

S B

3 5 9

STATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 1/16/92

FURTHER: Judiciary

Date of 5-Day Notice: Feb 27, 1992
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: April 16, 1992

Resources Committee considered SB 359

"An Act providing immunity for the Alaska State Emergency Response Commission, the local emergency planning committees, and the Hazardous Substance Spill Technology Review Council and their members for actions taken under AS 46.13; and providing for an effective date."

and recommends:

[] replace with _____ CS _____ (_____)

- [] same title
- [] new title
- [] technical title change (HB only)

[] attaches amendment(s)

[] adopts _____ Letter of Intent

[] further referral to the _____

[] do pass

[] do not pass

[] no recommendation

[x] individual recommendations

NEW FISCAL NOTES: Dept/Date

[] zero fiscal notes _____

[] fiscal notes _____

[] appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

[x] Governor's bill with fiscal notes:

zero fiscal notes Admin 1/16/92

NEC 1/16/92

fiscal notes _____

DO PASS:

See Gota
[Signature]
[Signature]

OTHER RECOMMENDATIONS:

And no rec
Rick Halford

[Signature]

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Vol. 1
Bill Version: SB 359
(S) Publish Date: 1/16/92

Revision Date: _____
Title: An Act providing for immunity for the Alaska Emergency
Response Comm. _____
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Risk Management
Component: Risk Management

COMPONENT SERIAL NO.

0	0	7	1
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: No impact on the Division of Risk Management's budget.

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Donald J. Hitchcock
Division: Risk Management

Phone: 465-2180
Date: 12.10.91

Approved by Commissioner: Nancy Bear Usura
Agency: Administration

Nancy Bear Usura
Date: Dec. 16, 1991

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBF, Gov. Legis. Ofc., & Impacted Agency(ies).

CONTINUATION OF FISCAL NOTE ANALYSIS
LAW LOG 92-0057 DRAFT BILL

An act providing statutory immunity for the Alaska State Emergency Response Commission and the Hazardous Substance Spill Technology Review Council and their members while acting within the course and scope of their official duties unless gross negligence or intentional misconduct is involved. Gross negligence, intentional misconduct or acts which fall under federal law are excluded from this immunity statute.

This bill will make it easier to get qualified members to serve on these very sensitive and important Commissions. The Division of Risk Management is in favor of this legislation.

FISCAL NOTE

No. 2

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: SB 359

(S) Publish Date: 1/16/92

Revision Date: _____ Department Affected: Environmental Conservation
 Title: Immunity for SERC, LEPCs, BRU: Spill Prevention and Response
 and HSSTRC _____ Component: Spill Prevention, Planning
 Sponsor: Governor _____ and Management _____
 Requestor: Governor _____ COMPONENT SERIAL NO.

1	4	3	0
---	---	---	---

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 465-5050
 Division: Commissioner's Office Date: December 10, 1991
 Approved by Commissioner: Janice Adair for John Sandoe
 Agency: Department of Environmental Conservation Date: December 10, 1991

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

18359

January 16, 1992

*The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill providing immunity for the Alaska State Emergency Response Commission (Alaska SERC), local emergency planning committees (LEPCs) established by Alaska SERC, and the Hazardous Substance Spill Technology Review Council (HSSTRC) and their members from civil damages and costs resulting from any acts or omissions occurring within the course and scope of their official duties under AS 46.13, unless the act or omission constitutes gross negligence or intentional misconduct or may be the subject of relief under an applicable federal law.

This bill adds a new section to AS 46.13 which at present does not address the question of the liability of the Alaska SERC, LEPCs, or HSSTRC nor the personal liability of the members of these entities.

State officials and members of the public serve on Alaska SERC, LEPCs, and HSSTRC. In performing tasks related to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic chemical release reporting, and the management of hazardous substances, the individuals appointed to these entities serve to protect the health and welfare of the citizens of this state.

The potential exposure to liability arising from these statutorily authorized activities may dissuade qualified and otherwise interested members of the public from accepting appointments to the Alaska SERC, LEPCs, and HSSTRC. In order for the

The Honorable Richard I. Eliason

January 16, 1992

Page 2

Alaska SERC, LEPCs, and HSSTRC to function effectively and to encourage the participation of qualified individuals, AS 46.13 should provide immunity for these entities and their members for any act or omission occurring within the course and scope of their statutorily authorized activities, except for those acts or omissions which constitute gross negligence or intentional misconduct or which may be the subject of relief under applicable federal law.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is centered on the page.

Walter J. Hickel
Governor

Citizens' Groups in Alaska with Duties Related to Oil and Hazardous Substances

FEDERAL

■ Regional Citizens' Advisory Councils (RCAC)

The federal Oil Pollution Act (OPA) of 1990 established RCACs in Prince William Sound and Cook Inlet to oversee crude oil tanker and terminal operations in those areas. RCACs serve as advisory groups to the President, U.S. Congress, and industry.

RCACs are funded by industry as required in OPA 90.

STATE

LEGISLATIVE BRANCH

■ Citizens' Oversight Council (COC)

The COC is an advisory group to the Legislature established by HB 578 in 1990. The Council is responsible for evaluating whether state and federal agencies are carrying out legislatively mandated programs related to oil and hazardous substance discharge prevention, and response. The COC may also make recommendations to the State regarding ways to prevent releases. [AS 24.20.600]

The COC is funded by the Oil and Hazardous Substance Release Response Fund. [AS 46.08]

EXECUTIVE BRANCH

■ State and Local Oil and Hazardous Substance Emergency Planning

The federal Emergency Planning and Community Right-to-Know Act (EPCRA) required states to establish a **State Emergency Response Commission (SERC)** to oversee local hazardous substance emergency planning programs. [42 USC 11001-11050]

Under Alaska law, the SERC oversees the development of response plans for oil and hazardous substance releases which are prepared by LEPCs and the State, and reviews and approves them as specified in state law. [AS 46.13]

The SERC appoints **Local Emergency Planning Committees (LEPC)**. LEPCs are responsible for developing a local response plan for oil and hazardous substance releases.

■ Hazardous Substance Spill Technology Review Council (HSSTRC)

The HSSTRC evaluates existing cleanup technologies for potential application in arctic/sub-arctic conditions and proposes research to development new ones.

- The SERC, LEPCs, and the HSSTRC are funded by the Oil and Hazardous Substance Release Response Fund [AS 46.08].

Citizens' Groups in Alaska with Duties Related to Oil and Hazardous Substances

Federal and state laws passed since 1986 provide citizens with greater opportunities to play an active role in making sure that Alaskans and their environment are safer from the negative impacts of hazardous substance releases. These groups and a brief description of their responsibilities are summarized below.

OVERSIGHT GROUPS

□ Citizen Oversight of Industry Operations

Regional Citizens' Advisory Councils (RCAC) in Prince William Sound and Cook Inlet were created under the federal Oil Pollution Act of 1990. Their primary responsibility is to monitor crude oil tanker and terminal operations. These Councils serve in an advisory capacity to industry and the federal government on issues related to crude oil tanker and terminal operations. RCACs are funded by industry.

□ Legislative Oversight of State Programs

Citizens' Oversight Council (COC) was established in the Legislature in 1990. Their chief function is to monitor and evaluate state and federal agencies efforts to carry out their responsibilities for programs related to preventing and responding to oil and hazardous substance releases. The Council may recommend to the Legislature, the Governor, the federal government, and private entities, policies and actions for preventing releases. [AS 24.20.600] The COC is funded by the Oil and Hazardous Substance Release Response Fund.

STATE AND LOCAL HAZARDOUS SUBSTANCE PLANNING GROUPS

□ State Planning

As required by federal law, the State Emergency Response Commission (SERC) was established in 1990. The Commission has sixteen members, including seven representing the public. The SERC is primarily responsible for ensuring that response plans for oil and hazardous substance releases prepared by Local Emergency Planning Committees (below) and the State are effective and coordinated. [AS 46.13]

□ Local Planning

Local Emergency Planning Committees (LEPC) are appointed by the State Emergency Response Commission (SERC). LEPCs are responsible for developing local response plans for oil and hazardous substances. [AS 46.13]

TECHNOLOGY REVIEW AND DEVELOPMENT

□ Hazardous Substance Spill Technology Review Council

The Hazardous Substance Spill Technology Review Council is responsible for reviewing existing spill containment and cleanup technology or procedures for their potential use in arctic/sub-arctic conditions. The Council may recommend research projects to develop new technology. The Council is also responsible for proposing ways to improve the ability of government agencies and industry to prevent and respond to releases. [AS 46.13]

MEMORANDUM OF AGREEMENT

1. Recitals

There currently exist liability concerns by persons who contribute their time and service to the State Emergency Response Commission ("SERC"), Local Emergency Planning Committees ("LEPCs"), and the Hazardous Substance Spill Technology Review Council ("HSSTRC"). By providing protection against liability costs, this memorandum of agreement is intended as an interim method of insuring that such persons will be willing to provide assistance to the SERC, LEPCs, and the HSSTRC. This agreement is entered into between the Department of Law, the Division of Risk Management in the Department of Administration, and the Commissioner of Environmental Conservation on behalf of the SERC, LEPCs, and the HSSTRC.

2. State Defense of Claims

The State of Alaska (State) agrees to defend the SERC and its members, SERC-approved LEPCs and their members, and the HSSTRC and its members against all non-insured claims arising from their acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, and the HSSTRC. When defense is provided under this agreement, the State will select and retain counsel to represent the members and entities covered by this agreement. The State will not be obligated to pay expenses of defense counsel

independently retained by members and entities without the approval of the Division of Risk Management.

3. Indemnification

The State agrees to indemnify the SERC, SERC-approved LEPCs, the HSSTRC, and their members for non-insured judgments arising from their acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, the HSSTRC, except that the State will not indemnify for judgments for damages resulting from gross negligence or intentional misconduct, or for punitive damages.

4. Definition of Non-Insured Claims and Judgments

As used in this agreement, "non-insured claims" and "non-insured judgments" refer to all or a portion of a claim or judgment (including a settlement) for which a member or entity covered by this agreement or a member's employer is not protected by a policy of insurance. Where a portion of a claim is insured, the State will endeavor to arrive at a cooperative agreement with the insurer for proration of defense costs and assignment of defense counsel. In the event of inability to reach such agreement, the State will, with prior written approval, reimburse the member covered by this agreement for reasonable non-insured defense costs and attorney fees incurred in defense of claims.

5. Notice of Claim

A member or entity covered by this agreement against whom a claim is made must submit a written request for defense to the State of Alaska, Division of Risk Management within 30 days of knowledge or receipt of a claim.

6. Conditions

The State will appear and defend a member or entity covered by this agreement unless and until it is determined by the State that the claim does not arise out of acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, or the HSSTRC, or that the acts or omissions complained of amounted to gross negligence or willful misconduct, in which case the State may reject defense of the claim. The State's obligation to defend and indemnify is further conditioned upon cooperation of the member or entity in defense against the claim. The member or entity shall not, except at their own cost, admit liability, voluntarily make any payment, assume any obligation, or incur any expense, without prior approval of the Division of Risk Management. Failure to provide timely notice of a claim, conduct prejudicial to the State's position, or failure to cooperate in defense voids the State's obligations under this agreement.

7. Recision of this Agreement

This memorandum of agreement may be revoked by the State upon 30 days notice to the entities covered by this agreement.

DATED:

6-12-91

Charles E. Cole
Charles E. Cole
Attorney General
Department of Law

DATED:

6/13/91

Brad Thompson
Brad Thompson, Deputy Director
Division of Risk Management
Department of Administration

DATED:

6/13/91

John Sandor
John Sandor
Commissioner
Department of Environmental
Conservation

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
410 WILLOUGHBY AVENUE, SUITE 105
JUNEAU, AK 99801-1795

Phone: (907) 465-5000
Fax: (907) 465-5070

January 27, 1992

The Honorable Lloyd Jones
Chairman
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Jones:

SB 359 was recently referred to your committee after introduction by the Governor. This bill would provide immunity to the members of the Alaska State Emergency Response Commission (SERC), the Local Emergency Planning Committees (LEPCs) created under the SERC, and the Hazardous Substance Spill Technology Review Council (HSSTRC or TRC) for their acts or omissions which are in accordance with their official duties, unless the act or omission constitutes gross negligence or intentional misconduct or which may be the subject of relief under an applicable federal law.

As explained in the Governor's transmittal letter, state officials and members of the public serve on the SERC, the LEPCs and the RTC. Each of these entities is charged with tasks relating to hazardous substance emergency planning and preparedness, community right-to-know reporting, toxic substance release reporting, and the management of hazardous substances. The potential exposure to liability arising from these statutorily mandated activities may discourage qualified individuals from accepting appointments to the SERC, LEPCs and RTC.

The success of the SERC, LEPCs and RTC are critical to the success of the State of Alaska in emergency preparedness when dealing with oil spills or other hazardous substance releases. Enclosed herewith is a legal opinion relating to this issue that may be of interest to the members of your committee when reviewing SB 359. We are also enclosing statutes from other states which have adopted this kind of immunity for members of their SERC, and the federal law allowing for citizen suits against members of a SERC. SB 359 would not affect this federal law.

The Honorable Lloyd Jones

-2-

January 27, 1992

We respectfully ask that you schedule this bill for a hearing at the earliest possible convenience. We look forward to your favorable action.

If you need any further information, please do not hesitate to contact Janice Adair, the Department's legislative liaison, at 465-5050.

Sincerely,


John A. Sandor
Commissioner

JA/vr (CO-comm\Jones.359)

Enclosures: Legal Opinion
Statutes

cc: Paul Fuhs, Governor's Office

MEMORANDUM

State of Alaska

Department of Law

October 29, 1990

Page 1

TO: Hon. Dennis D. Kelso
Department of Environmental
Conversation

DATE:

FILE NO.:

TEL. NO.:

Honorable Dennis D. Kelso
Commissioner
Department of Environmental
Conversation

SUBJECT: October 29, 1990

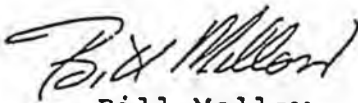
FROM:

RECEIVED

OCT 31 1990

465-3603

Liability of SERC, LEPC
and HSSTRC members



Bill Mellow
Assistant Attorney General
Special Litigation-Juneau

STATE OF ALASKA
DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY

Your opinion request seeks answers concerning potential liability of members of the above identified committees. I could go into a lengthy legal analysis of tort liability exposure, governmental immunities and qualified immunities but time constraints 1/ require that for now the solution to your concerns be met with a general statement of the law plus a state assurance of protection from non-insured liability exposure.

The short answer to liability exposure is that, generally, there is liability exposure for negligence which has been a legal cause of injury unless immunity is granted by law or court decision. Governmental agencies and employees are immune from liability for discretionary function negligence. AS 09.65.070 (municipalities); AS 09.50.250 (state). This form of immunity extends to high level planning activities which probably would be found by our courts to encompass most official actions of SERC, LEPC and HSSTRC members. Additionally, "member[s] of the governing body, a commission, or a citizen's advisory committee of a municipality of the state" are immune from liability for ordinary negligence occurring within the course and scope of official duties. AS 09.17.050.

As you acknowledge in your opinion request letter, liability is mostly hypothetical but the fear is real enough to

1/ The file was assigned to me while I was away most of the summer farming in Oregon. I am retiring from state employment at the end of October and thus, I am unable to devote the necessary research time needed for a careful analysis. Additionally, I have been advised by Camille Stephens that, most important, is an assurance of protection which can be given at the November 3, SERC meeting.

RECEIVED

SEP 19 1991

ADEC
COMMISSIONER'S OFFICE

justify a request for some degree of protection. As above noted, there exists only a slight potential for liability for negligence in planning for and implementation of responses to discharges of oil and hazardous substances. The best way to resolve the fear of liability and the cost of defense against the threat of liability is by contractual or legislative indemnification.

Attached is a proposed memorandum of agreement. The agreement extends a guarantee of defense of claims arising within the authority granted the respective committees and their members by state and federal law. The agreement also extends a guarantee of indemnification for damages for negligence. This memorandum of agreement should quell fears of committee members and will provide interim protection pending legislatively extended protection.

Concerning legislative action, I or my successor will draft a proposed bill which would immunize members from liability but, as you are well aware, such a bill would not easily pass into law and may well be watered down substantially as it winds its way through the hearing committees. I would anticipate that as a part of preparation of an explanation for justification of such a law that an extensive legal opinion memorandum will be prepared. The department's analysis will be provided to you.

Following is a restatement of questions raised by your letter along with an answer.

Question 1. What liability, if any, may exist for the SERC or the Council as state agencies or entities.

Answer. State agencies are liable for non-discretionary negligence. Discretionary (immune) activities are high level planning activities which are determined on a case by case basis. To quote the Alaska Supreme Court, the distinction between planning level (immune) and operational level (not immune) activities depends upon "the type of decision that is being made, examined within an analytical framework which is sensitive to the policies underlying the discretionary function or duty exception." Carlson v. State, 598 P.2d 969, 972 (Alaska 1979).

Question 2. What liability, if any, do the members of the SERC accrue due to their activities, or inactivity, as SERC members? If there is liability, will the state represent and indemnify the members should an award be made?

Answer. Planning decisions by SERC members are usually going to fall within the category of "discretionary" immune

activities. 2/ Where activities or inaction cross the line into operational negligence, members will be protected pursuant to the terms of the Memorandum of Agreement (MOA).

Question 3. If the state will represent and indemnify the SERC members, are there any limits?

Answer. The state will represent, without monetary limit, for ordinary negligence claims occurring within the course and scope of authority granted by law. By way of example, the state would represent the member on a claim that while intoxicated, the member slandered a SERC consultant if the state's initial investigation led to a conclusion that the conduct occurred within the course and scope of official duty but, at most, only ordinary negligence occurred. If the state investigative determination was proven to be wrong concerning the degree of negligence, the state would not pay a judgment where the fact finder determined that the defendant's conduct rose to the level of gross negligence or intentional misconduct.

Question 4. [Are the answers to questions 2 and 3 the same as to the HSSTRC and its members?]

Answer. Yes.

Question 5. Where a LEPC is formed under the auspices of a local government, does the local government run the risk of liability?

Answer. Yes, the local government runs the same risk as the state but the MOA will protect against non-insured liability.

Question 6. What are the liability risks to an LEPC or its individual members?

Answer. If a LEPC is "a commission, or a citizen's advisory committee of a municipality of the state" its members are immune for ordinary negligence for action or inaction within the course and scope of official duties but are subject to liability for gross negligence. AS 09.17.050(a)(4). If a LEPC is a state agency commission the answer to question 2 would be applicable along with the caveat of footnote 2 concerning "employees." The

2/ AS 09.50.250 protects "employees" of the state. It is probable that the court would broadly construe "employee" to include the seven public members listed as potential appointees in AS 46.13.010.

Hon. Dennis D. Kelso
Department of Environmental
Conversation

October 29, 1990
Page 4

MOA provides indemnification for those circumstances where otherwise there would be liability exposure because the commission is a state rather than municipal agency or where the individual defendant happens to be a non-governmental person.

Question 7. If there are liability risks associated with activities of an LEPC, will the State represent and indemnify the LEPC, the local government under which it is formed, and its members? Are there limits to the coverage for gross negligence or intentional acts? If so what are examples of acts that might trigger a limitation on coverage?

Answer. The MOA provides for representation of the LEPC and its members to the extent that no insurer has coverage obligations. If a local government is the alter ego of the LEPC, the municipality would also be defended where the plaintiff named the municipality as a defendant. The state will represent where there has been a determination that, at most, the defendant's conduct was only ordinary negligence but will not indemnify for conduct found to constitute gross negligence or intentional misconduct.

It is not possible to predict the degree of negligence for any specific type of conduct. Negligence may be ordinary, gross, or willful. Ordinary negligence is the failure to use ordinary care. Gross negligence is a failure to exercise even that care which a careless person would use, while willful negligence describes intentional conduct in disregard of an obvious risk occurring under circumstances that make it probable that harm to the plaintiff will result. W. Prosser, The Law of Torts § 180-85 (4th ed. 1971).

WGM:jal
Attachment

cc w/enc.: Camille Stephens

PROPOSED MEMORANDUM OF AGREEMENT

1. The State agrees to defend members of the State Emergency Response Commission (SERC), SERC approved Local Emergency Planning Committees (LEPCs) and their members and members of the Hazardous Substance Spill Technology Review Council (HSSTRC), against all non-insured claims arising from acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of SERC, SERC approved LEPCs, and the HSSTRC. The State further agrees to indemnify SERC members, SERC approved LEPCs and their members, and HSSTRC members for non-insured judgments against SERC members, approved LEPCs and their members, and HSSTRC members with the exception that the State will not indemnify for judgments for damages resulting from gross negligence or intentional misconduct.

2. As used in paragraph 1 of this agreement, "non-insured claims" and "non-insured judgments" refer to all or a portion of a claim or judgment for which the defendant or the defendant's employer are not protected by a policy of insurance. Where a portion of a claim is insured, the State will endeavor to arrive at a cooperative agreement with the insurer for proration of costs and assignment of counsel. In the event of inability to reach such agreement, the State will reimburse the defendant for non-insured costs and attorney fees incurred in defense of claims.

3. A defendant against whom a claim is made must submit a written request for defense with the State of Alaska, Division

of Risk Management within 30 days of knowledge or receipt of a claim. The State will appear and defend the defendant unless after investigation it is determined that the claim does not arise out of acts or omissions occurring within the course and scope of statutorily authorized activities or that the acts or omissions complained of amounted to gross negligence or willful misconduct, in which case the State may reject defense of the claim. The State's obligation to defend and indemnify is further conditioned upon cooperation of the defendant in defense against the claim. Failure to provide timely notice of a claim, conduct prejudicial to the State's position or failure to cooperate in defense voids the State's obligations under this agreement.

4. It is understood that there currently exists genuine liability concerns by persons who contribute their time and service to the SERC, LEPCs and the HSSTRC. By providing protection against liability costs, this memorandum of agreement is intended as an interim method of insuring that such persons will be willing to provide assistance to the SERC, LEPCs and the HSSTRC. It is further understood that the State will present a bill and seek legislation which will provide defense and indemnification similar to that provided by this agreement. This memorandum of agreement may be revoked by the State upon 30 days notice.

DATED: _____

Douglas B. Baily
Attorney General

DATED: _____

Division of Risk Management

MEMORANDUM

State of Alaska

RECEIVED
JUL 30 1980
JUL 31 1980

TO: Douglas B. Baily
Attorney General
Department of Law

DATE:

FILE NO:

TELEPHONE NO:

STATE OF ALASKA
DEPT. OF ENVIRONMENTAL CONSERVATION
DIVISION OF ENVIRONMENTAL QUALITY

FROM: Dennis D. Kelso
Commissioner
Department of Environmental
Conservation

SUBJECT: Liability of State,
Members of the State
Emergency Response
Commission (SERC),
Local Emergency
Planning Committees
(LEPCs) and the
Hazardous Substance
Spill Technology
Review Council

On behalf of the State Emergency Response Commission (SERC), I am requesting an opinion concerning the potential liability arising from the activities of the SERC, the Hazardous Substance Spill Technology Review Council, or the Local Emergency Planning Committees (LEPCs). Members of the SERC are appointed by the Governor under the Superfund Amendments and Reauthorization Act, Title III (SARA Title III), Administrative Order 103, and House Bill 566 which passed last session. The SERC is required by law to review and approve membership on the LEPCs. The Hazardous Substance Spill Technology Review Council was established within the SERC by HB 566. Seven of its nine members are appointed by the Governor.

The SERC and LEPCs have many planning and coordinating functions imposed by federal and recently passed state statutes (AS 46.13). However, neither has any direct administrative function. Response to hazardous substance and oil spill incidents remains the responsibility of Department of Environmental Conservation (DEC), the Department of Military and Veterans Affairs (DMVA), and other local, state, and federal agencies.

For SERC, the LEPCs, and the Council to be effective in their mission, there must be a large pool of potential members representing the various roles and expertise necessary to prepare an emergency response plan for hazardous substance and oil spill incidents. This is especially true at the local level. SERC policy has encouraged LEPCs to establish strong ties with, and even organize under the auspices of, a local government and the strive for the broadest possible representation on the committee. In many cases, LEPC membership exceeds the minimum number of participants mandated by state and federal law.

This policy encourages the level of public participation necessary to effectively carry out the goals of SARA Title III and HB 566. However, it is jeopardized by growing fears on the part of the local governments and the LEPC members about what, if any, liability may be attached to membership on an LEPC. This uncertainty now extends to the SERC members as well and impedes our ability to accomplish our statutory duties. Although members of the Council have not yet been appointed, it is reasonable to assume the same questions will arise in relation to its activities and members. This concern may result in some candidates being unwilling to accept appointment without reassurance about the degree of potential liability they may be assuming.

Before narrowing this request to the specific questions, I want you to know that I appreciate the likelihood that most fear of liability is hypothetical. However, the fear is real and no one wants to take any significant chance, or perhaps even a slight chance, of being sued for damages associated with a hazardous substance or oil spill incident. The cost of defense alone, as we well know could bankrupt anyone.

Specifically our questions are:

1. What liability, if any, may exist for the SERC or the Council as state agencies or entities?
2. What liability, if any, do the members of the SERC accrue due to their activities, or inactivity, as SERC members? If there is liability, will the state represent and indemnify the members should an award be made? (It is important to remember that some members are appointed to represent business, local governments, and other specific interests.)
3. If the state will represent and indemnify the SERC members, are there any limits, (for example gross negligence or intentional acts)? If there are such limits, please give examples of what may constitute such acts.
4. Questions 2 and 3 also pertain to the Hazardous Substance Spill Technology Review Council and its members.
5. Where an LEPC is formed under the auspices of a local government, does the local government run the risk of liability?
6. What are the liability risks to an LEPC or its individual members?

July 30, 1990

7. If there are liability risks associated with activities of an LEPC, will the State represent and indemnify the LEPC, the local government under which it is formed, and its members? Are there limits to the coverage for gross negligence or intentional acts? If so what are examples of acts that might trigger a limitation on coverage.

I have not tried to list the duties of the SERC, LEPCs or Council, although it is apparent that the answers to the questions are driven by the duties. The best source is the laws themselves, especially since SARA Title III is still relatively new and HB 566 was just passed by the Governor.

Should your review suggest there is any ^{significant} risk of liability for the members of any of these three entities, especially if the state will not fully represent and indemnify them, I would appreciate suggestions for a legislative "fix". The goals of SARA Title III and HB 566 cannot be met if the participants in the activities, local governments, or the State are subject to liability for their participation.

There are voluminous materials concerning SERC and SARA Title III that may be relevant to liability issues. An attached December 28, 1987, memo from a Kentucky Assistant Attorney General may be particularly helpful. Also attached are memos from two LEPC chairs expressing their liability concerns.

Please feel free to contact me or Camille Stephens of DEC's Spill Prevention, Planning and Management staff at 465-2630.

Thank for your assistance with this important matter.

Attachments

bcc: Camille Stephens

MEMORANDUM

TO: COLONEL MIKE MOLLOY
CHAIRMAN, KENTUCKY EMERGENCY RESPONSE COMMISSION

FROM: GREG HOLMES, ASSISTANT ATTORNEY GENERAL *GH*

RE: ASSESSMENT OF LIABILITY OF STATE COMMISSION AND
LOCAL COMMITTEES APPOINTED PURSUANT TO SARA

DATE: DECEMBER 28, 1987

At your request I have prepared the following assessment of the potential liability of the state commission and the local committees appointed pursuant to Title III of the Super Fund Amendments and Reauthorization Act of 1986 (hereinafter "SARA"). This assessment constitutes my legal opinion based on an analysis of existing statutes and case law.

The potential liability of the commission or committee must be thought of in two distinct ways: the liability of the commission or committee itself and the liability of the individual commissioners or committee members. It appears that the commission or committee itself will not be liable unless it fails to comply with a mandatory requirement spelled out in Title III of SARA. For example, should the commission or a committee fail to comply with the time table mandated in the federal statute, and should any future damages to any person or company accrue from such failure, there could be potential liability under the provisions of Title III. Title III does authorize persons to seek injunctive relief (that is orders from the federal courts requiring the commission or committee to undertake a mandated activity or to refrain from a forbidden activity) in matters concerning the enforcement of the provisions of the statute.

With regard to the potential liability of individual commission or committee members, all attorneys with whom I have spoken as well as my own research indicate that while we cannot be certain, it appears at this point that individual commission and committee members would not be liable unless: a) they fail to comply with the mandated requirement as discussed in the paragraph above; and b) such failure was due to gross negligence or willful misconduct.

Finally, it is important to note that commission and committee members, being appointed pursuant to state law to carry out state-mandated functions, are agents of the state with all the attendant immunities from liability conferred by law upon appointees to other state boards, commissions, and agencies.

NORTH SLOPE BOROUGH

SARROW GAS FIELD DEVELOPMENT PROJECT
P.O. Box 1120 Barrow, Alaska 99723 .

Phone: 907-852-7779
Fax 907-852-8971



April 3, 1990

Ms. Linda Van Houten
SARA Title 111 Coordinator
Department of Environmental Conservation
P.O. Box 0
Juneau, Alaska 99811-1800

Dear Ms. Van Houten;

The Prudhoe Bay Area LEPC membership is concerned about the area of liability in regards to their participation and activity within the framework of the LEPC.

As coordinator, I have been requested to query SERC and relay a response regarding potential liability in the following areas:

1. What is the nature of liability coverage for LEPC members?
2. What is the extent of liability coverage?
3. Who is responsible for liability coverage for members?
4. When is the membership covered and how?
5. Is the membership covered professionally and personally?
6. Is the membership covered against civil or criminal liability?

I understand that the question of liability for LEPC membership is an area yet to be completely clarified. However, the subject remains a timely concern for the Prudhoe Bay Area membership. I appreciate your address to this topic. Our next meeting is scheduled for April 23, 1990. If your schedule permits, please respond before this date. If I can be of further assistance to you, please contact me at your convenience, 852-2611, ext. 247.

Sincerely,

T.R. Rail
Coordinator, Prudhoe Bay Area LEPC

cc: David McDowell ✓
Division of Emergency Services

TO: Commissioner Dennis Kelso, Chair
State Emergency Response Commission

FROM: Steven O'Connor, Interim Chair
Kenai Peninsula Local Emergency Planning Committee

SUBJ: LEPC Budget and concerns

DATE: January 10, 1990

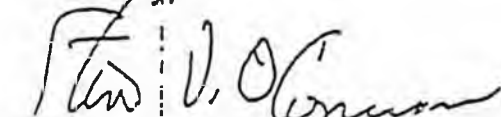
The Kenai Peninsula Local Emergency Planning Committee would like to submit a draft budget for consideration by the State Emergency Response Commission. This budget is just a preliminary draft as we have not had time to develop a workplan. As soon as the workplan is complete we will have a better idea of our fiscal needs.

Our LEPC has met and established a steering committee to draft bylaws and look at short term work objectives. The next full meeting of the Kenai Peninsula LEPC is scheduled for January 22, 1990. At that meeting the draft bylaws will be presented for consideration along with this budget. Dave McDowell is also scheduled to review the SERC workplan with the group with an emphasis on how the SERC workplan will provide guidance for the development of our local workplan. I have attached an agenda for your consideration.

Also attached are some concerns that have come up that the LEPC would appreciate your office or the State Emergency Response Commission addressing for us. These questions may have already been addressed in other areas. If you have any questions to clarify the attached questions please feel free to call Ross Kinney, Finance Director or Phil Reeves, Assistant Borough Attorney for the Kenai Peninsula Borough at 262-4441.

At this time I intend to be present at the SERC meeting scheduled for January 12, 1990 to answer any questions. Thank you for your time and consideration.

Sincerely,


Steven O'Connor, Interim Chair
Kenai Peninsula Local Emergency
Planning Committee

cc: Linda VanHouten
cc: Dave McDowell

enclosures (5)

QUESTIONS FOR SERC REGARDING LEPC FINANCING
AND LIABILITIES OF MEMBERS OF A LEPC

1. Will the SERC account for and allocate funding/expenditures of the LEPC's or will the LEPC's control their own finances? If the latter, we propose that the Borough administer LEPC finances as an agency fund; i.e., account for receipts and disbursements of funds based on the LEPC's budget which remains under the LEPC's discretion and control. This will allow the LEPC to meet the State and Federal single-audit requirements without additional expense.

2. LEPC members are apparently covered by the State of Alaska workmen's compensation coverage under AS 23.30.242. Will volunteer subcommittee members of the LEPC who are not LEPC members; approved by the State be covered by State worker's comp policies, and what will be the procedure for notification and acceptance of such subcommittee members by the CERC for such compensation coverage?

3. Are LEPC members (and subcommittee members) covered under the State's general liability coverage particularly for automobile liability? Are there any particular insurance requirements which the State will impose upon LEPC and subcommittee members for utilization of their personal automobiles in connection with their LEPC service?

4. Are LEPC members covered by any state public officials liability coverage? Will the State commit to providing legal defense for LEPC members in the event they are named defendant in a legal action based upon their LEPC service?

Comment. AS 09.50.250 provides immunity for the State and its agencies from tort actions arising from discretionary activities. This is obviously a limited immunity, and our Borough Risk Management policy is to insure our elected officials who are covered by a similar (but broader) municipal immunity under AS 09.65.070. AS 26.20.140 provides a much broader immunity for the State, its agents and representatives in activities under that chapter on civil defense. There is no similar immunity provided under AS 26.23 which is the Alaska Disaster Act. While we are aware that some people have cited AS 26.20.140 in discussing immunity provisions for disaster actions, we question this interpretation particularly considering AS 26.23.210 which sets out the relationship of the Alaska Disaster Act to the civil defense statute by stating: "The Alaska civil defense statute (AS 26.20), applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action. The provisions of this chapter [AS 26.23], other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and nonmilitary man-made disasters." It would seem that AS 26.23.210 expressly denies application of AS 26.20.140 immunities to actions undertaken under AS Chapter 26.23.

corporation, is an employee of the corporation under this chapter. However, an executive officer of a corporation may waive coverage under this chapter, subject to the approval of the commissioner of labor, notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this chapter, an executive officer of a municipal corporation or of a charitable, religious, educational, or other nonprofit corporation may be brought within the coverage of its insurance contract by the corporation by specifically including the officer in the contract of insurance. The election to bring an executive officer within the coverage continues in force for the period the contract of insurance is in effect. During that period an executive officer brought within the coverage of the insurance contract is an employee of the corporation under this chapter. (§ 2(8) ch 193 SLA 1959; am ch 146 SLA 1962)

NOTES TO DECISIONS

Stated in Gordon v. Burgess Constr. Co., Sup. Ct. Op. No. 401 (File No. 716), 425 P.2d 602 (1967).

Cited in Gordon v. Burgess Constr. Co., Sup. Ct. Op. No. 401 (File No. 716), 425 P.2d 602 (1967).

Collateral references. — 51 Am. Jur. 2d, Workmen's Compensation, § 177.

Sec. 23.30.241. Special officers as employees. (a) A special officer appointed under AS 18.65.010(a) is considered an employee under this chapter only when the person is actually traveling or working as a special officer. The weekly wage earned in the special officer's regular employment shall be used in computing the amount of compensation to be awarded. If a special officer has no regular employment, the minimum wage paid a full-time state trooper shall be used in computing the amount of compensation to be awarded.

(b) Annual appropriations to fund the coverage provided for in (a) of this section shall be provided for in the budget of the Department of Public Safety. (§ 1 ch 6 SLA 1978)

§ Sec. 23.30.242. Members of state boards and commissions as employees. (a) A member of a state board or commission is considered an employee under this chapter only while the member is actually traveling or working as a member of the board or commission. The maximum weekly wage shall be used in computing the amount of compensation to be awarded.

(b) Annual appropriations to fund the coverage provided for in (a) of this section shall be provided for in the budget of the Office of the Governor. (§ 1 ch 105 SLA 1969; am § 54 ch 69 SLA 1970)

Stat. Local

Coll.

Sec
the p:
incur
engag
prese
have
the E
of the
the e:
is ac
(b)
firem
by la
injur

Sec
empi
defen
provi
purp

Se:
empi
carr:
the e
servi:
empl:
empl:
mean:
\$1,00

(b)
unde

Se
will:
the p
chap
is pu
SLA

MEMORANDUM OF AGREEMENT

1. Recitals

There currently exist liability concerns by persons who contribute their time and service to the State Emergency Response Commission ("SERC"), Local Emergency Planning Committees ("LEPCs"), and the Hazardous Substance Spill Technology Review Council ("HSSTRC"). By providing protection against liability costs, this memorandum of agreement is intended as an interim method of insuring that such persons will be willing to provide assistance to the SERC, LEPCs, and the HSSTRC. This agreement is entered into between the Department of Law, the Division of Risk Management in the Department of Administration, and the Commissioner of Environmental Conservation on behalf of the SERC, LEPCs, and the HSSTRC.

2. State Defense of Claims

The State of Alaska (State) agrees to defend the SERC and its members, SERC-approved LEPCs and their members, and the HSSTRC and its members against all non-insured claims arising from their acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, and the HSSTRC. When defense is provided under this agreement, the State will select and retain counsel to represent the members and entities covered by this agreement. The State will not be obligated to pay expenses of defense counsel

independently retained by members and entities without the approval of the Division of Risk Management.

3. Indemnification

The State agrees to indemnify the SERC, SERC-approved LEPCs, the HSSTRC, and their members for non-insured judgments arising from their acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, the HSSTRC, except that the State will not indemnify for judgments for damages resulting from gross negligence or intentional misconduct, or for punitive damages.

4. Definition of Non-Insured Claims and Judgments

As used in this agreement, "non-insured claims" and "non-insured judgments" refer to all or a portion of a claim or judgment (including a settlement) for which a member or entity covered by this agreement or a member's employer is not protected by a policy of insurance. Where a portion of a claim is insured, the State will endeavor to arrive at a cooperative agreement with the insurer for proration of defense costs and assignment of defense counsel. In the event of inability to reach such agreement, the State will, with prior written approval, reimburse the member covered by this agreement for reasonable non-insured defense costs and attorney fees incurred in defense of claims.

5. Notice of Claim

A member or entity covered by this agreement against whom a claim is made must submit a written request for defense to the State of Alaska, Division of Risk Management within 30 days of knowledge or receipt of a claim.

6. Conditions

The State will appear and defend a member or entity covered by this agreement unless and until it is determined by the State that the claim does not arise out of acts or omissions occurring within the course and scope of statutorily authorized activities on behalf of the SERC, SERC-approved LEPCs, or the HSSTRC, or that the acts or omissions complained of amounted to gross negligence or willful misconduct, in which case the State may reject defense of the claim. The State's obligation to defend and indemnify is further conditioned upon cooperation of the member or entity in defense against the claim. The member or entity shall not, except at their own cost, admit liability, voluntarily make any payment, assume any obligation, or incur any expense, without prior approval of the Division of Risk Management. Failure to provide timely notice of a claim, conduct prejudicial to the State's position, or failure to cooperate in defense voids the State's obligations under this agreement.

7. Recision of this Agreement

This memorandum of agreement may be revoked by the State upon 30 days notice to the entities covered by this agreement.

DATED: 6-12-91

Charles E. Cole
Charles E. Cole
Attorney General
Department of Law

DATED: 6/13/91

Brad Thompson
Brad Thompson, Deputy Director
Division of Risk Management
Department of Administration

DATED: 6/13/91

John Sandor
John Sandor
Commissioner
Department of Environmental
Conservation

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.

(Oct. 17, 1986, P. L. 99-499, Title III, § 325, 100 Stat. 1753.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

SERC Liability under Federal law

11046. Civil actions

(a) Authority to bring civil actions. (1) Citizen suits. Except as provided in subsection (e), 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 304(c) [42 USCS § 11004(c)].
- (ii) Submit a material safety data sheet or a list under section 311(a) [42 USCS § 11021(a)].
- (iii) Complete and submit an inventory form under section 312(a) [42 USCS § 11022(a)] containing tier I information as described in section 312(d)(1) [42 USCS § 11022(d)(1)] unless such requirement does not apply by reason of the second sentence of section 312(a)(2) [42 USCS § 11022(a)(2)].
- (iv) Complete and submit a toxic chemical release form under section 313(a) [42 USCS § 11023(a)].

(B) The Administrator for failure to do any of the following:

- (i) Publish inventory forms under section 312(g) [42 USCS § 11022(g)].
- (ii) Respond to a petition to add or delete a chemical under section 313(e)(1) [42 USCS § 11023(e)(1)] within 180 days after receipt of the petition.
- (iii) Publish a toxic chemical release form under 313(g) [42 USCS § 11023(g)].
- (iv) Establish a computer database in accordance with section 313(j) [42 USCS § 11023(j)].
- (v) Promulgate trade secret regulations under section 322(c) [42 USCS § 11042(c)].

42 USCS § 11046

PUBLIC HEALTH AND WELFARE

(vi) Render a decision in response to a petition under section 322(d) [42 USCS § 11042(d)] 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 324(a) [42 USCS § 11044(a)].

(D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section 312(e)(3) [42 USCS § 11022(e)(3)] 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 302(c) [42 USCS § 11002(c)].

(ii) Submit a material safety data sheet or a list under section 311(a) [42 USCS § 11021(a)].

(iii) Make available information requested under section 311(c) [42 USCS § 11021(c)].

(iv) Complete and submit an inventory form under section 312(a) [42 USCS § 11022(a)] containing tier I information unless such requirement does not apply by reason of the second sentence of section 312(a)(2) [42 USCS § 11022(a)(2)].

(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 303(d) [42 USCS § 11003(d)] or for failure to submit tier II information under section 312(e)(1) [42 USCS § 11022].

(C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section 322(g) [42 USCS § 11042(g)].

(b) Venue. (1) Any action under subsection (a) 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) 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) 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) 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) 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) 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) 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 [42 USCS §§ 11001 et seq.] 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.

(Oct. 17, 1986, P. L. 99-499, Title III, § 326, 100 Stat. 1755.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Explanatory notes:

Brackets are inserted around the first period in subsec. (a)(2)(A)(iv) to indicate the probable intent of Congress to omit such punctuation.

Effective date of section:

Act Oct. 17, 1986, P. L. 99-499, § 4, 100 Stat. 1614, which appears as 42 USCS § 9601 note, provides that this section is effective on enactment on Oct. 17, 1986.

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986 [EPCRTKA § _____]

(42 U.S.C.A. §§ 11001 to 11050)

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

SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

- Sec.**
11001. Establishment of State commissions, planning districts, and local committees.
(a) Establishment of State emergency response commissions.
(b) Establishment of emergency planning districts.
(c) Establishment of local emergency planning committees.
(d) Revisions.
11002. Substances and facilities covered and notification.
(a) Substances covered.
(b) Facilities covered.
(c) Emergency planning notification.
(d) Notification of Administrator.
11003. Comprehensive emergency response plans.
(a) Plan required.
(b) Resources.
(c) Plan provisions.
(d) Providing of information.
(e) Review by the State emergency response commission.
(f) Guidance documents.
(g) Review of plans by regional response teams.
11004. Emergency notification.
(a) Types of releases.
(b) Notification.
(c) Followup emergency notice.
(d) Transportation exemption not applicable.
11005. Emergency training and review of emergency systems.
(a) Emergency training.
(b) Review of emergency systems.

SUBCHAPTER II—REPORTING REQUIREMENTS

11021. Material safety data sheets.
(a) Basic requirement.
(b) Thresholds.
(c) Availability of MSDS on request.
(d) Initial submission and updating.
(e) Hazardous chemical defined.
11022. Emergency and hazardous chemical inventory forms.
(a) Basic requirement.
(b) Thresholds.

- Sec.**
11022. Emergency and hazardous chemical inventory forms.
(c) Hazardous chemicals covered.
(d) Contents of form.
(e) Availability of tier II information.
(f) Fire department access.
(g) Format of forms.
11023. Toxic chemical release forms.
(a) Basic requirement.
(b) Covered owners and operators of facilities.
(c) Toxic chemicals covered.
(d) Revisions by Administrator.
(e) Petitions.
(f) Threshold for reporting.
(g) Form.
(h) Use of release form.
(i) Modifications in reporting frequency.
(j) EPA management of data.
(k) Report.
(l) Mass balance study.

SUBCHAPTER III—GENERAL PROVISIONS

11041. Relationship to other law.
(a) In general.
(b) Effect on MSDS requirements.
11042. Trade secrets.
(a) Authority to withhold information.
(b) Trade secret factors.
(c) Trade secret regulations.
(d) Petition for review.
(e) Exception for information provided to health professionals.
(f) Providing information to the Administrator, availability to public.
(g) Information provided to State.
(h) Information on adverse effects.
(i) Information provided to Congress.
11043. Provision of information to health professionals, doctors, and nurses.
(a) Diagnosis or treatment by health professional.
(b) Medical emergency.
(c) Preventive measures by local health professionals.
(d) Confidentiality agreement.
(e) Regulations.
11044. Public availability of plans, data sheets, forms, and followup notices.
(a) Availability to public.
(b) Notice of public availability.

1034

1035

COMMUNITY RIGHT-TO-KNOW

42 § 11001
EPCRTKA § 301

- Sec.**
11045. Enforcement.
(a) Civil penalties for emergency planning.
(b) Civil, administrative, and criminal penalties for emergency notification.
(c) Civil and administrative penalties for reporting requirements.
(d) Civil, administrative, and criminal penalties with respect to trade secrets.
(e) Special enforcement provisions for section 11013.
(f) Procedures for administrative penalties.
11046. Civil actions.
(a) Authority to bring civil actions.
(b) Venue.
(c) Relief.
(d) Notice.
(e) Limitation.
(f) Costs.
(g) Other rights.
(h) Intervention.
11047. Exemption.
11048. Regulations.
11049. Definitions.
11050. Authorization of appropriations.

WESTLAW Electronic Research

See WESTLAW guide following the Explanation pages of this pamphlet.

SUBCHAPTER I—EMERGENCY PLANNING AND NOTIFICATION

§ 11001. Establishment of State commissions, planning districts, and local committees [EPCRTKA § 301]

(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.

(Pub. L. 99-499, Title III, § 301, Oct. 17, 1986, 100 Stat. 1729.)

Effective Date

Section 4 of Pub. L. 99-499, (Oct. 17, 1986, 100 Stat. 1614, provided that title III of Pub. L. 99-499 [this chapter] is effective Oct. 17, 1986.

CERCLA and Administrator

Section 2 of Pub. L. 99-499, Oct. 17, 1986, 100 Stat. 1613, provided that, as used in this chapter—

(1) CERCLA.—The term "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C.A. § 9601 et seq.].

(2) Administrator.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

Short Title

Section 300(a) of Pub. L. 99-499, Title III, Oct. 17, 1986, 100 Stat. 1729, provided that "[t]he title [enacting this chapter] may be cited as the 'Emergency Planning and Community Right To Know Act of 1986'."

Library References

Health and Environment 4-25 549.
C.J.S. Health and Environment §§ 65, 66, 103, 107, 110 et seq.

§ 11002. Substances and facilities covered and notification [EPCRTKA § 302]

(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—

(1) 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, combustibility, 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 11001 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 estab-

lished 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.

(Pub. L. 99-499, Title III, § 302, Oct. 17, 1986, 100 Stat. 1730.)

Library References

Health and Environment 4-25 546 6).
C.J.S. Health and Environment §§ 91, 92, 106, 109, 129 to 131.

§ 11003. Comprehensive emergency response plans [EPCRTKA § 303]

(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 11001 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 the 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.

(Pub.L. 99-499, Title III, § 303, Oct. 17, 1986, 100 Stat. 1731.)

Library References

Health and Environment 4-25 549.
C.J.S. Health and Environment §§ 65, 66, 103, 107, 140 et seq.

§ 11004. Emergency notification [EPCRTKA § 304]

(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.A. § 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 section 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.A. § 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.A. § 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.A. § 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(n) of CERCLA [42 U.S.C.A. § 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.A. 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.A. § 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.A. § 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) Receipts 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 committee, 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 11017 of this title (relating to transportation) does not apply to this section.
(Pub.L. 99-499, Title III, § 304, Oct. 17, 1986, 100 Stat. 1731.)

Library References

Health and Environment 4-25 549.
C.J.S. Health and Environment §§ 91, 92, 106, 109, 129 to 131.

Code of Federal Regulations

Emergency planning and notification, see 40 CFR 355.10 et seq.

§ 11005. Emergency training and review of emergency systems [EPCRTKA § 305]

(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 con-

trol, 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.

(Pub.L. 99-499, Title III, § 305, Oct. 17, 1986, 100 Stat. 1735.)

Library References

Health and Environment 4-25 591, (10).
C.J.S. Health and Environment §§ 65, 66, 103 to 113, 129 to 150 et seq.

SUBCHAPTER II—REPORTING
REQUIREMENTS

Library References

Health and Environment 4-25 545 5).
C.J.S. Health and Environment §§ 91, 92, 106 to 109, 129 to 131

§ 11021. Material safety data sheets
(EPCRTKA § 311)

(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 and regulations promulgated under that Act [29 U.S.C.A. § 651 et seq.] 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.A. § 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.A. § 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.

1st Environmental Laws Page 40-41

(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.A. § 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 Feder-

al 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.

(Pub. L. 99-499, Title III, § 311, Oct. 17, 1986, 100 Stat. 1736)

§ 11022. Emergency and hazardous chemical inventory forms [EPCRTKA § 312]

(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.A. § 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.A. § 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.A. § 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 re-

quest 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 com-

mittee 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.

(Pub.L. 99-499, Title III, § 312, Oct. 17, 1986, 100 Stat. 1738.)

Code of Federal Regulations

Hazardous chemical reporting, community right to know, see 40 CFR 370.1 et seq.

§ 11023. Toxic chemical release forms
(EPCRTKA § 313)

(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.A. § 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 (b) 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.

(9) 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.

(7) 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.

(1) 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.

(Pub.L. 99-499, Title III, § 313, Oct. 17, 1986, 100 Stat. 1741.)

SUBCHAPTER III—GENERAL PROVISIONS

§ 11041. Relationship to other law
[EPCRTKA § 321]

(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 addi-

tional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

(Pub.L. 99-499, Title III, § 321, Oct. 17, 1986, 100 Stat. 1747.)

Library References

[Health and Environment 4-25345-5]
[U.S. Health and Environment 44 91, 92, 106, 109, 129 to 140]

§ 11042. Trade secrets [EPCRTKA § 322]

(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) Immunity

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)(1) 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 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 the 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 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.

(Pub. L. 99-499, Title III, § 322, Oct. 17, 1986, 100 Stat. 1717)

¹So in original. Probably should be "limitation".

Library References

Health and Environment 4-25:545-55, 69
E.P.S. Health and Environment §§ 65, 66, 91, 92, 103 to 109, 129
to 140 et seq.

§ 110-13. Provision of information to health professionals, doctors, and nurses [EPCHTKA § 323]

(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 11012 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 11012 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 confiden-

tiality agreement from pursuing any remedies to the extent permitted by law.

(c) **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.

(Pub.L. 99-499, Title III, § 323, Oct. 17, 1986, 100 Stat. 1750)

¹So in original. Probably should be "subsections"

§ 11044. **Public availability of plans, data sheets, forms, and followup notices [EPCRTKA § 321]**

(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.

(Pub.L. 99-499, Title III, § 324, Oct. 17, 1986, 100 Stat. 1752)

Library References

Health and Environment ¶25-5(5)
U.S. Health and Environment ¶¶ 91, 92, 106, 107, 129 to 131

Law Review Commentaries

Environmental liability and the limits of insurance. Kenneth S. Abraham, 88 Columbia L. Rev. 912 (1978)

§ 11015. **Enforcement [EPCRTKA § 325]**

(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 Administra-

tor 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 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 11001 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 11013

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.

(Pub. L. 99-499, Title III, § 325, Oct. 17, 1986, 100 Stat. 1753)

Library References

Health and Environment §-25 5(10), 38.
C.J.S. Health and Environment §§ 49, 50, 101 et seq., 113, 134 to 156.

§ 11046. Civil actions [EPCRTKA § 326]

(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(c)(1) of this title within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under 11023(g) of this title.

(iv) Establish a computer database in accordance with section 11023(g) 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 11014(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 11012(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 chapter 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.

(Pub. L. 99-499, Title III, § 326, Oct. 17, 1986, 100 Stat. 1755.)

¹ So in original. Probably should be preceded by "action".

Law Review Commentaries

Environmental liability and the limits of insurance. Kenneth S. Abraham, 84 Columbia L. Rev. 942 (1988).

§ 11047. Exemption (EPCRTKA § 327)

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.

(Pub. L. 99-499, Title III, § 327, Oct. 17, 1986, 100 Stat. 1757.)

Library References

Health and Environment 4-25 5(1)
CJS Health and Environment §§ 91, 92, 106, 109, 129 to 131

§ 11048. Regulations (EPCRTKA § 328)

The Administrator may prescribe such regulations as may be necessary to carry out this chapter. (Pub. L. 99-499, Title III, § 328, Oct. 17, 1986, 100 Stat. 1757.)

Library References

Health and Environment 4-25 5(1)
CJS Health and Environment §§ 91 et seq., 91 et seq., 106 to 133 et seq.

§ 11049. Definitions (EPCRTKA § 329)

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, associa-

tion, 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(e) of this title.

(Pub. L. 99-499, Title III, § 329, Oct. 17, 1986, 100 Stat. 1757.)

Library References

Health and Environment 4-25 1(5)
CJS Health and Environment §§ 91, 92, 106, 109, 129 to 131

§ 11050. Authorization of appropriations (EPCRTKA § 330)

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. (Pub. L. 99-499, Title III, § 330, Oct. 17, 1986, 100 Stat. 1758.)

Library References

United States 4-85
CJS United States § 121

Citizens' Groups in Alaska with Duties Related to Oil and Hazardous Substances

FEDERAL

■ Regional Citizens' Advisory Councils (RCAC)

The federal Oil Pollution Act (OPA) of 1990 established RCACs in Prince William Sound and Cook Inlet to oversee crude oil tanker and terminal operations in those areas. RCACs serve as advisory groups to the President, U.S. Congress, and industry.

RCACs are funded by industry as required in OPA 90.

STATE

LEGISLATIVE BRANCH

■ Citizens' Oversight Council (COC)

The COC is an advisory group to the Legislature established by HB 578 in 1990. The Council is responsible for evaluating whether state and federal agencies are carrying out legislatively mandated programs related to oil and hazardous substance discharge prevention, and response. The COC may also make recommendations to the State regarding ways to prevent releases. [AS 24.20.600]

The COC is funded by the Oil and Hazardous Substance Release Response Fund. [AS 46.08]

EXECUTIVE BRANCH

■ State and Local Oil and Hazardous Substance Emergency Planning

The federal Emergency Planning and Community Right-to-Know Act (EPCRA) required states to establish a **State Emergency Response Commission (SERC)** to oversee local hazardous substance emergency planning programs. [42 USC 11001-11050]

Under Alaska law, the SERC oversees the development of response plans for oil and hazardous substance releases which are prepared by LEPCs and the State, and reviews and approves them as specified in state law. [AS 46.13]

The SERC appoints **Local Emergency Planning Committees (LEPC)**. LEPCs are responsible for developing a local response plan for oil and hazardous substance releases.

■ Hazardous Substance Spill Technology Review Council (HSSTRC)

The HSSTRC evaluates existing cleanup technologies for potential application in arctic/sub-arctic conditions and proposes research to development new ones.

- The SERC, LEPCs, and the HSSTRC are funded by the Oil and Hazardous Substance Release Response Fund [AS 46.08].

Citizens' Groups in Alaska with Duties Related to Oil and Hazardous Substances

Federal and state laws passed since 1986 provide citizens with greater opportunities to play an active role in making sure that Alaskans and their environment are safer from the negative impacts of hazardous substance releases. These groups and a brief description of their responsibilities are summarized below.

OVERSIGHT GROUPS

□ Citizen Oversight of Industry Operations

Regional Citizens' Advisory Councils (RCAC) in Prince William Sound and Cook Inlet were created under the federal Oil Pollution Act of 1990. Their primary responsibility is to monitor crude oil tanker and terminal operations. These Councils serve in an advisory capacity to industry and the federal government on issues related to crude oil tanker and terminal operations. RCACs are funded by industry.

□ Legislative Oversight of State Programs

Citizens' Oversight Council (COC) was established in the Legislature in 1990. Their chief function is to monitor and evaluate state and federal agencies efforts to carry out their responsibilities for programs related to preventing and responding to oil and hazardous substance releases. The Council may recommend to the Legislature, the Governor, the federal government, and private entities, policies and actions for preventing releases. [AS 24.20.600] The COC is funded by the Oil and Hazardous Substance Release Response Fund.

STATE AND LOCAL HAZARDOUS SUBSTANCE PLANNING GROUPS

□ State Planning

As required by federal law, the State Emergency Response Commission (SERC) was established in 1990. The Commission has sixteen members, including seven representing the public. The SERC is primarily responsible for ensuring that response plans for oil and hazardous substance releases prepared by Local Emergency Planning Committees (below) and the State are effective and coordinated. [AS 46.13]

□ Local Planning

Local Emergency Planning Committees (LEPC) are appointed by the State Emergency Response Commission (SERC). LEPCs are responsible for developing local response plans for oil and hazardous substances. [AS 46.13]

TECHNOLOGY REVIEW AND DEVELOPMENT

□ Hazardous Substance Spill Technology Review Council

The Hazardous Substance Spill Technology Review Council is responsible for reviewing existing spill containment and cleanup technology or procedures for their potential use in arctic/sub-arctic conditions. The Council may recommend research projects to develop new technology. The Council is also responsible for proposing ways to improve the ability of government agencies and industry to prevent and respond to releases. [AS 46.13]