

SENATE FILE NO. SF0015

Hazardous Materials Emergency Response Act.

Sponsored by: Joint Transportation and Highways Interim
Committee

A BILL

for

1 AN ACT relating to public health and safety; creating the
2 Hazardous Materials Emergency Response Act; creating an
3 advisory board; providing procedures for the response to
4 the release of hazardous materials as specified; requiring
5 the state fire marshal to implement a plan to assist in
6 responding to hazardous materials; establishing regional
7 hazardous material response teams; establishing the
8 hazardous material emergency response account; providing
9 for liability for a released hazardous material; providing
10 for recovery of expenses incurred in responding to
11 hazardous material incidents; providing for mediation;
12 providing exceptions; providing an appropriation; and
13 providing for an effective date.

14

15 *Be It Enacted by the Legislature of the State of Wyoming:*

16

1 formally requested to assist off of the private facility
2 site by the state or a political subdivision of the state;

3

4 (ii) "Emergency response" means a response to
5 any occurrence, which has or may result in a release of a
6 hazardous material;

7

8 (iii) "Hazardous material" means any substance,
9 material, waste or mixture designated as hazardous
10 material, waste or substance according to 49 C.F.R. part
11 171.8, as amended;

12

13 (iv) "Incident" means the release, or imminent
14 threat of release, of hazardous material that requires the
15 emergency action of responders to limit or prevent damage
16 to life or property;

17

18 (v) "Incident commander" means the person in
19 charge of all responders at the site of an emergency
20 response;

21

22 (vi) "Local response authority" means the single
23 point of contact designated for a political subdivision for
24 coordinating responses to incidents;

1

2 (vii) "Political subdivision" means any county,
3 city, town or fire protection district of the state;

4

5 (viii) "Regional hazardous material response
6 team" means any group of local government emergency
7 responders brought together to assist an affected
8 jurisdiction within the different regions of the state with
9 the intent to protect life and property against the dangers
10 of incidents and emergencies involving hazardous materials,
11 in coordination with the state fire marshal regional
12 response;

13

14 (ix) "This act" means W.S. 35-9-151 through
15 35-9-160.

16

17 **35-9-153. Advisory board.**

18

19 (a) There is created a hazardous material emergency
20 response advisory board that shall consist of seven (7)
21 members appointed by the governor. The board shall consist
22 of one (1) member each representing the mining, trucking,
23 manufacturing and railroad industries and the career fire
24 services, the volunteer fire services and the political

1 subdivisions. The governor may remove any member as
2 provided in W.S. 9-1-202.

3

4 (b) The advisory board shall appoint a chairman from
5 among its members. The board shall meet at least annually
6 and may meet more often as deemed necessary by the board or
7 the state fire marshal. Board members shall be reimbursed
8 for per diem and mileage for attending board meetings in
9 the same manner and amount as state employees.

10

11 (c) The governor shall give consideration to the
12 geographical location of the board members in order to have
13 equitable representation of the geographical areas of the
14 state.

15

16 (d) The advisory board shall ensure the proper and
17 equitable collection and disbursement of funds.

18

19 **35-9-154. Emergency response training, planning and**
20 **reporting.**

21

22 (a) After consultation with the advisory board, the
23 state fire marshal shall:

24

1 (i) Coordinate, develop, implement and make
2 available a comprehensive voluntary training program
3 designed to assist emergency responders in hazardous
4 material incidents;

5

6 (ii) Provide for ongoing training programs for
7 political subdivisions, state agency employees and private
8 industry employees involved in responding to spills or
9 releases of hazardous materials;

10

11 (iii) Promulgate rules and regulations for:

12

13 (A) Hazardous material emergency response
14 training confirmation;

15

16 (B) Hazardous material emergency regional
17 response teams and criteria for providing aid to those
18 teams;

19

20 (C) Local and regional hazardous materials
21 incident response reporting.

22

1 (iv) Assist with emergency response planning by
2 appropriate agencies of government at the local, state and
3 national levels.

4
5 (b) In carrying out this act, the state fire marshal
6 shall contract only with emergency response teams that have
7 obtained confirmation of successful completion of requisite
8 national fire protection association criteria for the level
9 at which the team will operate as emergency responders. The
10 state fire marshal shall confirm the training of, and issue
11 documentation of completion to, public emergency response
12 agency personnel who successfully complete hazardous
13 material training.

14

15 **35-9-155. Regional hazardous material emergency**
16 **response teams.**

17

18 (a) The state fire marshal may contract and
19 coordinate to make available for use in any county, city or
20 fire protection district, any part of a regional hazardous
21 material emergency response team and specialized equipment
22 necessary to respond to the incident or emergency.

23

1 (b) Members of the regional hazardous material
2 emergency response teams shall be indemnified and defended
3 from liability by the state self-insurance program:
4

5 (i) While engaged in responding to incidents
6 outside their normal jurisdiction and pursuant to an
7 appropriate request for assistance; or
8

9 (ii) While traveling to or from an operation
10 authorized by this act.
11

12 (c) The state fire marshal may lend equipment and
13 personnel and make grants from available state or federal
14 funds for the purchase of equipment to any local government
15 participating in the regional hazardous material response
16 program.
17

18 (d) The state fire marshal may contract with persons
19 and local emergency response teams that have appropriately
20 trained personnel and necessary equipment to respond to
21 hazardous material incidents within Wyoming.
22

1 (e) The state fire marshal may enter into a written
2 agreement with each entity or person providing equipment or
3 services to a designated local emergency response team.

4
5 (f) The state fire marshal shall promulgate rules and
6 regulations establishing standards for hazardous material
7 emergency response teams.

8
9 **35-9-156. Hazardous material emergency response**
10 **account.**

11
12 (a) The hazardous material emergency response account
13 is established within the earmarked revenue fund. The
14 following shall apply to the account:

15
16 (i) If the account becomes exhausted, the state
17 fire marshal shall request additional appropriations to
18 maintain the account;

19
20 (ii) All reimbursements to the state collected
21 under provisions of this act shall be deposited in the
22 account;

23

1 (iii) The state fire marshal shall promulgate
2 rules and regulations for depositing funds to, and
3 disbursing funds from, the account to be used to update
4 equipment and provide training for the regional and local
5 hazardous materials emergency response teams;

6
7 (iv) In consultation with the advisory board,
8 the state fire marshal shall promulgate rules and
9 regulations governing the reimbursement of political
10 subdivisions for participation in operations authorized by
11 this act.

12

13 **35-9-157. Local response authority.**

14

15 (a) Every political subdivision of the state shall
16 designate a local response authority for responding to and
17 reporting of hazardous material incidents that occur within
18 its jurisdiction. The state fire marshal shall provide
19 appropriate training to emergency responders to respond,
20 upon request, to hazardous materials emergencies that occur
21 on private on-site industrial facilities. This training may
22 include occupational safety and health administration, mine
23 safety and health administration and other site specific

1 hazard training required by the facility. Designation shall
2 be in accordance with the following:

3

4 (i) The governing body of every incorporated
5 municipality shall designate a local response authority to
6 respond to and report incidents occurring within its
7 jurisdiction;

8

9 (ii) The board of county commissioners of every
10 county shall designate a local response authority to
11 respond to and report incidents within the unincorporated
12 area of the county or areas within the county in which no
13 municipal response authority has been designated. In those
14 areas of a county where a fire protection district has been
15 established, the board of directors of the fire protection
16 district shall designate a local response authority to
17 respond to and report incidents within the fire protection
18 district;

19

20 (iii) If a fire protection district is
21 designated as the local response authority by a governing
22 body of an incorporated municipality or board of county
23 commissioners, the agreement to assume those
24 responsibilities shall be documented in writing;

1

2 (iv) Any governing body of an incorporated
3 municipality or board of county commissioners designating a
4 local response authority to act outside the authority's
5 jurisdiction shall enter into an appropriate binding
6 agreement with the local response authority;

7

8 (v) The designation of a local response
9 authority and copies of any accompanying agreements and
10 other pertinent documentation created pursuant to this
11 section shall be filed with the state fire marshal within
12 seven (7) days of the agreement being reduced to writing
13 and signed by all appropriate persons.

14

15 (b) Every local response authority shall coordinate
16 the response to an incident occurring within its
17 jurisdiction in a fashion consistent with standard
18 hazardous materials incident command protocols. The local
19 response authority shall also coordinate the response to an
20 incident which initially occurs within its jurisdiction but
21 which spreads to another jurisdiction. If an incident
22 occurs on a boundary between two (2) jurisdictions or in an
23 area not readily ascertainable, the first local response

1 authority arriving at the scene shall coordinate the
2 initial emergency response.

3

4 (c) The incident commander shall declare an incident
5 ended when he has determined the threat to public health
6 and safety has ended.

7

8 **35-9-158. Liability for release of a hazardous**
9 **material; right to claim reimbursement.**

10

11 (a) Any person with hazardous materials in his care,
12 custody or control which is involved in a hazardous
13 material incident and requires an emergency response by a
14 local response authority shall be liable for the reasonable
15 and necessary costs incurred as a result of their response
16 to a hazardous material incident.

17

18 (b) Notwithstanding subsection (a) of this section,
19 no person shall be liable under this act if the incident
20 were caused by:

21

22 (i) An act of God; or

23

1 (ii) An act or omission of a person not defined
2 as a person under 49 C.F.R. part 171.8, provided that:

3

4 (A) The potentially liable person exercised
5 reasonable care with respect to the hazardous material
6 involved, taking into consideration the characteristics of
7 the hazardous material in light of all relevant facts and
8 circumstances; and

9

10 (B) The potentially liable person took
11 reasonable precautions against foreseeable acts or
12 omissions of any third person and the consequences that
13 could foreseeably result from such acts or omissions.

14

15 (c) The state fire marshal, regional hazardous
16 material emergency response teams and local response
17 authorities shall be entitled to recover their reasonable
18 and necessary costs incurred as a result of their response
19 to a hazardous material incident. Costs subject to
20 recovery under this act include, but are not limited to,
21 the following:

22

1 (i) Disposable materials and supplies acquired,
2 consumed and expended specifically for the purpose of the
3 response;

4

5 (ii) Remuneration of employees for the time and
6 efforts devoted specifically to responding to a hazardous
7 materials incident outside the responders' normal
8 jurisdiction;

9

10 (iii) A reasonable fee, as established through
11 rules and regulations of the state fire marshal, for the
12 use of equipment, including rolling stock, in responding to
13 a hazardous materials incident outside the responders'
14 normal jurisdiction;

15

16 (iv) Rental or leasing of equipment used
17 specifically for the response;

18

19 (v) At value replacement costs for equipment
20 owned by the person claiming reimbursement that is
21 contaminated beyond reuse or repair, if the loss occurred
22 as a result of the response;

23

1 (vi) Decontamination of equipment contaminated
2 during the response;

3

4 (vii) Special technical services specifically
5 requested and required for the response;

6

7 (viii) Medical monitoring or treatment of
8 response personnel; and

9

10 (ix) Laboratory expenses for analyzing samples
11 taken during the response.

12

13 **35-9-159. Expense recovery and civil remedies.**

14

15 (a) The decision to commence a civil action to
16 recover expenses shall be made by the state fire marshal,
17 fire protection district or the governing body of the
18 municipal or county government in consultation with the
19 attorney general, county or municipal attorney as
20 appropriate.

21

22 (b) Prior to commencing a civil action for recovery
23 of expenses pursuant to this act, the governmental entity
24 shall afford the person alleged to owe those expenses a

1 reasonable opportunity to engage in nonbinding mediation.
2 Each party to a mediation shall bear his own costs and
3 expenses, including a proportionate share of the fees of
4 the mediator.

5

6 (c) In the event that the attorney general, county or
7 municipal attorney prevails in a civil action for
8 reimbursement under this act, the court shall award costs
9 of collection including reasonable attorney's fees,
10 investigation expenses and litigation expenses.

11

12 (d) Any person who receives remuneration for the
13 emergency response expenses pursuant to any other federal
14 or state law shall be precluded from recovering
15 reimbursement for such expenses pursuant to this act.
16 Nothing in this act shall otherwise affect or modify in any
17 way the obligations or liability of any person under any
18 other provision of state or federal law, including common
19 law, for damages, injury or loss resulting from the release
20 of any hazardous material or for remedial action or the
21 expenses of remedial action for such release.

22

1 (e) Any recovery on behalf of the state under this
2 section shall be deposited in the hazardous material
3 emergency response account established under W.S. 35-9-156.

4
5 **35-9-160. Exceptions to reimbursements; exception to**
6 **act.**

7
8 (a) This act shall not apply to releases of hazardous
9 materials where there is an immediate on-site private
10 industry response capability to the emergency. The
11 exemption under this subsection shall apply only if the
12 private industry files evidence satisfactory to the local
13 response authority of its immediate response capability to
14 respond to emergency releases of hazardous materials that
15 may be present at the site of the private industry. The
16 exemption shall not apply if emergency responders responded
17 to a release of hazardous materials at the request of the
18 on-site private industry where the emergency occurred.

19
20 (b) No political subdivision shall be entitled to
21 reimbursement under this act from any person for an
22 incident involving less than the following quantities of
23 hazardous materials:

24

1 Hazard type	Quantity
2 Class A or B explosive	Any quantity
3 Class C explosive	50 pounds
4 Etiological agent	Any quantity
5 Water reactive flammable solid	5 pounds
6 Pyrophoric material	5 pounds
7 Organic/inorganic peroxide	50 pounds
8 Poison A or poison B	100 pounds or 15 gallons
9 Flammable liquid other than	700 pounds or 120 gallons
10 a pyrophoric liquid	
11 Compressed flammable gas other than	3,000 cubic feet or more
12 liquefied petroleum gases	at one (1) atmosphere at
13	seventy degrees (70°) Fahrenheit
14 Liquefied petroleum gases	Any installation exceeding
15	18,000 gallon water capacity
16 Oxidizer	200 pounds or 120 gallons
17 Combustible liquid	
18 Class I	120 gallons
19 Class II	240 gallons
20 Class III	500 gallons
21 Corrosive material	200 pounds or 120 gallons
22	(unless a lesser amount is
23	specified in 40 C.F.R., part 172.101, 2002)
24 Irritating material	200 pounds or 120 gallons

26 **Section 2.** W.S. 1-41-102(a)(v)(A) is amended to read:

27

1 **1-41-102. Definitions.**

2

3 (a) As used in this act:

4

5 (v) "Public employee" means any officer,
6 employee or servant of the state, provided the term:

7

8 (A) Includes elected or appointed
9 officials, peace officers, members of hazardous material
10 response teams as provided in W.S. 35-9-154 and persons
11 acting on behalf or in service of the state in any official
12 capacity, whether with or without compensation, including
13 volunteer physicians providing medical services under W.S.
14 9-2-103(a)(iii);

15

16 **Section 3.** There is appropriated two million five
17 hundred thousand dollars (\$2,500,000.00) from the general
18 fund to the hazardous material emergency response account
19 within the earmarked revenue fund to be used by the fire
20 marshal for purposes of this act.

21

22 **Section 4.** This act is effective July 1, 2003.

23

24

(END)