

**AGENDA**  
**Eau Claire County – Local Emergency Planning Committee**  
**721 Oxford Avenue, Room 3360 • Eau Claire WI**  
**Thursday, June 2, 2016 • 4:00 p.m.**

1. Call to Order
2. Confirmation of Meeting Notice
3. Public Comment
4. Review-Approval of the Minutes / Discussion – Action
  - March 31, 2016
5. Introductions / Discussion
6. Agency Reports / Discussion
7. Local Hazardous Materials Spill Response Team Report / Discussion
8. Review of LEPC Duties Listing / Discussion
9. Proposed Business Items for Next Meeting / Discussion
  - Off-site visit
  - Off-site plan review

Next meeting end of August/beginning of September.

10. Adjournment

Post: 5/27/2016

Please note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language, interpreters or other auxiliary aids. For additional information or to request the service, contact the County ADA Coordinator at 839-4710 (FAX) 839-1669 or (TDD) 839-4735 or by writing to the ADA Coordinator, Human Resources Department, Eau Claire County Courthouse, 721 Oxford Ave., Eau Claire, Wisconsin 54703.

**MINUTES**  
**Eau Claire County – Local Emergency Planning Committee**  
**721 Oxford Avenue, Room 3360 • Eau Claire WI**  
**Thursday, March 31, 2016 • 4:00 p.m.**

**Members Present:** Bruce Buchholz, Darrell Christy, Don Henning, James Hager, Jack Running, David Salter, Frank Neibauer, Kathryn White, Pat LaVelle, Paul Lokken

**Members Absent:** Jim Southworth, John Baltes, Larry Ganske, Jason Knecht

**Staff Present:** Michael Morlan, Jeanna Allen

**Others Present:** Lisa Olson-McDonald

1. Call to Order  
Chairman LaVelle called the meeting to order at 4:00 p.m.
2. Confirmation of Meeting Notice  
Chairman LaVelle confirmed that the meeting was posted in accordance with Wisconsin Open Meeting Law requirements.
3. Review-Approval of the Minutes / Discussion – Action
  - a. December 17, 2015  
**ACTION:** Motion by Paul Lokken to approve the minutes as submitted. Motion carried by unanimous consent.
4. Introduction of Michael Morlan, Emergency Management Coordinator  
Mr. Morlan introduced himself to the Committee.
5. Local Hazardous Materials Spill Response Team Report  
Bruce Buchholz reported on spill activity in the county.
6. LEPC Compliance Inspector Designation / Discussion – Action  
Members discussed the designation of the Compliance Inspector. Lisa Olson-McDonald, Wisconsin Emergency Management, was on hand to answer questions for members.  
**ACTION:** Motion by Darrell Christy, 2<sup>nd</sup> by Dave Salter, to designate Wisconsin Emergency Management as the compliance officer. Motion carried by unanimous consent.
7. Review/Approval of Strategic Plan / Discussion – Action  
Members reviewed the submitted strategic plan and offered corrections to staff.  
**ACTION:** Motion by Frank Neibauer, 2<sup>nd</sup> by Don Henning, to approve the strategic plan as corrected. Motion carried by unanimous consent.
8. Off-site plan review / Discussion – Action  
Off-site plans will be reviewed at the next meeting.
9. Proposed Business Items for Next Meeting  
Complete list of LEPC duties  
Off-site plan reviews  
Site tour (Diversey or Fall Creek cheese plant)
10. Public Comment  
None
11. Adjournment  
**ACTION:** Motion by Frank Neibauer, 2<sup>nd</sup> by James Hager, to adjourn at 4:28 p.m. Motion carried by unanimous consent.

Respectfully submitted,

Jeanna Allen  
Clerk, Local Emergency Planning Committee

D. The committee shall coordinate information on groundwater concerns within Eau Claire County and as part of that process shall:

1. Monitor state and federal regulation of groundwater.
2. Oversee the development and implementation of a comprehensive, county-wide groundwater management plan.
3. Perform such other tasks as directed by the planning & development committee.

E. The committee shall report to the planning & development committee at its request, but no less than annually.

F. The director of planning & development shall assign staff assistance to the committee who shall act as liaison with the planning & development committee, reporting regularly to both bodies. In addition, extension & health department staff shall be assigned as needed.

G. The committee shall meet at least four times per year. (Ord. 158-009, Sec. 1, 2014; Ord. 146-14, Sec. 7, 2002; Ord.143-91 Sec.14, 2000; Ord.137-100, 1994; Ord.133-29, 1989).

#### **2.05.650 Local Emergency Planning Committee.**

A. There is established, pursuant to Wis. Stat. § 59.54(8), a local emergency planning committee which shall be attached to the department on planning & development for administrative purposes.

B. The committee shall consist of not more than 16 persons, appointed by the chair of the county board upon recommendation of the committee on planning and development and subject to approval of the county board, for staggered 2-year terms expiring the third Tuesday in April and coinciding with the rules of operation adopted by the local emergency planning committee in the following manner.

1. Annual vacancies shall be noticed publicly. The planning & development committee shall submit a list of nominees to the county board chair prior to consideration of any committee appointment.

2. Members shall be from the following groups:

- a. Group 1: Elected state and local officials.
- b. Group 2: Representatives from law enforcement, civil defense, firefighting, first aid, health, transportation, hospitals, and local environmental groups.
- c. Group 3: Broadcast and print media.
- d. Group 4: Community groups.
- e. Group 5: Owners and operators of facilities subject to the requirements of SARA Title III.

3. Should any member no longer meet the qualifications for appointment, the member's seat shall be declared vacant.

4. Mid-term vacancies may be filled from a list of citizens who have applied for annual vacancies but have not been selected, or through a separate public notice, or by using both.

C. The county board chair shall appoint a chair pro tem to chair the first meeting. At the first meeting the membership shall elect a chair and a vice-chair. The committee chair shall appoint a committee member or a department staff member as secretary.

D. The committee shall have the powers and duties established for such committees under 42 U.S.C. 11050 and under Wis. Stat. §§ 323.60 and 323.61.

E. The committee shall report to the planning and development committee at its request, but no less than annually.

F. The director of planning & development shall assign staff assistance to the committee.

G. The committee shall meet at least 4 times per year.

H. Committee members, excluding county employees serving on the committee, shall receive per diem reimbursement as authorized in Chapter 3.20.

I. The emergency management coordinator and in his or her absence the LEPC is designated as the reviewing entity for hazardous substance discharges under Wis. Stat. § 166.22. (Ord. 154-2, Sec. 10 & 11, 2010; Ord. 152-26, Sec. 5, 2008; Ord. 150-003, Sec 1, 2006; Ord. 147-80, Sec. 5, 2003; Ord. 145-36, 2001; Ord. 144-101, Sec. 1, 2001; Ord. 144-24, Sec. 3; 2000; Ord.142-103 Sec.2, 1999; Ord.141.03, Sec.1, 1997; Ord.137-31, Sec.1, 1993; Ord.139-121, 1996; Ord.136-106, 1993; Ord.135-36, Sec. 2, 1991; Ord.133-44, 1989; Ord.135-21, Sec.1, 1991).

porary succession to the powers and duties of public offices for the period of an emergency resulting from a cause other than an enemy action, to read as follows:

(3) PERIOD DURING WHICH AUTHORITY MAY BE EXERCISED. An interim successor to an office may discharge the duties of the office only during the continuance of an emergency resulting from a disaster or the imminent threat of a disaster. The legislature, by joint resolution, may at any time terminate the authority of an interim successor to exercise the powers and discharge the duties of office provided in this subchapter.

(4) REMOVAL OF DESIGNEES. Until such time as the persons designated as interim successors are authorized to exercise the powers and discharge the duties of an office in accordance with this subchapter, those persons shall serve in their designated capacities at the pleasure of the designating authority.

(5) DISPUTES. Any dispute concerning a question of fact arising under this subchapter with respect to an office in the executive branch of the state government, except a dispute of fact relative to the office of governor, shall be adjudicated by the governor or other official authorized under the constitution or this subchapter to exercise the powers and discharge the duties of the office of governor and his or her decision shall be final.

History: 2009 a. 42 ss. 145 to 149, 316, 317; Stats. 2009 s. 323.55.

## SUBCHAPTER VI

### EMERGENCY PLANNING

#### 323.60 Hazardous substances information and emergency planning. (1) DEFINITIONS. In this subchapter:

(b) “Committee” means a local emergency planning committee created under s. 59.54 (8) (a).

(c) “Facility” means the buildings and contiguous area of a single location which is owned, operated or controlled by the same person and used for conducting the activities of a public or private agency, or as defined in 42 USC 11049 (4).

(d) “Facility plan” means a plan for response to the release of hazardous substances from a specific facility, prepared as a component of a local emergency response plan under sub. (5) (a) and under 42 USC 11003.

(e) “Federal act” means 42 USC 11000 to 11050.

(f) “Hazardous chemical” means a hazardous chemical covered under 42 USC 11021 and 11022 as defined under 29 CFR 1910.1200 (c).

(g) “Hazardous substance” means an extremely hazardous substance included in the list published by the administrator of the U.S. environmental protection agency under 42 USC 11002 (a) (2) or a hazardous substance as defined under 42 USC 9601 (14) or designated by the administrator of the U.S. environmental protection agency under 42 USC 9602 (a).

(gm) “Minerals” mean unbeneficiated metallic ore but does not include mineral aggregates such as stone, sand, and gravel.

(h) “Private agency” means a privately owned and operated research facility or educational institution.

(i) “Public agency” means a state or local office, agency, board, commission, committee, council, department, research facility, educational institution or public body corporate or politic created by constitution, law, ordinance, rule or order, or a governmental or quasi-governmental corporation.

(j) “Threshold quantity” means a designated quantity of any of the following:

1. A hazardous chemical which, if used by or present at a facility, makes the facility subject to the requirements of sub. (5) (c).

2. A toxic chemical which, if used by or present at a facility, makes the facility subject to the requirements of sub. (5) (d).

(k) “Toxic chemical” means a toxic chemical covered under 42 USC 11023 (c).

(2) DUTIES OF THE DIVISION. The division shall do all of the following:

(a) Serve as the state emergency response commission under the federal act.

(b) Promulgate rules necessary for the implementation of the federal act.

(bg) Promulgate rules establishing an amount not to exceed \$6,000 that may be an eligible cost for computers in an emergency planning grant under s. 323.61 (2) (br).

(c) Oversee the implementation of local emergency response plans by committees and provide assistance to committees in executing their duties under sub. (3) (b) to the greatest extent possible.

(d) Administer the grant program under s. 323.61.

(e) At least annually, submit a report to the governor indicating whether each county has a committee and whether the composition of each committee conforms to 42 USC 11001 (c).

(f) If the composition of a county’s committee does not conform to 42 USC 11001 (c), inform the county board of that fact and of the county board’s duty, under s. 59.54 (8) (a) 1., to create a committee with members as specified in 42 USC 11001 (c).

(3) DUTIES OF COMMITTEES. A committee shall do all of the following:

(a) Carry out all requirements of a committee under the federal act.

(b) Upon receipt by the committee or the committee’s designated community emergency coordinator of a notification under sub. (5) (b) of the release of a hazardous substance, take all actions necessary to ensure the implementation of the local emergency response plan.

(c) Consult and coordinate with the county board, the county and local heads of emergency management designated under s. 323.14 (1) (a) 2. or (b) 2. and the county emergency management committee designated under s. 323.14 (1) (a) 3. in the execution of the local emergency planning committee’s duties under this section.

(4) DUTIES OF THE DEPARTMENT OF NATURAL RESOURCES. The department of natural resources shall:

(a) Upon receipt of a notification under sub. (5) (b) or s. 292.11 (2) of the release of a hazardous substance, provide all information contained in the notification to the division.

(b) Have the same powers and duties at the time of a release of a hazardous substance as are given to it under s. 292.11, including the investigation of releases of hazardous substances, the repair of any environmental damage which results from the release and the recovery of costs from responsible parties. The department of natural resources may also, at the time of a release of a hazardous substance, identify and recommend to the division and the committee measures to lessen or mitigate anticipated environmental damage resulting from the release.

(c) Use the information contained in toxic chemical release forms submitted under sub. (5) (d) in the planning and implementation of programs related to the regulation, monitoring, abatement and mitigation of environmental pollution.

(4m) COOPERATION. A state agency, federally recognized American Indian tribe or band, or local governmental unit may assist the division or a committee in the performance of its duties under this section and may enter into an agreement with the division or a committee.

(5) NOTIFICATION AND REPORTING REQUIREMENTS. (a) All facilities in this state covered under 42 USC 11002 shall comply with the emergency planning and notification requirements under 42 USC 11002 and 11003.

(b) All facilities in this state covered under 42 USC 11004 shall comply with the notification requirements of 42 USC 11004. Notification of the department of natural resources of the discharge of a hazardous substance under s. 292.11 (2) shall constitute the notification of the division required under 42 USC 11004 if the notification contains the information specified in 42 USC 11004 (b) (2) or (c).

(c) All facilities in this state covered under [42 USC 11021](#) and all public agencies and private agencies in this state at which a hazardous chemical is present at or above an applicable threshold quantity shall comply with the reporting requirements under [42 USC 11021](#) and [11022](#). The division shall implement minimum threshold levels for reporting by retail gas stations that are identical to the minimum threshold levels for reporting under [42 USC 11021](#) and [11022](#).

(d) The following facilities shall comply with the toxic chemical release form requirements under [42 USC 11023](#) and shall submit copies of all toxic chemical release forms to the department of natural resources:

1. All facilities subject to [42 USC 11023](#).
2. All public agencies and private agencies at which a toxic chemical is used at or above an applicable threshold quantity.
3. All facilities with 10 or more employees in major group classifications 10 to 13 in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget, at which a toxic chemical is used at or above an applicable threshold quantity, except that compliance with the toxic chemical release form requirements under this subdivision is not required for the placement of a toxic chemical in a storage or disposal site or facility that is located at a facility with a permit under [ch. 293](#) or a mining permit under [subch. III of ch. 295](#) if the toxic chemical consists of or is contained in merchantable by-products, as defined in [s. 293.01 \(7\)](#) or [295.41 \(25\)](#), minerals, or refuse, as defined in [s. 293.01 \(25\)](#) or [295.41 \(41\)](#).

(e) The reporting procedures for trade secrets under [42 USC 11042](#) shall apply to all facilities in this state subject to the requirements under [par. \(a\)](#), [\(c\)](#), or [\(d\)](#). For the purposes of applying this paragraph to public agencies and private agencies, the division shall have the powers and duties granted to the administrator of the U.S. environmental protection agency under [42 USC 11042](#).

(f) All facilities in this state subject to the requirements under [par. \(c\)](#) or [\(d\)](#) shall comply with the procedures for providing information under [42 USC 11043](#).

**(5m) FURNISHING INFORMATION.** If the division or a committee requests, in writing, information relating to the federal act or to this section, a facility shall furnish the information in the manner requested.

**(6) THRESHOLD QUANTITIES.** Threshold quantities for the facilities of public agencies and private agencies shall be identical to the threshold quantities established by the federal act or by regulations promulgated under the federal act.

**(7) FACILITY FEES.** (a) The division shall establish, by rule, the following fees at levels designed to fund the division's administrative expenses and the grants under [s. 323.61](#):

1. An emergency planning notification fee to be paid when a facility makes the emergency planning notification required under [sub. \(5\) \(a\)](#).

2. An inventory form fee to be paid annually when a facility submits the emergency and hazardous chemical inventory forms required under [sub. \(5\) \(c\)](#).

(b) The operator of a facility subject to the requirements of [sub. \(5\) \(a\)](#) or [\(c\)](#) shall pay the fees under [par. \(a\)](#). The division may establish, by rule, a surcharge to be paid by the operator of a facility if the operator fails to pay the fees under [par. \(a\)](#) in a timely manner. The surcharge under this paragraph shall not exceed 20% of the original fee.

(d) The operator of a facility, including a facility engaged in farming, as defined in [s. 102.04 \(3\)](#), is exempt from the fees under [par. \(a\)](#) if the operator of the facility employs fewer than the equivalent of 10 full-time employees in this state.

(dm) The operator of a facility at which petroleum products are received by tank truck, tank trailer, or railroad tank car and stored for resale is exempt from the fees under [par. \(a\) 2.](#) with respect to gasoline and diesel fuel present at that facility.

(e) All moneys received under this subsection shall be credited to the appropriations under [s. 20.465 \(3\) \(i\)](#) and [\(jm\)](#).

**(7m) INSPECTIONS.** (a) An authorized inspector of the division or the committee for the county in which a facility is located may enter and inspect any facility or any pertinent record relating to the facility at any reasonable time for the purpose of determining whether the facility is complying with this section and rules promulgated under this section. The division or committee, if requested, shall furnish to the operator of the facility a report setting forth all facts found which relate to compliance with this section and rules promulgated under this section.

(b) The division shall promulgate rules to specify how the division or a committee may authorize inspectors for the purposes of [par. \(a\)](#). The rules shall include requirements for experience or training of individuals authorized to conduct inspections.

**(8) ENFORCEMENT.** (a) The department of justice, at its own discretion or at the request of the division or the committee or district attorney for the county in which the violation is alleged to have occurred, shall enforce [subs. \(2\) to \(7\)](#) and rules promulgated under [subs. \(2\) to \(7\)](#). In any action commenced under this paragraph, the department of justice may request the assistance of the district attorney for the county in which the violation is alleged to have occurred and the district attorney shall provide the requested assistance, except that, for a violation that is alleged to have occurred within the boundaries of a federally recognized Indian reservation or on land that is held in trust by the federal government for the benefit of an American Indian tribe or band, only the department of justice may enforce [subs. \(2\) to \(7\)](#) and rules promulgated under [subs. \(2\) to \(7\)](#).

(b) In addition to any other relief granted, the court may grant injunctive relief to restrain violations of [subs. \(2\) to \(7\)](#) and rules promulgated under [subs. \(2\) to \(7\)](#).

**(9) SUITS.** (a) Except as provided in [par. \(b\)](#):

1. Any person may commence a civil action on his or her behalf against any of the following:

- a. Any person for failure to submit a follow-up emergency notice under [42 USC 11004 \(c\)](#), as applied under [sub. \(5\) \(b\)](#).

- b. Any person for violation of [sub. \(5\) \(c\)](#) or [\(d\)](#).

- c. The division for failure to render a decision in response to a petition under [42 USC 11042 \(d\)](#), as applied under [sub. \(5\) \(e\)](#), within 9 months after receipt of the petition.

- d. The division for failure to provide a mechanism for public availability of information in accordance with [42 USC 11044 \(a\)](#), as applied under [sub. \(2\) \(a\)](#).

- e. The division for failure to respond to a request for information under [42 USC 11022 \(e\) \(3\)](#), as applied under [sub. \(2\) \(a\)](#).

2. The division or any local unit of government may commence a civil action against any person for failure to do any of the following:

- a. Provide notification to the division under [42 USC 11002 \(c\)](#), as applied under [sub. \(5\) \(a\)](#).

- b. Submit the information required under [42 USC 11021 \(a\)](#) or [11022 \(a\)](#), as applied by [sub. \(5\) \(c\)](#).

- c. Make available information requested under [42 USC 11021 \(c\)](#), as applied under [sub. \(5\) \(c\)](#).

3. The division or any committee may commence an action against any person for failure to provide the information required under [42 USC 11003 \(d\)](#), as applied under [sub. \(5\) \(a\)](#) or any information required under [42 USC 11022 \(e\) \(1\)](#), as applied under [sub. \(5\) \(c\)](#).

(b) 1. No action may be commenced against any person other than the division under this subsection under any of the following circumstances:

- a. If fewer than 60 days have elapsed since the plaintiff gave notice of the alleged violation to the division and to the alleged violator.

b. If the department of justice has commenced and is diligently prosecuting a civil action against the alleged violator, but in any such action any resident of this state may intervene as a matter of right.

2. No action may be commenced against the division under this subsection if fewer than 60 days have elapsed since the plaintiff gave notice of the action to the division.

(c) In addition to any other relief granted, the court may grant injunctive relief to restrain the violations alleged in the pleadings.

**(10) VENUE.** A proceeding under sub. (8) or (9) may be brought in the circuit court for Dane County, for the county in which the defendant is located or for the county in which the violation is alleged to have occurred.

**(11) PENALTIES.** (a) Any person who violates sub. (5) (a), (b), or (d), or the emergency and hazardous chemical inventory form requirements of 42 USC 11022, as applied under sub. (5) (c), or any rule promulgated under sub. (5) (a), (b), or (d), or concerning emergency and hazardous chemical inventory form requirements shall forfeit not less than \$100 nor more than \$25,000. Total forfeitures for the failure of a facility to report multiple releases of hazardous substances covered under 42 USC 11004, as applied under sub. (5), shall not exceed \$75,000 per day of offense.

(b) Any person who knowingly and willfully fails to report the release of a hazardous substance covered under 42 USC 11004 as required under sub. (5) (b) or any rule promulgated under sub. (5) (b) is subject to the following penalties:

1. For the first offense, the person is guilty of a Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than \$25,000.

2. For the 2nd and subsequent offenses, the person is guilty of a Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than \$50,000.

(c) Any person who violates sub. (5) (e) or (f) or the material safety data sheet requirements of 42 USC 11021, as applied under sub. (5) (c), or any rule promulgated under sub. (5) (e) or (f) or concerning material safety data sheet requirements shall forfeit not less than \$50 nor more than \$10,000.

(d) Any person who knowingly and willfully releases a trade secret entitled to protection under 42 USC 11042, as applied under sub. (5) (e), shall be fined not less than \$100 nor more than \$20,000 or imprisoned for not more than one year in the county jail or both.

(dg) Except as provided in this paragraph, any person who negligently makes a false statement or representation in any document provided by the operator of a facility or required to be maintained by the operator of a facility under the federal act, this section or rules promulgated under this section shall forfeit not less than \$100 nor more than \$25,000. This penalty does not apply to the division, a committee or a member of the division or a committee.

(dr) Any person who violates any provision of this section or any rule promulgated under this section for which no penalty is provided under pars. (a) to (dg) shall forfeit not more than \$20,000.

(e) For the purposes of this subsection, each day of continued violation constitutes a separate offense.

**History:** 1987 a. 342; 1989 a. 31, 115, 359; 1991 a. 39, 104, 189; 1993 a. 240, 253; 1995 a. 13, 113, 201, 227, 247; 1997 a. 27, 283; 1999 a. 9, 185; 2001 a. 16, 109; 2009 a. 42 ss. 157 to 161, 163, 168, 170 to 175, 179 to 192, 193 to 203, 205, 206; Stats. 2009 s. 323.60; 2013 a. 1.

**Cross-reference:** See also chs. WEM 1, 2, 3, 5, and 6, Wis. adm. code.

State Emergency Response Board committee members are entitled to indemnity for damage liability under s. 895.46 and legal representation by the attorney general under s. 165.25. 81 Atty. Gen. 17.

The authority and responsibility of local units of government to respond to Level B hazardous substance releases is discussed. OAG 1–99.

**323.61 Emergency planning grants. (1) GENERAL.** (a) There is created an emergency planning grant program for the pur-

pose of assisting committees to comply with the requirements of s. 323.60 and the federal act.

(b) Any committee may apply annually to the division for an emergency planning grant. Applications shall be made in the manner specified by the division.

**(2) ELIGIBLE COSTS.** Eligible costs for emergency planning grants are limited to the cost of all of the following:

(a) Maintaining emergency response plans required under 42 USC 11003, including the cost of maintaining facility plans.

(b) Reviewing, exercising and implementing emergency response plans required under 42 USC 11003.

(br) Subject to sub. (2m), 80% of the costs of computers and emergency response equipment, but not to exceed \$10,000. In-kind contributions may be used to meet the committee's contribution under this paragraph.

(c) Committee operation and administration, including the cost of supplies and equipment reasonably necessary for committee operation and administration, but excluding the cost of computers and emergency response equipment.

(d) Any other activity of the committee required under s. 323.60 or the federal act.

(dm) Hazardous materials response supplies.

(e) The portion of a previous year's costs that was approved by the division but not paid because of insufficient funds.

**(2m) STRATEGIC PLAN.** A committee is eligible for grant funds under sub. (2) (br) for emergency response equipment only if it submits to the division a strategic plan for emergency response to hazardous substance releases that includes all of the following:

(a) An analysis of the risks of hazardous substance releases in the county.

(b) Identification of the existing capability for emergency response to hazardous substance releases in the county.

(c) An assessment of needs, including equipment and training needs, related to emergency response to hazardous substance releases in the county.

(d) A process to maintain or increase the capability for emergency response to hazardous substance releases in the county.

(e) Identification of a local emergency response team that is capable of responding to a level B release that occurs at any place in the county and whose members meet the standards for hazardous materials technicians in 29 CFR 1910.120 (q) (6) (iii) and national fire protection association standards NFPA 471 and 472.

(f) Procedures for local emergency response team actions that are consistent with local emergency response plans developed under s. 323.60 (3) and the state contingency plan established under s. 292.11 (5).

**(3) GRANT AMOUNT.** (a) Emergency planning grants shall not exceed the sum of the following amounts:

1. The costs of each new facility plan completed by the committee and approved by the division in the period covered by the grant.

2. All costs incurred by the committee in the period covered by the grant related to subs. (2) (b) to (dm) and (2m).

3. The portion of a previous year's costs that was approved by the division but not paid because of insufficient funds.

(b) The division shall reduce the grant amount calculated under par. (a) by the amount of any other gifts or grants received by the committee in the period covered by the grant for costs incurred by the committee related to sub. (2).

(c) Notwithstanding sub. (2), the division shall deny that portion of a grant calculated under par. (a) 2. if the division determines that the committee has failed to meet grant obligations, including the development, review, exercise or implementation of local emergency response plans as required under s. 323.60 or the federal act.

(e) Annually, the division shall establish a formula to determine the amount of emergency planning grant funds available to each county.

(4) **PAYMENT OF GRANTS.** Annually, the division shall review all applications received under this section and make grants to committees from the appropriations under s. 20.465 (3) (jm) and (r). If insufficient funds are available to pay all approved grants, the division shall prorate the available funds among the eligible applicants in proportion to the approved grant amounts. A prorated payment shall be deemed full payment of the grant.

(5) **PAYMENT IN ADVANCE.** (a) The division may pay a portion of a grant before the end of the period covered by the grant if a committee requests the advance payment and if the division determines that the necessary funds are available and that the advance payment will not result in insufficient funds to pay other grants.

(b) The division may pay an amount up to 50% of anticipated eligible costs covered by a grant up to 12 months before the end of the period covered by the grant. The division may pay an additional amount up to 25% of anticipated eligible costs up to 6 months before the end of the period covered by the grant. The division shall determine anticipated eligible costs from a budget submitted by the committee at the time that the committee requests payment in advance.

(c) If a committee receives advance payments under this subsection which exceed the total grant amount calculated under sub. (3), the division shall subtract the amount of the overpayment from the amount of a grant paid to that committee in the next year that the committee receives a grant.

**History:** 1987 a. 342; 1989 a. 31, 115; 1991 a. 104; 1993 a. 16; 1995 a. 13, 227; 1997 a. 27; 2001 a. 16; 2009 a. 42 ss. 207 to 213; Stats. 2009 s. 323.61.

## SUBCHAPTER VII

### EMERGENCY RESPONSE TEAMS

#### 323.70 Hazardous substance emergency response.

(1) In this subchapter:

(a) “Hazardous substance” has the meaning given in s. 299.01 (6).

(b) “Local agency” means an agency of a county, city, village, or town, including a municipal police or fire department, a municipal health organization, a county office of emergency management, a county sheriff, an emergency medical service, a local emergency response team, or a public works department.

(c) “Local emergency response team” means a team that the committee identifies under s. 323.61 (2m) (e).

(2) The division shall contract with no more than 9 regional emergency response teams, one of which shall be located in La Crosse County. Each regional emergency response team shall assist in the emergency response to level A releases in a region of this state designated by the division. The division shall contract with at least one regional emergency response team in each area designated under s. 323.13 (2) (a). The division may only contract with a local agency under this subsection. A member of a regional emergency response team shall meet the highest standards for a hazardous materials responder in 29 CFR 1910.120 (q) (6) (iv) and National Fire Protection Association standards NFPA 471 and 472. Regional emergency response teams shall have at least one member that is trained in each of the appropriate specialty areas under National Fire Protection Association standard NFPA 472. Payments to regional emergency response teams under this subsection shall be made from the appropriation account under s. 20.465 (3) (dd).

(3) The division shall reimburse a regional emergency response team for costs incurred by the team in responding to an emergency involving a level A release, or a potential level A release, if the team followed the procedures in the rules promulgated under sub. (7) (b) to determine if an emergency requiring a response existed. Reimbursement under this subsection is limited

to amounts collected under sub. (4) and the amounts appropriated under s. 20.465 (3) (dr). Reimbursement is available under s. 20.465 (3) (dr) only if the regional emergency response team has made a good faith effort to identify the person responsible under sub. (4) and that person cannot be identified, or, if that person is identified, the team has received reimbursement from that person to the extent that the person is financially able or has determined that the person does not have adequate money or other resources to reimburse the regional emergency response team.

(4) A person shall reimburse the division for costs incurred by a regional emergency response team in responding to an emergency involving a level A release or a potential level A release if the team followed the procedures established under s. sub. (7) (b) to determine if an emergency requiring the team’s response existed and if any of the following conditions applies:

(a) The person possessed or controlled a hazardous substance that was involved in the emergency.

(b) The person caused the emergency.

(5) A member of a regional emergency response team who is acting under a contract under sub. (2) is considered an employee of the state for purposes of worker’s compensation benefits.

(6) The division shall notify the joint committee on finance in writing, before entering into a new contractual agreement under sub. (2) or renewing or extending a contractual agreement under sub. (2), of the specific funding commitment involved in that proposed new, renewed or extended contract. The division shall include in that notification information regarding any anticipated contractual provisions that involve state fiscal commitments for each fiscal year in the proposed new, renewed or extended contract. The division may enter into a new contractual agreement or renew or extend a contractual agreement, as proposed in the notification to the joint committee on finance, if within 14 working days after notification the committee does not schedule a meeting to review the division’s proposed action. If, within 14 working days after notification to the joint committee on finance, the committee notifies the division that the committee has scheduled a meeting to review the division’s proposed action, the division may enter into the proposed new contract or renew or extend the contract as proposed only if the committee approves that action.

(7) (a) The division shall promulgate rules establishing standards to determine all of the following:

1. If a regional or local emergency response team has made a good faith effort to identify a person responsible for the emergency involving a release or potential release of a hazardous substance under sub. (4) or s. 323.71 (4).

2. If a person responsible for the emergency involving a release or potential release of a hazardous substance under sub. (4) or s. 323.71 (4) is financially able or has the money or resources necessary to reimburse a regional or local emergency response team for the expenses incurred by the regional or local emergency response team in responding to the emergency.

(b) The division shall promulgate rules that establish the procedures that a regional emergency response team shall follow to determine if an emergency that requires the team’s response exists as the result of a level A release or a potential level A release.

(c) The division shall promulgate rules that establish the procedures that a local emergency response team shall follow to determine if an emergency that requires the team’s response exists as the result of a release or potential release of a hazardous substance, as defined in s. 299.01 (6).

**History:** 1991 a. 104; 1993 a. 253; 1995 a. 13; 1997 a. 27, 41; 1999 a. 9; 2001 a. 16; 2005 a. 33; 2009 a. 42 ss. 176 to 178, 214 to 221, 223, 224; Stats. 2009 s. 323.70.

#### 323.71 Local agency response and reimbursement.

(1) A person who possesses or controls a hazardous substance that is released or who causes the release of a hazardous substance shall take the actions necessary to protect public health and safety and prevent damage to property.

(2) If action required under sub. (1) is not being adequately taken or the identity of the person responsible for an emergency