaning given such term by section 1910.1200(c) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

(1)

Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2)

Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

(3)

Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.

(4)

Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

(5)

Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer

Sec. 11022. - Emergency and hazardous chemical inventory forms

(a) Basic requirement

(1)

The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this chapter referred to as an "inventory form") to each of the following:

(A)

The appropriate local emergency planning committee.

(B)

The State emergency response commission.

(C)

The fire department with jurisdiction over the facility.

(2)

The inventory form containing tier I information (as described in subsection (d)(1) of this section) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2) of this section) to the recipients described in paragraph (1).

(3)

An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(A)

Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.

(B)

Providing information on the inventory form on the mixture itself.

(b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(c) Hazardous chemicals covered

A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section 11021 of this title.

(d) Contents of form

(1) Tier I information

(A) Aggregate information by category

An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act.

(B) Required information

The information referred to in subparagraph (A) is the following:

(i)

An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.

(ii)

An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.

(iii)

The general location of hazardous chemicals in each category.

(C) Modifications

For purposes of reporting information under this paragraph, the Administrator may -

(i)

modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

(ii)

require reporting on individual hazardous chemicals of special concern to emergency response personnel.

(2) Tier II information

An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e) of this section:

(A)

The chemical name or the common name of the chemical as provided on the material safety data sheet.

(B)

An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.

(C)

An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.

(D)

A brief description of the manner of storage of the hazardous chemical.

(E)

The location at the facility of the hazardous chemical.

(F)

An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 11044 of this title.

(e) Availability of tier II information

(1) Availability to State commissions, local committees, and fire departments

Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

(2) Availability to other State and local officials

A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

(3) Availability to public

(A) In general

Any person may request a State emergency response commission or local emergency planning committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(B) Automatic provision of information to public

Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section 11044 of this title. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 11044 of this title to the person making the request.

(C) Discretionary provision of information to public

In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning

committee shall make the information available in accordance with section 11044 of this title to the person.

(D) Response in 45 days

A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

(f) Fire department access

Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

(g) Format of forms

The Administrator shall publish a uniform format for inventory forms within three months after October 17, 1986. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter

Sec. 11023. - Toxic chemical release forms

(a) Basic requirement

The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

(b) Covered owners and operators of facilities

(1) In general

(A)

The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.

(B)

The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.

(C)

For purposes of this section -

(i)

The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.

(ii)

The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce -

(I)

in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or

(II)

as part of an article containing the toxic chemical.

(2) Discretionary application to additional facilities

The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of this section if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.

(c) Toxic chemicals covered

The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (42 U.S.C. 11023) (including any revised version of the list as may be made pursuant to subsection (d) or (e) of this section).

(d) Revisions by Administrator

(1) In general

The Administrator may by rule add or delete a chemical from the list described in subsection (c) of this section at any time.

(2) Additions

A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

(A)

The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B)

The chemical is known to cause or can reasonably be anticipated to cause in humans -

(i)

cancer or teratogenic effects, or

(ii)

serious or irreversible -

(I)

reproductive dysfunctions,

(II)

neurological disorders,

(III)

heritable genetic mutations, or

(IV)

other chronic health effects.

(C)

The chemical is known to cause or can reasonably be anticipated to cause, because of -

(i)

its toxicity,

(ii)

its toxicity and persistence in the environment, or

(iii)

its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) of this section on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.

A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.

(3) Deletions

A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).

(4) Effective date

Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(e) Petitions

(1) In general

Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) of this section. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

(A)

Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3) of this section.

(B)

Publish an explanation of why the petition is denied.

(2) Governor petitions

A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A), (B), or (C) of subsection (d)(2) of this section. In the case of such a

petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator -

(A)

initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2) of this section, or

(B)

publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) of this section for adding a chemical to the list.

(f) Threshold for reporting

(1) Toxic chemical threshold amount

The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

(A)

With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.

(B)

With respect to a toxic chemical manufactured or processed at a facility -

(i)

For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.

(ii)

For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.

(iii)

For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

(2) Revisions

The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

(g) Form

(1) Information required

Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall -

(A)

provide for the name and location of, and principal business activities at, the facility;

(B)

include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and

(C)

provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:

(i)

Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.

(ii)

An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.

(iii)

For each wastestream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that wastestream.

(iv)

The annual quantity of the toxic chemical entering each environmental medium.

(2) Use of available data

In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

(h) Use of release form

The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section 11044(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

(i) Modifications in reporting frequency

(1) In general

The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

(A)

All toxic chemical release forms required under this section.

(B)

A class of toxic chemicals or a category of facilities.

(C)

A specific toxic chemical.

(D)

A specific facility.

(2) Requirements

A modification may be made under paragraph (1) only if the Administrator -

(A)

makes a finding that the modification is consistent with the provisions of subsection (h) of this section, based on -

(i)

experience from previously submitted toxic chemical release forms, and

(ii)

determinations made under paragraph (3), and (B) the finding is made by a rulemaking in accordance with section 553 of title 5.

(3) Determinations

The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

(A)

The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

(B)

The extent to which the information is

(i)

readily available to potential users from other sources, such as State reporting programs, and

(ii)

provided to the Administrator under another Federal law or through a State program.

(C)

The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

(4) 5-year review

Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

(5) Notification to Congress

The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

(6) Judicial review

In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

(7) Applicability

A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

(8) Effective date

Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.

(j) EPA management of data

The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

(k) Report

Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1)

A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2)

A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.

(3)

An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

(l) Mass balance study

(1) In general

The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after October 17, 1986.

(2) Purposes

The purposes of the study are as follows:

(A)

To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.

(B)

To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this chapter.

(C)

To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.

(D)

To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.

(3) Information collection

(A)

The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after October 17, 1986 initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.

(B)

Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.

(C)

The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

(D)

For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.

(4) Mass balance definition

For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct

SUBCHAPTER III - GENERAL PROVISIONS

- [Sec. 11041](#). Relationship to other law
- [Sec. 11042](#). Trade secrets
- [Sec. 11043](#). Provision of information to health professionals, doctors, and nurses
- [Sec. 11044](#). Public availability of plans, data sheets, forms, and followup notices
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Sec. 11041. - Relationship to other law

(a) In general

Nothing in this chapter shall -

(1)

preempt any State or local law,

(2)

except as provided in subsection (b) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or

(3)

affect or modify in any way the obligations or liabilities of any person under other Federal law.

(b) Effect on MSDS requirements

Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section 11021 of this title. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate

Sec. 11042. - Trade secrets

(a) Authority to withhold information

(1) General authority

(A)

With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 11003(d)(2), 11003(d)(3), 11021, 11022, or 11023 of this title to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c) of this section, if the person complies with paragraph (2).

(B)

Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).

(2) Requirements

(A)

A person is entitled to withhold information under paragraph (1) if such person -

(i)

claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b) of this section,

(ii)

includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b) of this section, including a specific description of why such factors apply, and

(iii)

submits to the Administrator a copy of such submittal, and the information withheld from such submittal.

(B)

In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may -

(i)

designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and

(ii)

submit such designated information separately from other information submitted under this subsection.

(3) Limitation

The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c) of this section, is not a trade secret.

(b) Trade secret factors

No person required to provide information under this chapter may claim that the information is entitled to protection as a trade secret under subsection (a) of this section unless such person shows each of the following:

(1)

Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

(2)

The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.

(3)

Disclosure of the information is likely to cause substantial harm to the competitive position of such person.

(4)

The chemical identity is not readily discoverable through reverse engineering.

(c) Trade secret regulations

As soon as practicable after October 17, 1986, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4) of this section, such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in *United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter*.

(d) Petition for review

(1) In general

Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

(2) Initial review

Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) of this section and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

(3) Finding of sufficient assertions

(A)

If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

(B)

If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret,

the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

(C)

If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimant ^[1] may seek judicial review of the determination.

(4) Finding of insufficient assertions

(A)

If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

(B)

If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

(C)

If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

(e) Exception for information provided to health professionals

Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 11043 of this title.

(f) Providing information to Administrator; availability to public

Any information submitted to the Administrator under subsection (a)(2) of this section or subsection (d)(3) of this section (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter.

(g) Information provided to State

Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) of this section and subsection (d)(3) of this section.

(h) Information on adverse effects

(1)

In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 11001 of this title shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2)

In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 11023(j) of this title and is provided to any person requesting information about such toxic chemical.

(i) Information provided to Congress

Notwithstanding any limitation ^[2] contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

Sec. 11043. - Provision of information to health professionals, doctors, and nurses

(a) Diagnosis or treatment by health professional

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that -

(1)

the information is needed for purposes of diagnosis or treatment of an individual,

(2)

the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and

(3)

knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(b) Medical emergency

An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that -

(1)

a medical emergency exists,

(2)

the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and

(3)

the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) of this section and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) Preventive measures by local health professionals

(1) Provision of information

An owner or operator of a facility subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist) -

(A)

who is a local government employee or a person under contract with the local government, and

(B)

who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

(2) Written statement of need

The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(A)

To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(B)

To conduct or assess sampling to determine exposure levels of various population groups.

(C)

To conduct periodic medical surveillance of exposed population groups.

(D)

To provide medical treatment to exposed individuals or population groups.

(E)

To conduct studies to determine the health effects of exposure.

(F)

To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(d) Confidentiality agreement

Any person obtaining information under subsection (a) or (c) of this section shall, in accordance with such subsection (a) or (c) of this section, be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

(e) Regulations

As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection (a) and (c) of this section and the confidentiality agreement under subsection (d) of this section. "subsections"^[1]

Sec. 11044. - Public availability of plans, data sheets, forms, and followup notices

(a) Availability to public

Each emergency response plan, material safety data sheet, list described in section 11021(a)(2) of this title, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 11022 of this title, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 11022(d)(2) of this title to be contained in an inventory form as tier II information.

(b) Notice of public availability

Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a) of this section

Sec. 11045. - Enforcement

(a) Civil penalties for emergency planning

The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 11002(b)(2) of this title) to comply with section 11002(c) of this title and section 11003(d) of this title. The United States district court for

the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

(b) Civil, administrative, and criminal penalties for emergency notification

(1) Class I administrative penalty

(A)

A civil penalty of not more than \$25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title.

(B)

No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.

(C)

In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

(2) Class II administrative penalty

A civil penalty of not more than \$25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation the amount of such penalty may be not more than \$75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of title 15. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

(3) Judicial assessment

The Administrator may bring an action in the United States District ^[1] court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than \$75,000 for each day during which the violation continues.

(4) Criminal penalties

Any person who knowingly and willfully fails to provide notice in accordance with section 11004 of this title shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than \$50,000 or imprisoned for not more than five years, or both).

(c) Civil and administrative penalties for reporting requirements

(1)

Any person (other than a governmental entity) who violates any requirement of section 11022 or 11023 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.

(2)

Any person (other than a governmental entity) who violates any requirement of section 11021 or 11043(b) of this title, and any person who fails to furnish to the Administrator information required under section 11042(a)(2) of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each such violation.

(3)

Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

(4)

The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.

(d) Civil, administrative, and criminal penalties with respect to trade secrets

(1) Civil and administrative penalty for frivolous claims

If the Administrator determines -

(A)

(i)

under section 11042(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or

(ii)

after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and

(B)

that the trade secret claim is frivolous,

the trade secret claimant is liable for a penalty of \$25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.

(2) Criminal penalty for disclosure of trade secret information

Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than \$20,000 or to imprisonment not to exceed one year, or both.

(e) Special enforcement provisions for section 11043

Whenever any facility owner or operator required to provide information under section 11043 of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 11043 of this title.

(f) Procedures for administrative penalties

(1)

Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

(2)

The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof

Sec. 11046. - Civil actions

(a) Authority to bring civil actions

(1) Citizen suits

Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

(A)

An owner or operator of a facility for failure to do any of the following:

(i)

Submit a followup emergency notice under section 11004(c) of this title.

(ii)

Submit a material safety data sheet or a list under section 11021(a) of this title.

(iii)

Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(iv)

Complete and submit a toxic chemical release form under section 11023(a) of this title.

(B)

The Administrator for failure to do any of the following:

- (i) Publish inventory forms under section 11022(g) of this title.
- (ii) Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.
- (iii) Publish a toxic chemical release form under 11023(g) ^[1] So in original. Probably should be preceded by "section".
- (iv) Establish a computer database in accordance with section 11023(j) of this title.
- (v) Promulgate trade secret regulations under section 11042(c) of this title.
- (vi) Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

(C)

The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.

(D)

A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

(2) State or local suits

(A)

Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

- (i) Provide notification to the emergency response commission in the State under section 11002(c) of this title.
- (ii) Submit a material safety data sheet or a list under section 11021(a) of this title.
- (iii) Make available information requested under section 11021(c) of this title.
- (iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

(B)

Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility

for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

(c)

Any State may commence a civil action against the Administrator for failure to provide information to the State under section 11042(g) of this title.

(b) Venue

(1)

Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2)

Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.

(c) Relief

The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

(d) Notice

(1)

No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(2)

No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

(e) Limitation

No action may be commenced under subsection (a) of this section against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

(f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement

of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

(h) Intervention

(1) By the United States

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.

(2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action

Sec. 11047. - Exemption

Except as provided in section 11004 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas

Sec. 11048. - Regulations

The Administrator may prescribe such regulations as may be necessary to carry out this chapter

Sec. 11049. - Definitions

For purposes of this chapter -

(1) Administrator

The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) Environment

The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(3) Extremely hazardous substance

The term "extremely hazardous substance" means a substance on the list described in section 11002(a)(2) of this title.

(4) Facility

The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

(5) Hazardous chemical

The term "hazardous chemical" has the meaning given such term by section 11021(e) of this title.

(6) Material safety data sheet

The term "material safety data sheet" means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.

(7) Person

The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.

(8) Release

The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.

(9) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

(10) Toxic chemical

The term "toxic chemical" means a substance on the list described in section 11023(c) of this title

Sec. 11050. - Authorization of appropriations

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter

Appendix O: 20 VSA Chapter 1

The Vermont Statutes Online

Title 20: Internal Security and Public Safety

Chapter 1: CIVIL DEFENSE GENERALLY

§ 1. Purpose and policy

(a) Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action, or from flood, fire, storm, or other natural causes, or from radiological incidents or hazardous chemical or substance incidents and in order to insure that preparation of this state will be adequate to deal with such disasters or emergencies, to provide for the common defense and to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state it is hereby found and declared to be necessary:

(1) to create a state emergency management agency, and to authorize the creation of local organizations for emergency management in the towns and cities of the state;

(2) to confer upon the governor and upon the executive heads or legislative branches of the towns and cities of the state the emergency powers provided herein; and

(3) to provide for the rendering of mutual aid among the towns and cities of the state, and with other states, and with the federal government with respect to the carrying out of emergency management functions; and

(4) to authorize the establishment of such organizations and the taking of such steps as are necessary and appropriate to carry out the provisions of this chapter.

(b) It is further declared to be the purpose of this chapter and the policy of the state that all emergency management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any emergencies caused by enemy attack, sabotage or hostile action. (Amended 1989, No. 252 (Adj. Sess.), § 2.)

§ 2. Definitions

As used in this chapter,

(1) "Commissioner" means the commissioner of public safety.

(2) "Emergency functions" include firefighting services, police services, medical and health services, rescue, engineering, air raid warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services (civilian war aid), plant protection emergency transportation, temporary restoration of public utility services, other functions related to civilian protection and all other activities necessary or incidental to the preparation for and carrying out of these functions.

(3) "Emergency management" means the preparation for and carrying out of all emergency functions, other than the functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage, or other hostile action or from flood, fire, storm or other natural causes, or from radiological incidents or hazardous chemical or substance incidents and the preparation and planning designed to insure that

this state is prepared to deal with such disasters or emergencies and includes civil defense activities.

(4) "Civil defense" means the preparation for and carrying out of all emergency functions, other than the functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize or repair injury and damage resulting from or caused by enemy attack, sabotage or other hostile action.

(5) "Hazardous chemical or substance" means:

(A) Any chemical covered by 42 U.S.C. §§ 11021 and 11022 and defined in 29 C.F.R. § 1910.1200(c) or in section 1722 of Title 18.

(B) Any substance as defined in 42 U.S.C. § 9601(14) or designated hazardous by the administrator of the United States Environmental Protection Agency pursuant to 42 U.S.C. §§ 9602(a) or 11002(a)(2).

(C) Any hazardous material pursuant to section 2001 of Title 5.

(D) Fungicides, herbicides, insecticides or rodenticides as defined in section 911 of Title 6.

(E) Any hazardous waste or material as defined in section 6602 of Title 10.

(F) Any of the dangerous substances defined in section 261 of Title 21.

(6) "Hazardous chemical or substance incident" means any mishap or occurrence involving hazardous chemicals or substances which may pose a threat to persons or property.

(7) "Radiological incident" means any mishap or occurrence involving radiological activity which may pose a threat to persons or property. (Amended 1971, No. 209 (Adj. Sess.), eff. April 3, 1972; 1989, No. 252 (Adj. Sess.), § 3.)

§ 3. Vermont emergency management division

(a) There is hereby created within the department of public safety a division to be known as the Vermont emergency management division.

(b) There shall be a director of Vermont emergency management who shall be in immediate charge of the division. The director shall be appointed by the commissioner, with the approval of the governor. The director shall serve at the pleasure of the commissioner and shall hold no other state office. The director shall perform all the following duties:

(1) Coordinate the activities of all emergency management organizations within the state.

(2) Maintain liaison and cooperation with emergency management agencies and organizations of the federal government and other states.

(3) Perform additional duties and responsibilities required pursuant to this chapter and prescribed by the governor.

(c) The commissioner, subject to the approval of the governor, shall delegate to the several departments and agencies of the state government appropriate emergency management responsibilities, and review and coordinate the emergency management activities of the departments and agencies with each other and with the activities of the districts and neighboring states, and the federal government. (Amended 1965, No. 125, § 17, eff. July 2, 1965; 1985, No. 4, eff. March 9, 1985; 1989, No. 252 (Adj. Sess.), § 4.)

§ 3a. Emergency management division; duties

In addition to other duties required by law, the emergency management division shall:

(1) Prepare and maintain a radiological emergency response plan in cooperation with other state and local agencies. The plan shall be designed to protect the lives and property of persons residing within this state who might be threatened as the result of their proximity to any operating nuclear reactor. The plan shall be formulated in accordance with procedures approved by the Federal Nuclear Regulatory Commission. The plan shall provide for all the following:

(A) Monitoring radiological activity within the state.

(B) Emergency evacuation routes within a ten-mile radius of any operating nuclear reactor.

(C) Adequate notification and communications systems.

(D) Contingency procedures as deemed necessary in the event of an incident or accident involving an operating nuclear reactor.

(2) Assist the state emergency response commission, the local emergency planning committees and the municipally established local organizations referred to in section 6 of this title in developing, implementing and coordinating emergency response plans.

(3) Provide administrative support to the state emergency response commission. (Added 1989, No. 252 (Adj. Sess.), § 5; amended 1993, No. 194 (Adj. Sess.), § 1, eff. June 14, 1994.)

§ 4. Repealed. 1996, No. 188, § 4.

§ 5. Emergency management districts

(a) Immediately subsequent to the passage of this chapter the governor shall divide the state into emergency management districts not exceeding ten in number. In making these divisions due consideration shall be given to existing road and rail communication systems and population centers, to the end that each district shall be a reasonably self sustaining, operating emergency management unit. District boundaries shall coincide with existing town or city boundaries.

(b) The emergency management executive in each district shall be known as the district coordinator. The district coordinator shall be appointed by the commissioner with the approval of the governor and upon due consideration of the recommendations of city and town officials within the district and shall serve during the pleasure of the commissioner. The district coordinator shall discharge emergency management powers within his or her district and shall be assisted by a suitable staff, appointed under regulations prescribed by

the governor and subject to his or her direction and control. Each emergency management district shall prepare and maintain a hazardous chemical or substance incident response plan in cooperation with the local emergency planning committee (LEPC) in that district and other state and local agencies. (Amended 1959, No. 23, § 1, eff. March 6, 1959; 1985, No. 4, eff. March 9, 1985; 1989, No. 252 (Adj. Sess.), § 7; 1995, No. 188 (Adj. Sess.), § 5.)

§ 6. Local organization for emergency management

(a) Each town and city of this state is hereby authorized and directed to establish a local organization for emergency management in accordance with the state emergency management plan and program. The executive officer or legislative branch of the town or city is authorized to appoint a town or city chair for emergency management who shall have direct responsibility for the organization, administration and operation of the local organization for emergency management, subject to the direction and control of the executive officer or legislative branch.

(b) Except as provided in subsection (d) of this section, each local organization for emergency management shall perform emergency management functions within the territorial limits of the town or city within which it is organized, and, in addition, shall conduct such functions outside of the territorial limits as may be required pursuant to the provisions of this chapter and in accord with such regulations as the governor may prescribe.

(c) Each local organization shall participate in the development of a hazardous chemical or substance incident response plan with the local emergency planning committee and the emergency management district.

(d) Each local organization shall annually notify the local emergency planning committee on forms provided by the state emergency response commission of its capacity to perform emergency functions in response to radiological and hazardous chemical or substance incidents. Each local organization shall perform the emergency functions indicated on the most recently submitted form in response to radiological or hazardous chemical or substance incidents. (Amended 1989, No. 252 (Adj. Sess.), § 8; 1993, No. 194 (Adj. Sess.), § 2, eff. June 14, 1994.)

§ 7. Mobile support units

(a) Organization. The commissioner, with the approval of the governor, is authorized to create and establish such number of mobile support units as may be necessary to reinforce emergency management organizations in stricken areas and with due consideration of the plans of the federal government and of other states. The mobile support units established under the authority of this section shall be organized, administered, and operated under regulations prescribed by the governor. These mobile support units shall be subject to call to duty and shall perform these functions in this state or in other states in accord with regulations prescribed by the governor, in accord with the terms of this chapter.

(b) Personnel; powers and immunities, compensation. Personnel of mobile support units while on duty, whether within or without the state, shall:

- (1) if they are employees of the state, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment;
- (2) if they are employees of a town or city, have the powers, duties, rights, privileges, and immunities and receive the compensation incidental to their employment; and
- (3) if they are not employees of the state, or a political subdivision thereof, be entitled to appropriate compensation as fixed by the emergency management board and to the same rights and immunities as are provided by law for the employees of this state.

All personnel of mobile support units shall, while on duty, be subject to the operational control of the authority in charge of emergency management activities in the area in which they are serving, and shall be reimbursed for all actual and necessary travel and subsistence expenses.

(c) Reimbursement of towns and cities. The state shall reimburse a town or city for the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of employees of such town or city while serving as members of a mobile support unit, and for all payments of death, disability, or injury of such employees incurred in the course of such duty, and for all losses of or damage to supplies and equipment of such town or city resulting from the operation of such mobile support unit.

(d) Aid from other states. Whenever a mobile support unit of another state shall render aid in this state pursuant to the orders of the governor of its home state and upon the request of the governor of this state, this state shall reimburse such other state for the compensation paid and actual and necessary travel, subsistence and maintenance expenses of the personnel of such mobile support unit while rendering such aid, and for all payments for death, disability, or injury of such personnel incurred in the course of rendering such aid, and for all losses of or damage to supplies and equipment of such other state or a political subdivision thereof resulting from the rendering of such aid: provided, that the laws of such other state contain provisions substantially similar to this section or that provisions to the foregoing effect are embodied in a reciprocal mutual-aid agreement or compact or that the federal government has authorized or agreed to make reimbursements for such mutual aid as above provided.

(e) Aid to other states. No personnel of mobile support units of this state shall be ordered by the governor to operate in any other state unless the laws of such other state contain provisions substantially similar to this section or unless the reciprocal mutual aid agreements or compacts include provisions providing for such reimbursements or unless such reimbursements will be made by the federal government by law or agreement.
(Amended 1989, No. 252 (Adj. Sess.), § 9.)

§ 8. General powers of governor

- (a) The governor shall have general direction and control of the emergency management agency and shall be responsible for the carrying out of the provisions of this chapter.
- (b) In performing his or her duties under this chapter, the governor is further authorized and empowered:

(1) Orders, rules and regulations. To make, amend and rescind the necessary orders, rules and regulations to carry out the provisions of this chapter with due consideration of the plans of the federal government.

(2) Plans. To prepare a comprehensive plan and program for the civil defense of this state, such plan and program to be integrated into and coordinated with the emergency management plans of this state, of the federal government and of other states to the fullest possible extent, and to coordinate the preparation of plans and programs for emergency management by the cities and towns of this state, such plans to be integrated into and coordinated with the emergency management plans and program of this state to the fullest possible extent.

(3) Inventories, training, mobilization. In accordance with such plan and program for the civil defense of the state, to ascertain the requirements of the state or the towns and cities thereof for food or clothing or other necessities of life in the event of attack and to plan for and procure supplies, medicines, materials, and equipment for the purposes set forth in this chapter; to make surveys of the industries, resources and facilities within the state as are necessary to carry out the purposes of this chapter, provided that no inventory or record of privately owned firearms shall be made under authority of this or any other provision of this chapter; to institute training programs and public information programs, and to take all other preparatory steps, including the partial or full mobilization of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need.

(4) Cooperation with the president and others. To cooperate with the president and the heads of the armed forces, and the civil defense agency of the United States, and with the officers and agencies of other states in matters pertaining to the civil defense of the state and nation and the incidents thereof; and in connection therewith, to take any measures not inconsistent with the constitution of this state, which he or she may deem proper to carry into effect any request for the president and the appropriate federal officers and agencies, for any action looking to civil defense, including but not limited to, the direction or control of (A) black-outs and practice black-outs, air raid drills, mobilization of civil defense forces, and other tests and exercises, (B) warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith, (C) the effective screening or extinguishing of all lights and lighting devices and appliances, (D) shutting off water mains, gas mains, electric power connections and the suspension of all other utility services, (E) the conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic during, prior, and subsequent to drills or attack, (F) public meetings or gatherings, and (G) the evacuation and reception of the civilian population.

(5) Law enforcement. To take such action and give such directions to state and local law enforcement officers and agencies as may be reasonable and necessary for the purpose of securing compliance with the provisions of this chapter and with the orders, rules, and regulations made pursuant thereto.

(6) Delegation of authority. To delegate any authority vested in the governor under this chapter to the commissioner.

(7) Mutual aid agreements with other states. On behalf of this state to enter into reciprocal aid agreements under this chapter and pursuant to compacts with other states

and the federal government or province of a foreign country under such terms as the Congress of the United States may prescribe. Such mutual aid arrangements shall be limited to the furnishing or exchange of food, clothing, medicine, and other supplies; engineering services; emergency housing; police services; national or state guards while under the control of the state; health; medical and related services; fire fighting, rescue, transportation and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed; the reimbursement of costs and expenses for equipment, supplies, personnel and similar items for mobile support units, fire fighting, and police units and health units; and on such terms and conditions as are deemed necessary.

(8) Mutual aid among towns and cities. To sponsor, develop and approve mutual aid plans and agreements among the towns and cities of the state, similar to the mutual aid arrangements referred to above. (Amended 1989, No. 252 (Adj. Sess.), § 10.)

§ 9. Emergency powers of governor

Subject to the provisions hereinafter stated, in the event of a natural disaster, a radiological incident, hazardous chemical or substance incident or an enemy attack upon the United States or Canada, any of which causes or may cause substantial damage or injury to persons or property within the bounds of the state in any manner, the governor may proclaim a state of emergency within the entire state or any portion or portions of the state. Thereafter the governor shall have and may exercise for such period as he or she shall find the emergency exists the following additional powers within such area or areas:

- (1) To enforce all laws, rules and regulations relating to emergency management and to assume direct operational control of all emergency management personnel and helpers in the affected area or areas;
- (2) To formulate and execute plans and regulations for the control of traffic and to coordinate the activities of the departments or agencies of the state and of the political subdivisions thereof concerned directly or indirectly with public highways and streets, in a manner which will best effectuate such plans;
- (3) To prescribe the maximum rates of speed at which motor vehicles may be operated on any road, highway or street in the state; prescribe the sizes and weights of such motor vehicles; suspend the application of any statute or regulation levying or assessing any license, insofar as such statute or regulation relates to the entry into or the privilege of operation in this state of any motor vehicle, including busses or house trailers, registered in any other state and with respect to which a valid and unexpired license has been issued by the other state;
- (4) To employ such measures and give such directions to the state or local boards of health as may be reasonably necessary for the purpose of securing compliance with the provisions of this chapter;
- (5) To utilize the services and facilities of existing officers, and agencies of the state and of the cities and towns thereof; and all such officers and agencies shall cooperate with and extend their services and facilities to the governor as he or she may request;

(6) To use and employ within the state, from time to time, and as he or she may deem expedient, any of the property, services and resources of the state, for the purposes set forth in this chapter;

(7) To establish agencies and offices and to appoint executive, technical, clerical, and other personnel as may be necessary to carry out the provisions of this chapter;

(8) Upon the declaration of an emergency as authorized in federal legislation which includes the state of Vermont, to cooperate with the president of the United States, the army, navy, and air force, with other federal departments, agencies and independent establishments, and other states in matters pertaining to emergency management; and in connection therewith to take such action, not inconsistent with the constitution and laws of the state which he or she may deem proper to carry into effect any request of the president, the secretary of defense and the director of the federal emergency management agency;

(9) To order the evacuation of persons living or working within all or a portion of an area for which a state of emergency has been proclaimed. (Amended 1959, No. 23, § 2, eff. March 6, 1959; 1983, No. 115 (Adj. Sess.), § 1, eff. March 16, 1984; 1989, No. 252 (Adj. Sess.), § 11.)

§ 10. -Request to governor by municipal authorities

The natural disaster provisions of this chapter shall not be brought into action as herein provided, unless a selectman of a town, or the president of the board of trustees in a village, or the city or town manager, or the mayor of a city, within the area affected by a natural disaster, shall request the governor to find that a state of emergency exists and he so finds.

§ 11. -Additional emergency powers

In the event of such an attack, the governor, with the concurrence of a majority of the Vermont emergency management board, may exercise any or all of the following additional powers:

(1) To authorize any department or agency of the state to lease or lend, on such terms and conditions and for such period as he may deem necessary to promote the public welfare and protect the interest of the state, any real or personal property of the state government or authorize the temporary transfer or employment of personnel of the state government to or by the army, navy, air force or any other branch of the armed forces of the United States of America;

(2) To enter into a contract on behalf of the state for the lease or loan, on such terms and conditions and for such period as he may deem necessary to promote the public welfare and protect the interests of the state, of any real or personal property of the state government, or the temporary transfer or employment of personnel thereof to any town or city of the state. The chief executive or legislative branch of such town or city is hereby authorized for and in the name thereof to enter into said contract with the governor for the leasing or lending of such property and personnel, and the chief executive or legislative branch of such town or city may equip, maintain, utilize and operate such property except newspapers and other publications, radio stations, places of worship and assembly, and other facilities for the exercise of constitutional freedom, and employ necessary personnel

therefor in accordance with the purposes for which such contract is executed; and may do all things and perform all acts which may be deemed necessary to effectuate the purpose for which such contract was entered into;

(3) To seize, take, or condemn property for the protection of the public or at the request of the president, or his authorized representatives including:

(A) All means of transportation;

(B) All stocks of fuel of whatever nature;

(C) Food, clothing, equipment, materials, medicines, and all supplies;

(D) Facilities, including buildings and plants; provided that neither this nor any other authority in this chapter shall be deemed to authorize the eviction of a householder and his family from his own home.

(4) To sell, lend, give or distribute all or any such property among the inhabitants of the state and to account to the state treasurer for any funds received for such property;

(5) To make compensation for the property so seized, taken, or condemned on the following basis:

(A) In case property is taken for temporary use, the governor, at the time of the taking, shall fix the amount of compensation to be paid therefor; and in case such property shall be returned to the owner in a damaged condition or shall not be returned to the owner, the governor shall fix the amount of compensation to be paid for such damage or failure to return. Whenever the governor shall deem it advisable for the state to take title to property taken under this section, he shall forthwith cause the owner of such property to be notified thereof in writing by registered mail, postage prepaid, and forthwith cause to be filed a copy of said notice with the secretary of state.

(B) Any owner of property of which possession has been taken under the provisions of this chapter to whom no award has been made or who is dissatisfied with the amount awarded him by the governor, may file a petition in the superior court within the county wherein the property was situated at the time of taking to have the amount to which he is entitled by way of damages or compensation determined, and thereafter either the petitioner or the state shall have the right to have the amount of such damages or compensation fixed after hearing by three disinterested appraisers appointed by said court, and who shall operate under substantive and administrative procedure to be established by the superior judges. If the petitioner is dissatisfied with the award of said appraisers, he may file an appeal therefrom in said court and thereafter have a trial by jury to determine the amount of such damages or compensation in such manner as the court shall provide. The court costs of a proceeding brought under this section by the owner of the property shall be paid by the state; and the fees and expenses of any attorney for such owner shall also be paid by the state after allowances by the court wherein the petition is brought in such amount as the court in its discretion shall fix. The statute of limitations shall not apply to proceedings brought by such owners of property as above provided for and during the time that any court having jurisdiction of such proceedings shall be prevented from holding its usual and stated sessions due to conditions resulting from emergencies as herein referred to.

(6) To perform and exercise such other functions, powers and duties as may be deemed necessary to promote and secure the safety and protection of the civilian population. (Amended 1959, No. 23, § 3, eff. March 6, 1959; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 1985, No. 4, eff. March 9, 1985.)

§ 12. -Establishment of civil defense department

When the governor finds that a war emergency exists or that hostile acts have occurred within and without the state which could jeopardize or endanger the lives and safety of persons or property within the state, he or she may, with the concurrence of a majority of the Vermont emergency management board, by executive order establish as a separate executive agency, a department of civil defense reporting directly to the governor. Under such circumstances all powers, duties and authority of the Vermont emergency management division of the department of public safety, together with all personnel, files, property and equipment, will be automatically transferred to the department of civil defense. The governor, with the advice and consent of the Vermont emergency management board, shall appoint a director of civil defense who will be the executive head of the department of civil defense. The director of civil defense will exercise all authority and power and perform the duties as prescribed in this chapter for the commissioner of public safety. The director shall hold no other state office, shall hold office during the pleasure of the governor and shall be compensated at a rate to be fixed by the governor with the approval of the emergency board. (Amended 1959, No. 23, § 4, eff. March 6, 1959; 1985, No. 4, eff. March 9, 1985; 1989, No. 252 (Adj. Sess.), § 12.)

§ 13. Termination of emergencies

The governor, with the concurrence of a majority of the Vermont emergency management board, shall have the power to terminate by proclamation the emergencies provided for in sections 9 and 11 of this title; provided, however, that no emergencies shall be terminated prior to the termination of such emergency as provided in federal law.

§ 14. -State of emergency

The governor may on his or her own motion declare the state of emergency terminated in any area affected by a natural disaster, radiological incident or hazardous chemical or substances incident. The governor, upon receiving notice that a majority of the legislative branch of a town, city or village, affected by a natural disaster no longer desire that the state of emergency continue within their city, town or village, shall declare the state of emergency terminated within that particular city, town or village. Upon the termination of the state of emergency, the functions as set forth in section 9 of this title shall cease and the local authorities shall resume the control they had prior to the declaration of the state of emergency. (Amended 1989, No. 252 (Adj. Sess.), § 13.)

§ 15. Return of property

Whenever the need for the purposes of this chapter of any real or personal property acquired under this chapter shall terminate, the governor may dispose of such property on such terms and conditions as he shall deem appropriate, but to the extent feasible and practicable he shall give to the former owner of any property so disposed of an opportunity to reacquire it:

(1) at its then fair value as determined by the governor or

(2) if it is to be disposed of (otherwise than at public sale of which he shall give reasonable notice) at less than such value, at the highest price any other person is willing to pay therefor:

Provided, that this opportunity to reacquire need not be given in the case of items which lose their identity in use or to property having a fair value of less than \$500.00.

§ 16. Orders, rules and regulations

The towns and cities of the state and other agencies designated or appointed by the governor are authorized and empowered to make, amend and rescind such orders, rules, and regulations as may be necessary for emergency management purposes and to supplement the carrying out of the provisions of this chapter, but not inconsistent with any orders, rules or regulations promulgated by the governor or by any state agency exercising a power delegated to it by him or her. (Amended 1989, No. 252 (Adj. Sess.), § 14.)

§ 17. Gift, grant or loan

(a) Federal. Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any town or city thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes of emergency management the state, acting through the governor with the consent of the Vermont emergency management board, or such town or city acting with the consent of the governor and the Vermont emergency management board and through its executive officer or legislative branch, may accept such offer and upon such acceptance the governor of the state or the executive officer or legislative branch of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the state or such political subdivisions, and subject to the terms of the offer and rules and regulations, if any, of the agency making the offer. Whenever such federal grant is contingent upon a state or local contribution, or both, the Vermont emergency management board, a political subdivision, or both, as the case may be, shall determine whether the grant shall be accepted and if accepted the respective shares to be contributed by the state and town or city concerned.

(b) Private. Whenever any person, firm or corporation shall offer to the state or to any town or city thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management, the state, acting through the governor, or such political subdivision, acting through its executive officer or legislative branch, may accept such offer and upon such acceptance the governor of the state or executive officer or legislative branch of such political subdivision may authorize any officer of the state or the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer. (Amended 1985, No. 4, eff. March 9, 1985; 1989, No. 252 (Adj. Sess.), § 15.)

§ 18. Personnel-Oath of allegiance and nonsubversion

No person shall be employed or associated in any capacity in any emergency management organization established under this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this

state or the overthrow of any government in the United States by force or violence, or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed shall take an oath of allegiance to the United States and the state of Vermont substantially as prescribed by federal law. This oath shall be taken in writing before a person authorized by law to administer oaths in this state and a copy shall be filed in the office of the director. (Amended 1989, No. 252 (Adj. Sess.), § 16.)

§ 19. -Powers outside of town of appointment

Whenever the employees of any town or city are rendering outside aid pursuant to the authority contained in this chapter such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the town or city in which they are normally employed.

§ 20. -Immunities and defenses

(a) Except in the case of willful misconduct or gross negligence, the state, any of its agencies, political subdivisions, local emergency planning committees or an emergency management worker, individual, partnership, association or corporation involved in civil defense or emergency management activities shall not be liable for the death of or any injury to persons or loss or damage to property resulting from an emergency management service or response activity, including, but not limited to, the development of local emergency plans and the response to those plans.

(b) Any individual, partnership, association, corporation or facility that provides personnel, training or equipment through an agreement with the local emergency planning committee, the state emergency response commission or local emergency response officials is immune from civil liability to the same extent provided in subsection (a) of this section for any act performed within the scope of the agreement. (Amended 1989, No. 252 (Adj. Sess.), § 17.)

§ 21. -Compensation for injury or death

In emergencies declared as hereinbefore provided in sections 9 and 11 of this title under such rules and regulations as may be prescribed by the governor, civil defense or emergency management workers actually engaged in civil defense or emergency management duties will be considered as temporary state employees within the scope of sections 601-710 of Title 21 provided, however, that awards shall be charged against appropriations for the purposes of this chapter. Under such rules and regulations as the governor may prescribe such protection against injury or death shall be afforded to civil defense or emergency management workers regularly engaged in civil defense or emergency management training exercises authorized and directed by the governor. Awards made pursuant to the provisions of this section shall not be less than the minimum amount provided by law for workers' compensation and shall not exceed the maximum amounts as provided by law for such compensation. This section shall not apply to any individual entitled to compensation for injury or death under any other provision of law, nor shall it apply during any period in which the United States government may assume the responsibility for compensation for civil defense or emergency management workers in the event of injury or death. (Amended 1981, No. 165 (Adj. Sess.), § 1; 1989, No. 252 (Adj. Sess.), § 18.)

§ 22. Political activity prohibited

No organization for civil defense or emergency management established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes. (Amended 1989, No. 252 (Adj. Sess.), § 19.)

§ 23. General powers not limited by specific powers

The general powers provided for in this chapter shall not be limited by any specific powers granted to the governor by any of the provisions of this chapter.

§ 24. Penalties

Any person violating any provision of this chapter or any rule, order or regulation made pursuant to this chapter which rule, order or regulation shall be filed with the secretary of state, shall, upon conviction thereof, be punishable by a fine not exceeding \$500.00 or imprisonment not exceeding six months or both.

§ 25. Matching funds

To the extent of any appropriation available to carry out the purposes of this chapter, federal moneys for civil defense and emergency management within the state may be matched therefrom. (1959, No. 23, § 5, eff. March 6, 1959; amended 1989, No. 252 (Adj. Sess.), § 20.)

§ 26. Change of venue because of enemy attack

In the event that the place where a civil action or a criminal prosecution is required by law to be brought, has become and remains unsafe because of an attack upon the United States or Canada, such action or prosecution may be brought in or, if already pending, may be transferred to the superior or district court as appropriate in an unaffected county or territorial unit and there tried in the place provided by law for such court. (1959, No. 23, § 7, eff. March 6, 1959; amended 1965, No. 194, § 10; 1973, No. 118, § 23, eff. Oct. 1, 1973; 1973, No. 193 (Adj. Sess.), § 3.)

§ 27. Auxiliary state police

For the purposes of emergency management, as the term is defined in section 2 of this title, the commissioner of public safety may recruit and train for police duty citizens, including sheriffs, deputy sheriffs, constables and police officers, from whom he may augment the state police, in emergency functions, by employing such number of them, for such period and at such compensation as the governor may fix, as auxiliary state police, who shall take the oath prescribed for sheriffs and, while so employed, shall each wear a distinctive arm badge marked with the words "AUXILIARY STATE POLICE" and shall have the powers and immunities of the state police as defined in section 1914 of this title. (1959, No. 23, § 8, eff. March 6, 1959; amended 1989, No. 252 (Adj. Sess.), § 21.)

§ 28. Emergency management medical program

The department of health is hereby directed, within the limits of appropriations made to it and through its authorized personnel, to plan and develop a comprehensive emergency

management medical program to protect and assist the people of the state in emergencies or natural disasters. (1961, No. 151; amended 1989, No. 252 (Adj. Sess.), § 22.)

§ 29. Civil defense shelters; no private liability

Any person owning or controlling premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part of such land and premises for the purpose of sheltering persons during an actual enemy attack or practice civilian defense alert in cooperation with federal, state or political subdivision shall, together with his successors in interest not be civilly liable for negligence causing the death of, or injury to, any person on or about such land and premises or for loss of, or damage to the property of such person during such an actual enemy attack or practice civilian defense alert. (1963, No. 67, eff. May 2, 1963.)

§ 30. State emergency response commission; creation

(a) A state emergency response commission is created. The commission shall consist of 11 members, six ex officio members, including the commissioner of public safety, the secretary of natural resources, the secretary of transportation, the commissioner of health, the secretary of agriculture, food and markets and the commissioner of labor and industry, or their designees; and five public members, including two representatives of local government, one of which shall represent the fire service and one shall represent the police, a representative of the transportation industry, a representative of an industry required to report to the commission and one representative of the public. The director of emergency management shall be the secretary of the commission without vote.

(b) The five public members shall be appointed by the governor for staggered three year terms. The governor shall appoint the chair of the commission.

(c) Members of the commission, except state employees, shall be entitled to a per diem and expenses as provided in section 1010 of Title 32. (Added 1989, No. 252 (Adj. Sess.), § 23; amended 1993, No. 194 (Adj. Sess.), § 3, eff. June 14, 1994; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 31. State emergency response commission; duties

(a) The commission shall have authority to:

(1) Carry out all the requirements of a commission under Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and as hereafter amended.

(2) Adopt rules necessary for the implementation of SARA 1986 and for the reporting of hazardous chemicals or substances, including setting minimum limits on the level of hazardous chemicals to be reported.

(3) Designate local emergency planning districts and to appoint local emergency planning committees. To the extent practicable, local emergency planning districts may coincide with the emergency management districts designated by the governor.

(4) Oversee the development and implementation of local emergency response plans by committees and provide assistance to committees in executing their duties.

(5) Develop and maintain a plan for providing state assistance to local government in an emergency involving hazardous chemicals or substances.

(6) Review and comment on local emergency response plans.

(b) The commission shall also perform the following duties:

(1) Develop a plan for coordinated disaster response operations to supplement, aid or advise local and state jurisdictions or other parties involved when there has been an accident involving the transportation of hazardous materials.

(2) Meet with interested parties, which may include representatives of the carrier industry shippers, and state and local agencies, having an interest, responsibility or expertise concerning hazardous materials.

(3) Maintain a state plan to go into effect when an accident occurs involving the transportation of hazardous materials. The plan shall be field tested at least once annually.

(c) Any rules adopted concerning reportable quantities of economic poison as defined in 6 V.S.A. § 911(5) shall be jointly adopted by the commission and the agency of agriculture, food and markets. The commission may enter into contracts with governmental agencies or private organizations to carry out the duties of this section. (Added 1989, No. 252 (Adj. Sess.), § 24; amended 1993, No. 194 (Adj. Sess.), § 4, eff. June 14, 1994; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 32. Local emergency planning committees; creation; duties

(a) Local emergency planning committees shall be appointed by the state emergency response commission.

(b) A local emergency planning committee shall perform all the following duties:

(1) Carry out all the requirements of a committee pursuant to Title III of SARA of 1986.

(2) Upon receipt by the committee or the committee's designated community emergency coordinator of a notification of a release of a hazardous chemical or substance, insure that the local emergency response plan has been implemented.

(3) Consult and coordinate with the heads of local government emergency services, the emergency management division of the department of public safety and the managers of all facilities within the district regarding the facility plan.

(4) Review and evaluate requests for funding and other resources and advise the state emergency response commission concerning disbursement of funds.

(c) Nothing in this section shall exempt any person or facility from the provisions of sections 1721-1731 of Title 18. (Added 1989, No. 252 (Adj. Sess.), § 25.)

§ 33. Regional emergency response commissions

(a) The state emergency response commission is authorized to create the number of regional emergency response commissions it deems necessary to assist existing emergency management response efforts.

(b) Each regional emergency response commission shall perform all the following duties:

(1) Organize a regional HAZMAT response team to assist local emergency planning committees, fire chiefs and other emergency management officials in response to hazardous chemical and substance (HAZMAT) incidents.

(2) Appoint persons who are trained and certified in HAZMAT response from among local fire companies, emergency medical service squads and police agencies to staff the response teams and, with the concurrence of the state emergency response commission, appoint two or more crew chiefs to direct the teams.

(3) Negotiate with municipalities which maintain firefighting departments to secure appropriate facilities and personnel to house and maintain the response team's vehicles and equipment and to provide drivers for the response vehicles.

(4) Coordinate the acquisition and maintenance of adequate vehicles and equipment for the response teams.

(5) Ensure that response team personnel are organized, trained and exercised in accordance with the standards set by the fire service training council and the state emergency response commission.

(6) Ensure that appropriate regional mutual aid agreements are created so that all firefighting departments within the region may participate with the regional HAZMAT response team.

(7) Prepare and propose annual operating budgets to the state emergency response commission and to the department of public safety.

(c) A regional emergency response commission shall be composed of the following members:

(1) Two members, who are certified HAZMAT responders (fire, EMS or police), to be appointed by each local emergency planning committee in the region, except that if there are more than four local emergency planning committees in a region, each local emergency planning committee shall appoint one member;

(2) The chief of the "host" fire department, ex officio; and

(3) A member to be appointed by the state emergency response commission to serve as chair; except that the state emergency response commission may elect to designate another member, who is a fire chief or senior fire officer certified as a HAZMAT responder, as chair.

(d) The state shall reimburse a municipality for the actual compensation and expenses paid to employees of the municipality while serving as members of a regional HAZMAT response team when control of a hazardous material or substance incident has been transferred and accepted by a state hazardous material responder at the scene pursuant to section 2673 of this title. Otherwise, reimbursement, if any, shall be in accordance with the terms of any mutual aid agreements entered into among the municipalities pursuant to this section.

(e) The department of public safety may employ up to twenty-five (25) regional HAZMAT team responders as temporary state employees, who shall be compensated as such when authorized to respond to a HAZMAT incident or to attend HAZMAT training. Regional HAZMAT team responders, whenever acting as state agents in accordance with this section, shall be afforded all of the protections and immunities of state employees.

(f) Crew chiefs, referred to in subdivision (b)(2) of this section, appointed by the regional emergency response commissions and whose appointments have been ratified by the state emergency response commission shall have the authority to accept the transfer of control of a hazardous material incident from the chief engineer or senior fire officer at a scene. At such times, crew chiefs shall be considered to be state employees and agents of the state subject to the direction of the state HAZMAT emergency operation team created in section 2681 of this title.

(g) Members of regional emergency response commissions, except state employees, shall be entitled to a per diem and expenses as provided in section 1010 of Title 32. (Added 1993, No. 194 (Adj. Sess.), § 5, eff. June 14, 1994; amended 1995, No. 115 (Adj. Sess.), §§ 2, 3, 4, eff. April 23, 1996; 1999, No. 148 (Adj. Sess.), § 78, eff. May 24, 2000.)

§ 34. Temporary housing for disaster victims

(a) Whenever the governor has proclaimed a disaster emergency under the laws of this state, or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(1) To enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by disaster victims and to make such units available to any political subdivision of the state.

(2) To assist any political subdivision of this state which is the locus of temporary housing for disaster victims to acquire sites necessary for such temporary housing and to do all things required to prepare such site to receive and utilize temporary housing units by:

(A) advancing or lending funds available to the governor from any appropriation made by the legislature or from any other source,

(B) "passing through" funds made available by any agency, public or private, or

(C) becoming a co-partner with the political subdivision for the execution and performance of any temporary housing for disaster victims project and for such purposes to pledge the credit of the state on such terms as he deems appropriate having due regard for current debt transactions of the state.

(b) Under such regulations as he shall prescribe, to temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, transportation (within or across the state), or other requirement of law or regulation within this state when by proclamation he deems such suspension or modification essential to provide temporary housing for disaster victims.

(c) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of

temporary housing units for disaster victims, and to enter into whatever arrangements (including purchase of temporary housing units and payment of transportation charges) which are necessary to prepare or equip such sites to utilize the housing units.

(d) The governor is authorized to make rules and regulations necessary to carry out the purposes of this chapter.

(e) Nothing contained in this chapter shall be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of disaster prevention, preparedness, response, or recovery.

(f) "Major disaster," "emergency," and "temporary housing" as used in this chapter shall have the same meaning as the terms are defined, or used, in the Disaster Relief Act of 1974 (P.L. 93-288, 88 Stat. 143). (Added 1975, No. 97, § 1, eff. April 30, 1975.)

§ 35. Community disaster loans

Whenever, at the request of the governor, the president has declared a "major disaster" to exist in this state, the governor is authorized:

(1) Upon his determination that a local government of the state will suffer a substantial loss of tax and other revenues from a major disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the local government, for a loan; and to receive and disburse the proceeds of any approved loan to any applicant local government.

(2) To determine the amount needed by any applicant local government to restore or resume its governmental functions, and to certify the same to the federal government, provided, however, that no application amount shall exceed 25 percent of the annual operating budget of the applicant for the fiscal year in which the major disaster occurs.

(3) To recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first three full fiscal year period following the major disaster, the revenues of the local government are insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character. (Added 1975, No. 97, § 2, eff. April 30, 1975.)

§ 36. Debris and wreckage removal

(a) Whenever the governor has declared a disaster emergency to exist under the laws of this state, or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(1) Notwithstanding any other provision of law, through the use of state departments or agencies, or the use of any of the state's instrumentalities, to clear or remove from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety, or public or private property, in any disaster emergency declared by the governor or major disaster as declared by the president.

(2) To accept funds from the federal government and utilize such funds to make grants to any local government for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(b) Authority under this chapter shall not be exercised unless the affected local government, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

(c) Whenever the governor provides for clearance of debris or wreckage pursuant to subsections (a) or (b) of this section, employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

(d) Except in cases of willful misconduct, gross negligence, or bad faith, any state employee or agent complying with orders of the governor and performing duties pursuant thereto under this chapter shall not be liable for death of or injury to persons or damage to property.

(e) The governor is authorized to make rules and regulations to carry out the purposes of this chapter. (Added 1975, No. 97, § 3, eff. April 30, 1975.)

§ 37. State financial participation in grants to disaster victims

(a) Whenever the president, at the request of the governor, has declared a major disaster to exist in this state, the governor is authorized:

(1) Upon his determination that financial assistance is essential to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot be otherwise adequately met from other means of assistance, to accept a grant by the federal government to fund such financial assistance, subject to such terms and conditions as may be imposed upon the grant.

(2) To enter into an agreement with the federal government, or any officer or agency thereof, under which the state is to participate in the funding of the financial assistance authorized in division (1) of this section, in an amount not to exceed 25 percent thereof and, if state funds are not otherwise available to the governor, to accept an advance of the state share from the federal government to be repaid when the state is able to do so.

(b) Notwithstanding any other provision of law or regulation, the governor is authorized to make financial grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster which cannot otherwise adequately be met from other means of assistance, which shall not exceed \$5,000.00 in the aggregate to an individual or family in any single major disaster declared by the president.

(c) The governor shall make such regulations as are necessary for carrying out the purposes of this chapter, including, but not limited to, standards of eligibility for persons applying for benefits; procedures for applying and administration; methods of investigation, filing, and approving applications; and formation of local or statewide boards to pass upon applications and procedures for appeals.

(d) Any person who fraudulently or willfully makes a misstatement of fact in connection with an application for financial assistance under this title shall, upon conviction of each

offense, be subject to a fine of not more than \$5,000.00, or imprisonment for not more than one year, or both. (Added 1975, No. 97, § 4, eff. April 30, 1975.)

§ 38. Special funds

(a)(1) There is created a radiological emergency response plan fund, into which any entity operating a nuclear reactor or storing nuclear fuel and radioactive waste in this state (referred to hereinafter as "the nuclear power plant") shall deposit the amount appropriated to support the Vermont radiological response plan for that fiscal year, adjusted by any balance in the radiological emergency response plan fund from the prior fiscal year. There shall also be deposited into the fund any monies received from any other source, public or private, that is intended to support the radiological emergency response planning process. The fund shall be managed in accordance with subchapter 5 of chapter 7 of Title 32. Any interest earned on the balance in the fund shall be retained by the fund.

(2) Expenditures from the fund shall be made by the division of emergency management, subject to an annual legislative appropriation. As part of the annual appropriations process, the division of emergency management shall present a budget for the ensuing fiscal year that anticipates the expenditures that will be made from the fund. The annual budget shall be developed by the division of emergency management in consultation with the Windham regional planning commission, state agencies, the management of the nuclear power plant, and the selectboards of the municipalities in the emergency planning zone and any other municipality defined by the state as required to support the plan. State personnel with responsibility for local coordination and plan development shall be physically located in the region. The annual budget shall include only expenditures necessary to support the radiological emergency response plan.

(3) The annual budget shall include anticipated expenditures to municipalities, county or state agencies, or other organizations necessary to support the radiological emergency response plan.

(4) By January 15 of each year, the division of emergency management shall submit to the general assembly a report detailing expenditures from the fund for the preceding fiscal year.

(5) The state shall bill the nuclear power plant on a monthly basis based on the budget presented and approved by the legislature. The nuclear power plant shall have the right to audit the books and records of the fund.

(6) Upon the permanent cessation of operation of the nuclear reactor and final removal of all nuclear fuel and radioactive waste, and the removal of emergency response plan regulations and state responsibilities applicable to it by the Federal Nuclear Regulatory Commission and any other federal agency having regulatory jurisdiction, and after all outstanding debts have been paid, all monies remaining in the fund shall be repaid to the nuclear power plant, and the fund terminated.

(b) There is created a hazardous chemical and substance emergency response fund which shall include all moneys paid to the state pursuant to section 39 of this title. The fund shall be managed pursuant to the provisions of 32 V.S.A. chapter 7, subchapter 5. The fund shall be used to implement and administer this chapter, including planning, training

and response activities as well as the purchase of equipment and assisting local organizations referred to in section 6 of this chapter to develop emergency response plans. Each local emergency planning district shall receive a minimum grant of \$1,500.00 annually and may petition the state emergency response commission for additional funds if needed and available. After disbursement of the minimum grant amounts and after consideration of the comments and evaluation received from the appropriate local emergency planning committee, the commissioner with the approval of the emergency response commission may make additional grants from the fund to any local emergency planning committee or regional emergency response commission as well as to any political subdivisions including any city, town, fire district, incorporated village and other incorporated entities in the state in accordance with rules adopted by the state emergency response commission. Unless waived by the state emergency response commission, grants shall be matched by local governments in the amount of 25 percent of the grant. The matching may be by contribution or by privately furnished funds or by in-kind services, space or equipment which would otherwise be purchased by a local emergency planning committee. (Added 1989, No. 252 (Adj. Sess.), § 26; amended 1993, No. 194 (Adj. Sess.), § 6, eff. June 14, 1994; 1995, No. 178 (Adj. Sess.), § 425, eff. May 22, 1996; 1997, No. 59, § 5, eff. June 30, 1997; 1999, No. 49, § 206; 2001, No. 142 (Adj. Sess.), § 114; 2003, No. 66, §§ 97a, 97b.)

§ 39. Fees to the hazardous substances fund

(a) Beginning January 1, 1994, every person required to report the use or storage of hazardous chemicals or substances pursuant to Title III of SARA of 1986 shall pay the following annual fees for each hazardous chemical or substance, as defined by the state emergency response commission, which is present at the facility:

- (1) \$25.00 for quantities between 100 and 999 pounds.
- (2) \$40.00 for quantities between 1,000 and 9,999 pounds.
- (3) \$60.00 for quantities between 10,000 and 99,999 pounds.
- (4) \$200.00 for quantities between 100,000 and 999,999 pounds.
- (5) \$500.00 for quantities exceeding 999,999 pounds.
- (6) An additional fee of \$100.00 will be assessed for each extremely hazardous chemical or substance as defined in 42 U.S.C. § 11002.

(b) The fee shall be paid to the commissioner of public safety and shall be deposited into the hazardous chemical and substance emergency response fund.

(c) The following are exempted from paying the fees required by this section but shall comply with the reporting requirements of this chapter:

- (1) Municipalities and other political subdivisions.
- (2) State agencies.
- (3) Persons engaged in farming as defined in section 6001 of Title 10.
- (4) Nonprofit corporations.

(d) No person shall be required to pay a fee for a chemical or substance which has been determined to be an economic poison as defined in section 911 of Title 6 or for a fertilizer or agricultural lime as defined in section 363 of Title 6 and for which a registration or tonnage fee has been paid to the agency of agriculture, food and markets pursuant to chapter 28 or 81 of Title 6.

(e) The state or any political subdivision, including any municipality, fire district, or incorporated village, is authorized to recover any and all reasonable direct expenses incurred as a result of the response to and recovery of a hazardous chemical or substance incident from the person or persons responsible for the incident. All funds collected by the state under this subsection shall be deposited into the hazardous chemical and substance emergency response fund created pursuant to subsection 38(b) of this chapter after reimbursements have been made to any responding state agencies. The attorney general shall act on behalf of the state to recover these expenses. The state or political subdivision shall be awarded costs and reasonable attorneys' fees which are incurred as a result of exercising the provisions of this subsection. (Added 1989, No. 252 (Adj. Sess.), § 27; amended 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1990; 1993, No. 194 (Adj. Sess.), §§ 7, 8, eff. June 14, 1994; 1999, No. 49, § 158; 2003, No. 42, § 2, eff. May 27, 2003.)

§ 40. Enforcement

(a) The department of public safety shall have authority to inspect the premises and records of any employer to ensure compliance with the provisions of this chapter and the rules adopted under this chapter.

(b) A person who violates any provision of this chapter or any rule adopted under this chapter shall be fined not more than \$1,000.00 for each violation. Each day a violation continues shall be deemed to be a separate violation.

(c) The attorney general may bring an action for injunctive relief in the superior court of the county in which a violation occurs to compel compliance with the provisions of this chapter. (Added 1993, No. 194 (Adj. Sess.), § 9, eff. June 14, 1994.)

§ 41. [Reserved for future use.]

§ 45. Emergency relief and assistance

(a) If a state of emergency due to a natural disaster is declared by the governor, the emergency board established by 32 V.S.A. § 131 may authorize the secretary of administration to expend from the emergency relief and assistance fund such funds necessary to meet match requirements for federal grants and to award low interest loans and grants to municipalities that sustain damage to public infrastructure as a result of a natural disaster and to persons whose homes, farms or businesses are damaged by a natural disaster. Assistance under this section may supplement assistance provided through federal and local emergency assistance programs, but eligibility for federal or local assistance shall not be required for eligibility under this section. Funds utilized under this section shall be distributed in accordance with criteria and procedures established by rule by the secretary of administration.

(b) The emergency board may authorize the secretary of administration to expend from the emergency relief and assistance fund an amount not to exceed \$1,000,000.00 to avert an emergency natural or otherwise as identified by the board.

(c) In any fiscal year, the emergency board may transfer to the emergency relief and assistance fund up to two percent of the amount of the general fund budget stabilization reserve established by 32 V.S.A. § 308, which may be expended to provide for emergency relief and assistance under this section. Upon the occurrence of the contingencies and conditions set out in subsections (a) and (b) of this section, such amounts are appropriated and may be expended for this purpose.

(d) There is created an emergency relief and assistance fund to be administered by the secretary of administration as a special fund under the provisions of subchapter 5 of chapter 7 of Title 32. The fund shall contain any amounts transferred to it under this section or appropriated to it by the general assembly.

(e) Annually, the secretary of administration shall submit a report detailing any expenditures for disaster relief and assistance under this section to the general assembly. (Added 1999, No. 62, § 272a; amended 1999, No. 152 (Adj. Sess.), § 278, eff. May 29, 2000.)

§ 46. Disaster relief workers fund; health care providers; reimbursement

(a) The disaster relief workers fund is established in the state treasury, and shall be managed in accordance with the provisions of subchapter 5 of chapter 7 of Title 32. The fund is established for the purpose of providing pay reimbursement to employers of certain public or private health care providers who perform behavioral health disaster relief services.

(b) All monies received by or generated to the fund shall be used to provide wage reimbursement to any public or private Vermont employer for disaster relief services rendered by its employee. The employee shall be a certified disaster relief service volunteer of the American Red Cross. Reimbursement shall be for not more than 14 days for performing disaster relief work pursuant to a request from the American Red Cross when:

(1) the work is performed in Vermont; or

(2) the disaster is a federal or presidentially-declared disaster designated as Level III or above, according to the American Red Cross regulations and procedures; or

(3) the disaster is declared by the governor of a state or territory.

(c) The proceeds from grants, donations, contributions, and other sources of revenue, as provided by law, may be deposited in the fund. Interest earned on the fund and any balance remaining at the end of the fiscal year shall remain in the fund. The treasurer's office shall maintain records that indicate the amount of money in the fund at any given time.

(d) The commissioner of finance and management shall issue warrants for disbursement from the fund only for the purposes described in subsection (b) of this section, and shall

administer the fund pursuant to an appropriation from the fund by the general assembly or authorization from the emergency board.

(e) For behavioral health care relief services, the commissioner of developmental and mental health services or a director of a regional mental health center may make timely applications to any and all appropriate federal or other grant programs that provide money for disaster relief or homeland security services, including the Crisis Counseling Training and Assistance Program. Any monies awarded from these sources for the purposes authorized in subsection (b) of this section shall be deposited into the disaster relief workers fund. The commissioner of developmental and mental health services shall supervise the administration of behavioral health care reimbursements under this act.

(f) Nothing in this section shall render an employer liable for damage, injury or harm caused or sustained by an employee who performs disaster relief services and who is eligible for reimbursement under this section, whether or not reimbursement occurs. (Added 2001, No. 100 (Adj. Sess.), § 1.)

§§ 42-44. Repealed. 1989, No. 252 (Adj. Sess.), § 28(b).

The Vermont Statutes Online

Title 6: Agriculture

Chapter 81: INSECTICIDES

6 V.S.A. § 911. Definitions

§ 911. Definitions

For the purpose of this chapter:

(1) "Active ingredient" means:

(A) In the case of an economic poison other than a plant regulator, defoliant or desiccant, any ingredient which will prevent, destroy or repel insects, nematodes, fungi, rodents, weeds, or other pests;

(B) In the case of plant regulators, any ingredient which will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of plants or the produce thereof;

(C) In the case of a defoliant, any ingredient which will cause the foliage to drop from a plant;

(D) In the case of a desiccant, any ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

(4) "Secretary" means the secretary of agriculture, food and markets.

(5) "Economic poison" means:

(A) Any substance produced, distributed or used for preventing, destroying, or repelling any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the secretary shall declare to be a pest;

(B) Any substance produced, distributed or used as a plant regulator, defoliant or desiccant.

(6) "Fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeast and bacteria, except those on or in living man or other animals.

(7) "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

(8) "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

(9) "Inert ingredient" means an ingredient which is not an active ingredient.

(10) "Ingredient statement" means:

(A) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

(B) A statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison. However, if the preparation is highly toxic to man (determined as provided in section 913 of this title) subdivision (10)(A) of this section shall apply; or

(C) A statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic, to be made in addition to the statement required by subdivisions (10)(A) or (B) of this section, in case the economic poison contains arsenic.

(11) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(12) "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(13) "Label" means the written, printed, or graphic matter on, or attached to, the economic poison, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison.

(14) "Labeling" means all labels and other written, printed, or graphic matter:

(A) Upon the economic poison or any of its containers or wrappers;

(B) Accompanying the economic poison at any time;

(C) To which reference is made on the label or in literature accompanying the economic poison, except when accurate, nonmisleading reference is made to current official publications of the United States Departments of Agriculture or Interior, the United States Public Health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of economic poisons.

(15) "Misbranded" shall apply:

(A) To any economic poison if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) To any economic poison;

(i) if it is an imitation of or is offered for sale under the name of another economic poison;

(ii) if its labeling does not bear a United States environmental protection agency registration number or a valid registration number issued by the secretary under this chapter;

(iii) if the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;

(iv) if the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and the total environment;

(v) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statements on the immediate container cannot be clearly read, of the retail package which is presented or displayed under the customary conditions of purchase;

(vi) if any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) if in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied; or

(viii) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals or vegetation to which it is applied. Provided, that physical or physiological effects on plants or parts thereof shall not be considered to be injurious when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(16) "Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.

(17) "Registrant" means the person registering any economic poison pursuant to the provisions of this chapter.

(18) "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the secretary shall declare to be a pest.

(19) "Weed" means any plant which grows where not wanted.

(20) "Nematocide" means any substance produced, distributed or used for preventing, destroying or repelling nematodes.

(21) "Plant regulator" means any substance produced, distributed or used for the purposes of accelerating or retarding the rate of growth or rate of maturation, or otherwise altering the behavior of plants but shall not include substances produced, distributed or used for plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments.

(22) "Defoliant" means any substance produced, distributed or used for causing the foliage to drop from a plant, with or without causing abscission.

(23) "Desiccant" means any substance produced, distributed or used for artificially accelerating the drying of plant tissues.

(24) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform or saclike bodies covered with cuticle, and inhabiting soil water, plants or plant parts; may also be called nemas or eelworms. (Amended 1961, No. 74, §§ 1-4, eff. April 19, 1961; 1975, No. 42, § 1; 1981, No. 117 (Adj. Sess.); 2003, No. 42, § 2, eff. May 27, 2003.)

Appendix P: CRTK Rules and Regulations

EPA Superfund Amendments and Reauthorization Act
of 1986, Title III Emergency Planning
and Community Right-to-Know Program

Section One - Purpose

Section Two - Scope

Section Three - Definitions

Section Four - Hazard Determination

Section Five - Employer Reporting Requirements

Section Six - Fees

Section Seven - Reporting Locations and Public Access to
information

Section Eight - Enforcement, Penalties, Appeals

Section Nine - Hazardous Chemical and Substance Emergency Response Fund

Section Ten - Trade Secrets

Table I - Reporting Requirements and Quantities

Table II - Reporting Fees

Effective Date: October 9, 1995

Section One - Purpose

These rules set forth the procedures for hazardous chemical/substance identification, employer reporting, public disclosure of grants in Vermont as provided for in [20 VSA, Chapter 1](#), and [Public Law 99-499, 42 USC 9601 "Superfund Amendments and Reauthorization Act of 1986, Title III Emergency Planning and Community Right to Know Act."](#)

These rules are intended to implement a reporting system which will satisfy the requirements of laws specified above. Pesticides will be reported separately to the Vermont Department of Agriculture, Food, and Markets. These rules are implemented pursuant to 20 VSA Section 31.

Section Two - Scope

2.1 These rules apply to all Employers and facilities that are required to prepare or have available Materials Safety Data Sheets (MSDS) for hazardous chemicals/substances under Federal Occupational Safety and Health Administration (OSHA) or Vermont Occupational Safety and Health Administration (VOSHA) regulation 29 CFR 1200, or have Petroleum Products, and fuels in excess of 10,000 pounds.

2.2 These rules also apply to state and local governments or any agency, department or instrumentality thereof.

2.3 Exemption - These rules do not apply to the Vermont National Guard.

Section Three - Definitions

3.1 (a) **Commissioner** - unless otherwise specified, the Vermont Commissioner of Public Safety, or designee.

(b) **Department** - unless otherwise specified, the Vermont Department of Public Safety.

(c) **Extremely hazardous substance** - means any substance listed in the appendices to 40 CFR Part 355.

(d) **Explosive** - Any chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

(e) **Facility** - means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

(f) **Hazard Category** - means any of the following:

(1) Immediate (acute) health hazard including "highly toxic," "toxic," "irritant," "sensitizer," "corrosive," (as defined under 1910.120 of Title 29 of the Code of Federal Regulations) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of short term exposure and is of short duration;

(2) Delayed (chronic) health hazard, including carcinogens (as defined under 1910.1200 of Title 29 of the Code of Federal Regulation) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long term exposure and is of long duration;

(3) Fire hazard, including "flammable," "combustible liquid," "pyrophoric," and "oxidizer" (as defined under 1910.1200 of Title 29 of the Code of Federal Regulations).

(4) Sudden release of pressure, including "explosive" and "compressed gas" (as defined under 1910.1200 of Title 29 Code of Federal Regulations);

(5) Reactive, including "unstable reactive," "organic peroxide," and "water reactive" (as defined under 1910.1200 of Title 29 of the Code of Federal Regulations).

(g) **Hazardous chemical/substance** - means any chemical/substance, including pesticides, which is a physical hazard or health hazard, except that such terms does not include the following substances.

(1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

(2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

- (3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.
- (4) Any substance to the extent it is used in routine agricultural operations by private applicators (farmers). Commercial applicators and/or dealers are not exempted from the reporting requirements of these rules.
- (h) **Health hazards** - means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed individuals. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes.
- (i) **Inventory form** - The Tier Two Emergency and Hazardous Chemical Inventory form or Tier Two Pesticide Inventory form or other form specified by the Department.
- (j) **Material Safety Data Sheet or MSDS** - the document required to be developed under 1910.1200 (g) of Title 29 of the Code of Federal Regulations.
- (k) **Physical Hazard** - means a chemical/substance for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water- reactive.
- (l) **Pesticide** - means materials as defined in 6 VSA Section 1101 (6).
- (m) **Petroleum products, and fuels** - means gasoline; kerosene; number two heating oil; diesel fuel; kerosene base jet fuel; number four, five, and six residual oil for utility or non-utility use; liquified petroleum gas; compressed natural gas.
- (n) **Regional Emergency Response Commission** – the commission created by [20 VSA](#) Section 33 to assist existing emergency management response efforts.
- (o) **Research Laboratory** - a workplace or work area of a workplace used primarily for research, development, non-routine testing or experimentation activity in which hazardous chemicals are used. Provided, however, that a research laboratory shall not be involved in the production or manufacture of goods for direct commercial sale.
- (p) **Significant change in the information previously provided** - Modifications which alter physical or health hazards sufficiently to require changes in emergency response plans or actions.
- (q) **State Emergency Response Commission (SERC)** - The commission created by [20 VSA](#) Section 30 to carry out the requirements of [Title III of the Superfund Amendments and Reauthorization Act of 1986 \(SARA\)](#).

(r) **Threshold Planning Quantity** - the quantities of extremely hazardous substances listed in the appendices of 40 CFR 355.

Section Four - Hazard Determination

4.1 All chemicals/substances for which a Material Safety Data Sheet must be prepared or maintained under VOSHA or OSHA regulation 1910.1200 "Hazard Communication" are hereby designated as hazardous chemicals/substances for purposes of these rules.

Section Five - Employer Facility Reporting Requirements

5.1 Annually, employers and owners or operators of a facility shall report the presence of hazardous chemicals/substances in each facility or workplace as specified in Table I. Reports for periods covering January 1 through December 31 of each year shall be filed on or before March 1 of the following year.

Previous reports filed pursuant to "Community Right to Know" regulations, effective March 1, 1987, DO NOT satisfy these reporting requirements.

5.2 Reports shall be filed on forms specified by the Department. All reports filed concerning pesticides shall be on forms specified by the Vermont Department of Agriculture, Food, and Markets.

5.3 Material Safety Data Sheets (MSDS) shall be submitted for each hazardous chemical/substance for which reporting is required. Submission of a MSDS may be waived by the Department or, for pesticides, by the Vermont Department of Agriculture, Food and Markets. In lieu of submitting a MSDS, the following may be submitted:

(a) A list of hazardous chemicals/substances for which an MSDS is required, grouped by hazard category as defined in section 3.1 (f) of these rules; and

(b) The chemical or common name of each hazardous chemical/substance; and

(c) Any hazardous component of each such chemical as provided on the material safety data sheet.

5.4 Inventory forms and MSDS (or list authorized pursuant to section 5.3 of these rules) shall be submitted to the Department (acting for SERC); or for pesticides the Vermont Department of Agriculture, Food, and Markets; the Local Emergency Planning Committee; and the local fire department having jurisdiction over the workplace or the facility. To insure optimum information flow and availability, SERC may temporarily receive information on behalf of any LEPC and redistribute such information or summaries to any LEPC.

The addresses and telephone numbers of the filing locations are shown in section 8 of these rules.

5.5 Supplemental Reporting

(a) The employer or facility who has submitted MSDS under section 5.3 shall provide revised MSDS to the organizations specified in section 5.4 within 3 months after discovery of significant new information concerning the hazardous chemical for which the MSDS was submitted.

(b) Within 30 days of a request by the Department, Vermont Department of Agriculture, Food, and Markets, State Emergency Response Commission, Local Emergency Planning Committee, or the fire department having jurisdiction over the facility or workplace, the employer shall submit MSDS for any hazardous chemical/substance present at a facility regardless of quantity.

5.6 Research Laboratories

(a) Facilities having multiple research laboratories shall file a separate reporting form for each building containing a research laboratory.

5.7 Emergency Notice

(a) Release of any hazardous materials/substances requiring notification under section 304 of Title III of the Superfund Amendment and Reauthorization Act of 1986 shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the Local Emergency Planning Committees for any area likely to be affected by the release and to the State Emergency Planning Commission of any State likely to be affected by the release.

With respect to transportation of a substance subject to the requirements of section 304 or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by telephoning Vermont Emergency Response Management at (800) 641-5005, and the local response organization, by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

Notice shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

- (1) The chemical name or identity of any substance involved in the release.
- (2) An indication of whether the substance is on the list referred to in section 302(a) of

SARA.

- (3) An estimate of the quantity of any such substance that was released into the environment.
- (4) The time and duration of the release.
- (5) The medium or media into which the release occurred.
- (6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
- (7) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).
- (8) The name and telephone number of the person or persons to be contacted for further information.

(b) Follow-up Emergency Notice:

As soon as practicable, but not more than seven calendar days after such a release, the owner or employer shall provide a written emergency notice (or notices, as more information becomes available) to the SERC through the Department or for pesticides the Department of Agriculture, Food and Markets, setting forth and updating the information required under [Section 304](#), subsection (b), and including additional information with respect to:

- (1) actions taken to respond to and contain the release,
- (2) any known or anticipated acute or chronic health risks associated with the release, and
- (3) where appropriate, advice regarding medical attention necessary for exposed individuals.

Section Six - Fees

6.1 Beginning January 1, 1991 every facility or employer filing a report pursuant to the requirements of these rules shall pay a fee for each reported hazardous chemical or substance in accordance with the schedule set out in Table II. Fees are due and shall be paid at the time of reporting.

Where the container and the hazardous chemical or substance are separately owned, the owner of the hazardous chemical or substance shall be responsible for the fee.

6.2 The following are exempted from paying fees but shall comply with all applicable reporting requirements of this chapter:

- (1) Municipalities and other political subdivisions.
- (2) State agencies.
- (3) Persons engaged in farming as defined in 10 VSA 6001.
- (4) No person shall be required to pay a fee for a chemical or substance which has been determined to be an [economic poison](#) as defined in [section 911 of Title 6](#) or for a fertilizer or agricultural lime as defined in section 363 of Title 6 and for which a registration or tonnage fee has been paid to the Department of Agriculture, Food and Markets pursuant to chapter 28 or 81 of Title 6.
- (5) Non profit corporations

6.3 The fees shall be paid to the "Vermont Commissioner of Public Safety, Hazardous Substance Fund." Fees shall be paid by check or money order. All Fees shall be deposited into the Hazardous Substance Fund established by [20 VSA](#) Section 38(b).

Section Seven - Reporting Locations and Public Access to Information

7.1 Reporting forms and requests for information concerning data gathered by the Department shall be directed to:

Vermont Emergency Management
Community Right to Know
103 S. Main Street
Waterbury, Vermont 05671

Pesticide reporting forms and requests for information concerning pesticide data gathered by the Vermont Department of Agriculture, Food, and Markets shall be directed to:

Vermont Department of Agriculture, Food and Markets
Plant Industry Section
116 State Street
Drawer 20
Montpelier, Vermont 05620-2901
(802)828-2431

Alternatively, informational requests may be directed to any Local Emergency Planning Committee.

7.2 Emergency Response Plans, Material Safety Data Sheets, Inventory Forms, Toxic Chemical Release Forms and Follow-up Emergency Notices shall, with the exception of information containing trade secrets as defined by [Sec. 322 of Title III, SARA](#), be available to the general public. Information shall be available for public inspection during the Department's and the Department of Agriculture, Food and Markets' normal business hours and shall be provided for the cost of copying, printing, postage, and handling.

Upon request of an owner or operator of a facility, the Department and the Department of Agriculture, Food and Markets shall withhold from public disclosure the exact location of any specific chemical required to be listed on an inventory reporting form.

7.3 The State Emergency Response Commission shall annually publish a notice in newspapers of general circulation throughout the state that the Emergency Response Plan, Materials Safety Data Sheets, and Inventory Forms have been submitted to the Department and the Department of Agriculture, Food and Markets. The notice shall state that follow-up emergency notices may subsequently be issued. Such notice shall state that members of the public who wish to review any such plan, sheet, form, or follow-up notice, may do so at a location designated by the Department or the Department of Agriculture, Food and Markets.

Section Eight - Enforcement, Penalties, and Appeals

8.1 Enforcement

(a) The Department, a Local Emergency Planning Committee, the State Emergency Response Commission, and its agents, and in the case of pesticides, the Vermont Department of Agriculture, Foods, and Markets, shall have authority to enter upon and inspect the premises and records of any employer and facility at reasonable times in order to ensure compliance with these rules.

(b) Upon notification to an employer or operator of a facility or a workplace subject to these rules, by the fire department with jurisdiction over the facility, the fire department shall be allowed to conduct an on-site inspection of the facility.

(c) A person who violates any provision of [Title 20, Chap. 1](#), or a rule adopted under this chapter shall be fined not more than \$1,000 for each violation. Each day a violation continues shall be deemed to be a separate violation.

8.2 General

(a) Reference is made to the latest EPA rule, 40 CFR 370, "Emergency Hazardous Chemical Inventory Forms and Community Right to Know Reporting Requirements; Final Rule." This document shall be used to provide guidance for procedural details not included in these rules.

9.1 Disbursements

The Commissioner of Public Safety, with the approval of the State Emergency Response Commission, may spend monies from the Hazardous Chemical and Substance Emergency Fund, reasonably necessary to implement and administer the requirements of [Title III of Superfund Amendments and Reauthorization Act of 1986 \(SARA\)](#) and [20 V.S.A. Secs. 30-32, 38](#). Such costs may include:

- Employment of personnel to manage and coordinate data.
- Implementation of site visits.
- Informational mailing.
- Establishment of and providing training program and personnel.
- Data processing.
- Mailing.
- Purchase or rental of equipment.
- Auditing Expenses.
- Employment of Personnel for Administrative Assistance to the SERC.
- Chemical Emergency Planning Activities.
- Accident Prevention Programs.
- Technical Assistance.
- Outreach Activities.

9.2 Grants to Local Emergency Planning Districts

(a) Each local Emergency Planning District shall receive an annual grant of \$1,500.

(b) Disbursement of the annual grant to each local Emergency Planning District shall be contingent upon adequate funds or anticipated funds in the Hazardous Chemical and Substance Emergency Response Fund.

(c) Initial grants to local Emergency Planning Districts need not be of equal amounts. In determining the size of initial grants, the Commissioner of Public Safety and the State Emergency Response Commission shall consider the money available in the fund, anticipated funds, the amount of other pending or anticipated requests from local Emergency Planning Districts and the merits of the request itself.

(d) Local Emergency Planning Committees shall file an application for a portion or all of the annual grant of \$1,500. The application shall state a request for a specific amount of money and a budget indicating how the grant shall be spent. The proposal should indicate how the proposed spending will further the Local Emergency Planning Committee's long term goals and how the proposal coincides with the Local Emergency Planning Committee's evaluation, conducted pursuant to Sec. 303(b) of Title III, (SARA) of the need for resources necessary to develop, implement, and exercise the emergency plan.

(e) Grants may be awarded for all costs reasonably necessary to implement and administer those duties imposed upon Local Emergency Planning Committees by 20 V.S.A. Sec. 32. Costs may include:

- employment of personnel;
- training cost;
- equipment;
- data processing;
- mailing;
- office space; and
- cost of complying with auditing or reporting requirements mandated by the State Emergency Response Commission.
- Chemical Emergency Planning Activities.
- Accident Prevention Programs.
- Technical Assistance.
- Outreach Activities.

(f) The commissioner of Public Safety with the approval of the State Emergency Response Committee shall approve in total, approve in part, or request resubmission of grant applications with modifications.

(g) Prior to actually receiving the money provided by the grant, each Local Emergency Planning Committee must be incorporated or must affiliate itself with a city, town, fire district, incorporated village, or other incorporated entity. Such entity must agree to receive, hold, and disburse the grant monies, and document such transactions according to generally accepted accounting principles. The financial records of the Local Emergency Planning Committee and any affiliated, incorporated entity shall be considered public records and shall be provided to the Commissioner of Public Safety or the State Emergency Response Commission upon request. All such records must be maintained for a minimum of five years.

9.3 Additional Grants

(a) After disbursement of the annual grant amounts to each Local Emergency Planning District or upon a determination that sufficient funds exist or are anticipated to meet the requirements of the annual grant amounts, additional grants may be made by the Commissioner of Public Safety, with the approval of the State Emergency Response Commission to any local emergency planning commission or regional emergency response commission as well as to any political subdivisions including any city, town, fire district, incorporated village, and other incorporated entities in the state.

(b) Grants made pursuant to this section shall be matched by the local government in the amount of twenty-five (25) percent of the grant unless waived by the State Emergency Response Commission. The match may be by contribution or by privately furnished funds or by in-kind services, space or equipment which would otherwise be purchased by the Committee. Applications shall be submitted for a specific amount of money and a budget indicating how the grant shall be spent. The proposal shall address those factors outlined in Section 9.3(c).

(c) The Commissioner of Public Safety and the State Emergency Response Commission shall consider the comments and evaluations from the appropriate Local Emergency Planning Committee as to the merits of the proposal. They shall also consider how the proposal coincides with the Local Emergency Planning Committee's evaluation, conducted pursuant to [Section 303\(b\) of Title III, \(SARA\)](#) of the need for resources necessary to develop, implement, and exercise the emergency plan. Emphasis shall be placed upon high-risk localities and proposals which facilitate coordination of emergency response services within planning districts.

(d) Grants may be awarded for costs reasonably necessary to establish and implement hazardous chemical and substance emergency response services. Costs may include:

- employment of personnel
- training costs
- equipment
- data processing
- mailing
- office space
- costs of complying with auditing or reporting requirements mandated by the State Emergency Response Commission.
- Chemical Emergency Planning Activities.
- Accident Prevention Programs.
- Technical Assistance.
- Outreach Activities.

(e) The grantee must agree to receive, hold, and disburse the grant monies, and document such transactions according to generally accepted accounting principles. The financial records of the grantee shall be considered public records and shall be provided to the Commissioner of Public Safety or the State Emergency Response Commission upon request. All such records must be maintained for a minimum of five years.

9.4 Reorganization of Additional Local Emergency Planning Committees/Districts

(a) If existing Local Emergency Planning Districts are reorganized and result in additional or fewer districts than presently exist, the State Emergency Response Commission shall determine whether the new districts shall qualify for all or part of the minimum grants in Section 9.2(a).

(b) In determining the amount of the minimum grant, if any, to be apportioned to a new district, the State Emergency Response Commission shall consider the amount of grants previously made to those areas comprising the new district, the benefits received by those areas from any such grants, and the existing needs of the newly created district.

9.5 Review and Audits of Grants

(a) The Commissioner of Public Safety and the State Emergency Response Commission may require, as a condition of a grant, that a grantee prepare or have prepared a periodic report,

summary or audit of the expenditures made pursuant to the grant. The costs of complying with such a condition may be provided for in the grant.

Section Ten - Trade Secrets

10.1 Requests for trade secret confidentiality status must meet the requirements of [Public Law 99-499 SARA Title III, Sec. 322, Trade Secrets.](#)

Appendix Q: 501 c Non-Profit Information

Advantages and Disadvantages

501(c)(3) Privileges

- Exemption from Federal Income Tax
- Exemption from F.U.T.A.
- Tax Deductibility for Donors
- Eligible for Government & Foundation Grants
- Eligible for Bulk Mailing Permit
- Some B & O and Property Tax Exemptions
- Gambling Permits
- Credibility

501(c)(3) Responsibilities

- Keep Adequate Records
- File Required Returns
- Provide Donor Substantiation
- Obey Disclosure Laws
- Generate Public Support
- Avoid "Excess Benefit"
- Shun Political Activity
- Limit Legislative Activity
- Limit Unrelated Business Activity

The chart below summarizes various kinds of tax treatment for nonprofit and for profit organizations for comparison purposes.

| Type of Tax | For-Profit | Non-Profit |
|-------------|------------|------------|
|-------------|------------|------------|

| | | |
|--|--|---|
| Income Tax | Sole proprietor files Form 1040, Schedule C, and pays income tax on net profit. Corporation files form 1120, and pays income tax on net profit; employees file Form 1040 and pay income tax on salaries received | 501(c)(3) non-profit files Form 990 or 990-EZ, and pays income tax only on net profit from unrelated activities; employees of the non-profit file Form 1040 and pay income tax on salaries received |
| Payroll Taxes | Sole proprietorship or corporation files quarterly 941's and annual 940, W-2's and W-3 | Nonprofit files quarterly 941's and annual W-2's/W-3, but 501(c)(3) organizations don't pay FUTA tax (Form 940) |
| Washington B & O Tax: Exempt Purpose Income | Income received by an individual or a for-profit is taxable for B & O tax purposes, even when related to charitable or educational activities | Some income from charitable or educational activities is exempt, while other income may be taxable; there is no blanket rule |
| Washington B & O Tax: Fundraising activities | Individuals and for profit organizations do not enjoy an exemption for fundraising income | Fundraising activities that meet specific criteria are exempt (examples - rummage sales, fundraising meals, concession sales, auctions) |
| Property Tax (WA) | Property owned by an individual or a for-profit entity is generally not eligible for property tax exemption | The use of the property determines exemption (examples of uses eligible for exemption - schools, churches, hospitals, nursing homes, museums) |
| Sales Tax: Sales Income (WA) | Individuals and for profits must collect sales tax on items sold | Some non-profit organization sales can be exempt from sales tax |
| Sales or Use Tax: Purchases (WA) | Individuals and for profits must pay sales or use tax on purchases | Non-profit organizations must pay sales or use tax on purchases, with very few exceptions |
| Charitable Contributions | Grantors and contributors are not able to take a charitable contribution deduction for cash or goods donated to an individual or to a for-profit organization | Grantors and contributors are permitted to take a charitable contribution deduction for cash or goods donated to a 501(c)(3) organization |

More information and forms can be found at the following Internal Revenue Service site:

<http://www.irs.gov/charities/index.html>

Appendix R: Robert's Rules of Order Information

Robert's Rules of Order - Summary Version

For Fair and Orderly Meetings & Conventions

Provides common rules and procedures for deliberation and debate in order to place the whole membership on the same footing and speaking the same language. The conduct of ALL business is controlled by the general will of the whole membership - the right of the deliberate majority to decide. Complementary is the right of at least a strong minority to require the majority to be deliberate - to act according to its considered judgment AFTER a full and fair "working through" of the issues involved. Robert's Rules provides for constructive and democratic meetings, to help, not hinder, the business of the assembly. Under no circumstances should "undue strictness" be allowed to intimidate members or limit full participation.

The fundamental right of deliberative assemblies require all questions to be thoroughly discussed before taking action!

The assembly rules - they have the final say on everything!

Silence means consent!

- Obtain the floor (the right to speak) by being the first to stand when the person speaking has finished; state Mr./Madam Chairman. Raising your hand means nothing, and standing while another has the floor is out of order! Must be recognized by the Chair before speaking!
- Debate can not begin until the Chair has stated the motion or resolution and asked "are you ready for the question?" If no one rises, the chair calls for the vote!
- Before the motion is stated by the Chair (the question) members may suggest modification of the motion; the mover can modify as he pleases, or even withdraw the motion without consent of the seconder; if mover modifies, the seconder can withdraw the second.
- The "immediately pending question" is the last question stated by the Chair! Motion/Resolution - Amendment - Motion to Postpone
- The member moving the "immediately pending question" is entitled to preference to the floor!
- No member can speak twice to the same issue until everyone else wishing to speak has spoken to it once!
- All remarks must be directed to the Chair. Remarks must be courteous in language and deportment - avoid all personalities, never allude to others by name or to motives!

- The agenda and all committee reports are merely recommendations! When presented to the assembly and the question is stated, debate begins and changes occur!

The Rules

- **Point of Privilege:** Pertains to noise, personal comfort, etc. - may interrupt only if necessary!
- **Parliamentary Inquiry:** Inquire as to the correct motion - to accomplish a desired result, or raise a point of order
- **Point of Information:** Generally applies to information desired from the speaker: "I should like to ask the (speaker) a question."
- **Orders of the Day (Agenda):** A call to adhere to the agenda (a deviation from the agenda requires Suspending the Rules)
- **Point of Order:** Infraction of the rules, or improper decorum in speaking. Must be raised immediately after the error is made
- **Main Motion:** Brings new business (the next item on the agenda) before the assembly
- **Divide the Question:** Divides a motion into two or more separate motions (must be able to stand on their own)
- **Consider by Paragraph:** Adoption of paper is held until all paragraphs are debated and amended and entire paper is satisfactory; after all paragraphs are considered, the entire paper is then open to amendment, and paragraphs may be further amended. Any Preamble can not be considered until debate on the body of the paper has ceased.
- **Amend:** Inserting or striking out words or paragraphs, or substituting whole paragraphs or resolutions
- **Withdraw/Modify Motion:** Applies only after question is stated; mover can accept an amendment without obtaining the floor
- **Commit /Refer/Recommit to Committee:** State the committee to receive the question or resolution; if no committee exists include size of committee desired and method of selecting the members (election or appointment).
- **Extend Debate:** Applies only to the immediately pending question; extends until a certain time or for a certain period of time
- **Limit Debate:** Closing debate at a certain time, or limiting to a certain period of time
- **Postpone to a Certain Time:** State the time the motion or agenda item will be resumed

- **Object to Consideration:** Objection must be stated before discussion or another motion is stated
- **Lay on the Table:** Temporarily suspends further consideration/action on pending question; may be made after motion to close debate has carried or is pending
- **Take from the Table:** Resumes consideration of item previously "laid on the table" - state the motion to take from the table
- **Reconsider:** Can be made only by one on the prevailing side who has changed position or view
- **Postpone Indefinitely:** Kills the question/resolution for this session - exception: the motion to reconsider can be made this session
- **Previous Question:** Closes debate if successful - may be moved to "Close Debate" if preferred
- **Informal Consideration:** Move that the assembly go into "Committee of the Whole" - informal debate as if in committee; this committee may limit number or length of speeches or close debate by other means by a 2/3 vote. All votes, however, are formal.
- **Appeal Decision of the Chair:** Appeal for the assembly to decide - must be made before other business is resumed; NOT debatable if relates to decorum, violation of rules or order of business
- **Suspend the Rules:** Allows a violation of the assembly's own rules (except Constitution); the object of the suspension must be specified

Roberts Rules of Order Made Simple

Points

The following three points are always in order:

1. Point of Order: a question about process, or objection and suggestion of alternative process. May include a request for the facilitator to rule on process.

2. Point of Information: a request for information on a specific question, either about process or about the content of a motion. This is not a way to get the floor to say something you think people should know. People misusing points of information in this fashion will be defenestrated, or otherwise sanctioned forcefully.

3. Point of Personal Privilege: a comment addressing a personal need - a direct response to a comment defaming one's character, a plea to open the windows, etc.

Motions

All motions must be seconded, and are adopted by a majority vote unless otherwise noted. All motions may be debated unless otherwise noted. Motions are in order of precedence: motions may be made only

if no motion of equal or higher precedence is on the floor (i.e., don't do a number 5 (move to end debate) when the body is discussing a number 4 (move to suspend rules).

1. Motion to Adjourn: not debatable; goes to immediate majority vote.
2. Motion to Recess: not debatable. May be for a specific time.
3. Motion to Appeal the Facilitator's Decision: Not debatable; goes to immediate vote. Allows the body to overrule a decision made by the chair.
4. Motion to Suspend the Rules: suspends formal process for dealing with a specific question. Debatable; requires 2/3 vote.
5. Motion to End Debate and Vote or Call the Question: applies only to the motion on the floor. Not debatable; requires 2/3 vote.
6. Motion to Extend Debate: can be general, or for a specific time or number of speakers. Not debatable.
7. Motion to Refer to Committee: applies only to the main motion. Refers question to a specific group with a specific time and charge
8. Motion to Divide the Question: breaks the motion on the floor into two parts, in manner suggested by mover.
9. Motion to Amend: must be voted for by a majority to be considered and by a 2/3 to be passed. If amendment is accepted as "friendly" by the proposer of the amendment then many bodies will allow it to be accepted without a formal vote; this is a way of including a consensus-building process into procedure without endless debate over amendments to amendments. Strictly speaking, however, once the main motion is made it is the property of the body to amend.
10. Main Motion: what it is you're debating and amending.

Other Meeting Guidelines:

1. When a topic is first introduced or a main motion is made, allow all questions for information purposes to be asked before opening to debate.
2. Discourage the repetition of arguments. Attempt to call on people who have not yet spoken before those who have already spoken. Discourage dialogues that start up between two individuals in debate.
3. If debate carries on too long, impose time limits on speakers.
4. Discourage people from talking in initials - spell them out.

Appendix S: Volunteer Protection Act of 1997

Volunteer Protection Act of 1997

This is the text of Public Law 105-19; the Volunteer Protection Act of 1997 as signed into law by President Clinton on June 18, 1997:

One Hundred Fifth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the seventh day of January, one thousand nine hundred and ninety-seven

An Act

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Volunteer Protection Act of 1997'.

SECTION 2. FINDINGS AND PURPOSE.

(a) FINDINGS- The Congress finds and declares that--

(1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;

(2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;

(3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost programs than would be obtainable if volunteers were participating;

(4) because Federal funds are expended on useful and cost-effective social service programs, many of which are national in scope, depend heavily on volunteer participation, and represent some of the most successful public-private partnerships, protection of volunteerism through clarification and limitation of the personal liability risks assumed by the volunteer in connection with such participation is an appropriate subject for Federal legislation;

(5) services and goods provided by volunteers and nonprofit organizations would often otherwise be provided by private entities that operate in interstate commerce;

(6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities; and

(7) clarifying and limiting the liability risk assumed by volunteers is an appropriate subject for Federal legislation because--

(A) of the national scope of the problems created by the legitimate fears of volunteers about frivolous, arbitrary, or capricious lawsuits;

(B) the citizens of the United States depend on, and the Federal Government expends funds on, and provides tax exemptions and other consideration to, numerous social programs that depend on the services of volunteers;

(C) it is in the interest of the Federal Government to encourage the continued operation of volunteer service organizations and contributions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and (ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) PURPOSE- The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

SECTION 3. PREEMPTION AND ELECTION OF STATE NONAPPLICABILITY.

(a) PREEMPTION- This Act preempts the laws of any State to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any State law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

(b) ELECTION OF STATE REGARDING NONAPPLICABILITY- This Act shall not apply to any civil action in a State court against a volunteer in which all parties are citizens of the State if such State enacts a statute in accordance with State requirements for enacting legislation--

(1) citing the authority of this subsection;

(2) declaring the election of such State that this Act shall not apply, as of a date certain, to such civil action in the State; and

(3) containing no other provisions.

SECTION 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.

(a) LIABILITY PROTECTION FOR VOLUNTEERS- Except as provided in subsections (b) and (d), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if--

(1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

(2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity;

(3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and

(4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the State requires the operator or the owner of the vehicle, craft, or vessel to--

(A) possess an operator's license; or

(B) maintain insurance.

(b) CONCERNING RESPONSIBILITY OF VOLUNTEERS TO ORGANIZATIONS AND ENTITIES- Nothing in this section shall be construed to affect any civil action brought by any nonprofit organization or any governmental entity against any volunteer of such organization or entity.

(c) NO EFFECT ON LIABILITY OF ORGANIZATION OR ENTITY- Nothing in this section shall be construed to affect the liability of any nonprofit organization or governmental entity with respect to harm caused to any person.

(d) **EXCEPTIONS TO VOLUNTEER LIABILITY PROTECTION-** If the laws of a State limit volunteer liability subject to one or more of the following conditions, such conditions shall not be construed as inconsistent with this section:

(1) A State law that requires a nonprofit organization or governmental entity to adhere to risk management procedures, including mandatory training of volunteers.

(2) A State law that makes the organization or entity liable for the acts or omissions of its volunteers to the same extent as an employer is liable for the acts or omissions of its employees.

(3) A State law that makes a limitation of liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

(4) A State law that makes a limitation of liability applicable only if the nonprofit organization or governmental entity provides a financially secure source of recovery for individuals who suffer harm as a result of actions taken by a volunteer on behalf of the organization or entity. A financially secure source of recovery may be an insurance policy within specified limits, comparable coverage from a risk pooling mechanism, equivalent assets, or alternative arrangements that satisfy the State that the organization or entity will be able to pay for losses up to a specified amount. Separate standards for different types of liability exposure may be specified.

(e) **LIMITATION ON PUNITIVE DAMAGES BASED ON THE ACTIONS OF VOLUNTEERS-**

(1) **GENERAL RULE-** Punitive damages may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately caused by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.

(2) **CONSTRUCTION-** Paragraph (1) does not create a cause of action for punitive damages and does not preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages.

(f) **EXCEPTIONS TO LIMITATIONS ON LIABILITY-**

(1) **IN GENERAL-** The limitations on the liability of a volunteer under this Act shall not apply to any misconduct that--

(A) constitutes a crime of violence (as that term is defined in section 16 of title 18, United States Code) or act of international terrorism (as that term is defined in section 2331 of title 18) for which the defendant has been convicted in any court;

(B) constitutes a hate crime (as that term is used in the Hate Crime Statistics Act (28 U.S.C. 534 note));

(C) involves a sexual offense, as defined by applicable State law, for which the defendant has been convicted in any court;

(D) involves misconduct for which the defendant has been found to have violated a Federal or State civil rights law; or

(E) where the defendant was under the influence (as determined pursuant to applicable State law) of intoxicating alcohol or any drug at the time of the misconduct.

(2) **RULE OF CONSTRUCTION-** Nothing in this subsection shall be construed to effect subsection (a)(3) or (e).

SECTION 5. LIABILITY FOR NONECONOMIC LOSS.

(a) **GENERAL RULE-** In any civil action against a volunteer, based on an action of a volunteer acting within the scope of the volunteer's responsibilities to a nonprofit organization or governmental entity, the liability of the volunteer for noneconomic loss shall be determined in accordance with subsection (b).

(b) **AMOUNT OF LIABILITY-**

(1) **IN GENERAL-** Each defendant who is a volunteer, shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which that defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) **PERCENTAGE OF RESPONSIBILITY**- For purposes of determining the amount of noneconomic loss allocated to a defendant who is a volunteer under this section, the trier of fact shall determine the percentage of responsibility of that defendant for the claimant's harm.

SECTION 6. DEFINITIONS.

For purposes of this Act:

(1) **ECONOMIC LOSS**- The term `economic loss' means any pecuniary loss resulting from harm (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to the extent recovery for such loss is allowed under applicable State law.

(2) **HARM**- The term `harm' includes physical, nonphysical, economic, and noneconomic losses.

(3) **NONECONOMIC LOSSES**- The term `noneconomic losses' means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses of any kind or nature.

(4) **NONPROFIT ORGANIZATION**- The term `nonprofit organization' means--

(A) any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note); or

(B) any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime referred to in subsection (b)(1) of the first section of the Hate Crime Statistics Act (28 U.S.C. 534 note).

(5) **STATE**- The term `State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, any other territory or possession of the United States, or any political subdivision of any such State, territory, or possession.

(6) **VOLUNTEER**- The term `volunteer' means an individual performing services for a nonprofit organization or a governmental entity who does not receive--

(A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or

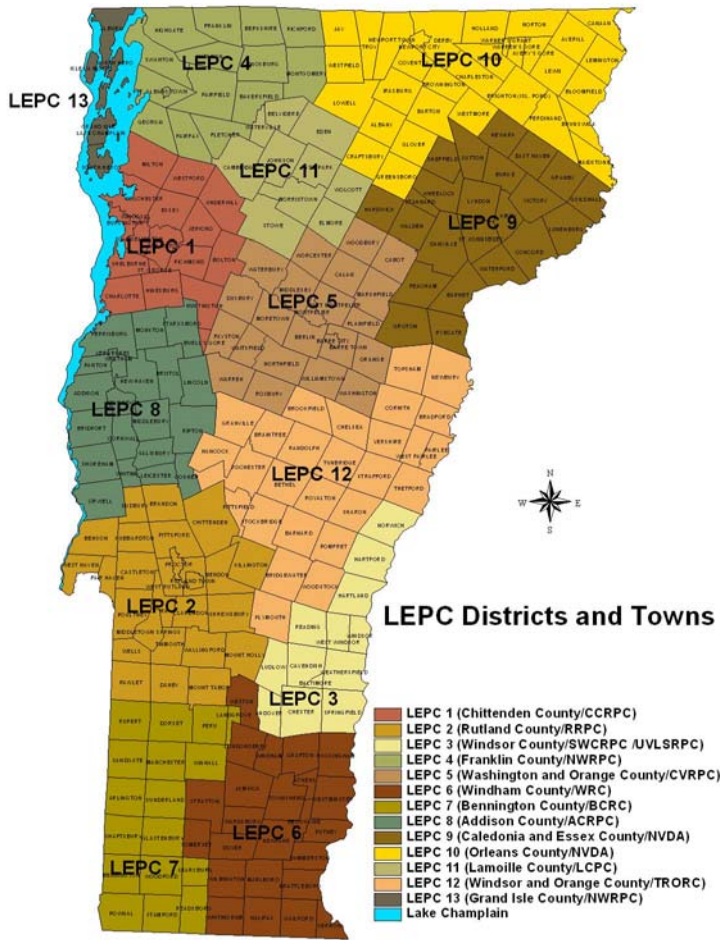
(B) any other thing of value in lieu of compensation, in excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.

SECTION 7. EFFECTIVE DATE.

(a) **IN GENERAL**- This Act shall take effect 90 days after the date of enactment of this Act.

(b) **APPLICATION**- This Act applies to any claim for harm caused by an act or omission of a volunteer where that claim is filed on or after the effective date of this Act but only if the harm that is the subject of the claim or the conduct that caused such harm occurred after such effective date.

Appendix T: LEPC Districts and Addresses



**Hazardous Materials
Compliance Website:**

www.dps.state.vt.us/vem/

- LEPC 1 - Chittenden (CCRPC)
- LEPC 2 - Rutland (RRPC)
- LEPC 3 - Parts of Windsor (UVLSRPC and SWCRPC)
- LEPC 4 - Franklin (NWRPC)
- LEPC 5 - Washington and parts of Orange (CVRPC)
- LEPC 6 - Windham (WRC)
- LEPC 7 - Bennington (BCRC)
- LEPC 8 - Addison (ACRPC)
- LEPC 9 - Caledonia and Essex (NVDA)
- LEPC 10 - Orleans and Essex (NVDA)
- LEPC 11 - Lamoille (LCPC)
- LEPC 12 - Parts of Orange and Windsor (TRORC)
- LEPC 13 - Grand Isle (NWRPC)

VERMONT LEPC DISTRICT CHAIRS

| <u>LEPC</u> | <u>Name</u> | <u>Phone</u> | <u>LEPC</u> | <u>Name</u> | <u>Phone</u> |
|-------------|--|----------------------------|-------------|---|--|
| 1. | Al Barber - Chair LEPC #1 C/o Hinesburg FD PO Box 12 Hinesburg, VT 05461 | 482-2687 | 7. | Keith Squires - Chair LEPC #7 c/o BCRC Att: Lissa Luke 9 Church St, Apt B, PO Box 10 Arlington, VT 05250 | 375-2576 375-1561 (FAX) |
| 2. | Bob Schlacter - Chair LEPC #2 P.O. Box 975 Rutland, VT 05702 | 773-1812 | 8. | Matthew Fraley - Chair Addison County LEPC #8 P.O. Box 169 Vergennes, VT 05491 | 759-2601 (h) 877-4121 (b) 741-2478 (pager) |
| 3. | Neil Fulton - Chair LEPC #3 c/o SWCRPC Ascutney Building, PO Box 320 Ascutney, VT 05030 | 674-9201 674-5711 (fax) | 9. | Jay Wood – Chair LEPC #9 41 Harvey Street St Johnsbury, VT 05819 | 748-2576 |
| 4. | Dan Lindley - Chair LEPC #4 c/o Northwest RPC 7 Lake Street, Suite 201 St Albans, VT 05478 | 524-5958 | 10. | Paul Duquette - Chair LEPC #10 %Newport City PD 222 Main St. Newport, VT 05855 | 334-6733 |

- | | | | | | |
|----|---|----------|-----|--|----------|
| 5. | Dave Gladding - Chair LEPC #5 c/o Barre City FD City of Barre 8 South Main Street Barre, VT 05641 | 476-0254 | 11. | Linda North - Chair LEPC #11 c/o LCPC Tegu Building - Portland St P.O. Box 1009 Morrisville, VT 05661-1009 | 888-4548 |
| 6. | Mike Empey - Chair LEPC #6 c/o WRC 139 Main Street Suite 505 Brattleboro, VT 05301 | 257-4547 | 12. | Marc Nemeth – Chair LEPC #12 c/o TRORC 3117 Rose Hill The King Farm Woodstock, VT 05091 | 457-3188 |
| | | | 13. | Joe Flynn, Assistant Chief LEPC #13 South Hero FD 3 Kibbe Point Road South Hero, VT 05486 | |

STATE EMERGENCY RESPONSE COMMISSION (SERC)
 %Vermont Emergency Management
 103 South Main Street
 Waterbury, VT 05671-2101

Towns Within Each LEPC

LEPC #1 (Chittenden County/ CCRPC) -

Bolton, Buel's Gore, Burlington, Charlotte, Colchester, Essex Jct, Essex Town, Hinesburg, Huntington, Jericho, Milton, Richmond, Shelburne, South Burlington, St George, Underhill, Westford, Williston, Winooski

LEPC #2 (Rutland County/RRPC) -

Benson, Brandon, Castleton, Chittenden, Clarendon, Danby, Fair Haven, Hubbardton, Ira, Mendon, Middletown Springs, Mount Holly, Mount Tabor, Pawlet, Pittsford, Poultney, Proctor, Rutland City, Rutland Town, Killington, Shrewsbury, Sudbury, Tinmouth, Wallingford, Wells, West Haven, West Rutland

LEPC #3 (Windsor County/SWCRPC and UVLSRPC) -

Norwich, Hartford, Hartland, Andover, Baltimore, Cavendish, Chester, Ludlow, Reading, Springfield, Weathersfield, West Windsor, Windsor

LEPC #4 (Franklin County/NWRPC) -

Bakersfield, Berkshire, Enosburg, Enosburg Falls, Fairfax, Fairfield, Fletcher, Franklin, Georgia, Highgate, Montgomery, Richford, Sheldon, St. Albans City, St. Albans Town, Swanton

LEPC #5 (Washington and Orange County/CVRPC) -

Barre City, Barre Town, Berlin, Cabot, Calais, Duxbury, East Montpelier, Fayston, Marshfield, Middlesex, Montpelier, Moretown, Northfield, Orange, Plainfield, Roxbury, Waitsfield, Warren, Washington, Waterbury, Williamstown, Woodbury, Worcester

LEPC #6 (Windham County/WRC) -

Athens, Bellows Falls, Brattleboro, Brookline, Dover, Dummerston, Grafton, Guilford, Halifax, Jamaica, Londonderry, Marlboro, Newfane, Putney, Rockingham, Saxton's River, Somerset, Stratton, Townshend, Vernon, Wardsboro, Weston, Westminster, Whitingham, Wilmington, Windham

LEPC #7 (Bennington County/BCRC) -

Arlington, Bennington, Dorset, Glastenbury, Landgrove, Manchester, Peru, Pownal, Readsboro, Rupert, Sandgate, Searsburg, Shaftsbury, Stamford, Sunderland, Winhall, Woodford

LEPC # 8 (Addison County/ACRPC) -

Addison, Bridport, Bristol, Ferrisburgh, Cornwall, Goshen, Leicester, Lincoln, Middlebury, Monkton, New Haven, Orwell, Panton, Ripton, Salisbury, Shoreham, Starksboro, Vergennes, Waltham, Weybridge, Whiting

LEPC #9 (Caledonia and Essex County/NVDA) -

Barnet, Burke, Canaan, Concord, Danville, East Haven, Granby, Groton, Guildhall, Hardwick, Kirby, Lunenburg, Lyndon, Lyndonville, Newark, Peacham, Ryegate, Sheffield, St Johnsbury, Stannard, Sutton, Victory, Walden, Waterford, Wheelock

LEPC #10 (Orleans County/NVDA) -

Albany, Averill, Avery's Gore, Bloomfield, Brighton, Barton, Brunswick, Brownington, Charleston, Coventry, Craftsbury, Derby, Ferdinand, Glover, Greensboro, Holland, Irasburg, Jay, Lemington, Lewis, Lowell, Maidstone, Morgan, Newport City, Newport Town, Norton, Orleans, Troy, Warner's Grant, Warren Gore, Westfield, Westmore

LEPC #11 (Lamoille County/LCPC) -

Belvidere, Cambridge, Eden, Elmore, Hyde Park, Johnson, Morristown, Stowe, Waterville, Wolcott

LEPC #12 (Windsor and Orange County/TRORC) -

Barnard, Bethel, Bradford, Braintree, Bridgewater, Brookfield, Chelsea, Corinth, Fairlee, Granville, Hancock, Newbury, Pittsfield, Plymouth, Pomfret, Randolph, Rochester, Royalton, Sharon, Stockbridge, Strafford, Thetford, Topsham, Tunbridge, Vershire, West Fairlee, Woodstock

LEPC #13 (Grand Isle County/NWRPC) -

Alburg, Grand Isle, Isle Lamotte, North Hero, South Hero

Appendix U

VERMONT Hazardous Chemical Inventory Reporting Decision Diagram

