

**WORKING DRAFT**

HOUSE BILL NO. \_\_\_\_\_

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 exceptions;  
12 providing an appropriation; and providing for an effective  
13 date.

14

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

16



1           (ii) "Emergency response" means a response to  
2 any occurrence, which has or may result in a release of a  
3 hazardous material;

4  
5           (iii) "Hazardous material" means any substance,  
6 material, waste or mixture designated as hazardous  
7 material, waste or substance according to 49 C.F.R. part  
8 171.8, as amended;

9  
10          (iv) "Incident" means the release, or imminent  
11 threat of release, of hazardous material that requires the  
12 emergency action of responders to limit or prevent damage  
13 to life or property;

14  
15          (v) "Incident commander" means the person in  
16 charge of all responders at the site of an emergency  
17 response;

18  
19          (vi) "Local response authority" means the single  
20 point of contact designated for a political subdivision for  
21 coordinating responses to incidents;

22  
23          (vii) "Political subdivision" means any county,  
24 city, town or fire protection district of the state;

25

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

9  
10           (ix) "This act" means W.S. 35-9-151 through 35-  
11 9-160.

12  
13           **35-9-153. Advisory Board.**

14  
15           (a) There is created a hazardous material emergency  
16 response advisory board that shall consist of seven (7)  
17 members appointed by the governor. The board shall have  
18 one (1) member representing the mining and extractive  
19 minerals industry, one (1) member representing the  
20 transportation industry, including trucking or railroads,  
21 one (1) member representing professional fire services, one  
22 (1) member representing volunteer fire services, and three  
23 (3) members who represent political subdivisions of the  
24 state. The governor may remove any member as provided in  
25 W.S. 9-1-202.

26

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

7  
8           (c) The governor shall give consideration to the  
9 geographical location of the board members in order to have  
10 equitable representation of the geographical areas of the  
11 state.

12  
13           (d) The advisory board shall ensure the proper and  
14 equitable collection and disbursement of funds.

15  
16           **35-9-154. Emergency response training, planning and**  
17 **reporting.**

18  
19           (a) After consultation with the advisory board, the  
20 state fire marshal shall:

21  
22           (i) Coordinate, develop, implement and make  
23 available a comprehensive voluntary training program  
24 designed to assist emergency responders in hazardous  
25 material incidents;

26

1           (ii) Provide for ongoing training programs for  
2 political subdivisions, state agency employees and private  
3 industry employees involved in responding to spills or  
4 releases of hazardous materials;

5  
6           (iii) Promulgate rules and regulations for:

7  
8           (A) Hazardous material emergency response  
9 training confirmation;

10  
11           (B) Hazardous material emergency regional  
12 response teams and criteria for providing aid to those  
13 teams;

14  
15           (C) Local and regional hazardous materials  
16 incident response reporting.

17  
18           (iv) Assist with emergency response planning by  
19 appropriate agencies of government at the local, state and  
20 national levels.

21  
22           (b) In carrying out this act, the state fire marshal  
23 shall contract only with emergency response teams that have  
24 obtained confirmation of successful completion of requisite  
25 National Fire Protection Association criteria for the level  
26 at which the team will operate as emergency responders. The

1 state fire marshal shall confirm the training of, and issue  
2 documentation of completion to, public emergency response  
3 agency personnel who successfully complete hazardous  
4 material training.

5  
6 **35-9-155. Regional hazardous material emergency**  
7 **response teams.**

8  
9 (a) The state fire marshal may contract and  
10 coordinate to make available for use in any county, city or  
11 fire protection district, any part of a regional hazardous  
12 material emergency response team and specialized equipment  
13 necessary to respond to the incident or emergency.

14  
15 (b) Members of the regional hazardous material  
16 emergency response teams shall be indemnified and defended  
17 from liability by the state self-insurance program:

18  
19 (i) While engaged in responding to incidents  
20 outside their normal jurisdiction and pursuant to an  
21 appropriate request for assistance; or

22  
23 (ii) While traveling to or from an operation  
24 authorized by this act.

25

1           (c) The state fire marshal may lend equipment and  
2 personnel and make grants from available state or federal  
3 funds for the purchase of equipment to any local government  
4 participating in the regional hazardous material response  
5 program.

6  
7           (d) The state fire marshal may contract with persons  
8 and local emergency response teams that have appropriately  
9 trained personnel and necessary equipment to respond to  
10 hazardous material incidents within Wyoming.

11  
12           (e) The state fire marshal may enter into a written  
13 agreement with each entity or person providing equipment or  
14 services to a designated local emergency response team.

15  
16           (f) The state fire marshal shall promulgate rules and  
17 regulations establishing standards for hazardous material  
18 emergency response teams.

19  
20           **35-9-156. Hazardous material emergency response**  
21 **account.**

22  
23           (a) The hazardous material emergency response account  
24 is established within the earmarked revenue fund. The  
25 following shall apply to the account:

26



1           (i) If the account becomes exhausted, the state  
2 fire marshal shall request additional appropriations to  
3 maintain the account;

4  
5           (ii) All reimbursements to the state collected  
6 under provisions of this act shall be deposited in the  
7 account;

8  
9           (iii) The state fire marshal shall promulgate  
10 rules and regulations for depositing funds to, and  
11 disbursing funds from, the account to be used to update  
12 equipment and provide training for the regional and local  
13 hazardous materials emergency response teams;

14  
15           (iv) The state fire marshal shall promulgate  
16 rules and regulations governing the reimbursement of  
17 political subdivisions for participation in operations  
18 authorized by this act.

19  
20           **35-9-157. Local response authority.**

21  
22           (a) Every political subdivision of the state shall  
23 designate a local response authority for responding to and  
24 reporting of hazardous material incidents that occur within  
25 its jurisdiction. The state fire marshal shall provide  
26 appropriate training to emergency responders to respond,

1 upon request, to hazardous materials emergencies that occur  
2 on private on-site industrial facilities. This training may  
3 include Occupational Safety and Health Administration, Mine  
4 Safety and Health Administration and other site specific  
5 hazard training required by the facility. Designation shall  
6 be in accordance with the following:

7  
8 (i) The governing body of every incorporated  
9 municipality shall designate a local response authority to  
10 respond to and report incidents occurring within its  
11 jurisdiction;

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

23  
24 (iii) If a fire protection district is  
25 designated as the local response authority by a governing  
26 body of an incorporated municipality or board of county

1 commissioners, the agreement to assume those  
2 responsibilities shall be documented in writing;

3

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

9

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

16

17 (b) Every local response authority shall coordinate  
18 the response to an incident occurring within its  
19 jurisdiction in a fashion consistent with standard  
20 hazardous materials incident command protocols. The local  
21 response authority shall also coordinate the response to an  
22 incident which initially occurs within its jurisdiction but  
23 which spreads to another jurisdiction. If an incident  
24 occurs on a boundary between two (2) jurisdictions or in an  
25 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 cost  
15 incurred by any local response authority, regional response  
16 team or other state response team arising out of the  
17 incident.

18

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

22

23 (i) An act of God; or

24

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

1

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

7

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

12

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

20

21 (i) Disposable materials and supplies acquired,  
22 consumed and expended specifically for the purpose of the  
23 response;

24

25 (ii) Remuneration of employees for the time and  
26 efforts devoted specifically to responding to a hazardous

1 materials incident outside the responders' normal  
2 jurisdiction;

3

4 (iii) A reasonable fee, as established through  
5 rules and regulations of the state fire marshal, for the  
6 use of equipment, including rolling stock, in responding to  
7 a hazardous materials incident outside the responders'  
8 normal jurisdiction;

9

10 (iv) Rental or leasing of equipment used  
11 specifically for the response;

12

13 (v) Replacement costs for equipment owned by the  
14 person claiming reimbursement that is contaminated beyond  
15 reuse or repair, if the loss occurred as a result of the  
16 response;

17

18 (vi) Decontamination of equipment contaminated  
19 during the response;

20

21 (vii) Special technical services specifically  
22 requested and required for the response;

23

24 (viii) Medical monitoring or treatment of  
25 response personnel; and

26

1           (ix) Laboratory expenses for analyzing samples  
2 taken during the response.

3  
4           **35-9-159. Expense recovery and civil remedies.**

5  
6           (a) The decision to commence a civil action to  
7 recover expenses shall be made by the state fire marshal,  
8 fire protection district or the governing body of the  
9 municipal or county government in consultation with the  
10 attorney general, county or municipal attorney as  
11 appropriate.

12  
13           (b) In the event that the attorney general, county or  
14 municipal attorney prevails in a civil action for  
15 reimbursement under this act, the court shall award costs  
16 of collection including reasonable attorney's fees,  
17 investigation expenses and litigation expenses.

18  
19           (c) Any person who receives remuneration for the  
20 emergency response expenses pursuant to any other federal  
21 or state law shall be precluded from recovering  
22 reimbursement for such expenses pursuant to this act.  
23 Nothing in this act shall otherwise affect or modify in any  
24 way the obligations or liability of any person under any  
25 other provision of state or federal law, including common  
26 law, for damages, injury or loss resulting from the release

1 of any hazardous material or for remedial action or the  
2 expenses of remedial action for such release.

3

4 (d) Any recovery on behalf of the state under this  
5 section shall be deposited in the hazardous material  
6 emergency response account established under W.S. 35-9-156.

7

8 **35-9-160. Exceptions to reimbursements; exception to**  
9 **act.**

10

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

22

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



1		
2	Hazard type	Quantity
3		
4	<b>Class A or B explosive</b>	<b>Any quantity</b>
5	<b>Class C explosive</b>	<b>50 pounds</b>
6		
7	<b>*** STAFF COMMENTS ***</b>	
8		
9	<b>These classes are defined by federal law. The</b>	
10	<b>agency is going to find the cites - they will be</b>	
11	<b>added later.</b>	
12	Etiological agent	Any quantity
13	Water reactive flammable solid	5 pounds
14	Pyrophoric material	5 pounds
15	Organic/inorganic peroxide	50 pounds
16	Poison A or poison B	100 pounds or 15 gallons
17	Flammable liquid other than	700 pounds or 120 gallons
18	a pyrophoric liquid	
19	Compressed flammable gas other than	3,000 cubic feet or more
20	liquefied petroleum gases	at one (1) atmosphere at
21		seventy degrees (70°)
22		Fahrenheit
23	Liquefied petroleum gases	Any installation exceeding
24		18,000 gallon water
25		capacity
26	Oxidizer	200 pounds or 120 gallons
27	Combustible liquid	
28	Class I	120 gallons

1	Class II	240 gallons
2	Class III	500 gallons
3	Corrosive material	200 pounds or 120 gallons
4		(unless a lesser amount is
5		specified in 40 C.F.R., part
6		172.101, 2002)
7	Irritating material	200 pounds or 120 gallons

8

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

10

11       **1-41-102. Definitions.**

12

13       (a) As used in this act:

14

15               (v) "Public employee" means any officer,

16 employee or servant of the state, provided the term:

17

18               (A) Includes elected or appointed

19 officials, peace officers, members of hazardous material

20 response teams as provided in W.S. 35-9-154 and persons

21 acting on behalf or in service of the state in any official

22 capacity, whether with or without compensation, including

23 volunteer physicians providing medical services under W.S.

24 9-2-103(a)(iii);

25

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

6

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

8

9

(END)