

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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DEPT OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: State Emergency Response Commission TITLE NUMBER: 55

CITE AUTHORITY: Chapter 15, Article 5A, Section 5

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: Series I

TITLE OF RULE BEING FILED AS AN EMERGENCY: SERC Legislative Rules

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The establishment of the proposed rule is necessary for the State Emergency Response Commission to carry out its responsibilities under Chapter 15, Article 5A of the Code of West Virginia and to comply with Federal requirements under the Superfund Amendments and Reauthorization Act of 1986, Title III.

4.40

Use Additional Sheets If Necessary.


Signature



Joseph J. Skaff
SECRETARY
(304) 348-2930

State of West Virginia
OFFICE OF THE SECRETARY
Department of Public Safety
State Capitol Building
- Box 2930 -

1900 Kanawha Boulevard
Charleston, West Virginia 25305-0001

June 14, 1991

Secretary of:
Department of Public Safety and
Comm. on Drunk Driving Prevention
Department of Corrections
Adjutant General's Department
Office of Emergency Services and
Emergency Services Advisory Council
Armory Board
Military Awards Board
Sheriff's Bureau
Fire Commission & State Fire Admin.
Regional Jail and Prison Authority
Board of Probation and Parole

TO: Ken Heckler
Secretary of State

FROM: Joseph J. Skaff, Secretary
Department of Public Safety

I hereby concur with the Rules and Regulations being proposed by
the State Emergency Response Commission on this date.

JJS/CLB:bk

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 55 - State Emergency Response Commission Legislative Rules

Type of Rule: X Legislative Interpretive Procedural

Agency State Emergency Response Commission Address C/O Office of Emergency Services, State Capitol Building, Room EB-80, Charleston, WV 25305

1. Effect of Proposed Rule:	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates: The proposed rule will have no effect on State of West Virginia's general revenue accounts.

3. Objectives of these rules: The objectives of these rules is to require the development of comprehensive emergency response plans, and establish a program for the collection and dissemination to the public information on certain hazardous and toxic chemicals in their communities.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The proposed rules will provide revenue for administering the provisions of Chapter 15, Article 5A. Minimal cost will be incurred to implement the program. Once implemented and revenue is generated, the cost to state government should be nil.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

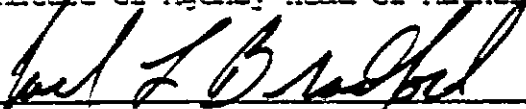
The economical impact to entities outside of state government will require the payment of fee(s) for reporting information meeting the criteria of hazardous and toxic chemicals in accordance with Federal Law SARA, Title III.

C. Economic Impact on Citizens/Public at Large.

The economical impact on West Virginians will only be applicable to those individuals operating facilities having hazardous or toxic chemicals. The average citizen should not be affected economically.

Date: 12-9-91

Signature of Agency Head or Authorized Representative



Carl Bradford, Chairman
State Emergency Response Commission

DATE: December 9, 1991

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Carl L. Bradford, Chairman, State Emergency Response Commission

LEGISLATIVE RULE TITLE: SERC Legislative Rules

1. Authorizing statute(s) citation Chapter 15, Article 5A,
Section 5 (g) through (I)

2. a. Date filed in State Register with Notice of Hearing:
June 14, 1991

b. What other notice, including advertising, did you give
of the hearing?

State Register

c. Date of hearing(s): July 19, 1991

d. Attach list of persons who appeared at hearing, comments
received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)

June 14, 1991

f. Name and phone number(s) of agency person(s) to contact
for additional information:

Mr. Carl L. Bradford, Director

Office of Emergency Services

State Capitol Building, Room EB-30

Charleston, WV 25305

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

DATE: December 9, 1991
TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
FROM: Carl L. Bradford, Chairman, State Emergency Response Commission
EMERGENCY RULE TITLE: Chapter 15, Article 5A, Section 5 (g) through (1)

1. Date of filing: December 9, 1991
2. Statutory authority for promulgating the emergency rule:
Chapter 15, Article 5A, Sections 5, (g) through (1)
3. Date of filing of proposed legislative rule: December 9, 1991

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

No

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare

The establishment of the proposed rules is necessary for the State
Emergency Response Commission to carry out its responsibilities under
Chapter 15, Article 5A of the Code of WV and to comply with Federal
requirements under the Superfund Amendments and Reauthorization Act
of 1986, Title III.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

The Superfund Amendments and Reauthorization Act of 1986, Title III
required states to establish State Emergency Response Commissions by
April 17, 1987. This was done by Executive Order, however, the West

8. Virginia Emergency Response and Community Right-to-Know Act of 1989*
State, with particularity, those facts and circumstances
which make the emergency rule necessary to prevent sub-
stantial harm to the public interest.

Adoption of the emergency rule is necessary to assure West Virginia's
ability to fully implement the provisions of the Federal and State
legislation cited above and insure that the public is fully informed
as to the hazardous chemicals present in their communities.

*superceded the Executive Order and the emergency rule is necessary to assure the state's full compliance with the Federal legislation.

WEST VIRGINIA

STATE EMERGENCY RESPONSE COMMISSION

Title 55

SERC Legislative Rules

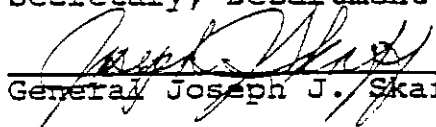
State Capitol
Charleston, West Virginia

Approved by:

The West Virginia State Emergency Response Commission:

June 7, 1991 _____

Secretary, Department of Public Safety:



General Joseph J. Skaff

WEST VIRGINIA STATE EMERGENCY RESPONSE COMMISSION

LEGISLATIVE RULES

Title 55

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55-1-1. GENERAL

1.1 Scope: These rules establish the procedures necessary by the West Virginia SERC for the implementation of Title III of the Superfund Amendments and Reauthorization Act of 1986 and Chapter 15, Article 5A et. seq. for the purpose of developing comprehensive emergency response plans and to establish a program for the collection and dissemination to the public of information on certain hazardous and toxic chemicals in communities throughout West Virginia.

1.2 Authority: These rules are issued under authority of West Virginia Code, Chapter 15, Article 5A, Section 5.

1.3 Effective Date:

1.4 Filing Date:

1.5 Exemptions: These rules have no application to (1) any food, food additive, color additive, drug, or cosmetic regulated by the U. S. Food and Drug Administration (FDA); (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; and (6) No exemptions apply to the requirements of Section 302 of Title III.

55-1-2. DEFINITIONS.

2.1. "Best management practices" means any practices made applicable to a facility pursuant to section 304(e) of the Clean Water Act and the federal regulations promulgated thereunder.

2.2. "Clean Water Act" means the Federal Water Pollution Control Act. P.L. 92-500. enacted on the eighteenth day of October, one thousand nine hundred seventy-two, and all subsequent amendments to that act.

2.3. "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

2.4. "Commission" means the state emergency response commission. (SERC)

2.5. "Committee" means a local emergency planning committee. (LEPC)

2.6. "Emergency planning district" means a geographic area designated by SERC as requiring its own comprehensive emergency response plan. The SERC may designate existing political subdivisions or multijurisdictional planning organizations as such districts.

2.7. "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. For the purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.

2.8. "Local emergency planning committee" (LEPC) means that group of persons, for each emergency planning district, who are appointed by SERC in accordance with the provisions of section seven of this article.

2.9. "Resource Conservation and Recovery Act" (RCRA) means P.L. 94-580, enacted on the twenty-first day of October, one thousand nine hundred seventy-six, and all subsequent amendments to that act.

2.10. "Spill prevention control and countermeasure plan" (SPCC) means any plan developed pursuant to Section 112.3 of Title 40 of the Code of Federal Regulations.

2.11. "Title III" means the Emergency Planning and Community Right-to-Know Act of 1986, P.L. 99-499.

2.12. "Emergency Notification" or "Emergency Release Notification" means the notification required by Section 304 of Title III which must be given immediately in the event of a release of a listed hazardous substance that exceeds the reportable quantity for that substance. This notification must be given to National Response Center, SERC and LEPC.

2.13. "Emergency Response Plan" means the plan to be developed by each LEPC.

2.14. "Inventory Form" means the Emergency and Hazardous Chemical Inventory and Tier II forms that must be submitted by covered facilities to the LEPC, SERC, and the local fire department.

2.15. "List of MSDS Chemicals" means a list of chemicals submitted to LEPC, SERC, and the local fire department in lieu of the requirement to submit copies of Material Safety Data Sheets (MSDS).

2.16. "MSDS" or "Material Safety Data Sheet" means a form used by chemical companies and required by the Federal Occupational Safety and Health Administration's Hazard Communication Standard (40 C.F.R. 1910.1200) for reporting health and safety information on hazardous substances.

2.17. "Tier II Information" means information which must be provided on the inventory form only upon request of SERC or LEPC and includes:

(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 and location of the hazardous chemical.

(e) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 324.

2.18. "Toxic Chemical Releases" means releases of toxic chemicals that must be reported annually in a "Toxic Chemical Release Reporting Form" to the U. S. Environmental Protection Agency and SERC.

2.19. Terms not defined in the state regulations shall carry the definitions given them in the federal regulations at 40 C.F.R. Part 355 and inclusive of the appendices corresponding thereto.

55-1-3. STATE EMERGENCY RESPONSE COMMISSION (SERC)

3.1. Composition. SERC shall consist of eleven members including (1) the director of the department of natural resources, (2) the director of the Department of health, (3) the director of the air pollution control commission, (4) the director of the office of emergency services, (5) the superintendent of the department of public safety, (6) the commissioner of the department of highways; one designee of the (7) public service commission and (8) state fire marshal, all of whom shall be ex officio members. A representative from (9) the chemical industry, (10) a representative of a municipal or volunteer fire department and (11) a representative of the public.

3.2. Chairman: The director of the office of emergency services shall serve as the Chairman of SERC.

3.3. Vice Chairman: SERC shall elect from its membership a Vice Chairman who shall preside over the meetings and hearings of SERC in the absence of the Chairman.

3.4. Secretary: SERC shall appoint a secretary. The secretary need not be a member of SERC. The secretary shall keep all proceedings of SERC entered in a permanently bound record book properly indexed. The secretary shall preserve and attest to all proceedings of SERC.

3.5. Meetings: SERC shall meet at such times and places as may be agreed upon by the members of SERC or upon call of the Chairman or any two members of SERC.

3.6. Quorum: Six members of SERC shall constitute a quorum for the transaction of business.

3.7. Authority of SERC: SERC shall have and exercise the authority to perform the following duties:

- (a) Designate emergency planning districts,
- (b) Appoint LEPC for each emergency planning district and supervise and coordinate the activities of such committees,
- (c) Revise any designations and appointments of planning districts and committees as appropriate,
- (d) Designate additional facilities subject to the requirements of these rules, Title III and Chapter 15 Article 5A of the West Virginia Code after public notice and comments,

- (e) Review emergency response plans submitted by the LEPC, make recommendations to ensure coordination of plans with other planning districts and existing state and local emergency response plans,
- (f) Enter into cooperative agreements with state agencies designating specific responsibilities to implement these rules and Article 15, Section 5A of the West Virginia Code.
- (g) Promulgate procedural rules of practice before SERC, receive and process requests from the public for information in accordance with 42 USC 11001, et.seq., prescribe forms and instructions for requesting information, prescribe forms and instructions for the submission and receipt of confidential information, award grants, establish fees and implement the provisions of Chapter 15, Article 5A of the West Virginia Code.
- (h) Establish an emergency planning grant program.

3.8. Reimbursement of Expenses. Members of SERC shall be reimbursed for all reasonable and necessary expenses actually involved in the performance of their duties in accordance with the State Travel Management Regulations.

3.9. Employment of Personnel.

(a) SERC may appoint and employ such personnel as may be required, whose duties shall be defined by SERC and whose compensation to be fixed by SERC.

(b) Payment of compensation shall be from the state treasury, upon requisition of SERC from monies appropriated for such purposes.

55-1-4. RULES OF PRACTICE BEFORE THE STATE EMERGENCY RESPONSE COMMISSION (SERC)

4.1. All meetings shall be in accordance with Chapter 6, Article 9A et.seq. of the West Virginia Code.

4.2. Any interested person desiring to appear before SERC shall notify the Secretary of SERC at least two weeks prior to the next scheduled meeting.

4.3. The chairman shall establish the agenda, provide for public notice and make necessary arrangements for the meeting.

55-1-5. PROCEDURES FOR RECEIVING AND PROCESSING REQUESTS
IN ACCORDANCE WITH 42 USC 11001.

5.1. Public records of SERC or LEPC consistent with the provisions of sections 322 and 324 of Title III will be made available to the general public during normal work hours at the Office of Emergency Services.

(a) Public records include the following documents which will be made available:

- (1) Material Safety Data Sheets submitted under Section 311 of Title III.
- (2) List described in Section 311(a)(2) of Title III.
- (3) Emergency Response Plan prepared under Section 303 of Title III.
- (4) Hazardous Chemical Inventory Forms (Tier II) prepared under Section 312 of Title III.
- (5) Follow up Emergency Notice, submitted under Section 304 of Title III.
- (6) Chemical Release Form submitted under Section 313 of Title III.
- (7) Minutes of SERC.
- (8) Correspondence between SERC regarding plans developed by LEPC.
- (9) List of facilities reporting under Title III Sections 302 and 313.

(b) The SERC Chairman or his designee will serve as coordinator of information.

5.2. Qualifications on Availability of Information Contained in Public Records.

(a) Any person may request Tier II information with respect to a specific facility by submitting a written request to the LEPC or SERC in accordance with the requirements of this section.

(b) If the LEPC or SERC does not have in its possession the Tier II information requested in paragraph (1) of this section, it shall request a submission of the Tier II form from the owner or operator of the facility that is the subject of the request, provided that the request is from a state or local official acting in his or her official capacity, or the request is limited to hazardous chemicals stored at the facility in an amount in excess of 10,000 pounds.

(c) If the request under paragraph (1) of this section does not meet the requirements of paragraph (2) of this section, the LEPC or SERC may request submission of the Tier II form from the owner or operator of the facility that is the subject of the request if the request under paragraph (1) of this section includes a general statement of need.

(d) Information that has been claimed as trade secret in accordance with 40 C.F.R. 350 et seq. shall be withheld.

5.3. How To Request Information.

(a) Individuals seeking information must file a written request with SERC or LEPC identifying the specific public record requested.

(b) Records which may be requested from SERC or LEPC include those items in Section 5.1(a).

(c) If the written request does not adequately identify the specific public record requested, SERC or LEPC will notify the person making the request that additional information is needed before the request can be processed.

5.4. Processing of Requests.

Upon receipt of a written request for information, SERC or LEPC will note the date and process the request, which includes one of the following actions:

- (a) Furnish the requested information along with an invoice for the cost of reproducing the information.
- (b) Advise the requestor of the time and place where the records may be inspected.
- (c) Request more specific information in order to process the request.

- (d) If the record is not available but was required to have been filed with SERC and can be obtained by SERC, advise the requestor that the record will be obtained.
- (e) Deny the request stating the reason for denial, i.e. (a) record not known to exist; (b) record is not required under Title III; or (c) the record is exempt from disclosure under Title III or any provision of Chapter 15 Article 5A of the West Virginia Code.

55-1-6. INSTRUCTIONS FOR REQUESTING INFORMATION

If SERC or LEPC requests, in writing, information relating to the provisions of these rules, a facility shall furnish the information requested.

55-1-7. CONFIDENTIAL INFORMATION

Facilities required to report under 42 U.S.C. 11001 et seq. which submit information claimed as "confidential" or "trade secret" must satisfy the following criteria in order to protect such information from disclosure:

- (a) The facility must be able to prove that the information has not been reported under any other environmental regulation;
- (b) The chemical's identity must be included in the facility's reports to SERC; and
- (c) The facility must substantiate any trade secret claims upon request.
- (d) All information received fulfilling the criteria of Section 7 shall not be available for public disclosure.

55-1-8. FEES.

8.1. All facilities required to submit the emergency and hazardous chemical inventory forms or material safety data sheet required under Title III, Sections 311 and 312 shall pay the following fee for the administration of Chapter 15, Article 5A et. seq. and LEPC grants as provided in 55-1-9 of these rules.

- (a) An emergency planning notification fee of \$100 shall be paid by a facility when it makes the emergency planning notification required under Title III, Sections 301-303.
- (b) An annual inventory fee of \$100 shall be paid by a facility when it submits the emergency and hazardous chemical inventory forms or material safety data sheet required under Title III, Sections 311 and 312.
- (c) A surcharge fee of 20% shall be paid by a facility which fails to pay the required fees of this section.
- (d) Fees required in Section 8.1(b) shall be paid by March 1st of each year.

8.2. The "Emergency Response/Right-to-Know Fund" is hereby created for the purposes specified in Section 15-5A-5(j)-(k) of the State Act. This fund shall be a special fund to be managed and allocated by the SERC. This fund shall be financed and allocated in the manner prescribed in Section 15-5A-5(j)-(k) of said Act.

55-1-9. GRANTS.

9.1. Purpose: The purpose of this procedure is to implement the emergency planning program grants as authorized by Chapter 15, Article 5A, Section 5(k) of the West Virginia Code.

9.2. Grant Application Deadline Dates.

- (a) Emergency planning grant application shall be received by SERC no later than June 30th of the grant year. Applications received after the established date shall not be considered for funding.

- (b) A mid-year report shall be submitted to SERC by July 1 of each grant year and shall include a report of the actual eligible expenditures incurred and a report of the activities accomplished under the grant through May 31 of the grant year.
- (c) Amended application to change grant request shall be received by SERC not later than July 1 of the grant year and shall indicate actual expenditures incurred and include a revised LEPC emergency response plan as part of the justification for the requested change in the grant request. Requests for increased grant awards may only be approved by SERC if sufficient revenue is available.
- (d) Request for the first payment (up to 25% of the grant award) shall be made if the grant application is approved.

Second payment request (up to 25% of the grant application) shall be received by SERC no later than July 1 of each grant year and shall include actual expenditures incurred through May 31 of the grant year. No second payments will be made for requests received after July 1; those requests will be considered as part of the final close-out of the grant.

Grant close-out including reimbursement request and certification of expenses shall be received by SERC not later than March 1 of the next grant year. Payment will be made based on actual eligible documented expenditures and completed LEPC emergency response plan submission. If the required close-out information is not received by SERC by March 1 and:

- (1) If no request for a second payment has been received, the SERC shall assume that LEPC has no eligible expenditures during the grant period and any payment shall be considered to be an overpayment, or
- (2) If a request for a second payment has been received, SERC shall assume that the eligible expenditures reported on the request for second payment is LEPC's total final eligible expenditures.

9.3. Eligibility to apply: Any LEPC approved by SERC may apply for an annual emergency planning grant.

LEPC beginning in 1993 shall have:

- (a) An approved LEPC Hazardous Materials plan and updated, if required.
- (b) Met at least quarterly in the preceding year.
- (c) Conducted at least one hazardous materials emergency response exercise during the preceding grant period and at least one hazardous material emergency response exercise (tabletop) each grant period.

9.4. Grant Period: All grant periods shall be on a calendar year, January 1 through December 31.

9.5. Grant application Information: Any LEPC making application shall complete the required information on forms provided by SERC.

9.6. Final Grant and Reductions in Grant Awards. In order to be eligible for the full grant award, LEPC must have incurred eligible expenses of at least the grant amounts and must have completed the required work activities as outlined in the grant proposal. If LEPC fails to complete the required work activities, the final grant award and final payment of the grant shall be reduced.

The value of the grant is calculated as: (1) Work activities associated with planning shall be worth up to 70% of the grant; (2) work activities associated with LEPC administration shall be worth up to 30% of the grant; (3) Exercises shall be worth up to the maximum allowable amount for the type of exercise conducted.

9.7. Eligible Costs.

(a) Personnel costs, including salary and fringe benefits, travel reimbursement for developing, reviewing and updating emergency response plans and for administration of LEPC.

(b) Copying, printing, associated with developing, reviewing, updating and publishing of emergency response plans and associated LEPC operations.

(c) LEPC funding for certain costs of conducting hazardous materials emergency response exercises as determined by SERC.

55-1-10. OFFICE OF EMERGENCY SERVICES

10.1. The office of emergency services shall perform the administrative duties of SERC.

10.2. The administrative duties shall include, but not limited to, the following:

- (a) Receive, catalogue and organize information required to be submitted to SERC;
- (b) Utilize existing state response organizations, plans and facilities to the extent possible;
- (c) Upon concurrence of SERC, enter into training exercise agreements with federal response agencies;
- (d) Coordinate with other state agencies on training for first responders and emergency service personnel;
- (e) Respond to requests to SERC from the public for information pursuant to this act;
- (f) Perform such preliminary analysis and collect such information as may be required to enable SERC to fully review local emergency response plans; and
- (g) The director may employ such clerical and technical personnel and acquire data management and other equipment and office space as may be necessary to carry out the provisions of this act.

55-1-11. ENFORCEMENT.

11.1. The Chairman of SERC may order a facility owner or operator to comply with the requirements of applicable federal law, Chapter 15, Article 5A of the West Virginia Code and any rules promulgated by SERC.

11.2. Failure to comply with the provisions of applicable federal law, Chapter 15, Article 5A et.seq. or any rule promulgated, the Chairman may request the attorney general to commence an action for civil penalties, injunctive relief or other appropriate relief to enforce such provisions, rules or order.

11.3. Action may be brought in any federal district court having jurisdiction or in the circuit court of Kanawha County or the county where the facility or a major portion thereof is located.

55-1-12. STATE EMERGENCY RESPONSE.

Agencies of state government shall respond within the confines of the West Virginia Hazardous Materials Emergency Response Plan.

WEST VIRGINIA

GASTON CAPERTON
GOVERNOR



STATE EMERGENCY RESPONSE COMMISSION

STATE CAPITOL BUILDING, ROOM EB-8C
CHARLESTON, WEST VIRGINIA 25305
(304) 348-5380

January 13, 1992

Ken Hechler
Secretary of State
Main Capitol Building
Charleston, WV 25305

Dear Mr. Hechler:

The West Virginia Emergency Response Commission respectfully requests to withdraw the Emergency Rules filed by the Commission with your office on December 9, 1991.

This action is taken based upon the understanding that it is the intent of your office to deny the Emergency Rules. Even though the withdrawal of these Rules will seriously impair the Commission's ability to meet its responsibility under Federal and State law, the impairment will be less severe than the consequences of having the filing denied.

Sincerely,

A handwritten signature in cursive script, reading "Carl L. Bradford".

Carl L. Bradford
Chairman

CLB/bk

WEST VIRGINIA

FILED

GASTON CAPERTON
GOVERNOR



1992 JAN 10 PM 2:28

OFFICE OF THE SECRETARY OF STATE

STATE EMERGENCY RESPONSE COMMISSION

STATE CAPITOL BUILDING, ROOM EB-80
CHARLESTON, WEST VIRGINIA 25305
(304) 348-5380

January 10, 1992

MEMORANDUM

TO: Honorable Ken Hechler, Secretary of State

FROM: Carl L. Bradford, Chairman *Carl L. Bradford*
West Virginia Emergency Response Commission

SUBJECT: Additional information regarding State Emergency Response Commission, Title Number 55, Emergency Rule Filing

COMMENTS:

The establishment of the proposed rule is necessary for the State Emergency Response Commission to carry out its responsibilities under Chapter 15, Article 5A of the Code of West Virginia and to comply with Federal requirements under the Superfund Amendments and Reauthorization Act of 1986, Title III.

Public Law 99-499, Title III, section 301 provides that: "Not later than six months after the date of the enactment of this title, 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) 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 324, including Tier II information under section 312. Such procedures shall include the designation of an official to serve as coordinator for information."...

Honorable Ken Hechler
January 10, 1992
Page Two

The effective date of this requirement was April 17, 1987. The state complied with this requirement by then Governor Moore issuing an executive order creating a State Emergency Response Commission and empowering it to establish procedures for complying with the requirements of Public Law 99-499.

However, on April 8, 1989 the West Virginia Legislature repealed Article thirty-one, Chapter sixteen of the Code of West Virginia, which provided many of the authorities utilized by the original State Emergency Response Commission. HB 2382 also amended Chapter fifteen of said Code by adding thereto a new article designated Article 5-A relating to the West Virginia Emergency Response and Community Right-to-Know Act: "setting forth purpose: creating the West Virginia Emergency Response Commission: setting forth responsibilities: providing definitions: referencing certain federal legislation: setting forth composition, organization, qualifications, terms, removal, compensation and meeting requirements for the State Emergency Response Commission: setting forth powers and duties of the commissions: providing for procedural rules: providing for certain fees: setting forth powers and duties of the Office of Emergency Services: providing for the establishment of emergency planning districts and committees: relating to facility fees and a special account to receive such fees: providing for a local grant program: setting forth a mechanism to collect and disseminate information to the public on certain hazardous chemicals and toxic chemicals and to assure that state and local authorities and the public are adequately prepared to respond to releases of hazardous chemicals and toxic chemicals into the environment: providing commission standards and requirements more stringent than federal law: providing for penalties: authorizing the commission to utilize the attorney general in initiating legal actions and penalties: and authorizing the commission to comply with the obligations of the state under federal law."

Until the emergency rules which are being submitted are in effect the West Virginia Emergency Response Commission has no valid procedures for carrying out its Federal and State mandated responsibilities. Principal among these functions are the provision of procedures for facilities having hazardous chemicals to report the storage, manufacture and accidental release of these chemicals to the Emergency Response Commission and procedures for the Commission to response to citizen inquiries regarding the presence of hazardous chemicals in their community.

CLB:bk

STATE OF WEST VIRGINIA
DEPARTMENT OF PUBLIC SAFETY

GASTON CAPERTON
GOVERNOR

JOSEPH J. SKAFF
SECRETARY



CARL L. BRADFORD
DIRECTOR

OFFICE OF EMERGENCY SERVICES
STATE CAPITOL BUILDING, ROOM EB-80
CHARLESTON, WEST VIRGINIA 25305
(304) 348-5380

December 13, 1991

MEMORANDUM

TO: All SARA Title III Reporting Entities

FROM: Carl L. Bradford, Chairman
West Virginia State Emergency Response Commission

SUBJECT: 1991 Changes for Reporting Tier II

The West Virginia State Emergency Response Commission (SERC) has adopted rules and regulations which affect the submission of Emergency and Hazardous Chemical Inventory forms in conformance with Section 312 of SARA Title III.

Enclosed is a copy of the 1990 November revised Tier II form and instruction sheets. The SERC will accept only this form for the 1991 reporting year due by March 1, 1992. There will be two reasons for the form to be returned to you: 1) Tier II information submitted on any other form but the required Tier II form and 2) if the form is not filled out properly. If you have any question on how to complete this form, please contact Barbara Knotts of my staff for assistance.

A \$100.00 per reporting facility filing fee will also be initiated beginning with this reporting year. The fee needs to be enclosed with the Tier II submission with the check or money order being made payable to the WV State Emergency Response Commission. A 20% late fee will be assessed for those submitting after March 1.

All Tier II reports are to be submitted to:

West Virginia Office of Emergency
Services
State Capitol Building, Room EB-80
Charleston, WV 25305

If you have any questions, please call my office at 304-348-5380.

ENCLOSURES

CLB/bk

Tier Two EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY
Specific Information by Chemical

Facility Identification
Name _____ Street _____ City _____ State _____ County _____ Zip _____
Dun & Bradstreet Number _____ SIC Code _____
ID # _____ Date Received _____

Owner/Operator Name
Name _____ Phone () _____
Maid Address _____
Emergency Contact
Name _____ Title _____ Phone () _____
Name _____ Title _____ Phone () _____

Important: Read all instructions before completing form

From January 1 to December 31, 19 _____

Check if information below is identical to the information submitted last year.

Chemical Description	Physical and Health Hazards (check all that apply)	Inventory	Storage Codes and Locations (Non-Confidential) Storage Locations
CAS _____ Chem. Name _____ Check all that apply: _____ EHS Name _____ Trade Secret <input type="checkbox"/>	Fire <input type="checkbox"/> _____ Sudden Release of Pressure <input type="checkbox"/> _____ Reactivity <input type="checkbox"/> _____ Immediate (acute) <input type="checkbox"/> _____ Delayed (chronic) <input type="checkbox"/> _____	Max. Daily Amount (code) _____ Avg. Daily Amount (code) _____ No. of Days On-site (days) _____	_____ _____ _____ _____ _____
CAS _____ Chem. Name _____ Check all that apply: _____ EHS Name _____ Trade Secret <input type="checkbox"/>	Fire <input type="checkbox"/> _____ Sudden Release of Pressure <input type="checkbox"/> _____ Reactivity <input type="checkbox"/> _____ Immediate (acute) <input type="checkbox"/> _____ Delayed (chronic) <input type="checkbox"/> _____	Max. Daily Amount (code) _____ Avg. Daily Amount (code) _____ No. of Days On-site (days) _____	_____ _____ _____ _____ _____
CAS _____ Chem. Name _____ Check all that apply: _____ EHS Name _____ Trade Secret <input type="checkbox"/>	Fire <input type="checkbox"/> _____ Sudden Release of Pressure <input type="checkbox"/> _____ Reactivity <input type="checkbox"/> _____ Immediate (acute) <input type="checkbox"/> _____ Delayed (chronic) <input type="checkbox"/> _____	Max. Daily Amount (code) _____ Avg. Daily Amount (code) _____ No. of Days On-site (days) _____	_____ _____ _____ _____ _____

Certification (Read and sign after completing all sections)
I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through _____, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title of owner/operator or authorized representative _____
Signature _____ Date signed _____

Optional Attachments
 I have attached a site plan
 I have attached a list of site coordinate abbreviations
 I have attached a description of dikes and other safeguard measures

Owner/Operator Name
 Name _____ Phone (____) _____
 Mail Address _____
Emergency Contact
 Name _____ Title _____
 Phone (____) _____ 24 Hr. Phone (____) _____
 Name _____ Title _____
 Phone (____) _____ 24 Hr. Phone (____) _____

Facility Identification
 Name _____
 Street _____
 City _____ County _____ State _____ Zip _____
 SIC Code _____
 Don & Recd. Number _____
 ID# _____
FOR OFFICIAL USE ONLY
 Date Received _____

Check if information below is identical to the information submitted last year.

Reporting Period From January 1 to December 31, 19 _____

Storage Codes and Locations (Confidential)
 Storage Locations

Confidential Location Information Sheet

CAS #	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Chem. Name	<input type="checkbox"/>
CAS #	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Chem. Name	<input type="checkbox"/>
CAS #	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Chem. Name	<input type="checkbox"/>

CAS #	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Chem. Name	<input type="checkbox"/>
CAS #	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Chem. Name	<input type="checkbox"/>
CAS #	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Chem. Name	<input type="checkbox"/>

Optional Attachments
 I have attached a site plan
 I have attached a list of site coordinate abbreviations
 I have attached a description of dikes and other safeguard measures

Certification (Read and sign after completing all sections)
 I certify under penalty of law that I have personally examined and am familiar with the information submitted in pages one through _____ and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.
 Name and official title of owner/operator OR representative _____ Signature _____ Date signed _____

TIER TWO INSTRUCTIONS

GENERAL INFORMATION

Submission of this Tier Two form is required when requested under Title III of the Superfund Amendments and Reauthorization Act of 1986, Section 312, Public Law 99-499, codified at 42 U.S.C. §11022. The purpose of this Tier Two form is to provide state and local officials and the public with specific information on hazardous chemicals present at your facility during the past year.

Certification

The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier Two submission is true, accurate, and complete. On the first page of the Tier Two report, enter your full name and official title. Sign your name and enter the current date. Also, enter the total number of pages included in the Confidential and Non-Confidential Information Sheets as well as all attachments. An original signature is required on at least the first page of the submission. Submissions to the SERC, LEPC, and fire department must each contain an original signature on at least the first page. Subsequent pages must contain either an original signature, a photocopy of the original signature, or a signature stamp. Each page must contain the date on which the original signature was affixed to the first page of the submission and the total number of pages in the submission.

You must provide all information requested on this form to fulfill Tier Two reporting requirements.

This form may also be used as a worksheet for completing the Tier One form or may be submitted in place of the Tier One form.

Who Must Submit This Form

Section 312 of Title III requires that the owner or operator of a facility submit this Tier Two form if so requested by a state emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility.

This request may apply to the owner or operator of any facility that is required, under regulations implementing the Occupational Safety and Health Act of 1970, to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical present at the facility. MSDS requirements are specified in the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard, found in Title 29 of the Code of Federal Regulations at §1910.1200.

What Chemicals Are Included

If you are submitting Tier Two forms in lieu of Tier One, you must report the required information on the Tier Two form for each hazardous chemical present at your facility in quantities equal to or greater than established threshold amounts (discussed below), unless the chemicals are excluded under Section 311(e) of Title III. Hazardous chemicals are any substance for which your facility must

maintain an MSDS under OSHA's Hazard Communication Standard.

If you elect to submit Tier One rather than Tier Two, you may still be required to submit Tier Two information upon request.

What Chemicals Are Excluded

Section 311(e) of Title III excludes the following substances:

- (i) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
- (ii) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under any normal conditions of use;
- (iii) 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;
- (iv) 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;
- (v) 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.

OSHA regulations, Section 1910.1200(b), stipulate exemptions from the requirement to prepare or have available an MSDS.

Reporting Thresholds

Minimum thresholds have been established for Tier One/Tier Two reporting under Title III, Section 312. These thresholds are as follows:

For extremely hazardous substances (EHSs) designated under section 302 of Title III, the reporting threshold is 500 pounds (or 227 kg.) or the threshold planning quantity (TPQ), whichever is lower:

For all other hazardous chemicals for which facilities are required to have or prepare an MSDS, the minimum reporting threshold is 10,000 pounds (or 4,540 kg.).

You need to report hazardous chemicals that were present at your facility at any time during the previous calendar year at levels that equal or exceed these thresholds. For instructions on threshold determinations for components of mixtures, see "What About Mixtures?" on page 3 of these instructions.

A requesting official may limit the responses required under Tier Two by specifying particular chemicals or groups of chemicals. Such requests apply to hazardous chemicals regardless of established thresholds.

INSTRUCTIONS

Please read these instructions carefully. Print or type all responses.

When To Submit This Form

Owners or operators of facilities that have hazardous chemicals on hand in quantities equal to or greater than set threshold levels must submit either Tier One or Tier Two forms by March 1.

If you choose to submit Tier One, rather than Tier Two, be aware that you may have to submit Tier Two information later, upon request of an authorized official. You must submit the Tier Two form within 30 days of receipt of a written request.

Where To Submit This Form

Send either a completed Tier One form or Tier Two form(s) to each of the following organizations:

1. Your State Emergency Response Commission.
2. Your Local Emergency Planning Committee.
3. The fire department with jurisdiction over your facility.

If a Tier Two form is submitted in response to a request, send the completed form to the requesting agency.

Penalties

Any owner or operator who violates any Tier Two reporting requirements shall be liable to the United States for a civil penalty of up to \$25,000 for each such violation. Each day a violation continues shall constitute a separate violation.

If your Tier Two responses require more than one page use additional forms and fill in the page number at the top of the form.

Reporting Period

Enter the appropriate calendar year, beginning January 1 and ending December 31.

Facility Identification

Enter the full name of your facility (and company identifier where appropriate).

Enter the full street address or state road. If a street address is not available, enter other appropriate identifiers that describe the physical location of your facility (e.g., longitude and latitude). Include city, state, and zip code.

Enter the primary Standard Industrial Classification (SIC) code and the Dun & Bradstreet number for your facility. The financial officer of your facility should be able to provide the Dun & Bradstreet number. If your firm does not have this information, contact the state or regional office of Dun & Bradstreet to obtain your facility number or have one assigned.

Owner/Operator

Enter the owner's or operator's full name, mailing address, and phone number.

Emergency Contact

Enter the name, title, and work phone number of at least one local person or office who can act as a referral if emergency responders need assistance in responding to a chemical accident at the facility.

Provide an emergency phone number where such emergency chemical information will be available 24 hours a day, every day.

The requirement is mandatory. The facility must make some arrangement to ensure a 24 hour contact is available.

Identical Information

Check the box indicating identical information, located below the emergency contacts on the Tier Two form, if the current chemical information being reported is identical to that submitted last year. Chemical descriptions, hazards, amounts, and locations must be provided in this year's form, even if the information is identical to that submitted last year.

Chemical Information: Description, Hazards, Amounts, and Locations

The main section of the Tier Two form requires specific information on amounts and locations of hazardous chemicals, as defined in the OSHA Hazard Communication Standard.

If you choose to indicate that all of the information on a specific hazardous chemical is identical to that submitted last year, check the appropriate optional box provided at the right side of the storage codes and locations on the Tier Two form. Chemical descriptions, hazards, amounts, and locations must be provided even if the information is identical to that submitted last year.

- What units should I use?

Calculate all amounts as weight in pounds. To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

- What about mixtures?

If a chemical is part of a mixture, you have the option of reporting either the weight of the entire mixture or only the portion of the mixture that is a particular hazardous chemical (e.g., if a hazardous solution weighs 100 lbs. but is composed of only 5% of a particular hazardous chemical, you can indicate either 100 lbs. of the mixture or 5 lbs. of the chemical).

Select the option consistent with your Section 311 reporting of the chemical on the MSDS or list of MSDS chemicals.

Chemical Description

Enter the Chemical Abstract Service number (CAS#). For mixtures, enter the CAS number of the mixture as a whole if it has been assigned a number distinct from its components. For a mixture that has no CAS number, leave this item blank or report the CAS numbers of as many constituent chemicals as possible.

If you are withholding the name of a chemical in accordance with criteria specified in Title III, Section 322, enter the generic chemical class or category that is structurally descriptive of the chemical (e.g., list toluene diisocyanate as organic isocyanate) and check the box marked Trade Secret. Trade secret information should be submitted to EPA and must include a substantiation. Please refer to EPA's final

TIER TWO INSTRUCTIONS

regulation on trade secrecy (53 FR 28772, July 29, 1988) for detailed information on how to submit trade secrecy claims.

2. Enter the chemical name or common name of each hazardous chemical.

3. Check box for ALL applicable descriptors: pure or mixture, and solid, liquid, or gas; and whether the chemical is or contains an EHS.

4. If the chemical is a mixture containing an EHS, enter the chemical name of each EHS in the mixture.

Example:

You have pure chlorine gas on hand, as well as two mixtures that contain liquid chlorine. You write "chlorine" and enter the CAS#. Then you circle "pure" and "mix" — as well as "liquid" and "gas".

Physical And Health Hazards

For each chemical you have listed, check all the physical and health hazard boxes that apply. These hazard categories are defined in 40 CFR 370.2. The two health hazard categories and three physical hazard categories are a consolidation of the 23 hazard categories defined in the OSHA Hazard Communication Standard, 29 CFR 1910.1200.

HAZARD CATEGORY CORRELATION FOR REPORTING UNDER SECTIONS 311 AND 312

EPA's hazard categories	OSHA's hazard categories
Fire Hazard	Flammable Combustion Liquid Pyrophoric Oxidizer
Sudden Release of Pressure	Explosive Compressed Gas
Reactive	Unstable Reactive Organic Peroxide Water Reactive
Immediate (Acute) Health Hazards	Highly Toxic Toxic Irritant Sensitizer Corrosive Other hazardous chemicals with an adverse effect with short term exposure
Delayed (Chronic) Health Hazard	Carcinogens Other hazardous chemicals with an adverse effect with long term exposure

Maximum Amount

1. For each hazardous chemical, estimate the greatest amount present at your facility on any single day during the reporting period.

2. Find the appropriate range value code in Table I.

3. Enter this range value as the Maximum Amount.

Table I REPORTING RANGES

Range Value	Weight Range in Pounds	
	From	To
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999

Range Value	Weight range in Pounds	
	From	To
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

If you are using this form as a worksheet for completing Tier One, enter the actual weight in pounds in the shaded space below the response blocks. Do this for both Maximum Amount and Average Daily Amount.

Example:

You received one large shipment of a solvent mixture last year. The shipment filled five 5,000-gallon storage tank. You know that the solvent contains 10% benzene, which is a hazardous chemical.

You figure that 10% of 25,000 gallons is 2,500 gallons. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 2,500 by 7.29 to get a weight of 18,225 pounds.

Then you look at Table I and find that the range value 04 corresponds to 18,225. You enter 04 as the Maximum Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 18,225 in the shaded area.)

Average Daily Amount

1. For each hazardous chemical, estimate the average weight in pounds that was present at your facility during the year.

To do this, total all daily weights and divide by the number of days the chemical was present on the site.

2. Find the appropriate range value in Table I.

3. Enter this range value as the Average Daily Amount.

Example:

The 25,000-gallon shipment of solvent you received last year was gradually used up and completely gone in 315 days. The sum of the daily volume levels in the tank is 4,536,000 gallons. By dividing 4,536,000 gallons by 315 days on-site, you calculate an average daily amount of 14,400 gallons.

You already know that the solvent contains 10% benzene, which is a hazardous chemical. Since 10% of 14,400 is 1,440, you figure that you had an average of 1,440 gallons of benzene. You also know that the density of benzene is 7.29 pounds per gallon, so you multiply 1,440 by 7.29 to get a weight of 10,500 pounds.

Then you look at Table I and find that the range value 04 corresponds to 10,500. You enter 04 as the Average Daily Amount.

(If you are using the form as a worksheet for completing a Tier One form, you should write 10,500 in the shaded area.)

Number Of Days On-Site

Enter the number of days that the hazardous chemical was found on-site.

Example:

The solvent composed of 10% benzene was present for 315 days at your facility. Enter 315 in the space provided.

Storage Codes and Storage Locations

List all non-confidential chemical locations in this column, along with storage types/conditions associated with each location. Please note that a particular chemical may be located in several places around the facility. Each row

NOTIFICATION, REPORTING, AND RECORDKEEPING

of boxes followed by a line represents a unique location for the same chemical.

Storage Codes: Indicate the types and conditions of storage present.

a. Look at Table II. For each location, find the appropriate storage type and enter the corresponding code in the first box.

b. Look at Table III*. For each storage type, find the appropriate storage types for pressure and temperature conditions. Enter the applicable pressure code in the second box. Enter the applicable temperature code in the third box.

Table II — STORAGE TYPES

CODES	Types of Storage
A	Above ground tank
B	Below ground tank
C	Tank inside building
D	Steel drum
E	Plastic or non-metallic drum
F	Can
G	Carboy
H	Silo
I	Fiber drum
J	Bag
K	Box
L	Cylinder
M	Glass bottles or jugs
N	Plastic bottles or jugs
O	Tote bin
P	Tank wagon
Q	Rail car
R	Other

Table III — TEMPERATURE AND PRESSURE CONDITIONS

CODES	Storage Conditions
(PRESSURE)	
1	Ambient pressure
2	Greater than ambient pressure
3	Less than ambient pressure
(TEMPERATURE)	
4	Ambient temperature
5	Greater than ambient temperature
6	Less than ambient temperature but not cryogenic
7	Cryogenic conditions

Example:

The benzene in the main building is kept in a tank inside the building, at ambient pressure and less than ambient temperature.

Table II shows you that the code for a tank inside a building is C. Table III shows you that code for ambient pressure is 1, and the code for less than ambient temperature is 6.

You enter: C(1,6)

Storage Locations: Provide a brief description of the precise location of the chemical, so that emergency responders can locate the area easily. You may find it advantageous to provide the optional site plan or site coordinates as explained below.

For each chemical, indicate at a minimum the building or lot. Additionally, where practical, the room or area may be indicated. You may respond in narrative form with appropriate site coordinates or abbreviations.

If the chemical is present in more than one building, lot, or area location, continue your responses down the page as needed. If the chemical exists everywhere at the plant site simultaneously, you may report that the chemical is ubiquitous at the site.

Optional Attachments: If you choose to attach one of the following, check the appropriate Attachments box at the bottom of the Tier Two form.

a. A site plan with site coordinates indicated for buildings, lots, areas, etc., throughout your facility.

b. A list of site coordinate abbreviations that correspond to buildings, lots, areas, etc., throughout your facility.

c. A description of dikes and other safeguard measures for storage locations throughout your facility.

Example:

You have benzene in the main room of the main building, and in tank 2 in tank field 10. You attach a site plan with coordinates as follows: main building = G-2, tank field 10 = B-6. Fill in the Storage Location as follows:

B-6 (Tank 2) G-2 (Main Room)

Under Title III, Section 324, you may elect to withhold location information on a specific chemical from disclosure to the public. If you choose to do so:

- Enter the word "confidential" in the Non-Confidential Location section of the Tier Two form on the first line of the storage location.

- On a separate Tier Two Confidential Location information Sheet, enter the name and CAS# of each chemical for which you are keeping the location confidential.

- Enter the appropriate location and storage information, as described above for non-confidential locations.

- Attach the Tier Two Confidential Location information Sheet to the Tier Two form. This separates confidential locations from other information that will be disclosed to the public.

*Editor's Note: According to EPA, this section of the Tier II form is incorrect. However, facilities are instructed to follow the instructions as written. For clarification, contact EPA's tollfree Right-To-Know Hotline at (800) 535-0202.



**WEST VIRGINIA
MANUFACTURERS ASSOCIATION**

SUITE 503
405 CAPITOL STREET
CHARLESTON, WV 25301
TELEPHONE (304) 342-2123

January 3, 1992

FILED
1992 JAN -7 AM 9:31
OFFICE OF THE SECRETARY OF STATE

VIA TELECOPY AND REGULAR MAIL

Mr. Mike McThomas
Legislative Rule-Making Review Committee
State Capitol Complex
Main Building, 152
Charleston, West Virginia 25305

Dear Mr. McThomas:

Below are the objections of the West Virginia Manufacturers Association ("WVMA") concerning certain sections of the State Emergency Response Commission's ("SERC's") legislative rules (the "rules") filed with your office and the Office of the Secretary of State as Emergency Rules on December 9, 1991.

The WVMA, in both their comments submitted to the Office of Emergency Services on July 18, 1991 and today, object to §5.1 of the rules which purports to list as a public record "[h]azardous chemical inventory forms (Tier II) prepared under Section 312 of Title III." The WVMA urges that the term "Tier II" be deleted from this sentence and be replaced with the term "Tier I" as Tier II information, required to be submitted under Section 312 of Title III, includes a disclosure of the location of specific chemicals. Under Section 324 of Title III, information pertaining to the location of such chemicals is to be protected from public disclosure, and therefore should not be listed under any state regulation as a public record available for general dissemination. (See attachment).

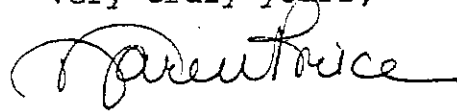
The WVMA further urges the deletion of §6 of the rules which purports to mandate facilities to, upon request, provide the SERC or any Local Emergency Planning Committee with information pertaining to any provision of the rules. The WVMA urges the deletion of this entire section as it lacks statutory authority, is overly broad and fails to address forms and instructions. Under

Mr. Mike McThomas
Page 2

the statutory authority granted it through §15-5A-5(h) of the State Act, the SERC is only empowered to establish procedures for the receipt and processing of requests from the public and for prescribing forms and instructions for making such requests. The State Act does not authorize the SERC or Local Emergency Planning Committees to make requests of facilities for information pertaining the rules.

On behalf of the WVMA, I thank you for affording me the opportunity to comment on these rules, and invite you to contact me at your convenience should you wish to discuss these objections.

Very truly yours,

A handwritten signature in cursive script that reads "Karen Price".

Karen Price
President, WVMA

KP/shr

Attachment

CC: Ms. Judy Cooper
Mr. Robert L. Foster

information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) of this section and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

(c) Preventive measures by local health professionals

(1) Provision of information

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

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

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

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

(2) Written statement of need

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

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

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

(C) To conduct periodic medical surveillance of exposed population groups.

(D) To provide medical treatment to exposed individuals or population groups.

(E) To conduct studies to determine the health effects of exposure.

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

(d) Confidentiality agreement

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

(e) Regulations

As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection¹ (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.)

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

Code of Federal Regulations

Trade secret disclosures to health professionals, etc., see 40 CFR 350.1 et seq.

§ 11044. Public availability of plans, data sheets, forms, and followup notices [EPCRTKA § 324]

(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(g)(2) of this title to be contained in an inventory form as tier II information.

West Virginia Petroleum Council

Division of the American Petroleum Institute

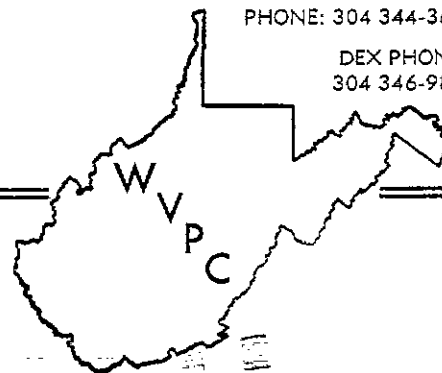
PHONE: 304 344-3609

DEX PHONE:
304 346-9813

1250 ONE VALLEY SQUARE . . . CHARLESTON, WEST VIRGINIA 25301

JACK E. HARRISON
Executive Director

December 18, 1991



DEC 18 AM 11:02

FILED

The Honorable Ken Hechler
West Virginia Secretary of State
Main Capitol Building
Charleston, WV 25301

Dear Ken:

This letter is to express our opposition to granting emergency status to Regulation 55 as filed by the State Emergency Response Commission on December 9.

It is our belief that no emergency exists, at this time, to justify implementing Regulation 55. The Legislature will be meeting in less than a month and we expect the WV Emergency Response Act to be amended to correct some deficiencies that will affect the proposed emergency rule.

We think sending out a rule asking for \$100 from gasoline service station owners, many of which are what we call Mom & Pop stations, and then having the Legislature rescind or scale back the fee will cause a lot of confusion. Plus the proposed rule imposes a 20 percent surcharge on all payers who fail to pay by March 1. (The Legislature is scheduled to adjourn March 7.)

We are not opposed to the intent of Regulation 55. Citizens have a right to know what hazardous chemicals exist in their communities and to plan appropriate emergency programs. We do, however, take exception to having gasoline service stations paying the same amount as a chemical manufacturing plant. We feel confident that the Legislature will want to put equity in the fee schedule.

We ask that you deny granting emergency status to Regulation 55. No harm will result in delaying the implementation of this rule. Great benefit will be gained by eliminating the confusion caused by implementing a rule that is certain to be changed.

Thank you for considering our request.

Sincerely,

A handwritten signature in cursive that reads 'Jack'.

Jack E. Harrison



West Virginia
Petroleum Marketers
Association

West Virginia
Association of Convenience
Stores



SUITE 712, ATLAS BUILDING • CHARLESTON, WEST VIRGINIA 25301 • (304) 343-5885

December 18, 1991

Honorable Ken Hechler
Secretary of State
West Virginia State Capital
Charleston, WV 25303

RE: State Emergency Response - SERC Legislative Rules
Title 55

Dear Mr. Secretary:

The purpose of this letter is our request to you, that the above Rule not be filed as an Emergency rule. We ask that the Rule be allowed to flow through the Legislative Rule Making process during the upcoming Legislative Session.

The Rule calls for a \$100 reporting fee per facility (service stations, C-stores, bulk plants etc.) effective the next reporting period March 1, 1992. The fee is unreasonably high compared to our neighboring states, four of which have no fee assessed against the small independent businesses Emergency Response Tier II Reporting.

Also, we fail to see the urgency behind the SERC filing the Rule under Emergency status. The Rule does not declare what the estimated revenues will be, nor, does the Rule state how these monies would be spent.

Your consideration of this request is very much appreciated.

Given the opportunity to explain our concerns to the Legislature, we are confident the issue will be resolved resulting in a fair and equitable program, and less confusing to those who must comply and the SERC.

Sincerely,

David W. Haines
Executive Director

FILED
1991 DEC 18 AM 11:02
OFFICE OF THE CLERK
SECRETARY OF STATE