WEST VIRGINIA CODE CHAPTER 15 ARTICLE 5A

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§15-5A-1. Declaration of purpose.

The Legislature recognizes that Title III of the Superfund Amendments and Reauthorization Act of 1986: The Emergency Planning and Community Right-to-Know Act of 1986, P.L. 99-499, enacted by the United States Congress and signed into law on October 17, 1986, has two primary objectives, i.e., to require states and local communities to develop comprehensive emergency response plans, and to establish a program for the collection and dissemination to the public of information on certain hazardous chemicals and toxic chemicals in their communities.

The purpose of this article is to enable and authorize this state to fulfill its obligations under the federal statute.

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§15-5A-2. Jurisdiction of West Virginia emergency response commission.

The state emergency response commission shall have within its jurisdiction and supervision the preparation and implementation of comprehensive emergency response plans for each designated emergency planning district within the state so as to comply with the requirements of 42 U.S.C. §11001, et seq. The commission, through the Office of Emergency Services, shall also be responsible for providing the citizens of this state with information in accordance with the requirements of 42 U.S.C. §11001, et seq. and this article. All state agencies shall cooperate with and assist the commission in all commission duties and responsibilities.

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§15-5A-3. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "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.

(b) "Clean Water Act" means the Federal Water Pollution Control Act, P.L. 92-500, enacted on October 18, 1972, and all subsequent amendments to that act.

(c) "Code" means the Code of West Virginia, 1931, as amended.

(d) "Commission" means the state emergency response commission.

(e) "Committee" means a local emergency planning committee.

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

(g) "Facility" means a facility subject to the provisions of 42 U.S.C. §11001, et seq., and this article, pursuant to the provisions of 42 U.S.C. §11002.

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

(i) "Resource Conservation and Recovery Act" means P.L. 94-580, enacted on the October 21, 1976, and all subsequent amendments to that act.

(j) "Spill prevention control and countermeasure plan" means any plan developed pursuant to section 112.3 of title 40 of the code of federal regulations.

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

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§15-5A-4. State emergency response commission created; composition and organization, qualifications, terms, removal, compensation, meetings.

(a) There is hereby created the state emergency response commission.

(b) The state emergency response commission shall consist of eleven members, including the director of the Division of Environmental Protection, the commissioner of the division of public health, the chief of the office of air quality of the Division of Environmental Protection, the director of the Office of Emergency Services, the superintendent of the division of public safety, the commissioner of the Division of Highways; one designee of the Public Service Commission and one designee of the state Fire Marshal, all of whom are members ex officio. A representative from the chemical industry, a representative of a municipal or volunteer fire department and a representative of the public who is knowledgeable in the area of emergency response shall be appointed by the Governor as public members of the state emergency response commission. The director of the Office of Emergency Services serves as the chair of the commission and may cast a vote only in the event of a tie vote. Members serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties under this article. The initial public members appointed by the Governor shall serve for a term ending on July 1, 1991. A successor to a public member of the commission shall be appointed in the same manner as the original public members and has a term of office expiring two years from the date of the expiration of the term for which his or her predecessor was appointed. In cases of any vacancy among the public members, such vacancy shall be filled by appointment by the Governor. Any member appointed to fill a vacancy on the commission occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Members appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall elect from its membership a vice chair and appoint a secretary. The secretary need not be a member of the commission. The vice chair shall preside over the meetings and hearings of the commission in the absence of the chair. The commission may appoint and employ such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state Treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

(d) The commission may establish procedural rules in accordance with chapter twenty-nine-a of the code for the regulation of its affairs and the conduct of all proceedings before it. All proceedings of the commission shall be entered in a permanently bound record book, properly indexed, and the same shall be carefully preserved and attested by the secretary of the commission. The commission shall meet at such times and places as may be agreed upon by the commissioners, or upon the call of the chairman of the commission or any two members of the commission, all of which meetings shall be general meetings for the consideration of any and all matters which may properly come before the commission. A

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majority of the commission constitutes a quorum for the transaction of business.

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§15-5A-5. Powers and duties of the commission.

The commission shall have and may exercise the following powers and authority and shall perform the following duties:

(a) Designate emergency planning districts;

(b) Appoint local emergency planning committees for each emergency planning district and supervise and coordinate the activities of such committees;

(c) Revise any designations and appointments made under subsections (a) and (b) of this section as it deems appropriate: Provided, That any interested person may petition the state emergency response commission to modify the membership of a local emergency planning commission;

(d) Designate, if necessary, additional facilities which shall be subject to the requirements of this article, provided such designation is made after public notice and opportunity for comment as provided under article three, chapter twenty-nine-a of the code;

(e) Review the emergency response plans submitted by the local emergency planning committees and make recommendations to the local committees on revisions of the plan that may be necessary to ensure coordination of such plan with the plans of other emergency planning districts and other existing state and local emergency response plans;

(f) Enter into cooperative agreements with other state agencies designating specific responsibilities to be performed by such state agencies to implement the provisions of this article;

(g) Promulgate procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing rules of practice before the commission;

(h) Promulgate procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, establishing procedures for receiving and processing requests from the public for information in accordance with the provisions of 42 U.S.C. §11001, et seq., and this article, and prescribing forms and instructions for requesting such information;

(i) Promulgate procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing forms and instructions for the submission and receipt of confidential information;

(j) Promulgate rules establishing the following fees which shall be deposited in a special account for the administration of this act and which shall be reasonably calculated to recover the necessary expenses incurred by the Office of Emergency Services in the administration of this article:

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(1) An emergency planning notification fee not to exceed $100 to be paid by a facility when it makes the emergency planning notification required under SARA, Title III, sections 301 through 303;

(2) An inventory form fee not to exceed $2,500 to be paid annually by a facility when it submits the emergency and hazardous chemical inventory forms or material safety data sheet required under SARA, Title III, sections 311 and 312; and

(3) A surcharge fee not to exceed twenty percent of the fee otherwise payable to be paid by facilities which fail to pay the fees in paragraphs (1) and (2) in a timely manner;

(k) Establish an emergency planning grant program to be administered by the commission. The grant programs will be funded by fees collected to administer this act pursuant to subdivision (j) of this section. The commission shall promulgate rules which establish the method of awarding such grants to local emergency planning committees to assist them in performing their responsibilities under this article;

(l) Promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article; and

(m) The chairman of the commission may order a facility owner or operator to comply with the requirements of applicable federal law, this article and any rules or regulations promulgated thereunder. When the chairman has reasonable cause to believe that there exists a failure to comply with the provisions of applicable federal law, this article or any rule or regulation promulgated thereunder or any order entered by the chairman, he or she may request the Attorney General to commence an action for civil penalties, injunctive relief or other appropriate relief to enforce such provisions, rules and regulations or order. Such 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.

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§15-5A-6. Powers and duties of the Office of Emergency Services.

The Office of Emergency Services, as created by article five, chapter fifteen of the Code of West Virginia, shall perform the administrative duties of the state emergency response commission. The administrative duties to be performed by the Office of Emergency Services shall include, but shall not be limited to, the following:

(a) Receive, catalogue and organize information required to be submitted to the commission;

(b) Utilize existing state response organizations, plans and facilities to the extent possible;

(c) Upon concurrence of the commission, 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 the commission from the public for information pursuant to this act;

(f) Perform such preliminary analysis and collect such information as may be required to enable the commission 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.

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§15-5A-7. Establishment of emergency planning districts and committees; composition, organization, duties.

(a) The state emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. After designating emergency planning districts, the state emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include representatives from each of the following groups or organizations: (1) Elected state and local officials; (2) law enforcement, civil defense, fire fighting, first aid, health, local environmental, hospital and transportation personnel; (3) broadcast and print media; (4) community groups; and (5) owners and operators of facilities subject to the requirements of this article. In addition to the above members, each county commission president from every county within the district, or a member of the county commission designated by the president, shall be appointed as a member of the committee and such appointment may fulfill the requirement to appoint elected local officials.

(b) Each local committee shall appoint a chairperson and establish procedural rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee and distribution of the emergency plan.

(c) The local committees shall submit their proposed procedural rules to the state emergency response commission for review and comment no later than January 1, 1990. If any local committees fail to submit proposed procedural rules, the state emergency response commission shall itself promulgate rules applicable to such local committees.

(d) The local emergency planning committee shall have and may exercise the following powers and authority and shall perform the following duties:

(1) Establish procedures for receiving and processing requests from the public for information regarding any emergency response plan, material safety data sheet, emergency, first aid and medical treatment procedures, list described in 42 U.S.C. §11021(a)(2), inventory form, toxic chemical release form, or followup emergency notice, including tier II information under 42 U.S.C. §11022;

(2) Designate an official to serve as coordinator for information for processing requests for information from the public;

(3) Develop and implement a comprehensive emergency response plan in accordance with 42 U.S.C. §11003, and review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require: Provided, That such comprehensive emergency response plans may not require a covered facility to revise, modify or otherwise alter any emergency release response or release prevention plan that has been prepared pursuant to any other state or federal statute or regulation including, but not limited to, contingency plans developed under the Resource Conservation and Recovery

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Act, Spill Prevention and Countermeasure Plans, or Best Management Practices Plans developed under the Clean Water Act;

(4) Prior to implementation, submit a copy of the prepared emergency response plan to the state emergency response commission for review and recommendation;

(5) Publish annually a notice in local newspapers that the emergency response plan is available for review, as are those material safety data sheets, emergency, first aid and medical treatment procedures, inventory forms and followup emergency notices which have been submitted to the committee. The notice shall also state that members of the public who wish to review any such plan, sheet, form or followup notice may do so at a designated location;

(6) Establish deadlines for responding to information requests from the public; and

(7) Receive, catalogue and organize information required to be submitted to the committee under the provisions of 42 U.S.C. §11001, et seq.

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§15-5A-8. Severability.

The provisions of this article are severable and if any provision, section or part thereof shall be held invalid, unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sections or parts of the article or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this article would have been adopted if such invalid or unconstitutional provisions, section or part had not been included therein.

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