

HOUSE BILL NO. HB0184

Hazardous Materials Emergency Response Act.

Sponsored by: Representative(s) Nicholas, Burns and Tipton  
and Senator(s) Coe

A BILL

for

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

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

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1           **Section 1.** W.S. 35-9-151 through 35-9-159 are created  
2 to read:

3

4

DIVISION 5

5

Hazardous Materials Emergency Response Act

6

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**35-9-151. Citation.**

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9 This act may be cited as the "Wyoming Hazardous Materials  
10 Emergency Response Act."

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**35-9-152. Definitions.**

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14

(a) As used in this act:

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(i) "Emergency responders" means public, state or federal fire services, law enforcement, emergency medical services, public health, public works, emergency management and other public response services or agencies that would be involved in direct actions to contain or control a hazardous material release. The term "emergency responders" does not include private on-site facilities with immediate emergency response capabilities unless

1 formally requested to assist by the state or a political  
2 subdivision of the state;

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

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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;

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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;

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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;

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

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5 (viii) "Regional hazardous material response  
6 program" means local government emergency responders  
7 assisting affected jurisdictions within the different  
8 regions of the state with the intent to protect life and  
9 property against the dangers of incidents and emergencies  
10 involving hazardous materials, in coordination with the  
11 state fire marshal regional response;

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13 (ix) "This act" means W.S. 35-9-151 through  
14 35-9-159.

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16 **35-9-153. Emergency response training, planning and**  
17 **reporting.**

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19 (a) The state fire marshal shall:

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

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(ii) Provide for ongoing training programs for political subdivisions, state agency employees and private industry employees involving responses to spills or releases of hazardous materials;

(iii) Promulgate rules and regulations for:

(A) Hazardous material emergency response training confirmation;

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

(C) Local and regional public emergency response reporting.

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

(b) The state shall contract only with emergency response teams which have obtained confirmation of

1 successful completion of requisite National Fire Protection  
2 Association criteria for the level at which the team will  
3 operate as emergency responders. The state fire marshal  
4 shall confirm the training of and issue documentation of  
5 completion to public emergency response agency personnel  
6 who successfully complete hazardous material training.

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8 **35-9-154. Regional hazardous material emergency**  
9 **response teams.**

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11 (a) Through qualified local government emergency  
12 responders, the state fire marshal may contract and  
13 coordinate to make available for use and duty in any  
14 county, city or district, any part of a regional hazardous  
15 material emergency response team and such specialized  
16 equipment necessary to respond to the incident or  
17 emergency.

18

19 (b) During operations authorized under this act,  
20 members of the regional hazardous material emergency  
21 response teams outside of their normal jurisdiction shall  
22 be protected and defended from liability by the state self-  
23 insurance program.

24

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

7

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

12

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

16

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

20

21           **35-9-155. Hazardous material emergency response**  
22 **account.**

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1           (a) The hazardous material emergency response account  
2 is established within the earmarked revenue fund. The  
3 following shall apply to the account:

4  
5           (i) If the account becomes exhausted, the state  
6 fire marshal shall request additional appropriations to  
7 maintain the account;

8  
9           (ii) All reimbursements collected under  
10 provisions of this act shall be deposited in the account;

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

17  
18           (iv) The state fire marshal shall establish an  
19 advisory board to ensure the proper and equitable  
20 collection and disbursement of funds.

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22           **35-9-156. Local response authority.**

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1           (a) Every political subdivision of the state shall  
2 designate a local response authority for responding to and  
3 reporting of hazardous material incidents that occur within  
4 its jurisdiction. The state fire marshal shall provide  
5 appropriate training to emergency responders to respond,  
6 upon request, to hazardous materials emergencies that occur  
7 on private on-site industry facilities. This training may  
8 include, but is not limited to, Occupational Safety and  
9 Health Administration, Mine Safety and Health  
10 Administration and other site specific hazard training  
11 required by the facility. Designation shall be in  
12 accordance with the following:

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14           (i) The governing body of every incorporated  
15 municipality shall designate by ordinance or resolution a  
16 local response authority to respond to and report incidents  
17 occurring within its jurisdiction;

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19           (ii) The board of county commissioners of every  
20 county shall designate by resolution a local response  
21 authority to respond to and report incidents within the  
22 unincorporated area of such county or areas within the  
23 county in which no municipal response authority has been  
24 designated. In those areas of a county where a fire

1 protection district has been established, the board of  
2 directors of the fire protection district shall designate  
3 by ordinance a local response authority to respond to and  
4 report incidents within the fire protection district;

5

6 (iii) If a fire protection district is  
7 designated as the local response authority by a governing  
8 body of an incorporated municipality or board of county  
9 commissioners, the agreement to assume those  
10 responsibilities shall be documented in writing;

11

12 (iv) Any governing body of an incorporated  
13 municipality or board of county commissioners designating a  
14 local response authority to act outside the authority's  
15 jurisdiction shall enter into an appropriate binding  
16 agreement with the local response authority;

17

18 (v) The designation of a local response  
19 authority and copies of any accompanying agreements, mutual  
20 aid agreements, ordinances, resolutions and other pertinent  
21 documentation created pursuant to this section shall be  
22 reported to the state fire marshal within seven (7) days.

23

1           (b) Every local response authority shall coordinate  
2 the response to an incident occurring within its  
3 jurisdiction in a fashion consistent with standard  
4 hazardous materials incident command protocols. The local  
5 response authority shall also coordinate the response to an  
6 incident which initially occurs within its jurisdiction but  
7 which spreads to another jurisdiction. If an incident  
8 occurs on a boundary between two (2) jurisdictions or in an  
9 area not readily ascertainable, the first local response  
10 authority shall coordinate the initial emergency response.

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12           (c) The incident commander shall declare an incident  
13 ended when he has determined the threat to public health  
14 and safety has ended.

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16           **35-9-157. Liability for release of a hazardous**  
17 **material; right to claim reimbursement.**

18

19           (a) Any person with hazardous materials in his care,  
20 custody or control which is involved in a hazardous  
21 material incident and requires an emergency response by a  
22 local response authority, shall be liable for the cost  
23 incurred by any local response authority, regional response

1 team or other state response team arising out of the  
2 incident.

3

4 (b) Notwithstanding subsection (a) of this section, no  
5 person shall be liable under this act if the incident was  
6 caused by:

7

8 (i) An act of God; or

9

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

12

13 (A) The potentially liable person exercised  
14 reasonable care with respect to the hazardous material  
15 involved, taking into consideration the characteristics of  
16 the hazardous material in light of all relevant facts and  
17 circumstances; and

18

19 (B) The potentially liable person took  
20 reasonable precautions against foreseeable acts or  
21 omissions of any third party and the consequences that  
22 could foreseeably result from such acts or omissions.

23

1           (c) The state fire marshal, regional hazardous  
2 material emergency response teams and local response  
3 authorities shall be entitled to recover their reasonable  
4 and necessary costs incurred as a result of their response  
5 to a hazardous material incident. Costs subject to recovery  
6 under this act include, but are not limited to the  
7 following:

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9           (i) Disposable materials and supplies acquired,  
10 consumed and expended specifically for the purpose of the  
11 response;

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13           (ii) Remuneration of employees and equipment for  
14 the time and efforts devoted specifically to the response  
15 that is not otherwise provided for in the applicable  
16 operating budget;

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18           (iii) Rental or leasing of equipment used  
19 specifically for the response;

20

21           (iv) Replacement costs for equipment owned by  
22 the person claiming reimbursement that is contaminated  
23 beyond reuse or repair, if the loss occurred as a result of  
24 the response;

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2 (v) Decontamination of equipment contaminated  
3 during the response;

4

5 (vi) Special technical services specifically  
6 requested and required for the response;

7

8 (vii) Medical monitoring or treatment of  
9 response personnel; and

10

11 (viii) Laboratory expenses for analyzing samples  
12 taken during the response.

13

14 (d) Any person billed for the costs incurred for an  
15 incident under this act may appeal a final decision in  
16 accordance with the Wyoming Administrative Procedure Act.

17

18 **35-9-158. Expense recovery and civil remedies.**

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20 (a) In the event that the state fire marshal, local  
21 response team or local response authorities are required to  
22 file a civil action for reimbursement under this act, costs  
23 of collection including reasonable attorney's fees,  
24 investigation expenses and litigation expenses shall be

1 awarded. Attorney's fees includes those fees incurred by  
2 the office of the attorney general in enforcing this act  
3 under subsection (d) of this section.

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5 (b) The decision to commence a civil action to  
6 recover expenses shall be made by the state fire marshal or  
7 the governing body of the municipal or county government  
8 which shall take into consideration the cause of the  
9 incident, the total amount of cost incurred in responding  
10 to the incident, the avoidability of the incident and such  
11 other factors as the state fire marshal or the governing  
12 body deems appropriate.

13

14 (c) The remedy for the recovery of those emergency  
15 response expenses identified in this act shall be exclusive  
16 and shall not be used in conjunction with or in addition to  
17 any other remedy for recovery of such costs provided by  
18 applicable federal laws. Any person who receives  
19 remuneration for the emergency response expenses pursuant  
20 to any other federal or state law shall be precluded from  
21 recovering reimbursement for such expenses pursuant to this  
22 act. Nothing in this act shall otherwise affect or modify  
23 in any way the obligations or liability of any person under  
24 any other provision of state or federal law, including

1 common law, for damages, injury or loss resulting from the  
2 release of any hazardous material or for remedial action or  
3 the expenses of remedial action for such release.

4  
5 (d) At the request of the state fire marshal or a  
6 county, city or other political subdivision of this state  
7 which has responded to or contained a hazardous material  
8 incident, the attorney general or the attorney representing  
9 the political subdivision, as appropriate, may commence a  
10 civil action on its behalf pursuant to this act.

11  
12 (e) Any recovery on behalf of the state under this  
13 section shall be deposited in the hazardous material  
14 emergency response account established under W.S. 35-9-155.

15  
16 **35-9-159. Exceptions to reimbursements; exception to**  
17 **act.**

18  
19 (a) No political subdivision shall be entitled to  
20 reimbursement under this act from any mine or its  
21 appurtenant facilities, oil field operators, petroleum  
22 refinery or liquid petroleum gas facility unless the  
23 incident to which the local response authority was required  
24 to respond occurred outside of the responsible party's site



1 as defined in the permit for the site issued by the Wyoming  
2 department of environmental quality.

3

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

15

16 (c) No political subdivision shall be entitled to  
17 reimbursement under this act from any person for an  
18 incident involving less than the following quantities of  
19 hazardous materials:

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Hazard type	Quantity
Class A or B explosive	Any quantity
Class C explosive	50 pounds

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

23

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

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26       **1-41-102. Definitions.**

27

1 (a) As used in this act:

2

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

5

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

13

14 **Section 3.** There is appropriated from the general  
15 fund for the fiscal year beginning July 1, 2002 to the  
16 state fire marshal two million five hundred thousand  
17 dollars (\$2,500,000.00) for purposes of this act.

18

19 **Section 4.**

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21 (a) Except as provided in subsection (b) of this  
22 section, this act is effective July 1, 2002.

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2           (b) W.S. 35-9-157 through 35-9-159 created under  
3 section 1 of this act are effective July 1, 2003.

4

5

(END)