

THE BY-LAWS  
OF THE  
WEST VIRGINIA EMERGENCY RESPONSE COMMISSION

ARTICLE I

NAME

This organization shall be known as the West Virginia State Emergency Response Commission, hereinafter referred to as the "Commission" or "SERC".

ARTICLE II

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 the seventeenth day of October, one thousand nine hundred eighty-six, 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 it's obligations under the federal statue.

ARTICLE III

JURISDICTION

The state emergency response commission shall have within it's 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 Division of Homeland Security and Emergency Management, 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 Chapter 15-5-5A. All State agencies shall cooperate with and assist the commission in all commission duties and responsibilities.

## ARTICLE IV

### RESPONSIBILITIES

The duties and activities of the Commission are those set forth by Chapter 15-5A-5 of West Virginia Code which establishes the SERC as the State Emergency Response Commission, as defined in the "Emergency Planning and Community Right-to-Know Act of 1986 enacted by the U.S. Congress and hereinafter referred to as the "Act". The Commission shall perform all of the duties required of it under the Act and Title 55 of West Virginia Code and other administrative, regulatory, or legislative actions, including, but not limited to, the following:

- (1) Designate emergency planning districts to facilitate preparation and implementation of emergency plans as required under Section 301 (b) of the Act.
- (2) Appoint local emergency planning committees described under section 301 (c) of the Act and §15-5A-7 of West Virginia Code. Supervise and coordinate the activities of such committees.
- (3) Revise any designations and appointments made under subsections (1) and (2) 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 committee.
- (4) Designate additional facilities that may be subject to the Act under Section 302 of the Act and §15-5A-5 section (d)
- (5) Review the emergency response plans submitted by local emergency planning committees and make recommendations to the committees on revisions of the plans that may be necessary to ensure coordination of such plans with the plans of other emergency planning districts and other existing state and local emergency response plans.
- (6) Enter into cooperative agreements with other state agencies designating specific responsibilities to be performed.
- (7) Establish procedures for reviewing and processing requests from the public for information under Section 324 of the Act.

#### ARTICLE IV (cont'd)

- (8) Establish forms and instructions for submission and receipt of confidential information.
- (9) Establish a fee system for facilities required to submit SARA Title III information.
- (10) Obtaining, administering and providing grants to West Virginia's Local Emergency Planning Committees to implement these acts and enhance public safety.
- (11) Establish procedural rules for the operation of the SERC.
- (12) Fees shall be deposited into a special account and shall be reasonably calculated to recover the necessary expenses incurred by the Division of Homeland Security and Emergency Management in the administration of this article.
- (13) A failure to comply by a facility or owner of the requirements of applicable federal or state law and any rules or regulations may be directed to the Attorney General for action.
- (14) Notify the Administrator of the Environmental Protection Agency of facilities subject to the requirements of Section 302 of the Act.
- (15) Increase state and local disaster/emergency response capabilities.
- (16) Coordinate training, education, technical assistance and outreach activities.
- (17) Provide management and oversight of hazardous materials related funding pursuant to Public Law 99-499 or Title 1 of Public Law 93-633 and §15-5-5A.

#### ARTICLE V

##### MEMBERSHIP

Section 1. Members – The SERC shall consist of eleven members, 8 of whom are members ex officio and 3 are appointed by the Governor.

Ex Officio

- (a) Director of the Division of Environmental Protection
- (b) Commissioner of Division of Public Health
- (c) Chief of the Office of Air Quality of the Division of Environmental Protection
- (d) Director of the Division of Homeland Security & Emergency Management
- (e) Superintendent of the Division of Public Safety
- (f) Commissioner of the Division of Highways
- (g) Designee of the Public Service Commission
- (h) Designee of the State Fire Marshal

Appointed by the Governor

- (i) Representative from the chemical industry
- (j) Representative of a municipal or volunteer fire department
- (k) Representative of the public knowledgeable in the area of emergency response

Section 1. Removal of members – Members appointed by the Governor may be removed by the Governor in case of incompetence, neglect of duty, gross immorality or malfeasance in office.

Section 2. Designee – When the Chairperson received a written letter from a duly appointed Commissioner delegating responsibility to a designee; the Chairperson is authorized to consider the candidate. If approved, the designee shall assume all voting rights, and perform all duties and responsibilities of a Commissioner.

Section 3. Vacancies – Vacancies by members appointed by the Governor shall be filled by the Governor for the remainder of the unexpired term.

## ARTICLE VI

### OFFICERS

Section 1. Chairperson shall be the Director of the Division of Homeland Security & Emergency Management.

Section 2. Elected – A Vice-Chairperson and a Secretary of the Commission shall be elected. The Secretary need not be a member of the commission.

## ARTICLE VII

### DUTIES OF THE OFFICERS

Section 1. Duties of the Chairperson – The Chairperson shall:

- (1) Set a date and recommends an agenda for each meeting;
- (2) Preside at all meetings of the Commission;
- (3) Preserve order during its meetings;
- (4) Appoint all committees with approval of the Commission
- (5) Serve as an exoficio member of such committees;
- (6) Sign all minutes and other such records, vouchers, or other documents connected with the work of the Commission requiring such signature;
- (7) Be responsible for implementing the policies and actions adopted by the Commission;
- (8) Exercise such other duties as from time to time may be assigned to him/her by the Commission.

Section 2. Duties of the Vice-Chairperson – In the absence of the Chairperson or in the event of his inability or refusal to act, the Vice-Chairperson, unless otherwise determined by the Commission, shall perform the duties of the Chairperson, and when so acting shall have all the powers of the Chairperson. He/She shall exercise such other duties as from time to time may be assigned to him/her by the Chairperson or the Commission.

## ARTICLE VIII

### STAFF

Personnel- The Commission may appoint and employ such personnel as required, whose duties shall be defined by the commission and compensation fixed by the commission, paid out of the state treasury from moneys appropriated for such purposes.

## ARTICLE IX

### MEETINGS

- Section 1. Regular Meetings – The Commission shall meet at least quarterly for regular meetings. Meetings shall be held at a time and location determined by the Chair. Meetings canceled due to unforeseen circumstances shall be rescheduled by the Chair and conducted as soon as possible.
- Section 2. Special Meetings – The Chairperson may call such special meetings as may be deemed necessary to carry out the duties of the Commission. Upon the written request of at least four members, the Chairperson shall call a meeting within 10 days.
- Section 3. Public Comment Meetings – The Commission shall hold such public comment meetings as it may deem necessary and desirable at such times and places as may be determined by a simple majority vote of the Commission in a regular meeting.
- Section 4. Quorum – A quorum shall consist of a majority of Commission members. A quorum shall be required to transact business.
- Section 4 (A) With the prior approval of the chair, a board member may participate in a board meeting by means of teleconference, video conference or email connection if the member is unable to attend the meeting in person, and if agreed to by the majority of members present. (approved change 9/24/07)
- Section 5. Agenda – Any Commission member may request the Chairperson to place an item on the agenda. If the Chairperson should decline the request, a Commission member may have such item placed on the agenda by submitting it in writing to the Chairperson with supporting signatures of three members.

## ARTICLE IX (CONT'D)

Section 6. Rules of Order – The deliberations of all meetings of the Commission and its various committees shall be governed by Robert’s Rules of Order, Newly Revised.

Section 7. Minutes of Meetings – All meetings shall be entered in a permanently bound record book, properly indexed.

Section 8. Notice of Meetings – Notice of the time, place, and agenda items to be considered at each meeting shall be given in writing to all members.

Notice of special meetings and intended agenda items shall be given to all Commission members in writing (including but not limited to letters, fax and electronic mail). Notice to the public of all Commission meetings shall be made in accordance with the West Virginia Open Meetings Law §6-9A.

Section 9. Participation of Members of the Public – Members of the public shall be encouraged to attend all regular and special meetings. Public notice of meetings shall be consistent with the provisions of West Virginia Code §6-9A requiring all meetings of any governing body to be open to the public. Each notification shall state the time, place and purpose of the meeting and be filed in a manner to allow each notice to appear in the State Register at least five (5) days prior to the date of the meeting. An opportunity shall be provided at each meeting for members of the public to address the SERC.

## ARTICLE X

### VOTING

Section 1. One Vote Each – Each Commission member, shall be entitled to one vote, excluding the Chairperson who casts a vote only in the event of a tie.

Section 2. Proxy Votes – No member may vote by proxy

Section 3. Abstentions – Members may register their abstention on any vote which shall be reflected in the minutes, and members are encouraged to abstain on matters which would pose for them a conflict of interest.

Section 4. Determination of Actions – All final actions, Commission positions, or policy recommendations shall require the favorable vote of a simple majority of those Commission members present at a duly called meeting.

- Section 5. Roll Call Votes – At the discretion of the Chairperson, any Commission action may be taken by a roll call vote, and the vote of each member shall be reflected in the minutes, or upon call of any member.
- Section 6. Conflict of Interest – All Commissioners will abide by an applicable Governor’s Executive Order, Law or Regulation governing voting rights and the potential for conflict of interest.

## ARTICLE XI

### EXPECTATIONS OF COMMISSION MEMBERS

- Section 1. Commission members are expected to:
- (1) Attend Commission meetings;
  - (2) Attend training workshops;
  - (3) Accept appointment to and participate in a Commission committee.
- Section 2. At the direction of the Chairperson, the Commission members should annually be prepared to:
- (1) Review the activities of the Commission;
  - (2) Develop or revise the Commission mission statement;
  - (3) Define Commission goals for the calendar year; and
  - (4) Make recommendations to the Commission Chairperson for the committee structure for the next calendar year.

## ARTICLE XII

### COMMITTEES AND EXPECTATIONS OF COMMITTEE MEMBERS

- Section 1. Chairperson – Committees will be chaired by a Commission member.
- Section 2. Membership – Committees will consist of at least three Commission members and members of the public. Public members serve at the discretion of the Commission Chairperson.
- Section 3. Quorum – A quorum shall consist of a simple majority of committee members.
- Section 4. Notice of Meetings – Notice to the public of all committee meetings shall be made in accordance with the West Virginia Open Meetings Law §6-9A.

ARTICLE XII (CONT'D)

(SERC BY-LAW PROPOSED CHANGE)

- Section 5. Voting – Voting shall follow the same procedure as prescribed for Commission meetings and described in ARTICLE X. (approved change 9/24/07)
- Section 6. Expectations of Committee Chairs – Committee Chairs will be expected to:
- (1) Schedule Committee meetings as needed;
  - (2) Recommend an agenda for each committee meeting;
  - (3) Preside at each committee meeting;
  - (4) Sign all minutes and other such records; and
  - (5) Provide a report of committee activities at Commission meetings.
- Section 7. Expectations of Committee Members – Committee members are expected to attend committee meetings. At the direction of the Commission Chair, the committee members should be prepared to annually review the activities of the committee, develop a committee mission statement, and define goals.
- Section 8. Committee Actions – All committee actions are subject to approval by the Commission unless the Commission has specifically delegated approval authority.
- Section 9. Special Committees – When deemed necessary to carry out Commission assignments, the Commission Chair may appoint a special committee with specific duties. Once the tasks of a special committee have been fulfilled, that committee will be disbanded at the discretion of the Commission Chair.

ARTICLE XIII

REPORTS AND RECOMMENDATIONS

- Section 1 Resolutions – At the option of the Chairperson all resolutions submitted for consideration by the Commission shall first be referred to an appropriate committee for review, consideration and its recommendation.
- Section 2 Annual Report – By the end of its first year of operations, and annually thereafter, the Commission shall prepare a report describing its activities for the preceding year. Upon approval by the Commission, this report shall be transmitted by the Chairperson to the Governor and then made available to other state and local government officials. The annual report shall be made available to the general public upon request.

## ARTICLE XIII (CONT'D)

- Section 3      Review of Draft Reports – A draft of any proposed report shall be circulated to all members of the Commission at least 30 days prior to consideration by the full Commission at a regular scheduled meeting.
- Section 4.      Issuance of Reports – No final report or recommendations of any kind shall be released in the name of the Commission unless and until it has been duly adopted by a favorable vote of a simple majority of the members of the Commission. All reports will be made available to the public and affected Agencies by appropriate means.

## ARTICLE XIV

### DIVISION OF HOMELAND SECURITY & EMERGENCY MANAGEMENT

- Section 1.      Will perform the administrative duties of the State Emergency Response Commission.
- Section 2.      The administrative duties shall include, but not 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 organizations
  - (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
  - (f)      Perform such preliminary analysis and collect such information as may be required to enable the commission to fully review local emergency response plans
  - (g)      Employ such clerical and technical personnel and acquire data management and other equipment and office space as may be necessary

## ARTICLE XV

### AMENDMENTS

These bylaws may be amended or replaced upon the affirmative vote of a simple majority of the Commission as defined in Article IX (approved change 9/24/07) at any regular meeting of the Commission provided that any proposed changes have been circulated to all members 15 days prior to any action thereon.

## ARTICLE XVI

### RECORDS

The West Virginia Division of Homeland Security & Emergency Management will be responsible for maintaining all records generated as a result of any action or function of this Commission. Records will include, but not be limited to, documents such as Commission Meeting Minutes, Resolutions, Bylaws, and information required to be submitted to the Commission under EPCRA or any other federal or State law or regulation. Records will be maintained in accordance with the State Public Records Act and the State of West Virginia records retention requirements.

## ARTICLE XVII

### Definitions

SERC	State Emergency Response Commission – the commission responsible for implementation of Title III within West Virginia. The SERC oversees operation of the LEPCs as well as coordinate emergency response planning, training, exercising activities
LEPC	Local Emergency Planning Committee – the committee responsible for receiving hazardous chemical information from covered facilities and making this information available to the public. The LEPC is also responsible for overseeing development and implementation of Emergency Plans
Emergency Response Plan	The plan to be developed by each LEPC, these plans should be completed no later than October 17, 1988

Tier II	Information which must be provided by facilities throughout West Virginia which store, manufacture, produces or use hazardous or extremely hazardous substances at or above the TPQ set by US EPA.
TPQ	Threshold Planning Quantity – quantity levels determined by US EPA for hazardous (10,000 lbs) or extremely hazardous substances (1-500 lbs)
EPCRA	Emergency Planning and Community Right to Know Act
Simple Majority	One half ( $\frac{1}{2}$ ) of Commission members plus one (1)

ARTICLE XVIII

RATIFICATION PROVISION

These bylaws are duly updated by a majority of the members of the Commission this \_\_\_\_19<sup>th</sup>\_\_ day of \_\_July\_\_, 2007, meeting in \_Charleston,\_\_\_ West Virginia. The signatures of those subscribing to these bylaws are set forth below.

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Board Member or Designee Division of Environmental Protection	Date
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Board Member or Designee Division of Public Health	Date
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Board Member or Designee Division of Homeland Security & Emergency Management	Date
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Board Member or Designee Division of Public Safety	Date
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Board Member or Designee Division of Highways	Date
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Board Member or Designee Public Service Commission	Date
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Board Member or Designee State Fire Marshal	Date
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Board Member or Designee Natural Resources	Date
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Board Member or Designee  
Chemical Industry

Date

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Board Member or Designee  
Municipal or Volunteer Fire Department

Date

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Board Member or Designee  
Emergency Response

Date

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Board Member or Designee  
Division of Environmental Protection

Date