

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: State Emergency Response Commission TITLE NUMBER: 55

CITE AUTHORITY Chapter 15, Article 5A, Section 5

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 NEW RULE BEING PROPOSED: Series I

TITLE OF RULE BEING PROPOSED: SERC Legislative Rules

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Carl E. Bradford
Chairman, SERC

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.

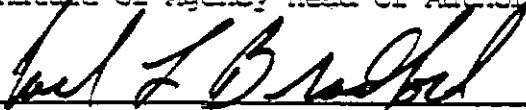
The economical impact to entities outside of state government will require the payment of fee(s) for reporting information meeting the criteria of hazardous and toxic chemicals in accordance with Federal Law SARA, Title III.

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

State Emergency Response Commission
Public Hearing
July 19, 1991

The hearing was called to order by Carl L. Bradford, Chairman, State Emergency Response Commission.

See attached for those in attendance.

COMMENTS:

James Graley, Jr. representing the Malden Public Service District, informed the SERC that all funds spent must be approved by the Public Service Commission. Questioned what time span they were looking at in order to put it in their budget. He did not present any negative comments regarding the fee structure.

Mayor LeRose of Summersville representing the City of Summersville Water and Sewer System expressed the concern that the fee could be raised through legislature at a later date. Felt strongly against any raises being enforced as the fee will be passed on to the customers. He requested that no fee be assessed as 55% of his customers have a yearly income of less than \$10,000. Mayor LeRose also requested he be provided a list of all SERC members.

Jim Hiller representing P&S Chemical Co. requested a cap on the fees. Mr. Hiller questioned whether there is sufficient ability to see who is required to file.

Bob Rodecker representing WV Rural Water Association and the South Putnam Public Service District questioned the cost and compliance by public service district's. Also felt Section 8.3 needed to be clarified to state 20% of \$100 or \$20 instead of sur charge of 20%.

Mark Wolford, Kanawha/Putnam LEPC Secretary, stressed the fact that the LEPC's are strictly voluntary. The LEPC headquarters has been moved to the Kanawha County Courthouse due to lack of funds. Mark feels the fees are necessary in order to provide LEPC's with the funds necessary to operate.

All written comments are due in no later than July 28th for consideration at the SERC Meeting on that date.

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 (l)
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-80
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

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 SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #1

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: State Emergency Response Commission TITLE NUMBER: 55

RULE TYPE: Legislative; CITE AUTHORITY Chapter 15, Article 5A, Section 5g

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 NEW RULE BEING PROPOSED: Series I

TITLE OF RULE BEING PROPOSED: SEEC Legislative Rules

DATE OF PUBLIC HEARING: July 19, 1991 TIME: 1:00 PM

LOCATION OF PUBLIC HEARING: Conference Center, Building 7
State Capitol
Charleston, WV 25305

COMMENTS LIMITED TO: ORAL ___ , WRITTEN ___ , BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: State Office of Emergency Services
Marshall Capitol

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

ETS-80
Charleston, WV 25305

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

STATE EMERGENCY RESPONSE COMMISSION
PUBLIC HEARING
JULY 19, 1991

NAME: Jim Hiller

REPRESENTATING: PB & S Chemical Co. & W.V. Section AWWA

ADDRESS: PO Box 1843, St. Albans, WV 25177

TELEPHONE: 727-4378

WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____

REPRESENTATING: _____

ADDRESS: _____

TELEPHONE: _____

WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____

REPRESENTATING: _____

ADDRESS: _____

TELEPHONE: _____

WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____

REPRESENTATING: _____

ADDRESS: _____

TELEPHONE: _____

WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

STATE EMERGENCY RESPONSE COMMISSION
PUBLIC HEARING
JULY 19, 1991

NAME: LARRY E. COX

REPRESENTATING: SERC K/PLEPC

ADDRESS: 909 CENTERS RD. CHARLESTON 25311

TELEPHONE: 343-6260 H 744-0079 W

WISH TO PRESENT
VERBAL TESTIMONY: YES NO

NAME: _____

REPRESENTATING: _____

ADDRESS: _____

TELEPHONE: _____

WISH TO PRESENT
VERBAL TESTIMONY: YES NO

NAME: _____

REPRESENTATING: _____

ADDRESS: _____

TELEPHONE: _____

WISH TO PRESENT
VERBAL TESTIMONY: YES NO

NAME: _____

REPRESENTATING: _____

ADDRESS: _____

TELEPHONE: _____

WISH TO PRESENT
VERBAL TESTIMONY: YES NO

STATE EMERGENCY RESPONSE COMMISSION
PUBLIC HEARING
JULY 19, 1991

NAME: Betty W. Dean
REPRESENTATING: WV Municipal League
ADDRESS: 1620 Kan. Blvd. East
TELEPHONE: 342-5564
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____
REPRESENTATING: _____
ADDRESS: _____
TELEPHONE: _____
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____
REPRESENTATING: _____
ADDRESS: _____
TELEPHONE: _____
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____
REPRESENTATING: _____
ADDRESS: _____
TELEPHONE: _____
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

STATE EMERGENCY RESPONSE COMMISSION
PUBLIC HEARING
JULY 19, 1991

NAME: MARK WOLFORD
REPRESENTATING: KAN. Co. Commission
ADDRESS: P.O. Box 3627, CHAS. WU 25336
TELEPHONE: 357-0111
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO ?

NAME: Robert Rodecker
REPRESENTATING: South Putnam PSD + Rural Water Assoc
ADDRESS: P.O. Box 2077, Charleston, W.V. 25328
TELEPHONE: 344-5046
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO ?

NAME: _____
REPRESENTATING: _____
ADDRESS: _____
TELEPHONE: _____
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____
REPRESENTATING: _____
ADDRESS: _____
TELEPHONE: _____
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

STATE EMERGENCY RESPONSE COMMISSION
PUBLIC HEARING
JULY 19, 1991

NAME: ERIC J. HOAG

REPRESENTATING: EIDUPONT

ADDRESS: 901 W. DUPONT AVE. BELLE 25015

TELEPHONE: 357-1237

WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: Reed ATKINSON

REPRESENTATING: A P C C

ADDRESS: 1558 WASHINGTON ST TE

TELEPHONE: 348-3745

WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: WAYNE MORGAN

REPRESENTATING: WEST VIRGINIA - AMERICAN WATER CO

ADDRESS: P.O. Box 1906

TELEPHONE: 340-2035

WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____

REPRESENTATING: _____

ADDRESS: _____

TELEPHONE: _____

WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

STATE EMERGENCY RESPONSE COMMISSION
PUBLIC HEARING
JULY 19, 1991

NAME: James P. Graley Jr.
REPRESENTATING: WU PSD. Asst.
ADDRESS: P.O. Box 2, Malden WVa. 25306.
TELEPHONE: 925-6997
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: Pamela DeHayes
REPRESENTATING: WU DWRJ
ADDRESS: 1356 Hancock St. Char. W 25304
TELEPHONE: 348-2745
WISH TO PRESENT
VERBAL TESTIMONY: ~~YES/NO~~

NAME: Roy McCallister
REPRESENTATING: State Police
ADDRESS: 725 Jefferson Rd. So. Charleston WVa
TELEPHONE: 746-2154
WISH TO PRESENT
VERBAL TESTIMONY: ~~YES/NO~~

NAME: Tom HANSON
REPRESENTATING: SERC
ADDRESS: 41 Riverdale Estates, Winfield
TELEPHONE: 586-9314
WISH TO PRESENT
VERBAL TESTIMONY: ~~YES/NO~~

STATE EMERGENCY RESPONSE COMMISSION
PUBLIC HEARING
JULY 19, 1991

NAME: MAYOR STEVE HEROSE
REPRESENTATING: CITY OF SUMMERSVILLE + W.V. MCH. LEAGUE
ADDRESS: P.O. Box 525 Summersville
TELEPHONE: 872-1211
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____
REPRESENTATING: _____
ADDRESS: _____
TELEPHONE: _____
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____
REPRESENTATING: _____
ADDRESS: _____
TELEPHONE: _____
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

NAME: _____
REPRESENTATING: _____
ADDRESS: _____
TELEPHONE: _____
WISH TO PRESENT
VERBAL TESTIMONY: YES/NO

TRIO PETROLEUM CORP.

Petroleum Bldg., Rt. 76, Box 35-E, Glenville, West Virginia 26351 (304) 462-7311

July 24, 1991

Office of Emergency Services
Main Capitol Building
EB-80
Charleston, WV 25305

RE: Comments on Proposed Rule
Title 55.

State Emergency Response Commission,

I am filing comments on the proposed Title 55 for the implementation of Title III of the Superfund Amendments & Reauthorization Act of 1986 & Chapter 15, Article 5A, on behalf of Trio Petroleum Corp. an independent natural gas and crude oil producer and the Independent Oil & Gas Association of WV's Environmental Committee, which is a non-profit state trade association representing more than 170 oil and gas companies in WV.

(55-1-8 / 8.1 & 8.2) Fees

I feel the filing fee of \$100.00 per facility upon emergency planning notification and the annual inventory fee of \$100.00 is excessive and will further depress an already depressed oil and gas industry.

In Ohio the filing fee is \$25.00 per facility, up to 35 facilities, and \$10.00 for each facility after that but not to exceed a total fee greater than \$700.00.

In Kentucky the filing fee is \$40.00 per facility with a maximum fee of \$250.00 per county.

As one can see, WV's proposal is not in balance with these states and should be reconsidered.

Currently, crude oil operators are regulated by the Federal E.P.A. and the WV Department of Energy for Spill Prevention Control & Countermeasures (S.P.C.C.) pursuant Section 112/ Title 40 Oil Pollution Prevention and WV Legislative Rules Title 38 Miscellaneous Water Pollution Control. Under these regulations written plans and secondary containment structures are required for crude oil storage. Upon a spill occurrence, notification is required to E.P.A. And D.O.E.

I feel additional reporting through "Tier II" and spill reporting to the S.E.R.C., Local Emergency Planning Committee, and local fire departments adds alot of duplication of paper work in the planning stages and spill occurrence reporting. It boils down to more manhours and expense in duplicating issues when this time can be best spent in achieving the end result of spill prevention through actual field implementation.

On the state level, since D.O.E. already has jurisdiction of crude oil, the S.E.R.C. should consider coordination of these activities with them so as to reduce further burden on the oil and gas industry within the state..

I appreciate the opportunity to comment on the proposed Rule.

Sincerely,



Bob Radabaugh

Trio Environmental Technician
IOGA Environmental Committee
Chairman



WEST VIRGINIA
MANUFACTURERS ASSOCIATION

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

HAND DELIVERED

July 18, 1991

*Recd
1:00 PM
7/19/91
PMB*

Mr. Carl L. Bradford, Director
Office of Emergency Services
State Capitol Building
Room EB-80
Charleston, West Virginia 25305

Dear Mr. Bradford:

Enclosed, please find for filing the comments of the West Virginia Manufacturers Association ("WVMA") regarding the West Virginia State Emergency Response Commission's ("SERC's") Proposed Legislative Rules filed on June 14, 1991.

Upon your review of these comments, you will notice that the majority of them arise due to the SERC's failure to consistently adopt the language of the corresponding federal statutory and regulatory provisions. The members of WVMA do not doubt that most instances where the Proposed Rules differ from the corresponding federal regulations arise due to the SERC's sincere efforts to clarify and condense the federal provisions. Other differences are, most likely, the result of inadvertent oversight.

While the WVMA readily agrees that the federal regulations are often less than a model of clarity, it is our opinion that state provisions which vary from the federal language lead to further confusion in most cases. For these reasons, the WVMA urges that the SERC adopt the only available alternative that will significantly simplify the burdensome task of incorporating the language of the federal regulations: incorporate by reference the federal regulations.

I thank you for affording the WVMA the opportunity to comment on these proposed rules and invite you to contact me at your convenience should you wish to discuss any of these comments.

Very truly yours,

Patrick M. Gallagher
Patrick M. Gallagher
President

PMG:tlh

Enclosures

cc: Robert L. Foster

COMMENTS OF
WEST VIRGINIA MANUFACTURERS
ASSOCIATION ON STATE EMERGENCY RESPONSE
COMMISSION PROPOSED LEGISLATIVE RULES

On June 14, 1991, the West Virginia State Emergency Response Commission ("SERC") filed with the Secretary of State proposed legislative rules purporting to establish the necessary procedures for the implementation of Title III of the Superfund Amendments and Reauthorization Act of 1986 ("Title III") as required by the State Community Right to Know Act at Chapter 15, Article 5-A et seq. of the West Virginia Code ("the State Act"). A public hearing on these proposed legislative rules was scheduled for July 19, 1991.

The West Virginia Manufacturers Association ("WVMA") represents a broad cross-section of both large and small industrial concerns in West Virginia. Because many of its members must comply with the provisions of Title III, the WVMA has been at the forefront of the development of the State Act and its implementing regulations. It is in furtherance of this active and supportive role that the WVMA offers these comments.

I. Section I.5 (Page I)

This section incorrectly refers to the United States Food and Drug Administration as the "Federal Drug Administration." Notwithstanding this inaccuracy, the authorizing statute makes no mention of such exemptions. Moreover, while the exemptions listed in this section appear to follow the exemptions from the federal reporting requirements under section 311 of Title III, their inclusion in the Rules is, nevertheless, objectionable. The SERC has no authority under the State Act to add to, delete from or modify the reporting requirements. If the SERC desires to list the

exemptions or any other provision of the federal law for informational purposes only, this intention should be clearly stated in the rules. For these reasons we urge the deletion of Section 1.5.

2. Section 2.4 (Page 1)

This section, which defines the term "commission," should be revised to include the term "SERC" as an acronym for the State Emergency Response Commission. For ease of reference, we suggest that the proposed rules be revised to uniformly substitute this acronym wherever the term "State Emergency Response Commission" is used.

3. Section 2.5 (Page 1)

This section, which defines the term "committee," should be revised to include the term "LEPC" as an acronym for Local Emergency Planning Committee. For ease of reference, we suggest that the proposed rules be revised to uniformly substitute this acronym wherever the term "Local Emergency Planning Committee" is used.

4. Section 2.15 (Page 2)

In order to maintain uniformity, clarity and consistency, this section should be revised to include the ^{*} proviso that 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.

5. Section 2.17 (Page 3)

In order to conform with §312(d)(2) of Title III, subsection (d) of this section should be revised to require a brief description of the location at the facility of stored hazardous chemicals.

6. Section 3.1 (Page 3), Section 3.2 (Page 4), Section 3.3 (Page 4), Section 3.4 (Page 4), Section 3.5 (Page 4), Section 3.6 (Page 4), Section 3.7 (Pages 4-5), Section 3.8 (Page 5), Section 3.9 (Page 5), and Section 4.2 (Page 5).

As an aid to the reader, the terms "State Emergency Response Commission" and "State Commission" should be deleted and replaced with the acronym "SERC" throughout these sections.

7. Section 3.9 (Page 5)

Both Title III, at §301(a), and the State Act, at §15-5A-7(d)(2), expressly require the designation of an official to serve as an information coordinator for processing requests for information. To this end, an additional subsection, labeled "(c)", should be added to this section in which this official is designated.

8. Section 5.1 (Page 6)

The subsection label "(a)" should be deleted from this section as there are no subsections provided thereunder. In addition, this section lists as a public record, "[h]azardous chemical inventory forms (Tier II) prepared under Section 312 of Title III." The term "Tier II" should be deleted from this sentence and replaced with the term "Tier I." The reason for this is that Tier II information

required to be submitted under §312 of Title III includes a disclosure of the location of specific chemicals. Under §324 of Title III, information pertaining to the location of such chemicals may be protected from public disclosure and thus should not be listed under any state regulation as a public record available for general disclosure.

9. Section 5.2 (Pages 6-7)

In order to provide uniformity, and in order to maintain consistency and clarity between the parallel federal and state provisions, subsection (a) of this section should be deleted and replaced with the following language found in 40 C.F.R. 370.3(b):

- (1) 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.
- (2) 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.

(3) 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.

Subsection (b) of this section should also be deleted and replaced with the following language:

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

10. Section 5.3 (Page 7)

A typographical error appears under subsection (b) of this section at the word "includes". The letter "s" should be deleted from this word, leaving it in its singular, as opposed to plural, form.

The term "Tier II" should be deleted from subsection (c) of this section as this subsection speaks to requests for "Toxic Chemical Release form information" under §313(a) of Title III, and not Tier II Hazardous Chemical Inventory form information which is provided for under §312(a) of Title III.

11. Section 6 (Page 8)

This entire section should be deleted as it lacks statutory authority, is overly broad and fails to address forms and

instructions. Under 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 any LEPC to make requests of facilities for information pertaining to the federal Act or state law.

12. Section 7 (Page 8)

This entire section should be revised in order to conform to the requirements of 40 C.F.R. Part 350 which establishes methods for asserting claims of trade secrecy. To this end, the methods listed in 40 C.F.R. 350.5 should be incorporated by reference into the rules. This section should further be revised to include the following language:

Facilities required to report under 42 U.S.C. 1100 et seq. which submit information claimed as "confidential" or "trade secret" must satisfy the following criteria in order to protect such information from disclosure:

- (1) The facility must be able to prove that the information has not been reported under any other environmental regulation;
- (2) The chemical's identity must be included in the facility's reports to EPA; and
- (3) The facility must substantiate any trade secret claims upon request.

All ~~reports~~ ^{confidential info} received fulfilling the criteria of Section 7 shall not be available for public disclosure.

13. Section 8 (Page 9)

The first paragraph of this section should be labeled "8.1." Moreover, the sentence which reads, "[a]ll fees collected shall be deposited into a special account" should be deleted from this section. The numerical labels setting out each of the four subparagraphs to this section should be deleted and said subparagraphs should then be labeled "(a)," "(b)," "(c)," and "(d)," respectively.

Substantively, this section adheres closely to the terms of the State Act in regards to the imposition of fees and the collection of delinquent fees. However, the State Act authorizes the imposition of "[a]n emergency planning notification fee not to exceed one hundred dollars...., [a]n annual inventory fee not to exceed one hundred dollars.... [and a] surcharge fee not to exceed twenty percent of the fee otherwise payable to be paid by facilities which fail to pay the fees [listed above]...." [emphasis added.] In contrast to this, this section, as proposed, imposes fees of \$100 Dollars and a surcharge fee of 20% -- the ~~maximum~~ amounts authorized under the State Act. The SERC should provide a rational basis for imposing these maximum sums on all facilities generally.

A new section, 8.2, should be added herein which supplies the language necessary for the creation of a special account into which all fees collected are to be deposited. This new section should read as follows:

The "Emergency Response/Right to Know Fund" is hereby created for the purposes specified in §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 §15-5A-5(j)-(k) of said Act.

14. Section 9 (Pages 9-12)

It is suggested that this section be revised to indicate the total funds that are to be available for the distribution of grants in any given year. Such a figure should be established and supplied for the mutual benefit of those LEPC's seeking grant funding and for the SERC in its budgeting and allocation efforts.

15. Section 12 (Page 13)

This section, which mandates state agencies to "...respond within the confines of the West Virginia Hazardous Materials Emergency Response Plan", is insufficient in that it does not provide instruction as to whom or what agencies of state government are to respond.