

HAWAII STATE EMERGENCY RESPONSE COMMISSION
MEETING #14

DECEMBER 11, 1992
9:00 a.m.- 12:00 noon

DEPARTMENT OF HEALTH'S
KINAU HALE 1ST FLOOR CONFERENCE ROOM

MEMBERS PRESENT

✓
____ John C. Lewin, Director
DOH

✓
____ Major General Richardson
Adjutant General, DOD or
Representative
(ROY LUCE)

✓
____ Yukio Kitagawa, Director
BOA or Representative
(GERALD KINRO)

✓
____ Keith Ahue, Director
DLIR or Representative
(RUSSEL CHARLTON)

✓
____ Mufi Hanneman, Director
DBEDT or Representative
(TOM SMYTH)

____ Brian Choy, Director
OEQC or Representative
(_____)

____ B. Z. Siegel, Dean
School of Public Health, UH
or Representative
(_____)

✓
____ Bruce S. Anderson, DDEH
DOH

✓
____ Jiggie Hommon, Manager
American Red Cross or
Representative
(RHETA THIELEN)

____ ^{DATE} William W. Paty, Director
BLIR or Representative
(_____)

✓
____ Rex D. Johnson, Director,
DOT or Representative
(RALPH MOORE)

✓
____ George Kekuna, LEPC
Coordinator or Representative
(GEORGE KEKUNA)

✓
____ Sel Menor, LEPC Co-Chair
Maui CD or Representative
(SEL MENOR)

✓
____ Clifford Ikeda, LEPC Co-Chair
Kauai CD or Representative
(CLIFFORD IKEDA)

✓
____ Harry Kim, LEPC Chair
Hawaii CD or Representative
(HARRY KIM)

*Call who is
new
director*

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
HEER OFFICE

April 7, 1993

E0404ly.h1

MEETING SUMMARY
HAWAII STATE EMERGENCY RESPONSE COMMISSION
MEETING #14

Friday December 11, 1992
9:00 a.m. - 12:00 noon

Department of Health's
Kinau Hale Board Room, 1st Floor
1250 Punchbowl Street

HSERC Commission Members and Representatives:

John C. Lewin, M.D., Chair, HSERC, DOH
Bruce S. Anderson, Ph.D., Vice Chair, HSERC, DOH
Roy Price for Major General Edward Richardson, DOD
Gerald Kinro for Yukio Kitagawa, BOA
Russell Charlton for Keith Ahue, DLIR
Tom Smyth for Mufi Hannemann, DBEDT
Ralph Moore for Rex Johnson, DOT
George Kekuna, Honolulu LEPC Representative
Clifford Ikeda, Kauai LEPC Representative
Sel Menor, Maui LEPC Representative
Harry Kim, Hawaii LEPC Representative
Rheta Thielen for Jiggie Hommon, Red Cross

Other Attendees:

Steven Armann, DOH
Rhonda Goyke, DOH
James Vinton, BHPPA
Robert Roberts, HSPA
Stacy Rogers, HCC/UH
Joseph Blackburn, Maui FD
Chris Takeno, C&C of Honolulu LEPC
James Bac, DBED/Energy

I. Call to Order

The 14th meeting of the HSERC was called to order by Lewin at 9:15 a.m.

A. Opening Remarks

Lewin stated the two main objectives of the meeting:

- 1) To come to consensus regarding the draft HEPCRA Bill; and
- 2) To discuss a model for a fee structure.

B. Discussion/Approval of Minutes from HSERC Meeting #13

Charlton noted that DOSH has been changed to HIOSH and the minutes should reflect the correct name.

Minutes were approved with change noted.

II. Update by the Attorney General's Office

Due to a scheduling conflict Kathy Ho is unable to join us. Lewin requested that a letter be drafted to Attorney General Marks requesting a Deputy AG at every HSERC meeting, stressing the importance of the Commission.

III. Draft State EPCRA BILL

A. Fee Structure Subcommittee

Armann explained that a fee subcommittee composed of: Roy Price, Chris Takeno, Sel Menor, Clifford Ikeda, Steve Armann, and Rhonda Goyke met on December 8th to discuss EPCRA fee options. The subcommittee recommendation was to make a fee system as simple as possible, both for the reporting facilities and for the HSERC. The recommendation is:

- 1) Stay away from sliding scales;
- 2) Initiate a straight flat fee that would be the same for everyone;
- 3) The fee recommended is \$100 per Tier II. Therefore, anyone that is required to submit a Tier II would pay an annual fee of \$100;
- 4) The fee would pay for a permit;

- 5) Provisions would be made for emergency provisions, such as someone who doesn't normally handle hazardous substances could get an emergency permit;
- 6) The money generated would be used for administration costs of the HSERC and LEPCs, public awareness, and training;
- 7) Purpose of a simple annual fee is to reduce administrative costs to DOH and to the facilities, keep recordkeeping simple; and
- 8) \$100 per Tier II would generate approximately \$50,000.

B. Open discussion

Anderson voiced concern over the inadequate funding that this recommendation would generate. \$50,000 would not be enough to support the staff that is needed for HSERC and LEPC support personnel. In addition, travel funds are needed for HSERC members and support staff.

Lewin suggested a compromise, the \$50,000 could support 1/2 FTE and pay for travel costs. Ideally there would be a support staff at the county level, but the current economy cannot support a large fee. However, we need to plan for the future and a small fund is a start at becoming self sufficient in the future.

Blackburn noted that the bill does not indicate where the LEPC will be administratively attached.

Anderson explained that the HSERC is an independent body with DOH providing administrative support, the LEPCs would be organized the same way.

Blackburn suggested to avoid confusion the administering agency should be spelled out in the bill.

Armann stated that the subcommittee discussed the problem of accountability at the county level. Therefor, it is the recommendation of the subcommittee that the language of the bill be changed back to reflect that the Mayor will appoint the LEPC members. Therefor, the Mayors would ultimately be responsible to ensure that the LEPC functions are carried out.

Anderson stated that if a 1/2 FTE is hired that would leave approximately \$20,000, which would be \$5,000 for each county which is not enough to develop ownership at the county level. How would the money be used.

Smyth suggested having one pool of money and the LEPCs could supply a budget and the HSERC could review and reward the money as appropriate, based on needs and request.

Price stated that is was refreshing to hear that the counties need help. The State economy is struggling due to Iniki and the recession. The EPCRA program is competing with other high priority programs. The rational behind a filing fee is that it would minimize the amount of administrative work associated with a fee system. There is no one to do the work, therefor the work load should be kept to a minimal amount. A state law would also allow fines to stay in the State instead of going to EPA. The EPCRA fund could grow slowly with the filing fees as well as any fines. The HSERC would continue to support the LEPCs as best as they can.

Price stated that the focus should be on the first responders, that is the county fire personnel, training and equipment for a Hazmat response team on each county.

Lewin inquired as to the equipment needed.

Blackburn stated that training was needed much more than equipment which could be charged to the spiller.

Kim stated that for Hawaii county he didn't know what the actual Hazmat need was. What is needed on Hawaii county is a clear division of responsibility. If a

geothermal incident is to occur it is not his responsibility except evacuation and warning. It is DOH responsibility.

Lewin stated that the \$50,000 is a small amount to do the job that needs to be done. Assessment and policy set up is the most important aspect of the program. Once a strong policy is in place the funding will follow. Set up adequate infrastructure to measure the success or failure of the program. It is understood that County/LEPC resources are inadequate but the State resources are inadequate as well. The fund generated by the fees could at least be used to hire the equivalent of a halftime to fulltime employee. This new person could be used as a link, by attending all LEPCs and the HSERC meetings.

Price clarified that he intended that the new staff person be used for compiling meeting minutes, xeroxing, etc. All these administrative tasks add up. We need to specify our intent and set priorities and make sure this is understood by the LEPCs. The fund will start out small, but once established the funds will grow as fines are initiated.

Armann stated that the way Chapter 128D was currently written most fines would go into the Revolving Fund. Therefore, fines for not reporting might be small.

Lewin queried the Commission as to the opinion of the HSERC regarding the need for EPCRA support staff. To be able to hire staff we need the fee structure.

Kinro stated that he supports a position to assist the HSERC and LEPCs, at least a 1/2 FTE.

Kim voiced the opinion that if the bill was left as is, it is essentially nonfunctioning. What is needed is to identify responsibilities of the various agencies involved. More help is needed than simply clerical assistance. What is needed is one agency to coordinate all activities.

Charlton noted that the funding issue at hand is a separate issue for the organizational issue that Kim is referring to.

Lewin stated that there is a need for a coordination body with regards to policy building and that this should be the function of the State.

Kim stated his preference for a single LEPC for the State.

Anderson emphasized the need for local plans.

Price explained that there are emergency operation plans in each county already. Specific requirements of EPCRA could be incorporated into the existing plans. EOPs are the responsibility of CD.

Kekuna agreed that the best place for the LEPC hazmat (EPCRA) EOP function was with CD. Kekuna also noted that EPCRA was becoming more visible and that enforcement should become our focus.

Blackburn noted that EOP are in place in each county, but facility specific information is missing. Someone must do the work.

Anderson stated that the LEPCs were set up to do the necessary work.

Lewin queried about the possibility of making the CD an advisory committee to the LEPC.

Kekuna clarified that there are specific requirements relating to advisory committees and how they are set up.

Kim could not support such a plan. Hawaii County can not handle additional responsibilities.

Charlton queried as to who the members of the "State LEPC" would be. Would the HSERC members be the LEPC members as well.

Lewin stated that if there was to be a "State LEPC" then the HSERC members would indeed do double duty as State LEPC members also.

Anderson stressed the need for local industry representatives in the LEPC as stated in EPCRA. EPCRA has very specific requirements as to who LEPC member should be.

Kim stated that at the county level an advisory board could be developed that could input and review the State LEPC plan.

Moore stated that his observation has been that the LEPC structure is the same as the CD structure. Therefore, if the Counties don't want an LEPC then perhaps we should just have an HSERC and have CD pick up the necessary responsibilities. This issue needs to be resolved once and for all and we should stop going back and forth with the same issue.

Charlton stated that funding was the real issue. The solution is to fund the program through the HEPCRA Bill, not to just push the responsibility around.

Lewin stated establishing LEPCs with an advisory function makes sense. Industry has an advisory function and the plans are centrally located. Acknowledge that the plans are HSERC responsibility. HSERC will work with CD to do the plans.

Blackburn stress the fact that the local plans must comply with EPCRA, including facility specific information and hazard analysis.

Takeno queried as to who would be held accountable for completing the plans.

Vinton stated that the commission should then be expanded to include representation from the public and the facilities impacted.

Anderson explained that the county advisory committees would provide that forum.

Lewin summarized the accomplishments of the meeting:

- 1) Planning function will be brought into the HSERC;
- 2) LEPC (advisory boards) will be appointed by the Mayor; and
- 3) Plans will be written in accordance with EPCRA.

Ikeda stressed opposition to this approach. He feels that it is important to involve non government people in the planning process. He has been trying to get away from the details of the plan, delegating the detailed work to the Fire Department. With this new organization the work load would be back on him.

Charlton stated that a fee system was needed that will fund the program that is required.

Lewin clarified that fees of \$500-600 per company would not get passed with the current economic situation.

Takeno stressed the point that if the responsibility of the Plans are taken away from the LEPC, there is no motivation for the LEPC to meet.

Lewin stated that the vested concern of industry would be the motivating factor.

Kim made the motion to go with the \$100 filing fee,

Davis queried as to the exemption of government agencies.

Lewin stated that clearly government would not be exempt.

Blackburn stated that Maui had planned to introduce a county fee that would fund enforcement. He queried as to the possibility of these facilities being exempt from the State filing fee. It would be unfair to tax Maui facilities twice.

Lewin suggested that the county fee be reduced by the amount paid to the State, therefore alleviating double fees.

Lewin reminded the Commission that the motion was on the floor to accept the \$100 filing fee per Tier II.

Motion Passed

Thielen stressed concern that the purpose of the meeting, to finalize the draft bill, was not going to be met. The bill is worded such that it is very general and the decision made today do not need to affect the wording of the bill. **The motion was made to adopt the bill as written, work assignments can be adjusted later.**

Kinro seconded the motion.

Amendments to the motion:

- 1) Bill should be changed to reflect that the Mayor are to appoint LEPC members;
- 2) \$100 filing fee will be placed in bill;
- 3) Page 3, line 25, change motor vehicle to motor carrier, Kinro opposed this motion amendment;
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- 8) Page 12, line 10, change to read "With support from the HSERC local emergence response plans shall be submitted to..."

Motion to adopt the bill with the above amendments was passed.

Lewin commented that the changes would be reflected in a revised copy of the bill and sent out to all members.

Kim requested that the subcommittee review the revisions one last time before the bill becomes final.

V. Schedule Next HSERC Meeting (#15)

The next HSERC meeting was tentatively set for the end of February 1993, if needed to review or revise the HEPCRA Bill .

The motion was made to adjourn the meeting at 12:05 p.m.

The motion was passed.

This Meeting Summary is submitted to the Hawaii State Emergency Response Commission.

Respectfully submitted,

Rhonda K. Goyke 5/7/93
RHONDA K. GOYKE Date

January 19, 1993

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Motion Passed

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Amendments to the motion:

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Motion to adopt the bill with the above amendments was passed.

Lewin commented that the changes would be reflected in a revised copy of the bill and sent out to all members.

**BRIEF
DR. LEWIN
DR. ANDERSON**

Kim requested that the subcommittee review the revisions one last time before the bill becomes final.

V. Schedule Next HSERC Meeting (#15)

The next HSERC meeting was tentatively set for the end of February 1993, if needed to review or revise the HEPCRA Bill .

The motion was made to adjourn the meeting at 12:05 a.m.

The motion was passed.

This Draft Meeting Summary is submitted to the Hawaii State Emergency Response Commission.

Respectfully submitted,

RHONDA K. GOYKE

date

JUSTIFICATION SHEET

November 20, 1992

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

PURPOSE: To establish a State Emergency Planning and Community Right-to-Know program, including establishing a Emergency Planning and Community Right-to-Know fund funded by reporting fees from regulated facilities. This fund will be used to support the State's responsibilities under the Federal Emergency Planning and Community Right-to-Know Act.

MEANS: Enact new law, Emergency Planning and Community Right-to-Know Act.

JUSTIFICATION: Current provisions for the Emergency Planning and Community Right-to-Know program are codified in the federal law only under the federal Superfund Amendments and Reauthorization Act (SARA, Title III). The state of Hawaii has begun implementation of this program based solely on the State's authorities as defined in this federal law. No provisions were made for federal funding for this new requirement. The purpose of this proposed State statute would be to establish a fee collection system and an Emergency Planning and Community Right-to-Know fund to provide resources for State and local agencies required to fulfill the requirements of SARA, Title III, and to provide a mechanism for the State to recover penalties into a State managed fund if chemical handlers do not comply with Title III. As the federal statute is currently written, without a state EPCRA law, any recovery of penalties for non-compliance with Title III must be returned to the federal government, even if the State conducts the enforcement action. Once a state EPCRA law is in place these penalties can go to the state.

GENERAL FUNDS: None

PROGRAM ID: HTH 849-FD

OTHER FUNDS: Revolving Fund

OTHER AGENCIES AFFECTED: DOA, DOD, DLIR, DLNR, DBEDT, DOT, OEQC, UH, American Red Cross, County Civil Defense Agencies.

A BILL FOR AN ACT

RELATING TO HAWAII EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that exposure to hazardous
2 materials has the potential for causing undesirable health and
3 environmental effects and poses a threat to the health, safety, and
4 welfare of the residents of this State, and that the residents of
5 this State and emergency service personnel who respond to emergency
6 situations should be protected from the health hazards and harmful
7 exposure resulting from hazardous material releases at facilities
8 and from transportation-related accidents.

9 The purposes of this Act are to:

- 10 (1) Create a strong working relationship and partnership
11 between business, industry, the public, and the State
12 and its counties to protect and safeguard the residents
13 of this State from the health hazards and other risks of
14 harm resulting from or incident to the use, storage,
15 distribution, and transportation of hazardous materials;
- 16 (2) Designate the Hawaii state emergency response commission
17 as the State's emergency response commission and a local
18 emergency planning committee (LEPC) in each county of
19 this State to act in accordance with the provisions of

1 the Emergency Planning and Community Right-To-Know Act
2 of 1986 (Title III of Public Law 99-4990) 42 U.S.C.
3 §§11001-11050;

4 (3) Create the Hawaii emergency planning and community
5 right-to-know (HEPCRA) fund to provide financial
6 assistance to State agencies and counties to develop an
7 effective and integrated response capability to the
8 health hazards, dangers, and risks which hazardous
9 material releases pose to the general public;

10 (4) Assign responsibilities to various State and local
11 agencies to ensure the development and furtherance of a
12 comprehensive emergency planning and community right-to-
13 know program (EPCRA);

14 (5) Provide civil liability protection to officials and
15 emergency response personnel of the State and counties
16 who are carrying out their duties and responsibilities
17 under this Act.

18 SECTION 2. The Hawaii Revised Statutes is amended by adding a
19 new chapter to be appropriately designated and to read as follows:

20 "CHAPTER

21 HAWAII EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

22 § -1 Definitions. As used in this chapter, unless the
23 context otherwise requires:

24 "Administrator" means the Administrator of the United States
25 Environmental Protection Agency.

1 "CERCLA" means the Comprehensive Environmental Response,
2 Compensation and Liability Act of 1980, as amended (42 U.S.C.
3 §§9601-9675).

4 "Commission" or "HSERC" means the Hawaii state emergency
5 response commission.

6 "Committee" or "LEPC" means the local emergency planning
7 committee within each county responsible for preparing hazardous
8 material plans and performing other functions under
9 EPCRA.

10 "County agency" means a county or any officer or agency
11 thereof.

12 "Department" means the department of health.

13 "Director" means the director of health.

14 "EPCRA" means the Emergency Planning and Community Right-to-
15 Know Act of 1986, as amended (42 U.S.C. §11001-11050).

16 "Extremely hazardous substance" means any substance listed in
17 Appendix A of 40 U.S.C. Part 350, as amended.

18 "Environment" means any waters, including surface water,
19 ground water, or drinking water, any land surface or any subsurface
20 strata, or any ambient air within the State of Hawaii or under the
21 jurisdiction of the State.

22 "Facility" means all buildings, structures, installation,
23 equipment, pipe or pipeline (including any pipe into a sewer or
24 publicly owned treatment works), well, pit, pond, lagoon,
25 impoundment, ditch, landfill, storage container, motor vehicle,

1 rolling stock, or aircraft, or any site or area where a hazardous
2 substance or pollutant or contaminant has been deposited, stored,
3 disposed of, or placed, or otherwise comes to be located; but does
4 not include any consumer product in consumer use.

5 "Hazardous material" or "Hazardous substance" means any
6 hazardous substance as defined in chapter 128D.

7 "HEPCRA" means the Hawaii emergency planning and community
8 right-to-know act.

9 "Person" means an individual, firm, corporation, association,
10 partnership, consortium, joint venture, commercial entity, state,
11 county, commission, political subdivision of the State, or, to the
12 extent they are subject to this chapter, the United States or any
13 interstate body.

14 "Release" means any spilling, leaking, pumping, pouring,
15 emitting, emptying, discharging, injecting, escaping, leaching,
16 dumping, or disposing of any hazardous substance or pollutant or
17 contaminant into the environment, (including the abandonment or
18 discarding of barrels, containers, and other closed receptacles
19 containing a hazardous substance or pollutant or contaminate); but
20 excludes:

21 (1) Any release which results in exposure of persons solely
22 within a workplace, with respect to a claim which such
23 exposed persons may assert against their employer;

24 (2) Emissions from the engine exhaust of a motor vehicle,
25 rolling stock, aircraft, vessel, or pipeline pumping

1 station engine;

- 2 (3) Release of source, byproduct, or special nuclear
3 material from a nuclear incident, as those terms are
4 defined in the Atomic Energy Act of 1954 (42 U.S.C.
5 §2011), if such release is subject to requirements with
6 respect to financial protection established by the
7 Nuclear Regulatory Commission under 42 U.S.C. §2210;
8 ⁴~~(4)~~ Release from sewerage systems collecting and conducting
9 primarily domestic wastewater; or

10 "Reportable quantity" means the quantity of a hazardous
11 material stated on the various lists of hazardous substances as
12 defined in chapter 128D

13 "Threshold planning quantity" or "TPQ" means the threshold
14 planning quantity for an extremely hazardous substance as defined
15 in 40 C.F.R. part 355.

16 "Toxic chemical" means a substance appearing on the list of
17 chemicals described in section 313 of EPCRA, as set forth in 40
18 C.F.R. part 372.

19 **§ -2 Designation and functions of the Hawaii state**
20 **emergency response commission.** (a) There is created the
21 Hawaii state emergency response commission (HSERC), placed for
22 administrative purposed within the department, to carry out all
23 requirements of this chapter; and to provide guidance and
24 coordinate the activities of the LEPCs.

25 (b) The HSERC shall consist of the following State officers

1 or their appointed designees: the director of health, the chair of
2 the board of agriculture, the adjutant general, the director of
3 labor and industrial relations, the chair of the board of land and
4 natural resources, the director of business, economic development,
5 and tourism, the director of transportation, the dean of the
6 University of Hawaii school of public health, the director of the
7 office of environmental quality control, a representative from each
8 LEPC designated by the mayor of the respective county, and other
9 members as appointed by the governor which at a minimum, meet the
10 requirements of EPCRA.

11 (c) A state officer may designate in writing a designee to
12 act in place of the officer. This designee shall have all the
13 power of a commission member.

14 (d) The chair of the HSERC shall be the director of health. A
15 vice-chair shall be designated by the chair to serve in the absence
16 of the chair or the chair designee. The chair or the chair
17 designee shall have the authority to assign, delegate, or transfer
18 tasks, duties, and responsibilities to members of the HSERC.

19 (e) Members shall serve without compensation, but shall be
20 reimbursed for necessary and reasonable actual expenses, such as
21 travel expense, incurred in connection with attendance at HSERC
22 meetings. Expenses shall be paid from the Hawaii emergency
23 planning and community right-to-know (HEPCRA) fund.

24 (f) The HSERC support personnel shall be supervised and
25 administered by the chair as the HSERCs primary agent responsible

1 for performing the functions and duties of the HSERC established
2 pursuant to this chapter. For this purpose, the department shall
3 employ such professional, technical, administrative, and other
4 staff personnel as may be deemed essential to carry out the
5 purposes of this chapter.

6 (g) The HSERC shall:

- 7 (1) Carry out all of the duties and responsibilities of a
8 state emergency response commission as specified in
9 EPCRA;
- 10 (2) Develop state contingency plans relating to the
11 implementation of this chapter;
- 12 (3) Provide guidance and direction to the LEPCs for the
13 implementation of this chapter and EPCRA;
- 14 (4) Develop a public information, education, and
15 participation program for the public and facility owners
16 covering the requirements of this chapter and
17 interpretation of the chemical information collected
18 pursuant to this chapter and the risks those chemicals
19 pose to the public health and environment;
- 20 (5) The HSERC shall appoint members of the LEPC, based upon
21 the recommendation of the mayor of the respective
22 counties;
- 23 (6) Adopt rules which may be necessary to implement this
24 chapter; and
- 25 (7) Develop a state chemical inventory form to be used in

1 lieu of the federal Tier II form and chemical list
2 requirements.

3 (8) Do all other acts, procedures, and administrative
4 actions necessary for the implementation of this chapter
5 and the requirements of EPCRA.

6 **§ -3 Powers; rulemaking; appointment of hearing**
7 **officers.** (a) The HSERC may make, amend, and repeal state rules
8 regarding the implementation of this chapter. Such rules shall
9 include, but shall not be limited to the establishment of a fee
10 structure, and rules regarding release reporting. All rules shall
11 be adopted pursuant to chapter 91. Any person heard at the public
12 hearing shall be given written notice of the action taken by the
13 HSERC with respect to the rules.

14 (b) In addition to other specific powers provided in this
15 chapter, the HSERC may appoint without regard to chapters 76 and
16 77, hearing officers to conduct public participation activities
17 including public hearings and public informational meetings.

18 **§ -4 Establishment of emergency planning districts.**
19 Each county is designated an emergency planning district for the
20 purposes of this chapter. For the purposes of this chapter the
21 department will be responsible for Kalalau county.

22 **§ -5 Establishment and functions of local emergency**
23 **planning committees.** (a) A minimum of one LEPC shall be
24 established in each county. The HSERC, based upon mayor
25 recommendations, shall designate an agency to act as the lead, for

1 administrative purposes, for the LEPC and shall appoint the LEPC
2 members. The LEPC shall be subject to the requirements of this
3 chapter and section 303 of EPCRA.

4 (b) An LEPC shall be composed of at least one person selected
5 from each of the following groups:

6 (1) Elected state and county officials;

7 (2) Law enforcement, first aid, health, local environmental,
8 hospital, and transportation personnel;

9 (3) Firefighting personnel;

10 (4) Civil defense and emergency management personnel;

11 (5) Broadcast and print media;

12 (6) Community groups not affiliated with emergency service
13 groups;

14 (7) Owners and operators of facilities subject to the
15 requirements of EPCRA; and

16 (8) Others, as appointed by the ~~mayor~~ ^{HSEPC}.

17 (c) The members of an LEPC shall be appointed by the HSERC
18 from a list of appointees recommended by the mayor of the county.
19 The list of appointees shall contain the titles of a least one
20 person from each of the groups listed in subsection (b).

21 (d) Within sixty days of the occurrence of a vacancy, the
22 HSERC shall appoint, a successor member to the LEPC, unless the
23 requirements of (b) have been fulfilled.

24 (e) Upon the failure of the mayor of a county to submit a
25 list of appointees to the HSERC within forty five days, the HSERC

1 may appoint members, unless the requirements of subsection (b) have
2 been fulfilled.

3 (f) An appointed LEPC member may designate in writing a
4 designee to act in place of the LEPC member. This designee shall
5 have all the power of an LEPC member.

6 (g) An LEPC shall:

7 (1) Adopt, amend, and repeal bylaws and other administrative
8 procedures to carry out the duties, requirements, and
9 responsibilities of an LEPC as set forth in this
10 chapter, and as required by the HSERC and EPCRA;

11 (2) Take appropriate actions to ensure the preparation,
12 implementation, and updating of the local emergency
13 response plan required by this chapter and EPCRA;
14 The local emergency response plans shall include (but is
15 not limited to) each of the following:

16 (A) Identification of each facility subject to the
17 requirement of section 303 of EPCRA, 42 U.S.C.
18 §11003 that are within the emergency planning
19 district, identification of routes likely to be
20 used for the transportation of substances on the
21 list of extremely hazardous substances, and
22 identification of additional facilities
23 contributing or subjected to additional risk due to
24 their proximity to facilities subject to the
25 requirement of this section, such as hospitals or

- 1 natural gas facilities;
- 2 (B) Methods and procedures to be followed by facility
3 owners and operators and local emergency and
4 medical personnel to respond to any release of such
5 substances;
- 6 (C) Designation of a community emergency coordinator
7 and facility emergency coordinators, who shall make
8 determinations necessary to implement the plan;
- 9 (D) Procedures providing reliable, effective, and
10 timely notification by the facility emergency
11 coordinator and the community emergency coordinator
12 to persons designated in the emergency plan, and to
13 the public, that a release has occurred, consistent
14 with the notification requirements of this chapter
15 and section 304 of EPCRA, 42 U.S.C. §11004;
- 16 (E) Methods for determining the occurrence of a
17 release, and the area or population likely to be
18 affected by such release;
- 19 (F) A description of emergency equipment and facilities
20 in the county and at each facility in the county
21 subject to the requirement of this section, and the
22 identification of the persons responsible for such
23 equipment and facilities;
- 24 (G) Evacuation plans, including provisions for
25 precautionary evacuation and alternate traffic

- 1 routes;
- 2 (H) Training programs, including schedules for training
3 of local emergency response and medical personnel;
4 and
- 5 (I) Methods and schedules for exercising the emergency
6 plan.
- 7 (3) Review facility response plans for adequacy according to
8 § -7, and request additional information from the
9 facilities if necessary;
- 10 (4) Prepare and submit local emergency response plans to the
11 HSERC for review and to other affected agencies upon
12 request;
- 13 (5) Report to the HSERC on alleged violations of this
14 chapter;
- 15 (6) Prepare reports, recommendations, and other information
16 related to the implementation of this chapter, as
17 requested by the HSERC;
- 18 (7) Have the primary responsibility for receiving,
19 processing, and managing hazardous chemical information
20 forms and data, trade secrets, and public information
21 requested pursuant to this chapter; ~~and~~
- 22 (8) Accept and deposit into the Hawaii emergency planning
23 and community right-to-know (HEPCRA) fund any grants,
24 gifts, or other funds received which are intended for
25 the purpose of carrying out this chapter^f; and.

1 (9) Evaluate the need for resources necessary to develop,
2 implement, and exercise the emergency plan, and make
3 recommendations with respect to additional resources
4 that may be required and the means for providing such
5 additional resources.

6 (h) The administrative and operational expenses of an LEPC
7 may be paid by the state through a combination of sources including
8 moneys received from the HSERC in accordance with section -11.

9 **§ -6 Facility emergency response plans for HEPCRA.**

10 (a) Each owner or operator of a facility in the State covered
11 under section 302 of EPCRA, 42 U.S.C. §11002, shall prepare
12 facility emergency response plans for HEPCRA according to § -7;

13 (b) Additional information shall be provided to the LEPC or
14 the HSERC, within thirty days of request; and

15 (c) Facility emergency response plans for HEPCRA shall be
16 submitted to the LEPCs within ninety days of the effective date of
17 this bill.

18 **§ -7 Requirements of a facility emergency response**
19 **plan for HEPCRA.** (a) The HSERC shall adopt rules pursuant to

20 chapter 91 establishing the contents of facility emergency response
21 plans for HEPCRA. Facility emergency response plans for HEPCRA
22 shall contain, but shall not be limited to the following
23 information:

- 24 (1) Facility diagrams and location area map;
- 25 (2) Methods and procedures to be followed by facility owners

1 and operators to respond to any release of such
2 substances;

3 (3) Designation of a facility emergency coordinators, who
4 shall make determinations necessary to implement the
5 plan;

6 (4) A description of emergency equipment and the
7 identification of the persons responsible for such
8 equipment;

9 (5) Evacuation plans, including provisions for precautionary
10 evacuation;

11 (6) Training programs, including schedules for training of
12 facility employees; and

13 (7) Methods and schedules for exercising the emergency plan.

14 (b) Existing facility emergency response plans may be amended
15 to meet the requirements of this section.

16 **§ -8 Reporting requirements.** (a) The owner or
17 operator of a facility in the State that stores, uses, or
18 manufactures any hazardous substance must comply with the following
19 requirements:

20 (1) Each owner or operator of a facility in the State
21 covered under section 302 of EPCRA, 42 U.S.C. §11002,
22 shall comply with the emergency planning and
23 notification requirements of section 302 and 303 of
24 EPCRA, 42 U.S.C. §§11002, 11003;

25 (2) Each owner or operator of a facility in this State that

1 is covered under section 311 of EPCRA, 42 U.S.C. §11021,
2 shall comply with the reporting requirements of section
3 311 of EPCRA, 42 U.S.C. §§11021, by completing the state
4 chemical inventory form, in lieu of material data sheets
5 or chemical lists by March first of each year. Material
6 safety data sheets shall be submitted within thirty days
7 of request to the HSERC or LEPC;

8 (3) Each owner or operator of a facility in this State that
9 is covered under section 312 of EPCRA, 42 U.S.C. §11022,
10 shall comply with the reporting requirements of section
11 312 of EPCRA, 42 U.S.C. §§11022, by completing the state
12 chemical inventory form, in lieu of Tier Is and Tier IIs
13 by March first of each year;

14 (4) Each owner or operator of a facility in this State that
15 is covered under sections 311 and 312 of EPCRA, 42
16 U.S.C. §§11021-11022, shall submit facility diagrams and
17 location area maps by March first, and update the maps
18 annually as needed;

19 (5) Each owner or operator of a facility in this State that
20 is subject to section 313 of EPCRA, 42 U.S.C. §110023,
21 shall comply with the toxic chemical release form
22 requirements of section 313 of EPCRA by July first of
23 each year; and

24 (6) Each owner or operator of a facility in this State
25 covered under section 304 of EPCRA, 42 U.S.C. §11004,

1 shall comply with the notification requirements of
2 section 304 of EPCRA, and section -9 of this chapter.

3 (b) The HSERC shall adopt, amend, and repeal rules
4 establishing specific information required on the state chemical
5 inventory form. The chemical inventory form will facilitate ease
6 in complying with the requirements of EPCRA by consolidating the
7 necessary information into one form. The chemical inventory form
8 may include, but is not limited to:

- 9 (1) The chemical name;
- 10 (2) Quantity stored on the site;
- 11 (3) Hazardous components;
- 12 (4) Health and physical hazards; and
- 13 (5) Storage information.

14 § -9 **Emergency notification requirements.** The HSERC
15 shall adopt rules pursuant to chapter 91 establishing the contents
16 of hazardous substance release reports. Hazardous substance
17 release reports shall contain, but shall not be limited to the
18 following information:

- 19 (a) the quantities of designated hazardous substances when
20 released are reportable pursuant to this chapter;
- 21 (b) Specific periods of time within which such quantities,
22 when released, are reportable pursuant to this chapter;
- 23 (c) To which agencies reports of releases must be reported;
- 24 and
- 25 (d) The format in which the release is to be reported.

1 **§ -10 Establishment of Funds.** (a) There is hereby
2 created in the State treasury a special fund to be designated as
3 the Hawaii emergency planning and community right-to-know fund
4 (HEPCRA). The fund shall consist of the fees collected under § -
5 11, civil penalties and fines, gifts, grants, and funds
6 appropriated by the legislature. Monies in the fund and the
7 interest accrued shall be administered and expended by the
8 department to carry out the purposes, goals, and objectives of this
9 chapter and EPCRA. To carry out the purposes, goals, and
10 objectives of this chapter and EPCRA the department may expend
11 money from the fund for personnel, administrative costs, equipment,
12 training, and public outreach and education.

13 (b) The HSERC shall accept and deposit into the Hawaii
14 emergency planning and community right-to-know (HEPCRA) fund any
15 grants, gifts, or other funds received which are intended for the
16 purpose of carrying out this chapter.

17 **§ -11 Establishment of Fees.** The HSERC may adopt,
18 amend, and repeal state rules establishing a reasonable reporting
19 fees structure for the reporting requirements established under ~~§~~
20 -8 and EPCRA (42 U.S.C. §§11001-11050). The fees shall be
21 deposited into the Hawaii emergency planning and community right-
22 to-know (HEPCRA) fund and shall be used to implement this chapter
23 and EPCRA (42 U.S.C. §§11001-11050).

24 **§ -12 Immunity from civil liability.** (a) No
25 employee, representative, or agent of a state agency or local

1 agency or persons requested by a state or local agency engaged in
2 any emergency service or response activities involving a hazardous
3 material release at a facility or transportation accident site
4 shall be liable for the death of or any injury to persons or loss
5 or damage to property resulting from that hazardous material
6 release, except for any acts or omissions which constitute wilful
7 misconduct.

8 (b) There shall be no liability under this chapter for a
9 defendant otherwise liable who can establish by a preponderance of
10 the evidence that the release or threat of release of a hazardous
11 substance and the damages resulting therefrom were caused solely
12 by:

- 13 (1) Any unanticipated grave natural disaster or other
14 natural phenomenon of an exceptional, inevitable, and
15 irresistible character, the effect of which could not
16 have been prevented or avoided by the exercise of due
17 care or foresight;
- 18 (2) An act of war;
- 19 (3) An act or omission of a third party other than an
20 employee or agent of the defendant, or other than one
21 whose act or omission occurs in connection with a
22 contractual relationship, existing directly or
23 indirectly with the defendant, if the defendant
24 establishes by a preponderance of the evidence that the
25 defendant exercised due care with response to the

1 hazardous substance concerned, taking into consideration
2 the characteristics of such hazardous substance, in
3 light of all relevant facts and circumstances; and that
4 the defendant took precautions against foreseeable acts
5 or omissions of any such third party and the
6 consequences that could foreseeable result from such
7 acts or omissions; or

8 (4) Any combination of the foregoing exceptions.

9 (c) No member of the HSERC or an LEPC shall be liable for the
10 death of or any injury to persons or loss or damage to property or
11 the environment or any civil damages resulting from any act or
12 omissions arising out of the performance of the functions, duties,
13 and responsibilities of the HSERC or LEPC, except for acts or
14 omissions which constitute wilful misconduct.

15 **§ -13 Penalties and fines.** (a) Any person who
16 violates any of the emergency reporting, planning, or notification
17 requirements of this chapter, or fails to pay the fees outlined in,
18 section -11 shall be subject to civil penalties of not less than
19 \$1,000 and not more than \$25,000. Each day of each violation shall
20 constitute a separate violation.

21 (b) A person who:

22 (1) Knowingly and wilfully fails to report the release of a
23 hazardous substance or extremely hazardous substance as
24 required by section -9 shall be guilty of a
25 misdemeanor and shall, upon conviction, be sentenced to

1 pay a fine of not less than \$1,000 and not more than
2 \$25,000 for each separate offense, or imprisonment for a
3 period of not more than one year, or both. For the
4 purposes of this paragraph, each day of each violation
5 shall constitute a separate offense; or

6 (2) Intentionally obstructs or impairs, by force, violence,
7 physical interference, or obstacle, a representative of
8 the department, a hazardous material response team, or
9 the LEPC attempting to perform the duties and functions
10 set forth in section -5 shall be guilty of a
11 misdemeanor and shall, upon conviction, be sentenced to
12 pay a fine of not less than \$5,000 and not more than
13 \$25,000 for each separate offense, or imprisonment for a
14 period of not more than one year, or both.

15 (c) All civil penalties and fines collected under this
16 section shall be deposited into the Hawaii emergency planning and
17 community right-to-know (HEPCRA) fund.

18 **§ -14 Enforcement.** If the HSERC determines that any
19 person has violated or is violating this chapter or any rule
20 adopted pursuant to this chapter, the director shall serve written
21 notice by certified mail or personal service upon the alleged
22 violator or violators specifying the alleged violation and may
23 include with the notice:

24 (1) An order specifying a reasonable time during which the
25 facility shall be required to submit the required

- 1 reports, forms, and notifications;
- 2 (2) An order imposing penalties provided in section -13;
- 3 and
- 4 (3) An order that the alleged violator or violators appear
- 5 before the director for a hearing at a time and place
- 6 specified in the notice or to be set later and answer
- 7 the charges complained of.

8 § -15 Relationship to other laws. (a) This chapter
 9 shall be read in conjunction with the federal statutes and
 10 regulations providing for the identification, labeling, or
 11 reporting of information; concerning hazardous material releases,
 12 and any other health and safety matters related to hazardous
 13 materials; and is intended to supplement federal statutes and
 14 regulations in the interests of protecting the health and safety of
 15 the citizens of the State.

16 (b) Nothing in this chapter shall affect or modify in any way
 17 the obligations or liabilities of any person under other laws of
 18 the State.

19 (c) This chapter shall preempt any ordinances passed or
 20 adopted by any county that are effective on, before, or after the
 21 effective date of this chapter to the extent that such ordinances
 22 conflict or are inconsistent with the provisions of this chapter."

23 SECTION 3. This Act shall take effect upon its approval.

24

25

INTRODUCED BY: _____



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:

FIVE WATERFRONT PLAZA, SUITE 250
500 ALA MOANA BOULEVARD
HONOLULU, HI 96813
FAX # (808) 586-4370

Faxed 12/4/92 Dar

FACSIMILE REQUEST AND COVER SHEET
(Use Black or Blue Ink Only)

DATE: 12/04/92 No. of pages (Incl. cover sheet): 2

TO: Julie Aquino

Office/Phone/Mail stop: Director's Office / 586-4408
586-4444 Fax

FROM: Darlene Rodrigues

Office/Phone/Mail stop: Hazard Eval. + Emerg. Resp. Ofc.
586-4397

SUBJECT/MESSAGE: Request for Special Function Parking
for December 11, 1992.

SIGNATURE OF SENDER: *Darlene Rodrigues*

NOTE: If this transmittal was incomplete or illegible, please call the sender's office.

SA

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
Automotive Management Division
Parking Control Branch

Date 12/04/92

MEMORANDUM

TO: DAGS, Automotive Management Division
Parking Control Branch PHONE: 586-0344 FAX: 586-0354

FROM: Health/Env. Health Admin./Haz. Eval. & Emer. Resp. Ofc. FAX: 586-4444
DEPT., DIVISION

SUBJECT: REQUEST FOR SPECIAL FUNCTION PARKING

PURPOSE: Hawaii State Emergency Response Commission (HSERC) Meeting

No. of Permits Requested: 15 Preferred Parking Lot: L

Date(s) of Function: 12/11/92 Time: 9:00a.m to 12 noon

Place of Function: Dept. of Health Kinau Hale Board Room 1st Floor
(address)

Participants Arriving From: * Neighbor Islands and Downtown Honolulu

Contact Person: Darlene Rodrigues Phone No. 586-4249

SUBMITTED BY: Steve Armann, Acting Manager
Hazard Evaluation & Emerg. Resp. Ofc.

APPROVED FOR DIRECTOR: _____

- NOTE:
- 1) SUBMIT ONE REQUEST FOR EACH FUNCTION.
 - 2) REQUESTS MUST BE RECEIVED BY PARKING CONTROL AT LEAST THREE (3) WORKING DAYS, BUT NO MORE THAN 30 DAYS, PRIOR TO THE DATE OF THE FUNCTION.
 - *3) PARTICIPANTS WHO ARE ISSUED SPECIAL FUNCTION PERMITS MUST BE ARRIVING FROM LOCATIONS OUTSIDE THE STATE CAPITAL COMPLEX.
 - 4) THIS SPECIAL FUNCTION PERMIT SHALL BE PROMINENTLY DISPLAYED, FACE UP, ON YOUR DASHBOARD ON THE DRIVER'S SIDE.

PARKING CONTROL USE ONLY

DATE RECD: _____ APPROVED BY: _____ LOT AUTHORIZED: _____

No. of Validated Tickets: _____

AMD-PC-001
REV. 6/92

DRAFT

*final
9/9*

If Draft is okay please sign final

E11--RG.m1

November 23, 1992

To: The Hawaii State Emergency Response Commission Members
From: John C. Lewin, M.D., Chairman,
The Hawaii State Emergency Response Commission
Subject: NOTICE FOR MEETING #14

HSERC MEETING NOTICE

This is to invite you to attend the next meeting of the Hawaii State Emergency Response Commission (HSERC) to be held Friday, December 11, 1992, 9:00 a.m. to 12:00 noon. The meeting will be held at the Department of Health Kinau Hale Boardroom, 1st Floor, located at 1250 Punchbowl Street.

The major purpose of this meeting is to finalize the Hawaii EPCRA Bill. The fee structure subcommittee will also be presenting recommendations for alternate fee structures. Please read the revised Bill carefully and be prepared to discuss and finalize the Hawaii EPCRA Bill.

E11--RG.m1

**HAWAII STATE EMERGENCY RESPONSE COMMISSION (HSERC)
MEETING #14**

Thursday December 11, 1992
9:00 a.m. - 12:00 noon

Department of Health's
Kinau Hale Board Room, 1st Floor

1250 Punchbowl Street

AGENDA

- I. Call to Order
 - A. Opening Remarks
 - B. Discussion/Approval of Minutes from HSERC Meeting #13
- II. Update by Attorney Generals Office
- III. Draft Hawaii EPCRA Bill
 - A. New Revision
 - ~~B.~~ Fee Structure Subcommittee
 - ~~C.~~ Open discussion
- IV. Schedule Next HSERC Meeting #15

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
HEER OFFICE

E1103RG.m1

November 23, 1992

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From: John C. Lewin, M.D., Chairman,
The Hawaii State Emergency Response Commission

Subject: NOTICE FOR MEETING #14

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JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
HEER OFFICE

E1102RG.m1

HAWAII STATE EMERGENCY RESPONSE COMMISSION (HSERC)
MEETING #14

Thursday December 11, 1992
9:00 a.m. - 12:00 noon

Department of Health's
Kinau Hale Board Room, 1st Floor
1250 Punchbowl Street

AGENDA

- I. Call to Order
 - A. Opening Remarks
 - B. Discussion/Approval of Minutes from HSERC Meeting #13
- II. Update by Attorney Generals Office
- III. Draft Hawaii EPCRA Bill
 - A. New Revision
 - B. Fee Structure Subcommittee
 - C. Open discussion
- IV. Schedule Next HSERC Meeting #15

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
HEER OFFICE

E1007RG.m1

November 20, 1992

MEETING SUMMARY
HAWAII STATE EMERGENCY RESPONSE COMMISSION
MEETING #12

Tuesday, October 20, 1992
9:00 a.m. - 12:00 noon

State Office Towers
Conference Room 1008
235 South Beretania Street

HSERC Commission Members and Representatives:

John C. Lewin, M.D., Chair, HSERC, DOH
Bruce S. Anderson, Ph.D., Vice Chair, HSERC, DOH
Gerald Kinro for Yukio Kitagawa, BOA
Roy Price for Major General Edward Richardson, DOD
Elma Agbanglo for Keith Ahue, DLIR
Stanley Young for William Paty, BLIR
James Bac for Mufi Hannemann, DBEDT
Barbara Siegel, School of Public Health, UH
Chris Takeno for George Kekuna, Honolulu LEPC Representative
Clifford Ikeda, Kauai LEPC Representative
Sel Menor, Maui LEPC Representative

Other Attendees:

Steven Armann, DOH
Rhonda Goyke, DOH
Carter Davis, Honolulu FD
James Vinton, PRI
Bruce Schlieman, HECO
Ralph Yoshizumi, Hawaii County FD
Robert Roberts, HSPA

I. Call to Order

The 12th meeting of the HSERC was called to order by Lewin at 9:10 a.m.

A. Opening Remarks

Lewin stated that it had been brought to his attention that there is an ongoing debate among certain HSERC members regarding the appropriateness of DOH as the lead agency for the EPCRA program. Lewin indicated that the HSERC could easily be housed in the DOD. There continues to be a lack of dedicated personnel for the EPCRA program and this would continue to be the case in either agency (DOH or DOD). The current HSERC staff is funded out of the Superfund program, therefore, if the HSERC responsibility is transferred to the DOD, the DOH would be unable to transfer staff. In 1986-1987 when EPCRA was first initiated in Hawaii, the DOD was unable to accept the burden of the program. At this time we need to look towards the future as we draft the state EPCRA Bill. We need to decide where the EPCRA program should be housed and go forward with the program. Lewin opposes the election of the HSERC Chair as long as DOH staff supports the Commission. For an election process to be effective, staff would need to be established and dedicated to the EPCRA program.

B. Discussion/Approval of Minutes from HSERC Meeting #11

Takeno stated that page five, the last paragraph should be corrected to read "Takeno informed the HSERC that private citizens could file suit against the LEPCs for not complying with EPCRA".

The motion was passed to accept the minutes with the change as described (Attachment 1).

II. Update by the Attorney General's Office

Larry Lau was unable to attend meeting #12. However, Lewin feels that one of the major areas that need clarifying is what constitutes a quorum of the HSERC.

III. Draft State EPCRA BILL

A. Conflicts between Draft EPCRA Bill and Draft HSERC Guidelines

Armann presented an overview of the major conflicts between the Draft Bill and the Draft Guidelines (Attachment 2). By item, the HSERC came to consensus as to how the two documents should read.

#1 Use the wording in the Draft Bill, it should be clearly stated as to who shall be members, thus avoiding any future confusion. In addition, to establish some consistency in the HSERC the Commission members need to officially designate a representative that will be able to attend the HSERC meetings in their absence and who will be given voting privileges. This point, regarding representatives and their authorities, needs to be clearly spelled out in the Bill. Other representatives are welcome to the meetings but will not have voting privileges. This is necessary for determination quorum status.

#2 Use the wording in the Draft Bill until such time as dedicated HSERC staff can be assigned.

#3 Seven HSERC members plus the Chairperson shall constitute a quorum.

#4 Included with item #2.

#5 The duties as outlined in the Draft Bill are more detailed than the duties described in the Draft Guidelines, ideally the Guidelines will be as or more descriptive than the Bill. No changes are necessary.

#6 Use the language in the Draft Bill. Spell it out in the Bill to clarify and to avoid future confusion. Use existing infrastructure.

#7 Use the wording in the Draft Bill.

#8-#10 Delete from the Guidelines, unnecessary.

Lewin stated that changes need to be finalized by the end of November because this is an Administrative Bill supported by the Governor.

Kinro stated that to establish fees the HSERC will need authority to promulgate rules.

Armann stated that the Bill was written in enough detail that rules may not be needed. Armann suggested establishing a subcommittee to work out the details of the Bill.

The subcommittee will be comprised of the following people: Anderson to be the subcommittee Chair, Price, Takeno, Kim, Menor, and Goyke.

The motion was made and passed to establish the EPCRA Bill subcommittee.

Lewin suggested that the subcommittee also work out any additional details that may need to be worked out with the Guidelines.

B. EPCRA Fee Structure

Goyke presented an overview of alternate fee structures based on a quantity bases (Attachment 3). The quantities of EHS chemicals, hazardous chemicals, and petroleum products that are currently being reported were outlined. Examples of Vermont and Maine were presented. Neither scenario would provide the \$245,000 minimum funding that would be required to provide staff to the HSERC, staff to each LEPC, and funding for the training program.

Anderson stated that additional facilities need to be identified that would be assessed a fee as well. Therefore, assess small fees to more facilities.

Price stated that the overall fee situation needs to be addressed and analyzed. We need to take into account all the different fees that are already being assessed on these facilities.

Anderson queried regarding the availability of Federal funds.

Price answered that the only Federal funds that are currently available are the HMTUSA Grant which is a reimbursable grant which does not afford much assistance and up to \$40,000 in training monies which may be available from FEMA.

Anderson queried as to the possibility of funding this program through DOT monies.

Price stated that the DOT monies would not be a stable funding source.

Lewin asked for a motion regarding proceeding with the funding problem.

Price made the motion that a subcommittee be formed to review in depth alternate fee structures that could provide the necessary funding for state and local EPCRA programs.

The subcommittee would be comprised of: Price, Chairperson; Anderson; Menor; Kim; Takeno; Armann; and Goyke.

The motion was passed.

IV. HSERC "Guidelines"

Discussion of the Guidelines was included with the Draft EPCRA discussion.

V. Schedule Next HSERC Meeting (#13)

Lewin stated that due to the legislative schedule the HSERC needed to finalize the Draft EPCRA Bill by the end of November. Therefore, the HSERC needs a report by the subcommittees in approximately a month. Tentative dates for the next HSERC meeting were scheduled for November 19 or 20, 1992.

The motion was made to adjourn the meeting at 10:30 a.m. The motion was passed.

This Meeting Summary is submitted to the Hawaii State Emergency Response Commission.

Respectfully submitted,

Rhonda K. Goyke 11/20/92
RHONDA K. GOYKE date

JUSTIFICATION SHEET

November 20, 1992

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

PURPOSE: To establish a State Emergency Planning and Community Right-to-Know program, including establishing a Emergency Planning and Community Right-to-Know fund funded by reporting fees from regulated facilities. This fund will be used to support the State's responsibilities under the Federal Emergency Planning and Community Right-to-Know Act.

MEANS: Enact new law, Emergency Planning and Community Right-to-Know Act.

JUSTIFICATION: Current provisions for the Emergency Planning and Community Right-to-Know program are codified in the federal law only under the federal Superfund Amendments and Reauthorization Act (SARA, Title III). The state of Hawaii has begun implementation of this program based solely on the State's authorities as defined in this federal law. No provisions were made for federal funding for this new requirement. The purpose of this proposed State statute would be to establish a fee collection system and an Emergency Planning and Community Right-to-Know fund to provide resources for State and local agencies required to fulfill the requirements of SARA, Title III, and to provide a mechanism for the State to recover penalties into a State managed fund if chemical handlers do not comply with Title III. As the federal statute is currently written, without a state EPCRA law, any recovery of penalties for non-compliance with Title III must be returned to the federal government, even if the State conducts the enforcement action. Once a state EPCRA law is in place these penalties can go to the state.

GENERAL FUNDS: None

PROGRAM ID: HTH 849-FD

OTHER FUNDS: Revolving Fund

OTHER AGENCIES AFFECTED: DOA, DOD, DLIR, DLNR, DBEDT, DOT, OEQC, UH, American Red Cross, County Civil Defense Agencies.

HTH-9(93)

November 25, 1992

DRAFT MEETING SUMMARY
HAWAII STATE EMERGENCY RESPONSE COMMISSION
MEETING #13

Thursday, November 19, 1992
9:00 a.m. - 12:00 noon

State Office Towers
Conference Room 1008
235 South Beretania Street

HSERC Commission Members and Representatives:

John C. Lewin, M.D., Chair, HSERC, DOH
Bruce S. Anderson, Ph.D., Vice Chair, HSERC, DOH
Don Gransback for Major General Edward Richardson, DOD
Gerald Kinro for Yukio Kitagawa, BOA
Russell Charlton for Keith Ahue, DLIR
Ying Fan Xu for William Paty, BLIR
Tom Smyth for Mufi Hannemann, DBEDT
Barbara Siegel, School of Public Health, UH
George Kekuna, Honolulu LEPC Representative
Clifford Ikeda, Kauai LEPC Representative
Sel Menor, Maui LEPC Representative

Other Attendees:

Steven Armann, DOH
Rhonda Goyke, DOH
James Vinton, PRI
Michael Choy, HECO
Robert Roberts, HSPA
Eugene Lee, DPW
Laurence Lau, AG Office
Kathy Ho, AG Office

I. Call to Order

The 13th meeting of the HSERC was called to order by Anderson at 9:05 a.m.

A. Opening Remarks

Anderson stated that the main objective of the meeting was to revise the draft HEPCRA Bill. The draft legislative package had been submitted to the Governor and it appears that the HEPCRA Bill will be part of the Administrative Package.

B. Discussion/Approval of Minutes from HSERC Meeting #12

The motion was passed to accept the minutes, as written.

II. Update by the Attorney General's Office

Lau explained that the workload of the Attorney General's Office had been reassigned by Sonia Faust. As such, he would no longer be assigned to work with the HSERC. However, Kathy Ho would be taking over those responsibilities. Ho joined the Attorney General's Office on November 16, 1992.

III. Draft State EPCRA BILL

Anderson chaired a subcommittee composed of: George Kekuna, Chris Takeno, Sel Menor, Clifford Ikeda, Steve Armann, and Rhonda Goyke. The subcommittee presented a revised draft of the Hawaii EPCRA bill, incorporating four major recommendations for Commission consideration. The four recommendations were:

- 1) Follow 128D as closely as possible;
- 2) Shorten the Bill as much as possible, removing any areas that were not absolutely necessary;
- 3) Remove many of the details of the Bill, instead provide authority to adopt, amend, and repeal rules to implement HEPCRA, including a fee structure;
- 4) During subcommittee discussion it became apparent that any monies received by the counties, to hire LEPC staff, must be put into the general funds and therefore would not necessarily be used for LEPC activities or staff. Therefore, it was recommended that the four LEPC staff positions be State positions assigned to the various counties. This would allow the money generated by the fee structure to be spent only HEPCRA activities.

Other recommendations or comments by Commissioners include (see attachment 1 for the revised Bill):

- 1) All references to a "Safety Program" were deleted;
- 2) After some discussion Lewin stressed the importance of paid travel expenses and per diem for outer island HSERC members. Gransback also voiced the importance of the continued support of the HSERC by the outer island members and that if necessary the State Civil Defense Agency will help with travel expenses until the funding of the program is available. Anderson informed the outer island LEPC members that if travel funds were not readily available notify the DOH;
- 3) It is recommended that a comprehensive State Chemical Inventory Form be developed that would serve as both §§311 and 312 reporting;
- 4) Anderson asked Ho to investigate how hearing officers were to be assigned;
- 5) It was questioned if the HSERC or the Director should have the rule making authority. Lewin prefers that the authority lie with the HSERC. This would allow the HSERC to be located with another agency or to be split, if appropriate;
- 6) Discussion regarding the need to specify Kalalau as a separate LEPC or planning district resulted in the clarification that the DOH is the LEPC for Kalalau;
- 7) Ikeda pointed out that to specify that the Mayors are to designate LEPC members would contradict the Federal Law. Therefore, it was decided to change the language to the HSERC is to appoint based on Mayor recommendations;
- 8) Much discussion resulted from the recommendation that regulated facilities are to submit emergency response plans. It was decided to provide authority to the HSERC to require such plans via rulemaking;
- 9) It was decided that LEPCs will be considered "State" entities;
- 10) Menor inquired as to how HEPCRA would affect establishing laws at the county level. Anderson stated that HEPCRA wouldn't preclude counties from establishing counties laws.
- 11) Vinton stated that as a matter of public policy PRI disagrees with fees which would in fact be passed on to consumers as hidden costs. Anderson stated that the Governor would take that fact into consideration, however the program needs funding and any alternate plans would be considered;
- 12) Regarding § 12(a), Vinton and Roberts both had a problem with the term the phrase "or persons *requested* by". The concern was, what if

injury or death results from an unqualified person being at a facility upon the *request* of the HSERC or the LEPC, should that person not be liable? Anderson suggested that the language could be revised and that any suggestions would be considered;

- 13) Anderson stated that § -15 appeared to be redundant with § -13, therefore delete § -15;
- 14) After considerable discussion it was agreed that § -16 is unnecessary because Superfund takes care of criminal penalties when warranted. Charlton further clarified that is a facility doesn't have an OSHA plan and someone is killed, DIOOSH would cover that situation; and
- 15) Lewin informed the Commission that a "cap" was probably necessary on the fee structure. Fee generated over \$300,000 would not be approved by the legislature. The commission agreed that a cap of \$250,000-300,000 was a good idea. Anderson suggested that the fee structure subcommittee include "not to exceed" language when they review and recommend changes to the bill.

The motion was made and passed to proceed with the draft legislation. Lewin stated that the bill must be finalized and approved by the Commission.

IV. HSERC "Guidelines"

Revisions on the HSERC Guidelines will be postponed until the Hawaii EPCRA Bill has been finalized.

V. Schedule Next HSERC Meeting (#14)

The next meeting of the HSERC was scheduled for December 11, 1992. Agenda items will include finalizing the HEPCRA Bill and fee proposals from the subcommittee.

The motion was made to adjourn the meeting at 11:20 a.m. The motion was passed.

This Draft Meeting Summary is submitted to the Hawaii State Emergency Response Commission.

Respectfully submitted,

RHONDA K. GOYKE

date

December 7, 1992

NEEDS ANALYSIS FOR EPCRA PROGRAM

<u>POSITION</u>	<u>(SR #)</u>	<u>SALARY (\$)</u>	<u>BENEFITS (25%)</u>	<u>TOTAL (\$)</u>
1 CT III	10	19,152	4,788	23,940
4 EHS III's	20	27,828	6,957	139,140
1 EHS IV	22	30,084	7,521	37,605

SUBTOTAL \$200,685

TRAVEL for LEPC support

Assumption: 3 EHS's travel outer island for 3 days/month

<u>Travel Expenses</u>	<u>Empl/Trip (\$)</u>	<u>Cost/Month (\$)</u>	<u>Total/Yr (\$)</u>
Airfare(\$90/rdtrp)	90	270	3,240
Per diem (\$80/day)	240	720	8,640
Car rental (\$30/day)	90	270	3,240

SUBTOTAL \$15,120

HSERC TRAVEL

Assumptions: 3 HSERC members traveling, one day, quarterly

<u>Travel Expenses</u>	<u>Member/Mtg (\$)</u>	<u>Cost/Qtr (\$)</u>	<u>Total/Yr (\$)</u>
Airfare	90	270	1,080
Per diem	40	120	480
Car rental	30	90	360

SUBTOTAL \$1,920

TOTAL \$217,725

Misc. Indirect Expenses:

Desk

Phone

Supplies

SOLID WASTE MANAGEMENT FUND

1. Purpose: To support the expanding needs of the Office of Solid Waste and fund the annual Household Hazardous Waste Collection Program.

Program Operations	\$ 450,000
Waste Diversion Projects (Contracts and Grants)	600,000
Landfill Training	50,000
Household Hazardous Waste	250,000

Estimated Revenues: **\$1,350,000**

Funding Source: Fee of \$0.75 per ton*

2. Purpose: To support statewide glass recovery program.

Estimated Revenues: **\$5,100,000**

Funding Source: Fee of \$0.015 per glass container**

* Collected at the disposal site and paid to the State Department of Health.

** Currently collected by the City and County of Honolulu, to operate a countywide program.

WATER QUALITY MANAGEMENT FUND

1. Purpose: To support the Water Pollution Control Program administered by the Clean Water Branch and Wastewater Branch.

Estimated Revenues: **\$3,000,000**

Funding Sources: Permit fees for private wastewater disposal systems and emission fees of \$25 per ton of solids discharged and/or \$5.00 per million gallons discharged per year.

2. Purpose: To provide sufficient funds to administer the safe drinking water and underground injection control programs.

Estimated Revenues: **\$3,085,000**

Funding Sources: Permit fees for public water systems based on the number of persons served and permit fees for underground injection control wells based on the daily average gallonage of effluent discharged.

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW FUND

Purpose: To make available information to the public on toxic materials in the community and provide funds for chemical emergency planning, training, and response.

Estimated Revenues: **\$250,000**

Funding Sources: Fees based on number of facilities storing chemicals, number of chemicals stored, and/or quantities of chemical stored.

ENVIRONMENTAL HEALTH RESEARCH AND EDUCATION FUND

Purpose: To provide funds for research, education, and training opportunities for environmental health staff.*

Estimated Revenues: **\$1,000,000**

Funding Sources: Food service permits, which will be issued on an annual basis, and noise control permits.

* These are supplemental funds not intended to offset general revenue funding for program administration and support.

PROJECTED NEEDS FOR HSERC AND LEPC EPCRA IMPLEMENTATION

Staff to the HSERC (estimated needs)

- 1 ~~2~~ Environmental Health Specialists
- 1 Clerk/Typist
- Total estimated annual needs \$150,000

Staff for the LEPCs (estimated needs by Harry Kim)

Hawaii

- 1 ~~2~~ Planners
- 1 ~~Clerical~~
- Computer \$15,000 initial cost with \$1,700 annual maintenance
- Total estimated annual needs is \$100,000

Kauai (estimated needs by HEER)

- 1 Planner or inspector
- Total estimated needs \$50,000-\$70,000

Maui personnel would be in the FD, (estimated needs by Capt. Blackburn)

- 1/2 FTE Clerical
- 1/2 FTE Inspector
- Equipment needs: Vehicle, desk, chair, computer, telephone, office supplies, etc. \$40,000 initial costs, \$10,000 annual costs
- Total annual estimated annual needs is \$70,000-80,000

Honolulu - feels that emphasis should be placed on staffing the HSERC. However, if they do not need the funds the funds can go to the other LEPCs. HEER estimates that they may need:

- 1 Planner or Inspector
- 1 ~~Clerical~~
- Computer \$15,000, \$1,700 annual maintenance
- Total estimated annual needs \$75,000

Training (estimated needs by Leighton Ah Cook)
\$50,000-\$60,000

Total funds that could be utilized if available:

~~\$535,000~~

\$245,000

**TABLE I REPORTING RANGES

RANGE VALUE	WEIGHT RANGE IN POUNDS	
	FROM...	TO...
01	0	99
02	100	999
03	1,000	9,999
04	10,000	99,999
05	100,000	999,999
06	1,000,000	9,999,999
07	10,000,000	49,999,999
08	50,000,000	99,999,999
09	100,000,000	499,999,999
10	500,000,000	999,999,999
11	1 billion	higher than 1 billion

** Please note that these reporting ranges were revised in June 1990. The range value of "00" was eliminated.

EMERGENCY PLANING & COMMUNITY RIGHT-TO-KNOW §312
 QUANTITIES REPORTED TO DATE

EXTREMELY HAZARDOUS SUBSTANCES

MAXIMUM DAILY AMOUNT

Number of Chemicals Reported Per Category

POUNDS	HAWAII	MAUI	KAUAI	OAHU	TOTAL
< 99	21	47	14	72	154
100-999	12	73	11	35	131
1,000-9,999	8	31	10	29	78
10,000-99,000	0	4	0	6	10
100,000-999,999	0	3	1	0	4
>1,000,000	0	0	0	0	0

AVERAGE DAILY AMOUNT

Number of Chemicals Reported Per Category

POUNDS	HAWAII	MAUI	KAUAI	OAHU	TOTAL
< 99	30	67	19	81	197
100-999	8	61	9	39	117
1,000-9,999	3	25	8	16	52
10,000-99,000	0	4	0	5	9
100,000-999,999	0	1	0	0	1
>1,000,000	0	0	0	0	0

EMERGENCY PLANING & COMMUNITY RIGHT-TO-KNOW §312
 QUANTITIES REPORTED TO DATE

HAZARDOUS SUBSTANCES

MAXIMUM DAILY AMOUNT

Number of Chemicals Reported Per Category

POUNDS	HAWAII	MAUI	KAUAI	OAHU	TOTAL
< 99	17	35	9	51	112
100-999	6	18	7	59	90
1,000-9,999	33	28	19	116	196
10,000-99,000	16	40	4	50	110
100,000-999,999	2	3	3	5	13
>1,000,000	1	0	0	2	3

AVERAGE DAILY AMOUNT

Number of Chemicals Reported Per Category

POUNDS	HAWAII	MAUI	KAUAI	OAHU	TOTAL
< 99	27	41	20	83	171
100-999	11	46	14	93	164
1,000-9,999	22	28	6	76	132
10,000-99,000	13	5	0	26	44
100,000-999,999	1	2	2	5	10
>1,000,000	1	0	0	0	1

EMERGENCY PLANING & COMMUNITY RIGHT-TO-KNOW §312
 QUANTITIES REPORTED TO DATE

PETROLEUM PRODUCTS

MAXIMUM DAILY AMOUNT

Number of Chemicals Reported Per Category

POUNDS	HAWAII	MAUI	KAUAI	OAHU	TOTAL
< 99	12	1	0	1	14
100-999	10	0	0	20	30
1,000-9,999	54	19	15	314	402
10,000-99,000	23	18	5	46	92
100,000-999,999	10	18	5	22	55
>1,000,000	2	5	1	27	35

AVERAGE DAILY AMOUNT

Number of Chemicals Reported Per Category

POUNDS	HAWAII	MAUI	KAUAI	OAHU	TOTAL
<99	22	1	0	3	26
100-999	14	3	0	38	55
1,000-9,999	40	20	15	306	381
10,000-99,999	21	16	5	46	88
100,000-999,999	10	16	5	16	47
>1,000,000	2	5	1	20	28

STATE OF VERMONT
REPORTING FEES

Quantity Reported* (Pounds)	Fee
100 - 999	\$ 5
1,000 - 9,999	\$ 20
10,000 - 99,999	\$ 50
100,000 - 999,999	\$100
Greater than 999,999	\$200
Any Extremely Hazardous Substance	\$50 <u>additional</u> for each reportable quantity

* "Quantity Reported" is the "Maximum Daily Amount" of the Inventory section of the reporting form.

STATE OF MAINE
SCHEDULE OF INVENTORY FEES

EXTREMELY HAZARDOUS SUBSTANCE FEES

Total average daily amounts of:	fee
less than 99 lbs	\$ 20
100 - 999 lbs	\$ 50
1,000 - 9,999 lbs	\$ 70
10,000 - 99,999 lbs	\$100
100,000 - 999,999 lbs	\$150
greater than 1,000,000 lbs	\$200

HAZARDOUS CHEMICAL FEES

Total average daily amounts of:	fee
less than 10,000 lbs	\$ 0
10,000 - 99,999 lbs	\$ 50
100,000 - 999,999 lbs	\$ 75
greater than 1,000,000 lbs	\$100

PETROLEUM PRODUCTS FEES

Total average daily amounts of:	fee
0 - 75,000 lbs	\$ 0
75,001 - 99,999 lbs	\$ 50
100,000 - 999,999 lbs	\$ 75
greater than 1,000,000 lbs	\$100

EXAMPLE #1

STATE OF VERMONT

SCHEDULE OF INVENTORY FEES

EXTREMELY HAZARDOUS SUBSTANCES

Total maximum daily amount	# reported	EHS fee \$50 ea.	quantity fee = quantity revenue	total fee
less than 99 lbs	154	\$7,700	\$0 = \$0	\$7,700
100-999 lbs	131	\$6,500	\$5 = \$655	\$7,155
1,000-9,999 lbs	78	\$3,900	\$20 = \$1,560	\$5,460
10,000-99,999 lbs	10	\$500	\$50 = \$500	\$1,000
100,000-999,999 lbs	4	\$200	\$100 = \$400	\$600
greater than 1,000,000 lbs	0	\$0	\$200 = \$0	\$0

TOTAL \$21,915

HAZARDOUS SUBSTANCES

Total maximum daily amount	# reported	quantity fee	revenues
less than 99 lbs	126	\$0	\$0
100-999 lbs	120	\$5	\$600
1,000-9,999 lbs	598	\$20	\$11,960
10,000-99,999 lbs	202	\$50	\$10,100
100,000-999,999 lbs	68	\$100	\$6,800
greater than 1,000,000 lbs	38	\$200	\$7,600

TOTAL \$37,060

TOTAL REVENUES \$58,975

EXAMPLE #2

STATE OF MAINE

SCHEDULE OF INVENTORY FEES

EXTREMELY HAZARDOUS SUBSTANCE FEE

Total average daily amounts	fee \$	# reported	revenues \$
less than 99 lbs	20	197	3,940
100-999 lbs	50	117	5,850
1,000-9,999 lbs	70	52	3,640
10,000-99,000 lbs	100	9	900
100,000-999,999 lbs	150	1	150
greater than 1,000 lbs	200	0	0

TOTAL \$14,480

HAZARDOUS SUBSTANCE FEE

Total average daily amounts	fee \$	# reported	revenues \$
less than 10,000 lbs	0	467	0
10,000-99,999 lbs	50	44	2,200
100,000-999,999 lbs	75	10	750
greater than 1,000,000 lbs	100	1	100

TOTAL \$3,050

PETROLEUM PRODUCTS FEES

Total average daily amounts	fees \$	# reported	revenues \$
less than 10,000 lbs	0	462	0
10,000-99,999 lbs	50	88	4,400
100,000-999,999 lbs	75	47	3,525
greater than 1,000,000 lbs	100	28	2,800

TOTAL \$10,725

TOTAL REVENUES \$28,255

PROJECTED REVENUES
UTILIZING THE FEE SCHEDULES OF VERMONT AND MAINE

§312 REPORTING FEE

\$50 per facility (processing charge) X 504 facilities = \$25,200

INVENTORY FEES

EXAMPLE 1 - VERMONT = \$58,975

EXAMPLE 2 - MAINE = \$28,255

§313 REPORTING FEE

\$1,000 per Form R X 28 facilities = \$28,000

TOTAL REVENUES PROJECTED

EXAMPLE 1 = \$112,175

EXAMPLE 2 = \$81,455

STATE OF MAINE
TOXIC RELEASE FEES

Total Release of:	Fee
0 lbs.	\$ 0
1 - 499 lbs.	\$ 20
500 - 999 lbs.	\$ 50
1,000 - 9,999 lbs.	\$ 70
10,000 - 99,999 lbs.	\$100
100,000 - 999,999 lbs.	\$150
greater than 1,000,000 lbs.	\$200

September 10, 1992

HSERC FEE PROPOSALS

The purpose of the EPCRA fee proposal is to raise funds for Hawaii's State emergency response commission (HSERC) and local emergency planning committees (LEPCs) to implement mandated EPCRA provisions and to improve public safety capabilities locally to deal with hazardous materials public safety matters throughout the State.

TOTAL FEE PROJECTIONS

Estimated annual fee projection is **\$183,075** as follows:

\$250 filing fee X 504 reporting facilities	\$126,000
\$25 per chemical required to be reported under §312 X 1163 chemicals	\$29,075
\$1,000 per form R under §313 X 28 forms	\$28,000

FEE PROJECTION BY COUNTY

Hawaii County

\$250 filing fee (§312) X 83 Tier II's	\$20,750
\$25 fee per individual chemicals reported on Tier II, \$25 X 341 chemicals	\$8,525
\$1,000 filing fee per form R under §313 X 4	\$4,000
TOTAL Hawaii generated revenues	\$33,275

City and County of Honolulu

\$250 filing fee (§312) X 298 Tier II's	\$74,500
\$25 per Tier II chemicals X 472 chemicals	\$11,800
\$1,000 X 15 form R's	\$15,000
TOTAL Honolulu generated revenues	\$101,300

Kauai County

\$250 X 90 Tier II's	\$22,500
\$25 X approx. 150 chemicals	\$3,750
\$1,000 X 4 Form R's	\$4,000
TOTAL Kauai generated revenues	\$30,250

Maui County

\$250 X 33 Tier II's	\$8,250
\$25 X 200 chemicals	\$5,000
\$1,000 X 5 Form R's	\$5,000
TOTAL Maui generated revenues	\$18,250

APPROVED
w/ CORRECTION
PG(4)

E1104RG.m1

November 25, 1992

DRAFT MEETING SUMMARY
HAWAII STATE EMERGENCY RESPONSE COMMISSION
MEETING #13

Thursday, November 19, 1992
9:00 a.m. - 12:00 noon

State Office Towers
Conference Room 1008
235 South Beretania Street

HSERC Commission Members and Representatives:

John C. Lewin, M.D., Chair, HSERC, DOH
Bruce S. Anderson, Ph.D., Vice Chair, HSERC, DOH
Don Gransback for Major General Edward Richardson, DOD
Gerald Kinro for Yukio Kitagawa, BOA
Russell Charlton for Keith Ahue, DLIR
Ying Fan Xu for William Paty, BLIR
Tom Smyth for Mufi Hannemann, DBEDT
Barbara Siegel, School of Public Health, UH
George Kekuna, Honolulu LEPC Representative
Clifford Ikeda, Kauai LEPC Representative
Sel Menor, Maui LEPC Representative

Other Attendees:

Steven Armann, DOH
Rhonda Goyke, DOH
James Vinton, PRI
Michael Choy, HECO
Robert Roberts, HSPA
Eugene Lee, DPW
Laurence Lau, AG Office
Kathy Ho, AG Office

I. Call to Order

The 13th meeting of the HSERC was called to order by Anderson at 9:05 a.m.

A. Opening Remarks

Anderson stated that the main objective of the meeting was to revise the draft HEPCRA Bill. The draft legislative package had been submitted to the Governor and it appears that the HEPCRA Bill will be part of the Administrative Package.

B. Discussion/Approval of Minutes from HSERC Meeting #12

The motion was passed to accept the minutes, as written.

II. Update by the Attorney General's Office

Lau explained that the workload of the Attorney General's Office had been reassigned by Sonia Faust. As such, he would no longer be assigned to work with the HSERC. However, Kathy Ho would be taking over those responsibilities. Ho joined the Attorney General's Office on November 16, 1992.

III. Draft State EPCRA BILL

Anderson chaired a subcommittee composed of: George Kekuna, Chris Takeno, Sel Menor, Clifford Ikeda, Steve Armann, and Rhonda Goyke. The subcommittee presented a revised draft of the Hawaii EPCRA bill, incorporating four major recommendations for Commission consideration. The four recommendations were:

- 1) Follow 128D as closely as possible;
- 2) Shorten the Bill as much as possible, removing any areas that were not absolutely necessary;
- 3) Remove many of the details of the Bill, instead provide authority to adopt, amend, and repeal rules to implement HEPCRA, including a fee structure;
- 4) During subcommittee discussion it became apparent that any monies received by the counties, to hire LEPC staff, must be put into the general funds and therefore would not necessarily be used for LEPC activities or staff. Therefore, it was recommended that the four LEPC staff positions be State positions assigned to the various counties. This would allow the money generated by the fee structure to be spent only HEPCRA activities.

Other recommendations or comments by Commissioners include (see attachment 1 for the revised Bill):

- 1) All references to a "Safety Program" were deleted;
- 2) After some discussion Lewin stressed the importance of paid travel expenses and per diem for outer island HSERC members. Gransback also voiced the importance of the continued support of the HSERC by the outer island members and that if necessary the State Civil Defense Agency will help with travel expenses until the funding of the program is available. Anderson informed the outer island LEPC members that if travel funds were not readily available notify the DOH;
- 3) It is recommended that a comprehensive State Chemical Inventory Form be developed that would serve as both §§311 and 312 reporting;
- 4) Anderson asked Ho to investigate how hearing officers were to be assigned;
- 5) It was questioned if the HSERC or the Director should have the rule making authority. Lewin prefers that the authority lie with the HSERC. This would allow the HSERC to be located with another agency or to be split, if appropriate;
- 6) Discussion regarding the need to specify Kalalau as a separate LEPC or planning district resulted in the clarification that the DOH is the LEPC for Kalalau;
- 7) Ikeda pointed out that to specify that the Mayors are to designate LEPC members would contradict the Federal Law. Therefore, it was decided to change the language to the HSERC is to appoint based on Mayor recommendations;
- 8) Much discussion resulted from the recommendation that regulated facilities are to submit emergency response plans. It was decided to provide authority to the HSERC to require such plans via rulemaking;
- 9) It was decided that LEPCs will be considered "State" entities;
- 10) Menor inquired as to how HEPCRA would affect establishing laws at the county level. Anderson stated that HEPCRA wouldn't preclude counties from establishing counties laws.
- 11) Vinton stated that as a matter of public policy PRI disagrees with fees which would in fact be passed on to consumers as hidden costs. Anderson stated that the Governor would take that fact into consideration, however the program needs funding and any alternate plans would be considered;
- 12) Regarding § 12(a), Vinton and Roberts both had a problem with the term the phrase "or persons *requested* by". The concern was, what if

injury or death results from an unqualified person being at a facility upon the *request* of the HSERC or the LEPC, should that person not be liable? Anderson suggested that the language could be revised and that any suggestions would be considered;

- 13) Anderson stated that § -15 appeared to be redundant with § -13, therefore delete § -15;
- 14) After considerable discussion it was agreed that § -16 is unnecessary because Superfund takes care of criminal penalties when warranted. Charlton further clarified that is a facility doesn't have an OSHA plan and someone is killed, ~~DIOSH~~ would cover that situation; and
- H1 OSH
15) Lewin informed the Commission that a "cap" was probably necessary on the fee structure. Fee generated over \$300,000 would not be approved by the legislature. The commission agreed that a cap of \$250,000-300,000 was a good idea. Anderson suggested that the fee structure subcommittee include "not to exceed" language when they review and recommend changes to the bill.

The motion was made and passed to proceed with the draft legislation. Lewin stated that the bill must be finalized and approved by the Commission.

IV. HSERC "Guidelines"

Revisions on the HSERC Guidelines will be postponed until the Hawaii EPCRA Bill has been finalized.

V. Schedule Next HSERC Meeting (#14)

The next meeting of the HSERC was scheduled for December 11, 1992. Agenda items will include finalizing the HEPCRA Bill and fee proposals from the subcommittee.

The motion was made to adjourn the meeting at 11:20 a.m. The motion was passed.

This Draft Meeting Summary is submitted to the Hawaii State Emergency Response Commission.

Respectfully submitted,

RHONDA K. GOYKE

date

JUSTIFICATION SHEET

~~STEVE~~ RG
12/11/92 HSEAC
WORKING INTO
COPY

November 20, 1992

mtg
#14
Comments

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

PURPOSE: To establish a State Emergency Planning and Community Right-to-Know program, including establishing a Emergency Planning and Community Right-to-Know fund funded by reporting fees from regulated facilities. This fund will be used to support the State's responsibilities under the Federal Emergency Planning and Community Right-to-Know Act.

MEANS: Enact new law, Emergency Planning and Community Right-to-Know Act.

JUSTIFICATION: Current provisions for the Emergency Planning and Community Right-to-Know program are codified in the federal law only under the federal Superfund Amendments and Reauthorization Act (SARA, Title III). The state of Hawaii has begun implementation of this program based solely on the State's authorities as defined in this federal law. No provisions were made for federal funding for this new requirement. The purpose of this proposed State statute would be to establish a fee collection system and an Emergency Planning and Community Right-to-Know fund to provide resources for State and local agencies required to fulfill the requirements of SARA, Title III, and to provide a mechanism for the State to recover penalties into a State managed fund if chemical handlers do not comply with Title III. As the federal statute is currently written, without a state EPCRA law, any recovery of penalties for non-compliance with Title III must be returned to the federal government, even if the State conducts the enforcement action. Once a state EPCRA law is in place these penalties can go to the state.

GENERAL FUNDS: None

PROGRAM ID: HTH 849-FD

OTHER FUNDS: Revolving Fund

OTHER AGENCIES
AFFECTED: DOA, DOD, DLIR, DLNR, DBEDT, DOT, OEQC, UH, American Red Cross, County Civil Defense Agencies.

HTH-9(93)

92:5675

JOHN WAIHEE
GOVERNOR



RECEIVED
OFFICE OF THE DIRECTOR
DEPT. OF HEALTH

REX D. JOHNSON
DIRECTOR

DEPUTY DIRECTORS
JOYCE T. OMINE
AL PANG
JEANNE K. SCHULTZ
CALVIN M. TSUDA

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION

869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

DIR-H
1.070

November 10, 1992

TO: John C. Lewin, M.D., Chairman
The Hawaii State Emergency Response Commission

FROM: Rex D. Johnson *Rex*
Director of Transportation

SUBJECT: DRAFT HAWAII STATE EMERGENCY PLANNING AND COMMUNITY
RIGHT TO KNOW ACT (EPCRA)

We have reviewed the Draft EPCRA Bill and offer the following comments and recommendations as agenda material at the next meeting of the Hawaii State Emergency Response Commission.

- a. Reference definition for "facility". Recommend the words "truck terminals" be changed to read "transportation terminals" for purpose of continuity with Federal and State regulations which govern the safe transportation of hazardous materials by aircraft, vessel and motor vehicle. Furthermore, some transportation terminals where hazardous materials arrive for follow-on shipment by commercial carrier have no connection with a trucking firm, e.g., large quantities of hazardous materials arrive at Honolulu Commercial Harbor by ship for transshipment by barge to a Neighbor Island.
- b. The definition of "Hazardous Materials" in the proposed EPCRA might be in conflict with existing definitions for hazardous materials established in the Code of Federal Regulations, Title 49, Hazardous Materials Regulations, paragraph 171.8, and State of Hawaii Revised Statutes (HRS), Section 286-XII. If the proposed EPCRA is to affect any mode of commercial transport of hazardous materials or even the reporting of a hazardous materials incident, then it is recommended that this matter be brought to the

attention of the State Attorney General to ensure appropriateness of the definition for hazardous materials.

- c. There are numerous references throughout the draft EPCRA to various teams which do the same emergency response job, e.g., "certified hazardous substances response team", certified hazardous materials response Team; and "hazardous materials response team". Also, at paragraph 5 on Page 21 of the draft EPCRA the terms "hazardous materials safety program" and "hazardous substances safety program" are inter-mixed in various sentences throughout the paragraph. For purpose of clarity and to simplify the content of the draft EPCRA, especially for the thousands of people who handle, store, and transport hazardous materials in commerce, recommend using only the familiar terminology of "Hazardous Materials Emergency Response Team" and "Hazardous Materials Safety Program" where needed in the EPCRA. This recommended change would also be consistent with Federal and State Occupational Safety and Health regulations which require maintenance of "Material Safety Data Sheets" at facilities that store, process and ship hazardous materials and hazardous waste.

- d. Both the draft EPCRA and the HRS 286-XII outline incident reporting requirements. We also know that continuity in reporting and collecting the proper data is essential to triggering a quick and appropriate incident response. To minimize any possibility of conflict in reporting procedures, the enclosed copy of HRS 286-XII is provided to help the Hawaii State Emergency Response Commission's subcommittee on draft EPCRA Revisions determine if any of the proposed incident reporting requirements will need to be changed.

If you have any question, please call Ralph Moore at 587-2164.

Encl.

shipping papers and hazardous waste manifests of motor carriers and persons subject to this part. Every state and county officer charged with enforcement of laws and ordinances shall assist in the enforcement of this part and of all rules adopted pursuant to this part and issue citations for violations as appropriate. [L Sp 1977 1st, c 20, pt of §1; am imp L 1984, c 90, §1; am L 1986, c 299, §1]

**[PART XII.] TRANSPORTATION OF HAZARDOUS MATERIALS,
HAZARDOUS WASTE, AND ETIOLOGIC AGENTS**

Cross References

Environmental response law, see chapter 128D.

Hazardous waste management, see chapter 342J.

[§286-221] Definitions. As used in this part, unless the context otherwise requires:

“Etiologic agent” means a viable microorganism, or its toxin, which causes or may cause human disease.

“Extremely hazardous substance” means for transportation purposes, chemicals transported in commerce that could cause serious health effects following short-term exposure from accidental releases and which are listed in part 355 of title 40 of the Code of Federal Regulations.

“Hazardous material” means a substance or material, including a hazardous substance, which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

“Hazardous materials incident” means an occurrence or likely occurrence or potential of a spill, release, leakage, dumping, or loss of control of an extremely hazardous substance, hazardous substance, hazardous material, hazardous waste, or etiologic agent during the course of transportation in commerce including loading, unloading, or temporary storage.

“Hazardous substance” means for transportation purposes, shipments of particular quantities of hazardous substances that are significant enough to be a substantial threat to public health and the environment, and which are listed in part 172 of title 49 of the Code of Federal Regulations.

“Hazardous waste” means any material designated in part 261 of title 40, of the Code of Federal Regulations and which are subject to the hazardous waste manifest requirements of part 262 of title 40, Code of Federal Regulations.

“Transportation-related release” means a release of a hazardous material, hazardous substance, extremely hazardous substance, hazardous waste, or etiologic agent that occurs during the course of transportation in commerce including storage incidental to transportation while under active shipping papers or manifests and which has not reached the ultimate consignee. [L 1989, c 185, pt of §2]

[§286-222] General powers. (a) The department of transportation may regulate the transportation of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents by motor carrier in commerce.

(b) The department shall annually adopt the hazardous materials regulations established by the United States Department of Transportation and published in title 49 of the Code of Federal Regulations, parts 107, 171 to 173, inclusive, and parts 177 and 178. All other rules adopted by the State and political subdivisions thereof shall be consistent therewith.

(c) Any hazardous material, including hazardous substances and hazardous wastes, which meets the federal and state criteria of a hazardous material must be handled and transported according to the appropriate requirements of the federal hazardous materials regulations and the additional requirements in this part. [L 1989, c 185, pt of §2]

[§286-223] Scope. (a) The federal rules establish minimum standards and must be complied with when transporting a hazardous material, hazardous waste, hazardous substance, or etiologic agent by motor carrier in commerce.

(b) For purpose of clarity and conformance with the rules established for describing hazardous materials on shipping papers and simplicity in hazardous materials incident reporting, hazardous substances and extremely hazardous substances as previously defined, shall be reported as hazardous materials.

(c) Transport shall be deemed to include any operation incidental to the whole course of carriage by motor carrier from shippers point of origin to final destination.

(d) No person shall transport any hazardous material, hazardous waste, hazardous substance, or etiologic agents outside the confines of the person's facility or other location of storage or use, or offer or deliver any hazardous materials, hazardous wastes, hazardous substances, or etiologic agents to a motor carrier for transportation in commerce, nor shall any motor carrier accept any hazardous materials, hazardous wastes, hazardous substances, or etiologic agents for transport, without compliance with the applicable requirements of the hazardous materials rules adopted by the department, including those relating to packaging of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents, marking and labeling of packages, preparation and carriage of shipping papers or manifests, handling, loading and unloading packages, placarding of the transporting vehicle, inspection of motor carrier vehicles, and motor carrier accident and hazardous materials incident reporting.

(e) No person in the course of transportation in commerce, shall spill, dump, deposit, or cause the release of a hazardous material, hazardous waste, hazardous substance, or etiologic agent upon a public highway, street, or the surrounding or connecting property, to include but not be limited to, storm drains, gutters, waterways, canals, lakes, and ocean shorelines, without immediately taking action to stop the spread of the material or remove the same or cause the same to be removed. If such person fails to comply with this subsection, the governmental agency responsible for the maintenance of the highway, street, or property on which the material was deposited may remove such materials and collect, by civil action, if necessary, the actual cost of the removal operation and repair of damage to the affected facility or property from the person responsible as stated in this subsection.

(f) Owners or operators of a facility from which there is a transportation-related release are subject to the hazardous materials transportation incident reporting requirements of this part.

(g) A copy of any written report required under this part shall be submitted to the director of transportation within fifteen days of the reported incident. [L 1989, c 185, pt of §2]

[§286-224] Inspections. (a) Any shipment or transport of hazardous materials, hazardous wastes, or hazardous substances, by motor vehicle in commerce of which vehicle placarding or a shipping paper or manifest is required by the hazardous materials regulations adopted by the State, is subject to inspection by persons appointed by the director of transportation to enforce the safe transportation of hazardous materials, hazardous wastes, and hazardous substances in commerce and

by those state and county officers charged with the enforcement of laws and ordinances adopted pursuant to this part.

(b) All carriers and persons that use a highway or street to transport hazardous materials, hazardous wastes, hazardous substances, or etiologic agents in commerce shall afford the director of transportation, persons designated by the director, and those persons designated by the county executive officers, reasonable opportunity to enter and inspect freight containers, and motor vehicles, to review and document deficiencies on shipping papers and manifests, and to inspect other places incidental to the transshipment of hazardous materials, hazardous wastes, hazardous substances, and etiologic agents by motor carrier vehicles. [L 1989, c 185, pt of §2]

[§286-225] Hazardous materials transportation incident reporting. (a) Any employee of the motor carrier, the driver, handlers and loaders, and any employees of state and county governments shall report incidents involving hazardous materials, hazardous wastes, and etiologic agents as follows:

- (1) Upon becoming aware of or observing the potential or actual spill, leakage, or loss of control of a hazardous material, hazardous waste, or hazardous substance, shall immediately, or as soon as possible, notify the nearest police or fire department and make a report of the situation. This incident reporting requirement does not relieve a carrier or shipper of the responsibility to notify the United States Department of Transportation of certain hazardous materials incidents.
- (2) Whenever an etiologic agent shipment is lost, stolen, or suspected or known to be leaking from its containment packaging, shall immediately, or as soon as possible, notify the state department of health, and the Center for Disease Control in Atlanta, Georgia, and make a report of the situation.

(b) Whenever possible, the incident report should include the name and telephone number of the person calling in the report, the name of the carrier, type of vehicle involved, injuries or fatalities connected with the incident, if any, the location and time of the incident, the duration of a chemical release into the environment, if known, a description of hazards involved to include the chemical name or identity of any substance released, hazardous materials classification, markings, and information on labels and placards affixed on packages, containers or vehicles, and emergency actions taken including evacuation to minimize hazardous effects to public health, safety, and property. [L 1989, c 185, pt of §2]

[§286-226] Routes. The intrastate shipment of explosives of any quantity that would require placarding of the transporting motor vehicle by the rules adopted pursuant to this part, shall not take place without first giving the police department and the fire department of the county in which the explosives are to be transported a forty-eight hour minimum advance notice. This advance notice shall be in writing and indicate the quantity and type of explosive material being shipped, the date and time of the shipment, and the route over which the explosive shipment will travel. This provision does not apply to the military during the period of a civil defense emergency proclaimed by the President or the governor. [L 1989, c 185, pt of §2]

[§286-227] Penalty. (a) Any person who violates this part or any rule adopted pursuant to this part shall be subject to a civil penalty of not more than \$10,000 for each violation. Each day the violation continues shall constitute a separate offense. An action to impose or collect the penalty provided in this section shall be considered a civil action.

**BRIEF
DR. LEWIN
DR. ANDERSON**

**HAWAII STATE EMERGENCY RESPONSE COMMISSION (HSERC)
MEETING #14**

**Friday December 11, 1992
9:00 a.m. - 12:00 noon**

AGENDA

- I. Call to Order (DR. LEWIN 15 min.)
 - A. Opening Remarks
There are basically two main reasons we are meeting here today, 1) To come to consensus regarding the draft HEPCRA Bill and 2) To discuss a model for a fee structure.
 - B. Discussion/Approval of Minutes from HSERC Meeting #13
- II. Update by Attorney Generals Office (DR. LEWIN)
Due to a conflict in her schedule, Kathy Ho will not be able to attend today's meeting.
- III. Draft Hawaii EPCRA Bill (2 hours)
 - A. Fee Structure Subcommittee (Steve Armann 30 min)
The subcommittee composed of myself, Roy Price, Chris Takeno, Sel Menor, Clifford Ikeda, and Rhonda Goyke met on December 8th. The consensus of the subcommittee was to recommend that the fee system be kept very simple and actually be put back into the bill in detail. The recommendation is:
 - 1) Initiate a straight flat fee that would be the same for everyone;

**BRIEF
DR. LEWIN
DR. ANDERSON**

- 2) The fee recommended is \$100 per Tier II. Therefore, anyone that is required to submit a Tier II would pay an annual fee of \$100;
- 3) The fee would pay for a permit;
- 4) Provisions would be made for emergency provisions, such as someone who doesn't normally handle hazardous substances could get an emergency permit;
- 5) The money generated would be used for administration costs of the HSERC and LEPCs, public awareness, and training;
- 6) Purpose of a simple annual fee is to reduce administrative costs to DOH and to the facilities, keep recordkeeping simple;
- 7) \$100 per Tier II would generate approximately \$50,000.

B. Open discussion (DR. LEWIN)

At this time we would like to initiate an open discussion of the revised draft bill.

1. The November 11, 1992 version of the draft bill has been revised according to HSERC comments. These revisions are detailed in the minutes of our November 19th meeting.
2. We would like to point out a correction, page 3, line 17 should read "Appendix A of 40 C.F.R. Part 355, as amended."
3. I am very glad to report that the City and County of Honolulu LEPC has been meeting regularly and has taken an interest in the Draft Bill. At this time, we would like

**BRIEF
DR. LEWIN
DR. ANDERSON**

to ask George Kekuna, to present an overview of the opinions and recommendations of the C&C of Honolulu LEPC.

4. We would also like to thank Hawaii DOT for submitting written comments which we have distributed for discussion. I think we should discuss these comments at this time.
5. Any additional comments or concerns to be addressed by the Commission at this time?

IV. Schedule Next HSERC Meeting #15 (DR. LEWIN 10 min.)

JOHN WAIHEE
GOVERNOR OF HAWAII



JOHN C. LEWIN, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH

P. O. BOX 3378
HONOLULU, HAWAII 96801

In reply, please refer to:
HEER OFFICE

April 7, 1993

E0404ly.h1

MEETING SUMMARY
HAWAII STATE EMERGENCY RESPONSE COMMISSION
MEETING #14

Friday December 11, 1992
9:00 a.m. - 12:00 noon

Department of Health's
Kinau Hale Board Room, 1st Floor
1250 Punchbowl Street

HSERC Commission Members and Representatives:

John C. Lewin, M.D., Chair, HSERC, DOH
Bruce S. Anderson, Ph.D., Vice Chair, HSERC, DOH
Roy Price for Major General Edward Richardson, DOD
Gerald Kinro for Yukio Kitagawa, BOA
Russell Charlton for Keith Ahue, DLIR
Tom Smyth for Mufi Hannemann, DBEDT
Ralph Moore for Rex Johnson, DOT
George Kekuna, Honolulu LEPC Representative
Clifford Ikeda, Kauai LEPC Representative
Sel Menor, Maui LEPC Representative
Harry Kim, Hawaii LEPC Representative
Rheta Thielen for Jiggie Hommon, Red Cross

Other Attendees:

Steven Armann, DOH
Rhonda Goyke, DOH
James Vinton, BHPPA
Robert Roberts, HSPA
Stacy Rogers, HCC/UH
Joseph Blackburn, Maui FD
Chris Takeno, C&C of Honolulu LEPC
James Bac, DBED/Energy

I. Call to Order

The 14th meeting of the HSERC was called to order by Lewin at 9:15 a.m.

A. Opening Remarks

Lewin stated the two main objectives of the meeting:

- 1) To come to consensus regarding the draft HEPCRA Bill; and
- 2) To discuss a model for a fee structure.

B. Discussion/Approval of Minutes from HSERC Meeting #13

Charlton noted that DOSH has been changed to HIOSH and the minutes should reflect the correct name.

Minutes were approved with change noted.

II. Update by the Attorney General's Office

Due to a scheduling conflict Kathy Ho is unable to join us. Lewin requested that a letter be drafted to Attorney General Marks requesting a Deputy AG at every HSERC meeting, stressing the importance of the Commission.

III. Draft State EPCRA BILL

A. Fee Structure Subcommittee

Armann explained that a fee subcommittee composed of: Roy Price, Chris Takeno, Sel Menor, Clifford Ikeda, Steve Armann, and Rhonda Goyke met on December 8th to discuss EPCRA fee options. The subcommittee recommendation was to make a fee system as simple as possible, both for the reporting facilities and for the HSERC. The recommendation is:

- 1) Stay away from sliding scales;
- 2) Initiate a straight flat fee that would be the same for everyone;
- 3) The fee recommended is \$100 per Tier II. Therefore, anyone that is required to submit a Tier II would pay an annual fee of \$100;
- 4) The fee would pay for a permit;

- 5) Provisions would be made for emergency provisions, such as someone who doesn't normally handle hazardous substances could get an emergency permit;
- 6) The money generated would be used for administration costs of the HSERC and LEPCs, public awareness, and training;
- 7) Purpose of a simple annual fee is to reduce administrative costs to DOH and to the facilities, keep recordkeeping simple; and
- 8) \$100 per Tier II would generate approximately \$50,000.

B. Open discussion

Anderson voiced concern over the inadequate funding that this recommendation would generate. \$50,000 would not be enough to support the staff that is needed for HSERC and LEPC support personnel. In addition, travel funds are needed for HSERC members and support staff.

Lewin suggested a compromise, the \$50,000 could support 1/2 FTE and pay for travel costs. Ideally there would be a support staff at the county level, but the current economy cannot support a large fee. However, we need to plan for the future and a small fund is a start at becoming self sufficient in the future.

Blackburn noted that the bill does not indicate where the LEPC will be administratively attached.

Anderson explained that the HSERC is an independent body with DOH providing administrative support, the LEPCs would be organized the same way.

Blackburn suggested to avoid confusion the administering agency should be spelled out in the bill.

Armann stated that the subcommittee discussed the problem of accountability at the county level. Therefor, it is the recommendation of the subcommittee that the language of the bill be changed back to reflect that the Mayor will appoint the LEPC members. Therefor, the Mayors would ultimately be responsible to ensure that the LEPC functions are carried out.

Anderson stated that if a 1/2 FTE is hired that would leave approximately \$20,000, which would be \$5,000 for each county which is not enough to develop ownership at the county level. How would the money be used.

Smyth suggested having one pool of money and the LEPCs could supply a budget and the HSERC could review and reward the money as appropriate, based on needs and request.

Price stated that is was refreshing to hear that the counties need help. The State economy is struggling due to Iniki and the recession. The EPCRA program is competing with other high priority programs. The rational behind a filing fee is that it would minimize the amount of administrative work associated with a fee system. There is no one to do the work, therefor the work load should be kept to a minimal amount. A state law would also allow fines to stay in the State instead of going to EPA. The EPCRA fund could grow slowly with the filing fees as well as any fines. The HSERC would continue to support the LEPCs as best as they can.

Price stated that the focus should be on the first responders, that is the county fire personnel, training and equipment for a Hazmat response team on each county.

Lewin inquired as to the equipment needed.

Blackburn stated that training was needed much more than equipment which could be charged to the spiller.

Kim stated that for Hawaii county he didn't know what the actual Hazmat need was. What is needed on Hawaii county is a clear division of responsibility. If a

geothermal incident is to occur it is not his responsibility except evacuation and warning. It is DOH responsibility.

Lewin stated that the \$50,000 is a small amount to do the job that needs to be done. Assessment and policy set up is the most important aspect of the program. Once a strong policy is in place the funding will follow. Set up adequate infrastructure to measure the success or failure of the program. It is understood that County/LEPC resources are inadequate but the State resources are inadequate as well. The fund generated by the fees could at least be used to hire the equivalent of a halftime to fulltime employee. This new person could be used as a link, by attending all LEPCs and the HSERC meetings.

Price clarified that he intended that the new staff person be used for compiling meeting minutes, xeroxing, etc. All these administrative tasks add up. We need to specify our intent and set priorities and make sure this is understood by the LEPCs. The fund will start out small, but once established the funds will grow as fines are initiated.

Armann stated that the way Chapter 128D was currently written most fines would go into the Revolving Fund. Therefore, fines for not reporting might be small.

Lewin queried the Commission as to the opinion of the HSERC regarding the need for EPCRA support staff. To be able to hire staff we need the fee structure.

Kinro stated that he supports a position to assist the HSERC and LEPCs, at least a 1/2 FTE.

Kim voiced the opinion that if the bill was left as is, it is essentially nonfunctioning. What is needed is to identify responsibilities of the various agencies involved. More help is needed than simply clerical assistance. What is needed is one agency to coordinate all activities.

Charlton noted that the funding issue at hand is a separate issue for the organizational issue that Kim is referring to.

Lewin stated that there is a need for a coordination body with regards to policy building and that this should be the function of the State.

Kim stated his preference for a single LEPC for the State.

Anderson emphasized the need for local plans.

Price explained that there are emergency operation plans in each county already. Specific requirements of EPCRA could be incorporated into the existing plans. EOPs are the responsibility of CD.

Kekuna agreed that the best place for the LEPC hazmat (EPCRA) EOP function was with CD. Kekuna also noted that EPCRA was becoming more visible and that enforcement should become our focus.

Blackburn noted that EOP are in place in each county, but facility specific information is missing. Someone must do the work.

Anderson stated that the LEPCs were set up to do the necessary work.

Lewin queried about the possibility of making the CD an advisory committee to the LEPC.

Kekuna clarified that there are specific requirements relating to advisory committees and how they are set up.

Kim could not support such a plan. Hawaii County can not handle additional responsibilities.

Charlton queried as to who the members of the "State LEPC" would be. Would the HSERC members be the LEPC members as well.

Lewin stated that if there was to be a "State LEPC" then the HSERC members would indeed do double duty as State LEPC members also.

Anderson stressed the need for local industry representatives in the LEPC as stated in EPCRA. EPCRA has very specific requirements as to who LEPC member should be.

Kim stated that at the county level an advisory board could be developed that could input and review the State LEPC plan.

Moore stated that his observation has been that the LEPC structure is the same as the CD structure. Therefore, if the Counties don't want an LEPC then perhaps we should just have an HSERC and have CD pick up the necessary responsibilities. This issue needs to be resolved once and for all and we should stop going back and forth with the same issue.

Charlton stated that funding was the real issue. The solution is to fund the program through the HEPCRA Bill, not to just push the responsibility around.

Lewin stated establishing LEPCs with an advisory function makes sense. Industry has an advisory function and the plans are centrally located. Acknowledge that the plans are HSERC responsibility. HSERC will work with CD to do the plans.

Blackburn stress the fact that the local plans must comply with EPCRA, including facility specific information and hazard analysis.

Takeno queried as to who would be held accountable for completing the plans.

Vinton stated that the commission should then be expanded to include representation from the public and the facilities impacted.

Anderson explained that the county advisory committees would provide that forum.

Lewin summarized the accomplishments of the meeting:

- 1) Planning function will be brought into the HSERC;
- 2) LEPC (advisory boards) will be appointed by the Mayor; and
- 3) Plans will be written in accordance with EPCRA.

Ikeda stressed opposition to this approach. He feels that it is important to involve non government people in the planning process. He has been trying to get away from the details of the plan, delegating the detailed work to the Fire Department. With this new organization the work load would be back on him.

Charlton stated that a fee system was needed that will fund the program that is required.

Lewin clarified that fees of \$500-600 per company would not get passed with the current economic situation.

Takeo stressed the point that if the responsibility of the Plans are taken away from the LEPC, there is no motivation for the LEPC to meet.

Lewin stated that the vested concern of industry would be the motivating factor.

Kim made the motion to go with the \$100 filing fee,

Davis queried as to the exemption of government agencies.

Lewin stated that clearly government would not be exempt.

Blackburn stated that Maui had planned to introduce a county fee that would fund enforcement. He queried as to the possibility of these facilities being exempt from the State filing fee. It would be unfair to tax Maui facilities twice.

Lewin suggested that the county fee be reduced by the amount paid to the State, therefore alleviating double fees.

Lewin reminded the Commission that the motion was on the floor to accept the \$100 filing fee per Tier II.

Motion Passed

Thielen stressed concern that the purpose of the meeting, to finalize the draft bill, was not going to be met. The bill is worded such that it is very general and the decision made today do not need to affect the wording of the bill. The motion was made to adopt the bill as written, work assignments can be adjusted later.

Kinro seconded the motion.

Amendments to the motion:

- 1) Bill should be changed to reflect that the Mayor are to appoint LEPC members;
- 2) \$100 filing fee will be placed in bill;
- 3) Page 3, line 25, change motor vehicle to motor carrier, Kinro opposed this motion amendment;
- 4) Page 4, definition of "Release" will be changed to mimic 128D;
- 5) Page 6, line 2, change adjutant general to "director of the department of defense";
- 6) Page 7, line 3, add "staff support";
- 7) Page 10(12) add "annual" update;
- 8) Page 12, line 10, change to read "With support from the HSERC local emergence response plans shall be submitted to..."

Motion to adopt the bill with the above amendments was passed.

Lewin commented that the changes would be reflected in a revised copy of the bill and sent out to all members.

Kim requested that the subcommittee review the revisions one last time before the bill becomes final.

V. Schedule Next HSERC Meeting (#15)

The next HSERC meeting was tentatively set for the end of February 1993, if needed to review or revise the HEPCRA Bill .

The motion was made to adjourn the meeting at 12:05 p.m.

The motion was passed.

This Meeting Summary is submitted to the Hawaii State Emergency Response Commission.

Respectfully submitted,

Rhonda K. Gojke 5/7/93
RHONDA K. GOYKE Date

04
E117RG.m1

November 25, 1992

**DRAFT MEETING SUMMARY
HAWAII STATE EMERGENCY RESPONSE COMMISSION
MEETING #13**

Thursday, November 19, 1992
9:00 a.m. - 12:00 noon

State Office Towers
Conference Room 1008
235 South Beretania Street

HSERC Commission Members and Representatives:

John C. Lewin, M.D., Chair, HSERC, DOH
Bruce S. Anderson, Ph.D., Vice Chair, HSERC, DOH
Don Gransback for Major General Edward Richardson, DOD
Gerald Kinro for Yukio Kitagawa, BOA
Russell Charlton for Keith Ahue, DLIR
Ying Fan Xu for William Paty, BLIR
Tom Smyth for Mufi Hannemann, DBEDT
Barbara Siegel, School of Public Health, UH
George Kekuna, Honolulu LEPC Representative
Clifford Ikeda, Kauai LEPC Representative
Sel Menor, Maui LEPC Representative

Other Attendees:

Steven Armann, DOH
Rhonda Goyke, DOH
James Vinton, PRI
Michael Choy, HECO
Robert Roberts, HSPA
Eugene Lee, DPW
Laurence Lau, AG Office
Kathy Ho, AG Office

I. Call to Order

The 13th meeting of the HSERC was called to order by Anderson at 9:05 a.m.

A. Opening Remarks

Anderson stated that the main objective of the meeting was to revise the draft HEPCRA Bill. The draft legislative package had been submitted to the Governor and it appears that the HEPCRA Bill will be part of the Administrative Package.

B. Discussion/Approval of Minutes from HSERC Meeting #12

The motion was passed to accept the minutes, as written.

II. Update by the Attorney General's Office

Lau explained that the workload of the Attorney General's Office had been reassigned by Sonia Faust. As such, he would no longer be assigned to work with the HSERC. However, Kathy Ho would be taking over those responsibilities. Ho joined the Attorney General's Office on November 16, 1992.

III. Draft State EPCRA BILL

Anderson chaired a subcommittee composed of: George Kekuna, Chris Takeno, Sel Menor, Clifford Ikeda, Steve Armann, and Rhonda Goyke. The subcommittee presented a revised draft of the Hawaii EPCRA bill, incorporating four major recommendations for Commission consideration. The four recommendations were:

- 1) Follow 128D as closely as possible;
- 2) Shorten the Bill as much as possible, removing any areas that were not absolutely necessary;
- 3) Remove many of the details of the Bill, instead provide authority to adopt, amend, and repeal rules to implement HEPCRA, including a fee structure;
- 4) During subcommittee discussion it became apparent that any monies received by the counties, to hire LEPC staff, must be put into the general funds and therefore would not necessarily be used for LEPC activities or staff. Therefore, it was recommended that the four LEPC staff positions be State positions assigned to the various counties. This would allow the money generated by the fee structure to be spent only HEPCRA activities.

Other recommendations or comments by Commissioners include (see attachment 1 for the revised Bill):

- 1) All references to a "Safety Program" were deleted;
- 2) After some discussion Lewin stressed the importance of paid travel expenses and per diem for outer island HSERC members. Gransback also voiced the importance of the continued support of the HSERC by the outer island members and that is necessary the State Civil Defense Agency will help with travel expenses until the funding of the program is available. Anderson informed the outer island LEPC members that if travel funds were not readily available notify the DOH;
- 3) It is recommended that a comprehensive State Chemical Inventory Form be developed that would serve as both §§311 and 312 reporting;
- 4) Anderson asked Ho to investigate how hearing officers were to be assigned;
- 5) It was questioned ~~as to~~ if the HSERC or the Director should have the rule making authority. Lewin prefers that the authority lie with the HSERC. This would allow the HSERC to be located with another agency or to be split, if appropriate;
- 6) Discussion regarding the need to specify Kalalau as a separate LEPC or planning district resulted in the clarification that the DOH is the LEPC for Kalalau;
- 7) Ikeda pointed out that to specify that the Mayors are to designate LEPC members would contradict the Federal Law. Therefore, it was decided to change the language to the HSERC is to appoint based on Mayor recommendations;
- 8) Much discussion resulted from the recommendation that regulated facilities are to submit emergency response plans. It was decided to provide authority to the HSERC to ~~develop~~ such plans via rulemaking;
- 9) It was decided that LEPCs will be considered ~~"State" agencies~~; *Require*
- 10) Menor inquired as to how HEPCRA would affect establishing laws ~~at the~~ *ENTITIES.* county level. Anderson stated that HEPCRA wouldn't preclude counties from establishing counties laws.
- 11) Vinton stated that as a matter of public policy PRI disagrees with fees which would in fact be passed on to consumers as hidden costs. Anderson stated that the Governor would take that fact into consideration, however the program needs funding and any alternate plans would be considered;
- 12) Regarding § 12(a), Vinton and Roberts both had a problem with the term the phrase "or persons *requested* by". The concern was, what if

injury or death results from an unqualified person being at a facility upon the *request* of the HSERC or the LEPC, should that person not be liable? Anderson suggested that the language could be revised and that any suggestions would be considered;

- 13) Anderson stated that § -15 appeared to be redundant with § -13, therefore delete § -15;
- 14) After considerable discussion it was agreed that § -16 is unnecessary because Superfund takes care of criminal penalties when warranted. Charlton further clarified that is a facility doesn't have an OSHA plan and someone is killed, DIOSH would cover that situation; and
- 15) Lewin informed the Commission that a "cap" was probably necessary on the fee structure. Fee generated over \$300,000 would not be approved by the legislature. The commission agreed that a cap of \$250,000-300,000 was a good idea. Anderson suggested that the fee structure subcommittee include "not to exceed" language when they review and recommend changes to the bill.

The motion was made and passed to proceed with the draft legislation. Lewin stated that the bill must be finalized and approved by the Commission.

IV. HSERC "Guidelines"

Revisions on the HSERC Guidelines will be postponed until the Hawaii EPCRA Bill has been finalized.

V. Schedule Next HSERC Meeting (#14)

The next meeting of the HSERC was scheduled for December 11, 1992. Agenda items will include finalizing the HEPCRA Bill and fee proposals from the subcommittee.

The motion was made to adjourn the meeting at 11:20 a.m. The motion was passed.

This Draft Meeting Summary is submitted to the Hawaii State Emergency Response Commission.

Respectfully submitted,

RHONDA K. GOYKE

date

A BILL FOR AN ACT

RELATING TO EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that exposure to hazardous
2 materials has the potential for causing undesirable health and
3 environmental effects and poses a threat to the health, safety, and
4 welfare of the residents of this State, and that the residents of
5 this State and emergency service personnel who respond to emergency
6 situations should be protected from the health hazards and harmful
7 exposure resulting from hazardous material releases at facilities
8 and from transportation related accidents.

9 The purpose of this Act is to:

- 10 (1) Create a strong working relationship and partnership
11 between business and industry and the State and its
12 municipalities to protect and safeguard the residents of
13 this State from the health hazards and other risks of
14 harm resulting from or incident to the use, storage,
15 distribution, and transportation of hazardous materials;
16 (2) Designate the Hawaii state emergency response commission
17 as the States emergency response commission and

1 establish an emergency planning district and a LEPC in
2 each county of this State to act in accordance with the
3 provisions of the Emergency Planning and Community
4 Right-To-Know Act of 1986 (Title III of Public Law 99-
5 4990);

6 (3) Establish and maintain a comprehensive hazardous
7 material safety program for the State and it's counties;

8 (4) Create the emergency planning and community right-to-
9 know fund to provide financial assistance to the State
10 agencies and counties to develop an effective and
11 integrated response capability to the health hazards,
12 dangers, and risks which hazardous material releases
13 pose to the general public;

14 (5) Establish an emergency notification system whereby the
15 release of hazardous materials occurring at a facility
16 or resulting from a transportation accident will be
17 promptly reported to the proper State and county
18 emergency response officials;

19 (6) Assign responsibilities to various State and local
20 agencies to ensure the development and furtherance of a
21 comprehensive hazardous material safety program;

22 (7) Provide civil liability protection to officials and
23 emergency response personnel of the State and
24 municipalities who are properly carrying out their
25 duties and responsibilities under the States's hazardous

material safety program; and

- (8) Require persons responsible for the release of hazardous materials to pay the costs incurred by certified hazardous material response teams or supporting paid and volunteer emergency service organizations of emergency response activities necessitated by the hazardous material release.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

HAWAII EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

Section

- 1 Definitions
- 2 Designation and Functions of the Hawaii State Emergency Response Commission
- 3 Establishment of Emergency Planning Districts
- 4 Establishment and Functions of Local Emergency Planning Committees
- 5 Hazardous Substance Safety Program
- 6 Emergency Reporting Requirements
- 7 Emergency Notification Requirements
- 8 Establishment of Funds
- 9 Hazardous Materials Response Teams
- 10 Recovery of Response Costs
- 11 Facility and Vehicle Inspection and Testing

1 -12 Immunity from Civil Liability

2 -13 Penalties and Fines

3 -14 Enforcement

4 -15 Relationship to other laws

5 § -1 Definitions. As used in this chapter, unless the
6 context otherwise requires:

7 "Administrator" means the Administrator of the United States
8 Environmental Protection Agency.

9 "CERCLA" means the Comprehensive Environmental Response,
10 Compensation and Liability Act.

11 "Certified hazardous substances response team" means a team of
12 individuals who are certified and organized by a state agency; a
13 local agency; regional hazardous substances organization;
14 transporter, a manufacturer, supplier or user of hazardous
15 substances; volunteer service organization; private manufacturer,
16 supplier, or user of hazardous substances; volunteer service
17 organization; or private contractor for the primary purpose of
18 providing emergency services to mitigate actual or potential
19 immediate threats to public health and the environmental in
20 response to the release or threat of release of a hazardous
21 substances, which is certified, trained, and equipped in accordance
22 with section -9. Hazardous substances response teams may also
23 be certified to perform stabilization action needed to remove
24 threats to public health and the environment from hazardous
25 material releases.

1 "Commission" or "HSERC" means the Hawaii state emergency
2 response commission.

3 "County agency" means a county or any officer or agency
4 thereof.

5 "Department" means the department of health.

6 "Emergency management" means the judicious planning,
7 assignment, and coordination of all available resources in an
8 integrated program of prevention, mitigation, preparedness,
9 response, and recovery of emergencies of any kind, whether from
10 attack, manmade, or natural sources.

11 "EPCRA" means the Federal Emergency Planning and Community
12 Right-to-Know Act of 1986, as amended (40 U.S.C. section 11001 et
13 seq.)

14 "Extremely hazardous substance" means any substance appearing
15 on the list of extremely hazardous substances published by the
16 Administrator under the authority of section 302 of the Emergency
17 Planning and Community Right-to-Know Act ("Appendix A - The List of
18 Extremely Hazardous Substances and Their Threshold Planning
19 Quantities").

20 "Facility" means all buildings, structures, and other
21 stationary items which are located on a single site or a contiguous
22 or adjacent site which are owned or operated by the same persons
23 and which actually manufacture, produce, use, transfer, store,
24 supply, or distribute any hazardous material. The term includes
25 railroad yards and truck terminals but does not include individual

1 trucks, rolling stock, water vessels, airplanes, or other
2 transportation vehicles.

3 "Hazardous chemical" means any chemical which is a physical
4 hazard or a health hazard, except that the term does not include
5 the following:

- 6 (1) Any food, food additive, color additive, drug, or
7 cosmetic regulated by the United States Food and Drug
8 Administration;
- 9 (2) Any substance present as a solid in any manufactured
10 item to the extent that exposure to the substance does
11 not occur under normal conditions or use;
- 12 (3) Any substance to the extent that it is used for
13 personal, family, or household purposes or is present in
14 the same form and concentration as a product packaged
15 for distribution and use by the general public;
- 16 (4) Any substance to the extent that it is used in a
17 research laboratory or a hospital or other medical
18 facility under the direct supervision of a technically
19 qualified individual; and
- 20 (5) Any substance to the extent that it is used in routine
21 agricultural operations or is a fertilizer held for sale
22 by a retailer to the ultimate consumer.

23 "Hazardous material" means any of the following, as defined
24 in this section:

- 25 (1) A hazardous substance;

- 1 (2) Any extremely hazardous substance;
- 2 (3) A hazardous chemical; and
- 3 (4) A toxic chemical.

4 Except as provided in section -7, the term does not include the
5 transportation, including the storage incident to such
6 transportation, of any substance of chemical subject to the
7 requirements of this chapter, including the transportation and
8 distribution of natural gas.

9 "Hazmat response team organizer" means the state agency, local
10 agency, regional hazardous material organization, volunteer
11 emergency service organization, or hazardous material transporter,
12 manufacturer, supplier or user that organized the certified
13 hazardous material response team.

14 "Hazardous substance" includes any substance designated
15 pursuant to section 311(b)(2)(A) of the Clean Water Act; any
16 element, compound, mixture, solution, or substance designated
17 pursuant to section 102 of CERCLA; any hazardous waste having the
18 characteristics identified under or listed pursuant to §3001 of the
19 Solid Waste Disposal Act; any toxic pollutant listed under section
20 307(a) of the Clean Water Act; any hazardous air pollutant listed
21 under section 112 of the Clean Air Act, as amended (42 U.S.C.
22 §§7401-7626); any imminently hazardous chemical substance or
23 mixture regulated under section 7 of the Toxic Substance Control
24 Act, as amended (15 U.S.C. §§2601-2671); oil, trichloropropane, and
25 other substance or pollutant or contaminant designated pursuant to

1 this chapter 128D, HRS.

2 "Independent agency" means any board, commission, authority,
3 and any other agency and officer of the state which are not subject
4 to the policies, supervision, and control of the governor, except
5 any officer or agency of the judiciary or the legislature.

6 "Local Emergency Planning Committee" or "LEPC" means the local
7 committee within each county responsible for preparing hazardous
8 material plans and performing other functions under EPCRA.

9 "Person" means an individual, firm, corporation, association,
10 partnership, consortium, joint venture, commercial entity, state,
11 county, commission, political subdivision of the State, or, to the
12 extent they are subject to this chapter, the United States or any
13 interstate body.

14 "Release" means any spilling, leaking, pumping, pouring,
15 emitting, emptying, discharging, injection, escaping, leaching,
16 dumping, or disposing of any hazardous substance or pollutant or
17 contaminant into the environment, (including the abandonment or
18 discarding of barrels, containers, and other closed receptacles
19 containing a hazardous substance or pollutant or contaminate); but
20 excludes:

21 (1) Any release which results in exposure of persons solely
22 within a workplace, with respect to a claim which such
23 exposed persons may assert against their employer;

24 (2) Emissions from the engine exhaust of a motor vehicle,
25 rolling stock, aircraft, vessel, or pipeline pumping

1 station engine;

- 2 (3) Release of source, byproduct, or special nuclear
3 material from a nuclear incident, as those terms are
4 defined in the Atomic Energy Act of 1954 (42 U.S.C.
5 §2011), if such release is subject to requirements with
6 respect to financial protection established by the
7 Nuclear Regulatory Commission under 42 U.S.C. §2210;
- 8 (4) Any release resulting from the normal application of
9 fertilizer;
- 10 (5) Any release resulting from the legal application of
11 pesticide products registered under the Federal
12 Insecticide, Fungicide, and Rodenticide Act;
- 13 (6) Release from sewerage systems collecting and conducting
14 primarily domestic wastewater; or
- 15 (7) Any release permitted by any federal, state, or county
16 permit or other legal authority.

17 "Reportable quantity" means the quantity of a hazardous
18 material stated on the various lists of hazardous substances and
19 extremely hazardous substances as defined in chapter 128D.

20 "Response cost" means any of the following:

- 21 (1) Disposable materials and supplies acquired, consumed,
22 and expended specifically for the purpose of the
23 response to the hazardous material release;
- 24 (2) Rental or leasing of equipment used specifically for the
25 response, for example, protective equipment or clothing

1 and scientific and technical equipment;

2 (3) Replacement costs for equipment that is contaminated
3 beyond reuse or repair during the response, for example,
4 self-containing breathing apparatus irretrievably
5 contaminated during the response;

6 (4) Decontamination of equipment contaminated during the
7 response;

8 (5) Compensation of paid employees or members of the
9 hazardous material response team or supporting paid or
10 volunteer emergency service organizations, to include
11 regular and overtime pay for permanent full-time and
12 other full-time employees or members;

13 (6) Special technical services specifically required for the
14 response, for example, costs associated with the time
15 and efforts of technical experts or specialists;

16 (7) Laboratory and testing costs for purposes of analyzing
17 samples or specimens taken during the response;

18 (8) Other special services specifically required for the
19 response, for example, utility costs;

20 (9) Cost associated with the services, supplies and
21 equipment used to conduct an evacuation during the
22 response; and

23 (10) Costs associated with the removal and disposal of
24 hazardous materials.

25 "Rolling stock" means any railroad tank car, railroad boxcar,

1 or other railroad freight car as defined in 49 CFR 215 that
2 contains an extremely hazardous substance in excess of the
3 threshold planning quantity established for such substance and is
4 used as a storage site for such substance.

5 "Service station" means a motor vehicle service station,
6 filling station, garage, or similar operation engaged in the retail
7 sale of motor fuels that are regulated by the Storage Tank and
8 Spill Prevention Act of July 6, 1989 (P.L. 169, No. 32), or a
9 facility whose primary function is auto body repair.

10 "Threshold planning quantity" or "TPQ" means the threshold
11 planning quantity for an extremely hazardous substance as defined
12 in 40 CFR Part 355.

13 "Toxic chemical" means a substance appearing on the list of
14 chemicals described in section 313 of EPCRA, as set forth at 40 CFR
15 Part 372.

16 "Vehicle" means any truck, railroad car, water vessel,
17 airplane, or other transportation vehicle that ships, carries, or
18 transports a hazardous material on any highway, rail line, or
19 waterway within the jurisdiction boundaries of the State.

20 **§ -2 Designation and functions of the Hawaii state**
21 **emergency response commission.** (a) There is created the
22 Hawaii state emergency response commission (HSERC) for the purpose
23 of carrying out all requirements of this chapter; to develop
24 overall policy and direction for a statewide hazardous substances
25 safety program; and to supervise and coordinate the

1 responsibilities of the LEPCs.

2 (b) The HSERC shall consist of the following State officers or
3 their appointed designees: the director of health, director board
4 of agriculture, the adjutant general, director department of labor
5 and industrial relations, director board of land and natural
6 resources, director department of business, economic development
7 and tourism, director department of transportation, dean University
8 of Hawaii school of public health, manager Hawaii State Chapter
9 American Red Cross, director office of environmental quality
10 control, and a representative from each LEPC which shall be *Military?*
11 designated by the Mayor. *(State Attorney General's office (rep))*

12 (c) The chairperson of the HSERC shall be the director of
13 health. A vice-chairperson shall be designated by the chairperson
14 to serve in the absence of the chairperson or his designee. The
15 chairperson or his designee shall have the authority to assign,
16 delegate, or transfer tasks, duties and responsibilities to members
17 of the HSERC. The chairperson or his designee shall approve the
18 appointment of members to the HSERC who are designated by their
19 respective department or office and authorized to fulfill the
20 duties and responsibilities of the appointed member of the HSERC.

21 (d) Members shall serve without compensation, but shall be re-
22 reimbursed for necessary and reasonable actual expenses, such as
23 travel expense, incurred in connection with attendance at HSERC
24 meetings.

25 (e) To conduct routine or emergency business, the HSERC shall

1 meet at the call of the chairperson. Five members of the HSERC
2 shall constitute a quorum for the purpose of conducting the
3 business of the HSERC and for all other purposes. All actions of
4 the HSERC shall be taken by a majority of the HSERC members
5 present.

6 (f) The HSERC support personnel shall be supervised and
7 administered by the department as its primary agent responsible for
8 performing the functions and duties of the HSERC established
9 pursuant to this chapter. For this purpose, the department shall
10 employ such professional, technical, administrative, and other
11 staff personnel as may be deemed essential to carry out the
12 purposes of this chapter and the development and maintenance of a
13 comprehensive hazardous material safety program. These employees
14 shall report directly to the director of health. Funding for these
15 employees shall be appropriated from the fund.

*A.G. Rep.
(Enforcement)*

16 (g) The HSERC shall:

- 17 (1) Carry out all of the duties and responsibilities of a
18 state emergency response commission as specified in
19 EPCRA;
- 20 (2) Develop agency contingency plans relating to the
21 implementation of this chapter;
- 22 (3) Provide guidance and direction to counties for the
23 implementation of this chapter and EPCRA;
- 24 (4) Supervise the operation of LEPCs and ensure that the
25 LEPCs meet all federal and State standards and

1 requirements;

2 (5) Develop a State comprehensive hazardous material safety
3 program;

4 (6) Delegate authority and assign primary responsibility to
5 the adjutant general for hazardous materials training;

6 (7) Delegate authority and assign primary responsibility to
7 the LEPC's for receiving, processing, and managing

8 hazardous chemical information forms and data, (trade
9 secrets,) and public information requested pursuant to

10 this chapter. Emphasis should be given to

11 electronically processing the information reported

12 pursuant to this chapter to maximize its use in

13 emergency response and to enhance its availability to

14 the public;

15 (8) Delegate authority and assign responsibility to the

16 department for providing technical advice and assistance

17 consistent with established department responsibilities

18 in the alleviation of public health and environmental

19 hazards associated with hazardous material releases or

20 threatened releases of hazardous materials, including

21 but not limited to, dispatching emergency response

22 personnel to accident sites during emergency situations

23 when requested by the HSERC. This chapter shall not

24 affect any existing authority these agencies have to

25 respond to hazardous material release;

*what
determine
or
trade
secret (Defora)*

- 1 (9) Prescribe duties and responsibilities for State
2 agencies, counties, and LEPCs to conduct comprehensive
3 emergency management activities consistent with this
4 chapter;
- 5 (10) Prescribe standards for hazardous material response team
6 training and certification, the equipping of hazardous
7 material response team units, and other matters
8 involving hazardous material response activities;
- 9 (11) Develop a public information, education, and
10 participation program for the public and facility owners
11 covering the requirements of this chapter and
12 interpretation of the chemical information collected
13 pursuant to this chapter and the risks those chemicals
14 pose to the public health and environment;
- 15 (12) Develop a mechanism or guidelines for the use of LEPCs
16 to act as boards of arbitration for resolving cost
17 recovery disputes concerning those costs defined in
18 section -10 that arise between a person who causes a
19 release of a hazardous material and the organizers of
20 any certified hazardous material response teams, or the
21 emergency service organization that responded to the
22 hazardous material release or both; and
- 23 (13) Do all other acts and things necessary for the exercise
24 of the powers and duties of the HSERC for the
25 implementation of this chapter and the requirements of

(13) *To much flap + power!*
** Need HSERC approval*
(board) first!!

HTH-__ (93)

1 EPCRA.

2 § -3 Establishment of emergency planning districts.

3 Each county is designated an emergency planning district for the
4 purposes of this chapter.

5 § -4 Establishment and functions of local emergency

6 planning committees. (a) To carry out the provisions of this
7 chapter, a minimum of one LEPC shall be established in each county.

8 The Mayor shall designate an agency to act as the lead for the LEPC
9 and shall appoint the LEPC chairperson. The LEPC shall be subject

10 to the supervision of the HSERC and shall cooperate with the county
11 emergency management agency and EPCRA facilities to prepare the
12 emergency response plans required by section 303 of EPCRA, for
13 facilities where extremely hazardous chemicals are present.

14 (b) A LEPC shall be composed of at least one person selected
15 from each of the following groups:

16 (1) Elected county officials; *SPECIFIC VIA BALLOT ? DISTRICT REPS ?*

17 (2) Law enforcement, first aid, health, local environmental,
18 hospital, and transportation personnel;

19 (3) Firefighting personnel;

20 (4) Civil defense and emergency management personnel;

21 (5) Broadcast and print media;

22 (6) Community groups not affiliated with emergency service
23 groups; and

24 (7) Owners and operators of facilities subject to the

25 requirements of EPCRA.

1 (c) The county emergency management coordinator, as
2 supervised by the LEPC, shall have the lead responsibility for
3 ensuring that the plans and activities of the LEPC comply with
4 EPCRA, this chapter, and other applicable statues and laws.

5 (d) The members of a LEPC shall be confirmed by the HSERC
6 from a list of appointees submitted by the mayor of the county.
7 The list of appointees shall contain the titles of a least one
8 person from each of the groups listed in subsection (b). Upon the
9 failure of the mayor of a county to submit a list of appointees to
10 the HSERC within a time fixed by the HSERC, the HSERC may appoint
11 members. (*What about on the ballot system?*)

12 (e) Within sixty days of the occurrence of a vacancy, the
13 mayor shall appoint, in the manner provided in subsection d, a
14 successor member to the LEPC. A vacancy shall occur upon the
15 death, resignation, disqualification, or removal of a member of a
16 LEPC.

17 (f) For the conduct of routine or emergency business, the
18 LEPC shall meet at the call of the chairperson. A majority of the
19 members of the LEPC, or such other number of members of the LEPC as
20 set by the LEPC, shall constitute a quorum for the purpose of
21 conducting the business of the LEPC and for all other purposes.
22 All action of the LEPC shall be taken by a majority of the LEPC
23 members present.

24 (g) A LEPC shall:

25 (1) Make, amend, and repeal bylaws and other procedures to

1 carry out the duties, requirements, and responsibilities
2 of a LEPC as set forth in this chapter, and as required
3 by the HSERC;

4 (2) Take appropriate actions to ensure the implementation
5 and updating of the local emergency response plan
6 required by this chapter;

7 (3) Report to the HSERC on alleged violations of this
8 chapter;

9 (4) Prepare reports, recommendations, or other information
10 related to the implementation of this chapter, as
11 requested by the HSERC;

12 (5) Meet, when appropriate, with any State agency or local
13 or regional agency which is empowered to exercise the
14 governmental functions of planning and zoning, to
15 regulate land use and land use development, or to
16 authorize the siting of a facility within the county to
17 discuss and review with the State agency and local
18 agency all limitation factors necessary to protect the
19 health, safety, and welfare of the general public from a
20 potential release of hazardous materials from a proposed
21 facility. Mitigation factors include environmental
22 impacts, shelter, and evacuation feasibility, emergency
23 warning and communications, availability of response
24 equipment and future population and economic growth in
25 the area of the proposed facility; and

1 (6) Accept and deposit into the emergency planning and
2 community right-to-know fund any grants, gifts, or other
3 funds received which are intended for the purpose of
4 carrying out this chapter.

5 (h) The administrative and operational expenses of a LEPC may
6 be paid through a combination of sources by the county from fees
7 collected by the county, from monies received from the HSERC in
8 accordance with the provisions of sections -8 or by accepting
9 private donations.

10 (i) A member of a LEPC shall be an agent of the HSERC and
11 shall be deemed as duly enrolled emergency management volunteer for
12 the purposes of _____ (relating to compensation for
13 accidental injury).

14 (j) The LEPCs may perform other emergency management advisory
15 duties as requested by county elected officials.

16 (k) Each emergency plan shall include, but not be limited to,
17 each of the following: (PROVIDE ITERRIM SECURITY, COMMUNITY
OR FACILITY)

18 (1) Identification of the facility subject to the
19 requirement of section 303 of EPCRA, within the county,
20 identification of routes likely to be used for the
21 transportation of substances on the list of extremely
22 hazardous substances and identification of additional
23 facilities contributing or subjected to additional risk
24 due to their proximity to the facility subject to the
25 requirements of this section, such as hospitals or

1 natural gas facilities;

2 (2) Methods and procedures to be followed by facility owners
3 and operators and local emergency and medical personnel
4 to respond to any release of such substances;

5 (3) Designation of a county emergency management coordinator
6 and facility emergency coordinators, who shall make
7 determinations necessary to implement the plan;

WHO?
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8 (4) Procedures providing reliable, effective, and timely
9 notification by the facility emergency and the county
10 emergency management coordinator to persons designated
11 in the emergency plan, and to the public, that a release
12 has occurred, consistent with the notification
13 requirements of section 304 of EPCRA;

14 (5) Methods for determining the occurrence of a release, and
15 the area or population likely to be affected by such a
16 release.

17 (6) A description of emergency equipment and facilities in
18 the county and at each facility in the county subject to
19 the requirements of this section, and an identification
20 of the persons responsible for such equipment and
21 facilities; + 24 HR. PHONE CONTACT!

22 (7) Evacuation plans, including provisions for a
23 precautionary evacuation and alternate traffic routes;

24 (8) Training programs, including schedules for training of
25 local emergency response and medical personnel; and

1 (9) Methods and schedules for exercises the emergency plan.

2 § -5 Hazardous substances safety program. (a) In

3 conjunction with the departments of health, transportation,

4 agriculture, labor and industrial relations, defense, land and

5 natural resources, the police and fire departments of the city and

6 county of Honolulu and the counties of Kauai, Maui, and Hawaii and

7 any other State or county agencies as determined by the HSERC, the

8 department shall develop a hazardous material safety program for

9 incorporation into the State of Hawaii oil and hazardous substances

10 emergency response plan (relating to emergency management

11 services). The hazardous substances safety program shall include

12 an assessment of the potential dangers and risks that hazardous

13 material releases occurring at facilities and from transportation

14 related accidents pose to the general public. The program shall

15 also consider the impacts, consequences, and necessary protective

16 measures required to respond to and mitigate the effects of such

17 releases and accidents. The program shall include:

18 (1) Development of a state oil and hazardous substance

19 emergency response plan for hazardous substances for the

20 state and state agencies which sets forth the specific

21 duties, responsibilities, roles and missions of state

22 agencies;

23 (2) Development of a notification system whereby the owners

24 and operators of a facility will report the occurrence

25 of any hazardous substance or extremely hazardous

1 substance release to the appropriate State agencies,
 2 local agencies, and state and local officials designated
 3 in the state and local plans. The reporting
 4 requirements for this notification system are set forth
 5 in section -7;

- 6 (3) Development of a notification system whereby the
 7 transporters of any hazardous substance or extremely
 8 hazardous substance will report the occurrence of any
 9 hazardous material release to the state agencies, local
 10 agencies, and state and local officials designated in
 11 the state and local plans. The reporting requirement
 12 for this notification system are set forth in section

13 *3.5* -7; DEVELOP STATE, LOCAL COMM'S FOR POLREP'S ETC !!
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- 14 (4) Training and equipping state agency and local agency SET
 15 public safety and emergency response personnel; ANNUAL /
 \$

- 16 (5) Establishment of training standards or a certification
 17 program for the formation of state agency, local agency,
 18 or regional hazardous substances response teams. All
 19 state agencies, local agencies or other agencies and
 20 committees that establish training standards for
 21 emergency service law enforcement, firefighting, or
 22 other personnel shall cooperate with the HSERC in the
 23 implementation of these training standards or
 24 certification program;

- 25 (6) Periodic exercise of hazardous material release

1 scenarios at facilities and transportation sites that
2 are designed to test the response capabilities of state
3 agency, local agency, and regional public safety and
4 emergency response personnel;

- 5 (7) Assistance in procuring specialized hazardous material *(WHO?)*
6 response supplies and equipment to be used by local and *ON*
7 regional public safety and emergency response personnel; *PRIORITY?*
8 (8) State civil defense shall staff and operate a twenty- *(LET'S*
9 four-hour state emergency operations center to provide *THE GOOD*
10 effective emergency response coordination for all types *STUFF)*
11 of natural and man-made disaster emergencies, including
12 the ability to receive and monitor the emergency
13 notification reports required under sections -7 from
14 all facilities and transporters involved with hazardous
15 material incidents; and *(PROVIDE FOR EVALUATION TRANSPORT)*
16 (9) Provisions for financial assistance to counties and
17 state agencies as provided in section -8.

18 (b) Within one hundred eighty days of the completion of
19 procedures called for in subsection (a) (3), LEPCs shall develop and
20 submit to the HSERC a hazardous material emergency preparedness
21 assessment. The assessment shall be updated annually. The county
22 shall assess the potential dangers and risks that hazardous
23 material release from facilities and transportation accidents pose
24 to public health and the environment, identify the county's needs
25 and resources for hazardous material response teams to deal with

1 those dangers and risks and outline its plan for implementing
2 county and local emergency planning functions under this act. The
3 assessment shall include:

- 4 (1) Potential threats posed by facilities requiring
5 emergency response plans under section 303 of EPCRA, and
6 other concentrations of hazardous materials in the
7 county that may pose a threat; (PROVIDE PRIMARY + OF THOSE
-EVAC- FACILITIES
SECONDARY BOUNDARIES
- 8 (2) Potential threats posed by hazardous materials
9 transported by highway and railroad in the county;
- 10 (3) Identification of existing capabilities to respond to
11 hazardous material released, including personnel,
12 equipment, training, planning, and identification of
13 existing hazardous material response zones;
- 14 (4) Identification of the need for personnel, equipment,
15 training, planning, and identification of existing
16 hazardous material response zones; and
- 17 (5) Identification of other resources needed to implement
18 the provision of this act and to support the LEPCs.

19 The LEPC shall prepare a hazardous material emergency response
20 preparedness assessment. The HSERC shall review and approve the
21 assessment if it determines the assessment is complete and fulfills
22 the county's obligations under this act to respond to releases of
23 hazardous materials. If an assessment is not approved by the
24 HSERC, it shall be returned to the county with an explanation of
25 its deficiencies. The county shall have sixty days to return the

1 assessment to the HSERC with either changes or further explanation
2 or justification. The HSERC shall then review the assessment. The
3 review process will continue until the HSERC is satisfied with the
4 assessment.

5 § -6 Emergency reporting requirements. (a) The
6 owner or operator of a facility in the State shall comply with the
7 following requirements:

8 (1) The owner or operator of a facility in the State covered
9 under section 302 of EPCRA, shall comply with the
10 emergency planning and notification requirements under
11 section 302 and 303 of EPCRA. Emergency response plans
12 shall be submitted to the LEPC and to the HSERC;

13 (2) The owner or operator of a facility in this State,
14 covered under section 311 of EPCRA, shall comply with
15 the reporting requirements under sections 311 and 312 of
16 EPCRA by submitting chemical lists for chemicals in lieu
17 of material data sheets for section 311 and Tier II
18 reports in lieu of Tire I reports for section 312 of
19 EPCRA by March first of each year. Material safety data
20 sheets shall be submitted within 30 days of request to
21 the HSERC or LEPC. The information shall be submitted
22 in electronic form consistent with the system used by
23 the LEPCs and HSERC, whenever possible;

24 (3) The owner or operator of a facility in this State,
25 subject to section 313 of EPCRA, shall comply with the

1 toxic chemical release form requirements of section 313
2 of EPCRA by July first of each year. The information
3 shall be submitted in electronic form consistent with
4 the system used by the LEPCs and HSERC whenever
5 possible;

6 (4) The owner of a facility in this state subject to the
7 requirements of paragraphs (2) and (3) shall comply with
8 the toxic chemical release form requirements under
9 section 323 of EPCRA. The information shall be
10 submitted in electronic form consistent with the system
11 used by the LEPCs and HSERC whenever possible;

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+ 24 HR PHONE CONTACT #

12 (5) The owner or operator of a facility in this State
13 covered under section 304 of EPCRA, shall comply with
14 the notification requirements of section 304 of EPCRA,
15 and section -7 of this chapter.

16 (b) The owner or operator of a property that has one or more
17 rolling stock, whether owned or leased, located within its property
18 boundaries for any period of time in excess of thirty continuous
19 days and containing an extremely hazardous substance in excess of
20 the threshold planning quantity shall notify the HSERC and the
21 appropriate LEPC of the fact and shall prepare an emergency
22 response plan, which contains those persons that either the HSERC
23 or the appropriate LEPC directs, in order to deal with any
24 potential release of an extremely hazardous substance from that
25 rolling stock.

1 § -7 **Emergency notification requirements.** (a) Except
2 as provided in subsection (e), the owner or operator of a facility
3 that manufactures, produces, uses, imports, exports, stores,
4 supplies, or distributes any hazardous substance or extremely
5 hazardous substance and the owner or operator of a vehicle that
6 ships, transports, or carries any hazardous substance or extremely
7 hazardous substance to, within, through, or across the State shall
8 immediately report the release of the substance which exceeds the
9 reportable quantity to the appropriate State and LEPC as follows:

10 (1) Two notifications shall be made by the owner or operator
11 of a facility. The first call shall be made by the
12 owner or operator of a facility by calling the twenty-
13 four-hour response telephone number of the LEPC. The
14 second call shall be made to the HSERC twenty-four-hour
15 response number which shall be the twenty-four-hour
16 response number of the office of hazard evaluation and
17 emergency response in the department; and

18 (2) Initial notification shall be made by the owner or
19 operator of a vehicle by dialing 911 or, in the absence
20 of a 911 emergency telephone number, calling the
21 operator in order to notify the LEPC management office
22 twenty-four-hour response number within whose
23 jurisdiction the transportation accident or incident has
24 occurred, and reporting that a hazardous substance or an
25 extremely hazardous substance release has occurred. The

1 LEPC shall report any notification made under this
2 subsection to the HSERC twenty-four-hour response number
3 within one hour of its receipt.

4 (b) The notification required by subsection (a) shall include
5 each of the following to the extent known at the time of the notice
6 and so long as no delay in responding to the emergency results:

- 7 (1) The name and telephone number of the person making the
8 notification;
- 9 (2) The name of the person employed by the owner or operator
10 of the facility or vehicle who has the authority or
11 responsibility to supervise, conduct, or perform any
12 cleanup activities required at the facility or
13 transportation accident site or to contract for the
14 performance of any cleanup activities at the facility or
15 transportation accident site;
- 16 (3) The chemical name or identity of any substance involved
17 in the release;
- 18 (4) An indication of whether the substance is an extremely
19 hazardous substance or other hazardous material that
20 appears on a federal or state list of hazardous
21 materials as periodically amended;
- 22 (5) An estimate of the quantity of the substance that was
23 released into the environment;
- 24 (6) The time, location, and duration of the release;
- 25 (7) The medium or media into which the release occurred;

1 (8) Any known or anticipated acute or chronic health risks
2 associated with the emergency, and where appropriate,
3 advice regarding medical attention necessary for exposed
4 individuals;

5 (9) Proper precautions to take as a result of the release,
6 including evacuation, unless the information is readily
7 available to the community emergency coordinator under
8 an emergency plan, and any other relevant information
9 which may be requested;

10 (10) The name and telephone number of the person or persons
11 to be contacted for further information; and

12 (11) Additional information required by federal or state law
13 or regulations.

14 (c) Notification to the department shall be made to the
15 department twenty-four-hour response number. This notification
16 shall contain the information required by subsection (b). The
17 notice to the department shall fulfill the requirement in EPCRA to
18 notify the HSERC. Notice under this section shall not fulfill any
19 requirement in other state laws to notify any other state agency of
20 a spill or release of a hazardous chemical.

21 (d) As soon as practicable, but no later than fourteen
22 calendar days after a release which required notice under this
23 section, the owner or operator of a facility and the owner or
24 operator of a vehicle shall provide a written follow-up emergency
25 notice, or notices if more information becomes available, to the

1 department and the LEPC setting and updating the information
2 required under subsection (b), and including additional information
3 with respect to:

- 4 (1) Actions taken to respond to and contain the release;
- 5 (2) Any know or anticipated acute or chronic health risk
6 associated with the release; *PERSONS AFFECTED*
(EXPOSED)
- 7 (3) Advice regarding medical attention necessary for exposed
8 individuals, where appropriate; and
- 9 (4) Actions to be taken to mitigate potential future
10 incidents.

11 (e) The provisions of this section shall not apply to a
12 release of a hazardous substance or an extremely hazardous
13 substance if the release of such substance is exempt, excluded, or
14 permitted by federal or state law, rule, or regulation.

15 § -8 Establishment of Funds. (a) There is hereby
16 created in the State treasury a special fund to be designated as
17 the emergency planning and community right-to-know fund. The fund
18 shall consist of the fees collected under this section, civil
19 penalties and fines and funds appropriated by the Attorney General.
20 Monies in the fund and the interest accrued shall be administered
21 by the department to carry out the purposes, goals, and objectives
22 of this chapter, EPCRA, and the State's hazardous material safety
23 program.

24 (b) The owner or operator of a facility required to annually
25 file an emergency and hazardous chemical inventory form under

1 section -7 shall submit with the inventory form a filing fee of
2 \$250. In addition to the filing fee, the owner or operator shall
3 submit with the inventory form the following additional fees for
4 reporting inventories of individual hazardous substances produced,
5 used, or stored at the facility. An additional fee of \$25 per
6 chemical enumerated on the inventory form shall be submitted. An
7 owner or operator of a facility who fails to submit such an
8 inventory form within thirty days after the applicable filing date
9 prescribed in section -6 shall submit with the inventory form a
10 late filing fee of 15% of the total fees due under this section, in
11 addition to the fees due under this section.

12 (c) The owner or operator of a facility required to annually
13 file a toxic release inventory form (Form R) under section -6
14 shall submit with the inventory form a filing fee of \$1,000. An
15 owner or operator of a facility who fails to submit such an
16 inventory form within thirty days after the applicable filing date
17 prescribed in section -6 shall submit with the inventory form a
18 late filing fee of 15% of the total fees due under this section, in
19 addition to the fees due under this section.

20 (d) The department shall administer and allocate monies in the
21 fund, including all interest generated therein, in the following
22 manner: On or before the first day of January of each year, the
23 department shall allocate moneys in the fund to each of the
24 following entities of classes of entities in the percentages
25 stated:

- 1 (1) To the department, not less than forty percent or more
2 than forty three percent of the moneys in the fund;
- 3 (2) To LEPCs, not less than thirty two percent or more than
4 thirty five percent of moneys in the fund; and
- 5 (3) To the adjutant general, not less than twenty five
6 percent or more than thirty percent of the moneys in the
7 fund.

8 All LEPCs and State agencies to be funded under this chapter shall
9 submit to the HSERC for review and approval by October 1 of each
10 year a budget worksheet and a workplan for the fiscal year to begin
11 January 1 of that year. The allocated moneys shall be distributed
12 at the start of each fiscal year. The HSERC's decisions on the
13 distribution of moneys from the fund are not appealable.

14 (e) Moneys received under this section shall not be used to do
15 any of the following:

- 16 (1) Acquire first response equipment, except as otherwise
17 provided in subsection (f);
- 18 (2) Defray costs for copying and mailing hazardous chemical
19 list, material safety data sheets, or emergency and
20 hazardous chemical inventory forms submitted pursuant to
21 this chapter for distribution to the public;
- 22 (3) Reimburse any person for expenditures incurred for
23 emergency response and cleanup of a release of oil, a
24 hazardous substance, or an extremely hazardous
25 substance; and

1 (4) Perform any assessment of damages to natural resources
2 resulting from a release of oil, a hazardous substance,
3 or an extremely hazardous substance.

4 (f) After a committee determines that the initial training
5 needs for emergency management personnel within its emergency
6 planning district set forth the committee's plan or most recent
7 review of its plan pursuant to section -6 have been met, the
8 HSERC may make moneys it receives under this section available to
9 fire departments located within the district for the purchase of
10 first response equipment.

11 § -9 Hazardous Materials Response Teams. (a) The
12 HSERC shall establish a program for certifying hazardous material
13 response teams, setting standards for training, equipment, safety,
14 operations, and administration of the teams. The certification
15 program shall include, but not limited to:

- 16 (1) Standards for certifying response teams with several
17 preparedness levels patterned after levels established
18 by the United States Occupational Safety and Health
19 Administration at 29 CFR Part 1910.120; and
20 (2) Reviewing existing hazardous material training and
21 certification programs to establish specific procedures
22 for crediting that training and certification under the
23 program established by this section.

24 (b) The HSERC may establish hazardous material response zones,
25 consisting of portions of counties or multiple counties, that may

1 be served by certified hazardous material response teams that are
2 certified by the HSERC where counties have not identified zones in
3 their hazardous material emergency response preparedness
4 assessment.

5 (c) Hazardous material response teams shall comply with any
6 guidelines, directives or other documents developed by the HSERC
7 for incorporation into the State's hazardous material safety
8 program and shall be consistent with the county hazardous material
9 emergency response preparedness assessment approved by the HSERC.

10 (d) Each county shall comply with the hazardous material
11 safety program by doing any of the following, consistent with the
12 county hazardous material emergency response preparedness
13 assessment.

14 (1) Individually organizing and operating a certified
15 hazardous material response team;

16 (2) Contracting or having formal agreements with a certified
17 hazardous material response team, including those formed
18 by a regional hazardous material organization or private
19 companies; and

20 (3) Participating as a member of a regional hazardous
21 material organization for the purpose of creating and
22 organizing a certified hazardous material response team.

23 (e) Each State agency, local agency, regional hazardous
24 material organizations, volunteer service organization, hazardous
25 material transporter, manufacture, supplier or user, or other

1 entity that organizes a certified hazardous material response team
2 as identified on the team certification, shall be responsible for
3 providing, directly or by agreement with a third part, worker's
4 compensation and ordinary public liability insurance for its
5 certified hazardous material response team. The State, a county,
6 or municipality may self-insure to meet this obligation to the
7 extent it is now authorized by State law.

8 (f) A certified hazardous material response team may, when
9 authorized by the LEPC:

- 10 (1) Enter onto any private or public property on which a
11 release of a hazardous material has occurred or there
12 may be a threat of a hazardous material release;
- 13 (2) Enter any adjacent or surrounding property to which the
14 hazardous material release has occurred or may threaten
15 to occur; and
- 16 (3) Enter any private or public property in order to respond
17 to the release or threatened release of a hazardous
18 material, to monitor and contain the hazardous material
19 release, to perform cleanup and stabilization actions
20 and to perform any other emergency response activities
21 deemed necessary by the certified hazardous material
22 response team or by the representatives of the
23 department or the LEPC.

24 (g) Notwithstanding any Federal Law to the contrary, the
25 department of health, consistent with the State oil and hazardous

1 substances emergency response plan and chapter 128D, is designated
2 as the State agency assigned the responsibility to direct cleanup
3 efforts at a release site upon the occurrence of a release.

4 § -10 **Recovery of response costs.** (a) A person who
5 causes a release of a hazardous material shall be liable for the
6 response costs incurred by a certified hazardous material response
7 team or a supporting paid or volunteer emergency service
8 organization. The hazmat response team organizer, as identified on
9 the team certification, or supporting paid or volunteer emergency
10 service organizations, that undertakes a response action may
11 recover those response costs in law or an action in equity brought
12 before a court of competent jurisdiction. Should more than one
13 certified hazardous material response team incur response cost for
14 the same hazardous material release or incident, the organizing
15 entities of those certified hazardous material response teams may
16 file a joint action in law or equity and may designate one entity
17 to represent the others in the law suite.

18 (b) In an action to recover response costs, a State agency,
19 local agency, regional hazardous material organization, supporting
20 paid or volunteer emergency service organizations that are properly
21 trained in accordance with the standards developed under this act
22 and that are properly requested and dispatched by a legally
23 constituted authority shall be eligible to recover their response
24 costs.

25 (c) Arbitration.

- 1 (1) In lieu of bringing an action at law or in equity in a
2 court of competent jurisdiction in the matter of a
3 response cost dispute under subsection (a), the party
4 who is the person who caused a release of a hazardous
5 material and the party who is the certified hazardous
6 material response team, including any volunteer
7 emergency service organizations requested and dispatched
8 by a legally constituted authority, may agree to submit
9 the response cost dispute to arbitration, the parties
10 shall have waived all rights to remedies available under
11 subsection (a) and to any other remedies available at
12 law;
- 13 (2) Once the parties agree to submit the response cost
14 dispute to binding arbitration, the LEPC shall notify
15 the HSERC and the parties of the request for a board of
16 arbitration and shall request the recommendation of the
17 parties for persons to be appointed to the board. The
18 board of arbitration shall consist of three persons, one
19 to be selected by each of the parties and a third person
20 to be agreed upon by the arbitrators as specified in
21 paragraph (3). Within five days of the request of
22 arbitration, the parties shall submit the names of the
23 arbitrators that they have chosen and the LEPC shall
24 appoint those persons to the board of arbitration;
- 25 (3) Within five days after their appointment, the two

1 arbitrators shall meet and select a third arbitrator who
2 shall be appointed to the board by the LEPC, and who
3 will be chairperson of the board of arbitration;

- 4 (4) If the two arbitrators fail to select a third arbitrator
5 as provided in paragraph (3), the HSERC shall, within
6 five days, select a third arbitrator who shall be
7 appointed to the board. The person so selected shall
8 not be a member of the HSERC, a member of any LEPC or a
9 person or relative of a persons employed by the party or
10 a subsidiary of the party who caused the hazardous
11 material release or who has an ownership or equal
12 interest in the party or subsidiary of the party who
13 caused the hazardous material release;

- 14 (5) Upon appointment of the third member, the board shall
15 commence its proceedings and within thirty days shall
16 make its determination, which shall be binding on all
17 parties; and

- 18 (6) Unless otherwise proscribed in the agreement to
19 arbitrate, the expenses and fees of the arbitrators and
20 other expenses, incurred in the conduct of the
21 arbitration shall be paid as prescribed in the award.

22 § -11 Facility and vehicle inspection and testing.

- 23 (a) In order to determine compliance with this chapter and EPCRA,
24 either the qualified HSERC or LEPC member or representative, may
25 enter a facility or vehicle site, during normal business hours, to

1 inspect the facility or vehicle and to request information or
2 reports from the facility or vehicle owner or operator concerning
3 the chemical name, identity, amount or any other information
4 necessary for emergency planning and response purposes for any
5 substance, liquid mixture, material or product manufactured,
6 produced, used, stored, supplied, imported, exported, or
7 distributed at, to, or from the facility or vehicle.

8 (b) Should the designated HSERC or LEPC member or
9 representative determine during the course of a facility or vehicle
10 inspection that the chemical name, identity, amount or any other
11 requested information for any substance, liquid, mixture, compound,
12 material or product present at the facility or vehicle cannot be
13 identified or determined to his/her satisfaction, due to the lack
14 of proper labeling, placarding, recordkeeping or for any other
15 reason, the representative shall have the authority to analyze or
16 arrange for the analysis of the substance to identify the chemical
17 properties of the sample or specimen, the amount of the substance,
18 liquid, mixture, compound, material or product manufactured,
19 produced, used stored, supplied, imported, exported or distributed
20 at, to or from the facility or vehicle to determine if it is
21 regulated by this at. The owner or operator of a facility or
22 vehicle shall pay any testing and laboratory analysis costs
23 incurred by the HSERC or a LEPC as performed under this section.
24 Samples of any substance required to be taken under this section by
25 the qualified HSERC or LEPC shall be split with the facility for

1 analysis.

2 (c) Should a release or threatened release of a known or
3 unknown substance, liquid, mixture, compound, material or product
4 occur or appear to be imminent at a facility vehicle site, which
5 endangers or has the potential to endanger the health, safety and
6 welfare of the public, the employees of the facility or the
7 vehicle's owner or operator, or the employees of the owner or
8 operator of the vehicle, the HSERC or the LEPC may send
9 representatives to the facility or vehicle site at any time in
10 order to inspect the facility or vehicle and to access the danger
11 posed by the release or threatened release and to obtain samples or
12 specimen of the substance, liquid, mixture, compound, material, or
13 product involved in the release or threatened release and to
14 perform any other emergency response activities deemed necessary by
15 the representatives of the HSERC or the LEPC.

16 (d) A person shall provide the representative of the HSERC or
17 the LEPC with the chemical name, identity or any other information
18 requested concerning any substance, liquid, mixture, compound,
19 material or product present at the facility or vehicle, whether or
20 not the chemical name, identity or other information requested is
21 entitled, to protect as a trade secret under section 322 of EPCRA,
22 unless the manufacturer of the substance will not provide the
23 information requested to the facility owner because it has received
24 trade secret protection under EPCRA. For that information which
25 has received trade secret protection under section 322 of EPCRA,

1 prior to the date of the inspection or request, the representative
2 shall give a written assurance to the person that reasonable
3 measures will be taken to protect the confidentiality of any
4 information provided to the qualified representative.

5 § -12 **Immunity from civil liability.** (a) No hazmat
6 response team organizer nor their elected officers, officials,
7 directors, and employees, and no certified hazardous material
8 response team member, member of an industrial hazardous material
9 response team, law enforcement officer, ambulance service or rescue
10 squad member, firefighter, or other emergency response or public
11 works personnel engaged in any emergency service or response
12 activities involving a hazardous material release at a facility or
13 transportation accident site shall be liable for the death or any
14 injury to persons or loss or damage to property or the environment
15 resulting from a response to a hazardous material release, except
16 for any acts or omissions which constitute gross negligence or
17 willful misconduct. Nothing in this section shall exempt any
18 hazardous material transporter, manufacturer, supplier, or user
19 from liability for the death of or any injury to persons or loss or
20 damage to property or the environment resulting from the release of
21 any hazardous material.

22 (b) There shall be no liability under subsection (a) for a
23 defendant otherwise liable who can establish by a preponderance of
24 the evidence that the release or threat of release of a hazardous
25 substance and the damages resulting therefrom were caused solely

1 by:

- 2 (1) Any unanticipated grave natural disaster or other
3 natural phenomenon of an exceptional, inevitable, and
4 irresistible character, the effect of which could not
5 have been prevented or avoided by the exercise of due
6 care or foresight;
- 7 (2) An act of war;
- 8 (3) An act or omission of a third party other than an
9 employee or agent of the defendant, or than one whose
10 act or omission occurs in connection with a contractual
11 relationship, existing directly or indirectly, with the
12 defendant, if the defendant establishes by a
13 preponderance of the evidence that the defendant
14 exercised due care with response to the hazardous
15 substance concerned, taking into consideration the
16 characteristics of such hazardous substance, inlight of
17 all relevant facts and circumstances; and the defendant
18 took precautions against foreseeable acts or omissions
19 of any such third party and the consequences that could
20 foreseeable result from such acts or omissions; or
- 21 (4) Any combination of the foregoing paragraphs.
- 22 (c) No member of the HSERC or a LEPC shall be liable for the
23 death of or any injury to persons or loss or damage to property or
24 the environment or any civil damages resulting from any act or
25 omissions arising out of the performance of the functions, duties

1 and responsibilities of the HSERC or LEPC, except for acts or
2 omissions which constitute willful misconduct.

3 (d) No employee, representative or agent of a State agency or
4 local agency engaged in any emergency service or response
5 activities involving a hazardous material release at a facility or
6 transportation accident site shall be liable for the death of or
7 any injury to persons or loss or damage to property resulting from
8 that hazardous material release, except for any acts or omissions
9 which constitute willful misconduct.

10 § -13 Penalties and fines. (a) Any person who
11 violates any of the emergency reporting, planning, or notification
12 requirements of, or fails to pay the fees outlined in, section -7
13 shall be subject to civil penalties of not less than \$1,000 and not
14 more than \$25,000. Each day a violation continues shall constitute
15 a separate violation.

16 (b) A person who:

17 (1) Knowingly and willfully fails to report the release of a
18 hazardous substance or extremely hazardous substance as
19 required by section -7 commits a misdemeanor of the
20 third degree and shall, upon conviction, be sentence to
21 pay a fine of not less than \$1,000 and not more than
22 \$25,000 for each separate offense or imprisonment, for a
23 period of not more than one year, or both. For the
24 purposes of this paragraph, each day a violation
25 continues shall constitute a separate violation; and

1 (2) Intentionally obstructs or impairs, by force, violence,
2 physical interference or obstacle, a representative of
3 the department, a certified hazardous material response
4 team or the LEPC attempting to perform the duties and
5 functions set forth in sections -9 and -11 commits
6 a misdemeanor of the second degree and shall, upon
7 conviction, be sentenced to pay a fine of not less than
8 \$5,000 and not more than \$25,000 for each separate
9 offense or imprisonment, for a period of not more than
10 two years, or both.

11 (c) All civil penalties and fines collected under this
12 section shall be deposited into the emergency planning and
13 community right-to-know fund.

14 § -14 Enforcement. (a) The department of the attorney
15 general may commence a civil action against any person for failure
16 to comply with this act or its regulations. No action may be
17 commenced under this subsection prior to sixty days after the
18 department of the attorney general has given written notice of the
19 alleged violation to the alleged violator. The HSERC, a county or
20 a municipality may commence a civil action against any person for
21 failure to comply with this act if the department of the attorney
22 general has not commenced such action and more than one hundred
23 twenty days have elapsed since the HSERC, a county, or a
24 municipality gave notice of the violation to the alleged violator.

25 § -15 Relationship to other laws. (a) This law shall

1 be read in conjunction with the Federal Acts, laws or regulations
 2 providing for the identification, labeling, or reporting of
 3 information; concerning hazardous material releases, and any other
 4 health and safety matters related to hazardous materials, and is
 5 intended to supplement Federal acts, laws and regulation in the
 6 interests of protecting the health and safety of the citizens of
 7 the State. In those instances where the provisions of this act are
 8 more comprehensive or stringent than the provisions of an
 9 applicable Federal act, law or regulation, the provisions of this
 10 act shall be controlling.

11 (b) Nothing in this chapter shall affect or modify in any way
 12 the obligations or liabilities of any person under other statutes
 13 of this State.

14 (c) This act shall preempt any ordinances or resolutions
 15 passed or adopted by any political subdivisions that is effective
 16 on or before or after the effective date of this chapter to the
 17 extent that such ordinance or resolution conflicts or is
 18 inconsistent with the provision of this act.

19 SECTION 3. This Act shall take effect upon its approval.

20

21

INTRODUCED BY: _____

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

PURPOSE: To establish a State Emergency Planning and Community Right-to-Know program, including establishing a Emergency Planning and Community Right-to-Fund funded by reporting fees from regulated facilities. This fund will be used to support the State's responsibilities under the Federal Emergency Planning and Community Right-to-Know Act.

MEANS: Enact new law, Emergency Planning and Community Right-to-Know Act.

JUSTIFICATION: Current provisions for the Emergency Planning and Community Right-to-Know program are only codified in the federal law under the federal Superfund Amendments and Reauthorization Act (SARA, Title III). The state of Hawaii has begun implementation of this program based solely on the State's authorities as defined in this federal law. No provisions were made for federal funding for this new requirement. The purpose of this proposed State statute would be to establish a fee collection system, and an Emergency Planning and Community Right-to-Know fund, to provide resources for State and local agencies required to fulfill the requirements of SARA, Title III, and to provide a mechanism for the State to recover penalties into a State managed fund if chemical handlers do not comply with Title III. As the federal statute is currently written, any recovery of penalties for non-compliance with Title III must be returned to the federal government, even if the State conducts the enforcement action.

GENERAL FUNDS: None

OTHER FUNDS: Revolving Fund

OTHER AGENCIES AFFECTED: DOA, DOD, DLIR, DLNR, DBEDT, DOT, OEQC, UH, American Red Cross, County Civil Defense Agencies.

STATE OF HAWAII
DEPARTMENT OF HEALTH
PROPOSED ADMINISTRATIVE BILL ANALYSIS

Program lead

Office of Hazard Evaluation and Emergency Response

Title of Proposed Administrative Bill: Relating to Emergency Planning and Community Right-to-Know.

- a) **Reason for submitting this bill:** Current provisions for the Emergency Planning and Community Right-to-Know program are only codified in the federal law under the federal Superfund Amendments and Reauthorization Act (SARA, Title III). The state of Hawaii has begun implementation of this program based solely on the State's authorities as defined in this federal law. No provisions were made for federal funding for this new requirement. The purpose of this proposed State statute would be to establish a fee collection system, and an Emergency Planning and Community Right-to-Know fund, to provide resources for State and local agencies required to fulfill the requirements of SARA, Title III, and to provide a mechanism for the State to recover penalties into a State managed fund. As the federal statute is currently written, any recovery of penalties for non-compliance with Title III must be returned to the federal government, even if the State conducts the enforcement action.
- b) **What alternatives were considered in the development of this bill?** The current legislation from many states that have a State EPCRA Bill in place were studied and considered.
- c) **Are there any rules, regulations or legislation which can be adapted or amended to accomplish the purpose of the bill?**
No
- d) **What would be the impact on your program if the proposed Administrative Bill is not accepted or passed by DOH/ the Governor/ the Legislature?** If this bill is not passed the

mandates of EPCRA cannot be fully met. For example, specifically mandated is to "supervise and coordinate the activities of" the Local Emergency Planning Committees, such assistance is impossible with the resources now available.

e) **What other action will the program take to accomplish the purpose of the bill?** Without further funding, there is nothing more the state can do with its current limited resources.

f) Name of person preparing the bill:
Rhonda Goyke 586-4249

Division Chief: _____ Date: _____