

SERC MEETING
Nebraska Educational Television
Lincoln, Nebraska
July 2, 2013; 1300 CDT

I. Call to Order, Introduction of Members

An Open Meeting Statute, available for review, was available on the registration table. Keith Hanson, Chair, called the meeting to order at 1:03 PM.

Member		Affiliation	Present
Sherry	Blaha	County Elected Official	X
Al	Berndt	NE Emergency Management	
Steven	Danon	Small Business	X
Keith	Deiml	Education	X
Don	Eisenhauer	Agribusiness	X
Jim	Heine	State Fire Marshal	
Joe	Francis	Department of Environmental Quality	X
Gary	Gandara	Labor	
John	Grimes	Industry	X
Keith	Hansen	Chair, Community Health	X
Tim	Hofbauer	Vice Chair, Local Emergency Management	X
Larry	Johnson	Trucking Association	X
Judd	Lyons	ARNG	
Mark	Lohnes	NDEQ SARA Title III	
(empty)		City Government	
Mark	Maday	Transportation	
Dana	Miller	Fire	X
Tonya	Ngotel	SERC Coordinator	X
Kimberly	Plouzek	Environmental Protection	X
Tom	Sands	Department of Roads	X
Tom	Schwarten	State Patrol	X
Sue	Semerena	Health and Human Services	
Jessica	Sherwood	NDOR Alt	X

Others Present: Mark DeKraai (Public Policy Center); Nikki Weber (NEMA), Cindy Newsham (NEMA), Todd Campbell (EPA Region 7), Jason Heitman (EPA Region 7), Todd Phillips (EPA Region 7).

Present Via Video Conference – Region 7 EPA: Terri Blunk, George Hess, Patrick Bustos, Fatima Ndiaye, Ken Buholtz. Scottsbluff Nebraska; Dana Miller (Firefighters) and Sherry Blaha (County Official)

II. Approval of the Agenda for July 2, 2013

Keith Deiml made a motion to approve the agenda. Tom Sands seconded the motion; the motion passed by consensus.

III. **Approval of the Minutes** from April 2, 2013 meeting.

Joe Francis made a motion to approve the meeting minutes from April 2, 2013. Don Eisenhauer seconded the motion; the motion passed by consensus.

IV. **New Business**

a. **HMEP Grant Overview**

The current 2012-2013 Department of Transportation Hazardous Materials Grant will be final as of September 30. An item that will be completed within this grant cycle will be a final commodities study. There is still a need to get pipeline data; due to the sensitive nature of the information a UNL student will be working at NEMA to access this information. The SERC will receive an overview of the plan and the information gained once the grant is over and the project is complete.

A flyer on the Hazmat challenge was distributed to members. There is a plan to bring in the 10 hazmat teams and conduct a full scale drill/exercise at the Omaha training facility. If anyone is interested in being involved in the hazmat challenge, either as an exercise staff or participate, please contact Tonya.

Another component to the grant is the funding for the Nebraska Hazardous Incident Team (NHIT) training. They have established a training committee within the team who are tasked with developing a work plan and schedule of outlining training. We would like to bring them to the next SERC meeting.

The new HMEP grant was resubmitted in May 2013. There was need for additional justification on equipment and the budget. There is more scrutiny this year across the nation. Nebraska's grant is on track. There are two grant categories, training and planning. Nebraska in the past has received approx (\$300,000) – \$150,000 for planning and \$150,000 for training. Planning examples are the development of the Local Emergency Operations Plan (LEOPs) and Local Emergency Planning Committee (LEPC) conference. The majority of the training funds are allocated to the State Fire Marshal who provides hazmat technician level training to the fire responders and the Grand Island training center who trains the law enforcement entity.

b. **SERC Strategic Plan Review and Update**

Keith Hansen provided a summary of the meeting of the group working on the first goal. The group pulled together materials from other states and other national resources. The group will be developing a tool for LEPCs to use as they continue to build their programs. For the second goal, since the retreat, Mark Lohnes worked on a draft letter that was sent out across the country and received good feedback. John Grimes, Tonya Ngotel and Mark Lohnes attended national conference and shared information they received.

c. **West Texas Explosion – Nebraska Response**

Many emails have been sent out to the SERC members concerning the events in West Tx. Some of the action that has been taken here in Nebraska is specifically looking at safety measures and the monitoring of chemicals. At this point, there are no final conclusions that EPA knows about. Several state agencies including the Department of Agriculture (NDA), Department of Environmental Quality (NDEQ), Nebraska Emergency Management (NEMA) and Fire Marshall's Office (SFM) discussed implications of a large chemical release and/or explosion. Several storage facilities have been identified as critical and both NEMA and NDEQ will work with the local emergency manager to ensure a LEPC is in place and active.

One of the issues that came to the forefront was the community right to know and Tier II information and the availability of that information to the public. NEMA and NDEQ both received calls requesting information. A review of the law, the policy and a general information discussion was held concerning any requests.

V. Old Business

a. LEPC Membership Approval (Vote)

The SERC received and reviewed 26 new applications, all from Sarpy County except one from Hastings. Larry Johnson made a motion to approve the applications, Tom Schwarten seconded this motion; the motion passed by consensus.

b. SERC Membership Committee

i. Status Report

The SERC has two new members:

Sherry Blaha, Scottsbluff County will now serve in the county commissioner seat.

John Grimes, Affiliated Foods Midwest will now serve in the industry representative seat.

There is still an opening for a city official. Interested parties should talk to Tonya Ngotel or Kathleen Dolezal at the Governor's Office.

c. SERC Subcommittee Report

i. Public Outreach/LEPC Support

It was determined that this agenda item is discussed in other parts of the overall meeting and thus will be taken off the agenda.

ii. LEPC Function

1. Strategic Report – Survey Results

See new business item b

d. 2013 Regional LEPC Conference

The conference will be held in Kansas City July 25-27, 2013. Any one attending should reserve their rooms, July 3rd they are giving up the block. A handout was provided to members identifying the many tracks of the conference. Hotel rooms will be reimbursed and Tonya can help cover mileage. There will be an awards ceremony, and several Nebraska LEPCs have been nominated. Let Tonya by tomorrow if you wish to attend; 25-30 from Nebraska have already registered.

HMEP grant money was available to fund conference expenses for LEPC members. Six applications were received, accounting for 13 people requesting funding assistance to attend the conference. SERC members can request reimbursement for conference expenses. Each state can nominate a large LECP, small LECP, website and industry for awards presented at this conference. Nominations can be sent to Tonya Ngotel via email.

e. Other

No report.

VI. Report from NEMA

Report given by Nikki Weber. General Lyons has accepted a national position and will be moving to Washington. His last day is 7/12. Recommendations from the committee have been forwarded to Governor.

Storm season is in full bloom and fire season is on us, but the panhandle has received moisture which may help prevent fires. The Wildfire Control Act passed this year. There is a contract with a Montana group to maintain a plane in Valentine. Nebraska will have a Single Engine Air Tanker (SEAT) assigned and will be housed in; Alliance, Chadron or Valentine. The contract starts July 15th. The range is 50 miles. The plane can move based on conditions – for example, where there is critical fire weather. There will be training of NEMA duty officers on the deployment of this asset. The state will still maintain the Aerial Applicator Program in which crop applicators volunteer to drop retardant on fires. Although, the per hour costs on airplanes were raised, please refer to the Nebraska Wild land Fire Guide book found on the NEMA website.

For the 2013 homeland security grants, the award letter is expected in September. Nebraska completed a Threat Hazard Incident Response Assessment (THIRA) last year and that information was used in the justification of the monies requested. We are now being required to do regional THIRAs in the fall. This year we will look at capabilities including the HAZMAT Teams. The focus on funding will be on Planning, Exercise, and Training (PET) rather than on equipment.

With the changes in hazmat response, NEMA created a hazardous materials response book similar to the wild land fire book. This book includes the call down and a flow chart for first responders. There is a simple flow chart for first responders, and a more complex one for hazmat response including critical information to collect. The revised blue book is being provided to fire schools and EMTs.

VII. Report from NDEQ/EPA

Report given by Joe Francis. Toxic Release Inventory (TRI) reports are due July 1st and for first time NE has used an online system and it appears to have gone smoothly.

EPA Report attached.

VIII. Public Forum/Presentation

The University of NE Center for Preparedness Education hosted a speaker from India doing grand rounds and who spoke of the Bhopal chemical incident. Recording of the talk will be provided to members. She is a writer for NY times. A link will be sent out to members.

IX. Next Meeting:

The next meeting will be held on October 1, 2013 at 1:00 PM in Lincoln, Nebraska at the Nebraska Emergency Management Agency – Joint Force Headquarters.

X. Adjournment

Larry Johnson made a motion to adjourn at 2:27 PM. Tom Sands seconded the motion; the motion passed by consensus.



EPA Report-Out Nebraska State Emergency Response Commission Meeting July 2, 2013



Emergency Planning and Community Right-to-Know Act (EPCRA) / Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

Facilities that Blend Fertilizers, Tier II Reports, and Information about Ammonium Nitrate

In the aftermath of the West, Texas tragedy we are receiving input from the public and local governments with concern over facilities that store/manage ammonium nitrate. If you know of any such facilities that you would like for EPA to visit, please contact Terri Blunk at 913-551-7013 or blunk.terri@epa.gov. For questions relating to ammonium nitrate please contact Steve Greenwald at 913-551-7408 or greenwald.steven@epa.gov.

Some facilities that blend fertilizers to meet the individual needs of their customers believe that they are exempt from reporting these fertilizers on their Tier II reports. Attached at the end of this report-out is a letter from EPA to The Fertilizer Institute which discusses the exemption for "chemicals used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer". In short, if the facility has more than 10,000 pounds of a non-EHS containing fertilizer which they then blend with other substances prior to selling it to the customer, the facility needs to report the fertilizer on their Tier II report.

Toxic Release Inventory (TRI) Updates

- **EPA Publishes Proposed Rule to Add a Nonylphenol Category to TRI Chemical List.** Nonylphenol is highly toxic to aquatic organisms and has been found in ambient waters. Comments on the proposed rule will be accepted until August 19, 2013. For more information please visit the following website: <http://www.epa.gov/tri/>.
- **2011 TRI National Analysis Report is available.** The National Analysis is EPA's annual report summarizing the most recent TRI information at the national level and for selected urban communities, large aquatic ecosystems, and tribal lands. A variety of documents, web pages and online tools are available to help you learn about the TRI toxic chemicals managed at industrial facilities in 2011, including what those facilities are doing to prevent pollution. For more information please visit the following website: <http://www.epa.gov/tri/>.
- **EPA invites interested stakeholders to provide input** on a variety of topics related to EPA plans to potentially broaden the scope of industry sectors covered by TRI. EPA is considering adding or expanding coverage of the following industry sectors: Iron Ore Mining, Phosphate Mining, Solid Waste Combustors and Incinerators, Large Dry Cleaning, Petroleum Bulk Storage, and Steam Generation from Coal and/or Oil. For further information or to provide input, visit: <http://www.regulations.gov/exchange/topic/trisectorsrule>.

Amendments to the Emergency & Hazardous Chemical Inventory Forms (Tier II)

On July 13, 2012, EPA published a final rule to revise Tier I and Tier II reporting forms, as well as the Confidential Location Information Sheet. The revisions add some new data elements and revise some existing data elements. The rule becomes effective on January 1, 2014, and facilities must comply with the new requirements on the Tier II inventory form starting reporting year 2013, which is due by March 1, 2014. For more information, please visit the following website:

<http://www.epa.gov/emergencies/content/epcra/tier2.htm>

[EPCRA / CERCLA \(cont.\)](#)

[2013 Region 7 LEPC/TERC Emergency Planning and Response Conference](#)

The next regional conference is planned for July 25-27, 2013 at the Marriott hotel in Overland Park, KS. For registration and other conference information, please visit:

<http://www.marc.org/gti/lepc-terc/index.htm>.

[Clean Air Act \(CAA\) 112\(r\) - Risk Management Program](#)

- **Tyson Foods Settlement.** EPA through the Department of Justice settled a major judicial case with Tyson Foods for CAA-RMP violations associated with the facility's anhydrous ammonia refrigeration process. The settlement includes four (4) Tyson facilities in Nebraska. In addition to performing some corrective actions, Tyson chose to conduct Supplemental Environmental Projects as part of the settlement. This project will provide emergency response equipment to the communities of Omaha, Lexington, and Dakota City. The case has been entered with the court and equipment should be delivered within six (6) months. For more information, please visit:
<http://www.epa.gov/enforcement/waste/cases/tysonfoodsinc.html#relief>.
- If you know of any facility in Nebraska that needs compliance assistance with their Risk Management Program or Risk Management Plan (RMP), please contact EPA Region 7's Nebraska compliance assistance expert Steve Greenwald at 913-551-7408 or greenwald.steven@epa.gov.
- If you have concerns about any Risk Management Program facility or know of one that has closed, contact Terri Blunk at 913-551-7013 or blunk.terri@epa.gov.
- If you want access to the RMPInfo website (with/without offsite consequence data), e-mail your name, title, agency/company name, address, phone number, and e-mail address to Terri.

[Free Training – EPA's RMP Requirements for Agricultural Ammonia Suppliers Webinar](#)

This webinar scheduled for Tuesday July 16, 2013 from 11:00-12:00 AM CST provides an overview of the CAA 112(r) Risk Management Program requirements as they apply to agricultural ammonia suppliers. Register using the link below to reserve your spot at the webinar:

<https://www2.gotomeeting.com/register/931621674>.

[Emergency Response and Removal Update](#)

- For information on removal actions completed by EPA, please visit <http://www.epaosc.org>.

[Removal Assessment Beginning for Lincoln, NE Site](#)

EPA is preparing to investigate whether the Northwest Metals Site in downtown Lincoln, NE meets the removal criteria as specified in the National Contingency Plan. The primary contaminant of concern is lead and the resulting exposure to children. If you have information to share about the site please contact Todd Campbell at campbell.todd@epa.gov or 913-551-7115.

[Region 7 Regional Response Team Meeting](#)

The next Region 7 Regional Response Team meeting will be held October 22-23, 2013, in Kansas City, MO at EPA Region 7's Training and Logistic Center: 8600 NE Underground Rd, Pillar 253; Kansas City, Missouri 64141. Please follow this link to Register:

http://nrt.org/production/nrt/RRTHome.nsf/AllPages/nrt_vii-upcoming-meetings.htm?OpenDocument.

If you have questions about this meeting, please contact Janice Kroone at kroone.janice@epa.gov or (913) 551-7005.

[Emergency Response and Removal Update \(cont.\)](#)

[Local Government Reimbursements \(LGR\) – Hazardous Substance Claims](#)

To make a claim to EPA for reimbursement of costs associated with a hazardous materials response, go to <http://www.epa.gov/oem/content/lgr>. If you have questions, call the EPA Helpline at 1-800-431-9209.

[U.S. Coast Guard National Pollution Funds Center \(NPFC\) – Oil Claims](#)

To make a claim for costs or damages from an incident under the Oil Pollution Act of 1990 (OPA), use the two-page form found at the bottom of the NPFC Claimant's Guide, which can be found at <http://www.uscg.mil/npfc/urg/>.

[Other News](#)

[Various Training Opportunities – In Nebraska](#)

- Introduction to Risk Assessment Guidance for Superfund. July 16-18, 2013 in Lincoln, NE. This course provides participants with the fundamentals of risk assessment as applied to the Superfund cleanup process. This course is designed to present an introduction of the Superfund risk assessment process to Project Managers, On-Scene Coordinators, Risk Assessment Reviewers, and potentially new Risk Assessors working at hazardous waste sites or treatment, storage and disposal facilities. For additional information, please visit the following website or call Patricia Maxwell at 913-551-7365:
<http://www.trainex.org/classdetails.cfm?courseid=24&classid=6062>

[Various Training Opportunities – In Iowa, Kansas, and Missouri](#)

- Sampling for Hazardous Materials. July 30 – August 1, 2013 in Jefferson City, MO. This introductory course provides classroom and field instruction for the environmental sampling of soil, groundwater, surface water, sediment and waste. It is intended for individuals with no sampling experience, personnel performing program inspection or oversight, and as a refresher for those returning to field activities. For additional information, please visit the following website or call Patricia Maxwell at 913-551-7365:
<http://www.trainex.org/classdetails.cfm?courseid=20&classid=6063>
- Introduction to Groundwater Investigations. August 27-29, 2013 in Jefferson City, MO. This course is designed to provide participants with information concerning hydrogeological processes and the necessary elements of a sound groundwater site investigation. It is intended for personnel who are involved in groundwater contamination investigations but have little prior hydrogeological experience. For additional information, please visit the following website or call Patricia Maxwell at 913-551-7365:
<http://www.trainex.org/classdetails.cfm?courseid=6&classid=6069>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 3 2010

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Chris S. Leason
Counsel to The Fertilizer Institute
2575 East Camelback Road
Phoenix, AZ 85016

Dear Mr. Leason:

This is in response to your letter dated June 1, 2010 on behalf of The Fertilizer Institute (TFI) regarding EPA's interpretation of the exemption provided in Section 311(e)(5) of the Emergency Planning and Community Right-to-Know Act (EPCRA). You requested EPA to clarify our interpretation of Section 311(e)(5), which exempts chemicals used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer from the definition of hazardous chemical and thus EPCRA Sections 311 and 312. Your specific request related to the second part of the exemption, "... is a fertilizer held for sale by a retailer to the ultimate customer."

Your letter states that many of your clients' operations include selling fertilizers to their customers as well as blending fertilizers to meet the individual needs of their customers. You state in your letter that as a result of this blending no chemical reaction occurs, therefore, the fertilizer used prior to the blending and the resultant fertilizer mixture created after the blending would be exempt as "a fertilizer held for sale by a retailer to the ultimate customer." In support of your request, you cite to prior Q&A guidance the Agency has issued, which denied an EPCRA 311/312 reporting exemption for chemicals held and blended for the purposes of producing a fertilizer.¹ You argue that, because no chemical reaction occurs when your clients mix two or more source fertilizers and no new fertilizer is created, the prior Q&A guidance is inapplicable and the resultant mixed fertilizer "held for sale by a retailer to the ultimate customer" should be exempted from EPCRA 311/312 reporting. You assert that the mixing done by your clients is more akin to a household or consumer product exemption the Agency previously interpreted under Section 311(e)(3) of EPCRA, concerning the mixing of paint base colors to meet a customer's request for a custom shade of paint.²

The Agency, however, stands by its prior Q&A guidance regarding the blending of chemicals to produce a fertilizer and does not agree that the mixing of fertilizers would fall under Section 311(e)(5) exemption. The exemption in Section 311(e)(5) is for "a fertilizer held for sale

¹ See EPCRA Frequent Questions - Applicability of the Exemption under Section 311(e)(5) (Updated July 2010), located at <http://www.epa.gov/oem/content/epcra/epcra-qa.htm>

² See EPCRA Frequent Questions - Applicability of the Exemption under Section 311(e)(3) (Updated July 2010), located at <http://www.epa.gov/oem/content/epcra/epcra-qa.htm>

by a retailer to the ultimate customer." Such a fertilizer is one that is merely held for sale, not one that is mixed or formulated. This reflects an intent to limit the exemption to mere retailing. Congress' intent was to focus Section 311/312 reporting on manufacturers and wholesalers - those are facilities that typically have large quantities of fertilizers, and that use and manufacture a wide range of chemical compounds. Congress appreciated that such manufacturers and wholesalers presented significant risks that needed to be addressed by emergency response authorities, but that mere retailers did not. Assuming arguendo that Congress' intent is ambiguous, the above interpretation is one that EPA adopts as being the most reasonable interpretation of the statute. Therefore, consistent with the Agency's prior Q&A guidance, the amount of chemicals intended for blending and the new product should be reported under Sections 311 and 312 if the reporting thresholds are exceeded.

The Q&A guidance you cite concerning the mixing of paint colors to create a custom shade does not apply here. The exemption in Section 311(e)(3) is for "any substance to the extent it is . . . present in the same form and concentration as a product packaged for distribution and use by the general public." The determination you cite dealt with cans of paint that were "in the same form and concentration" and were "product[s] packaged for distribution and use by the general public." Such packaged products fell squarely within the exemption of Section 311(e)(3). But that determination is not relevant to the question of whether chemicals being mixed are thereby "held for sale by a retailer to the ultimate customer." In addition, the examples you provide explain that fertilizer retailers mix varying concentrations of nitrogen, phosphorous, and potassium to meet their individual customers' soil conditions and crop needs. It does not follow that such retailers are selling fertilizers in the same "form and concentration" as those that are "packaged for distribution and use by the general public." Based on the above, the Agency disagrees that your clients qualify for an exemption under either Sections 311(e)(3) or (5) of EPCRA for the mixing or blending of chemicals to produce a fertilizer.

If you have any technical questions or need further clarification, please contact Sicy Jacob, Office of Emergency Management, at (202) 564-8019.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. S. Tulis', with a long horizontal flourish extending to the right.

Dana S. Tulis, Acting Director
Office of Emergency Management