

IC 13-25 ARTICLE 25. HAZARDOUS SUBSTANCES

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- Ch. 2. Emergency Planning and Notification
- Ch. 3. Repealed
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IC 13-25-1 Chapter 1. Indiana Emergency Response Commission

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IC 13-25-1-1 Establishment

Sec. 1. The Indiana emergency response commission is established.
 [Pre-1996 Recodification Citation: 13-7-36-2.]
 As added by P.L.1-1996, SEC.15.

IC 13-25-1-2 Members

Sec. 2. (a) The commission consists of the following thirteen (13) members:

- (1) The commissioner or the commissioner's designee.
- (2) The executive director of the department of homeland security or the executive director's designee.
- (3) The superintendent of the state police department or the superintendent's designee.
- (4) The state fire marshal or the state fire marshal's designee.
- (5) Three (3) representatives of business and industry.
- (6) Three (3) representatives of the public.
- (7) Three (3) representatives of local government.

(b) The governor shall appoint the members provided for in subsection (a)(5) through (a)(7).
 A member appointed under this subsection serves at the pleasure of the governor.
 [Pre-1996 Recodification Citation: 13-7-36-3.]
 As added by P.L.1-1996, SEC.15. Amended by P.L.1-2006, SEC.204.

IC 13-25-1-2.5 Emergency response commission membership not a lucrative office

Sec. 2.5. For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, membership on the commission is not a lucrative office.
 As added by P.L.68-2016, SEC.1.

IC 13-25-1-3 Compensation

Sec. 3. (a) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b).

(b) Each member of the commission is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

[Pre-1996 Recodification Citation: 13-7-36-4.]

As added by P.L.1-1996, SEC.15.

IC 13-25-1-4 Officers

Sec. 4. The governor shall appoint:

(1) a chairman; and

(2) a vice chairman;

of the commission from among the members of the commission.

[Pre-1996 Recodification Citation: 13-7-36-5.]

As added by P.L.1-1996, SEC.15.

IC 13-25-1-5 Meetings; quorum

Sec. 5. (a) The commission shall meet as follows:

(1) At least one (1) time every three (3) months.

(2) At the call of the chairman.

(b) A majority of the members constitutes a quorum for the authority to conduct business.

[Pre-1996 Recodification Citation: 13-7-36-6.]

As added by P.L.1-1996, SEC.15.

IC 13-25-1-6 Duties of commission and local emergency planning committee; membership on local committee not a lucrative office; appointment of local committee members

Sec. 6. (a) The commission shall do the following:

(1) Encourage and support the development of emergency planning efforts to provide:

(A) state government entities;

(B) local governments; and

(C) the public;

with information concerning potential chemical hazards in Indiana.

(2) Assist the state in complying with the requirements of SARA.

(3) Design and supervise the operation of emergency planning districts in Indiana.

(4) Gather and distribute information needed for effective emergency response planning.

(5) Appoint the members of the local emergency planning committee of each emergency planning district.

(b) A local emergency planning committee shall do the following:

(1) Satisfy the requirements of SARA.

(2) Prepare and submit a roster of committee members to the commission at least one (1) time each year.

(3) Meet at least two (2) times, on separate days, every six (6) months.

(4) Each year, prepare and submit a report to the commission that describes the expenditures of the local emergency planning committee in the preceding year that were paid for with the money distributed under IC 13-25-2-10.6.

(c) A local emergency planning committee member may appoint a designee to act on the committee member's behalf under this chapter. An appointment under this subsection must:

- (1) be in writing;
- (2) specify the duration of the appointment; and
- (3) be submitted to the committee at least two (2) calendar days before the first meeting that the designee attends on behalf of the member.

(d) For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, membership on a local emergency planning committee is not a lucrative office.

(e) The members of a local emergency planning committee shall elect officers of the local emergency planning committee from among its members.

(f) The commission may appoint the number of members of a local emergency planning committee that the commission considers appropriate. The members of a local emergency planning committee must include representatives of each of the following:

- (1) State and local officials.
- (2) Law enforcement, emergency management, firefighting, emergency medical services, health, local environmental, hospital, and transportation personnel.
- (3) Broadcast and print media.
- (4) Community groups.
- (5) Owners and operators of facilities subject to IC 13-25-2-10.

(g) The commission may revise its appointment of members of a local emergency planning committee under subsection (a)(5). Interested persons, including a county executive, may petition the commission to modify the membership of a local emergency planning committee.

(h) A local emergency planning committee is a county board of the county identified in one (1) of the following:

- (1) If the emergency planning district of the local emergency planning committee is wholly within the boundaries of one (1) county, the local emergency planning committee is a county board of the county in which the emergency planning district is located.
- (2) If the emergency planning district of the local emergency planning committee includes more than one (1) county, the local emergency planning committee is a county board of only one (1) of the counties, and the county of which the local emergency planning committee is a county board must be determined by agreement of the counties included in the emergency planning district.

(i) The commission may not establish an emergency planning district that includes more than one (1) county unless all the counties to be included in the emergency planning district have agreed which of the counties will be the county of which the local emergency planning committee will be a county board under subsection (h)(2).

[Pre-1996 Recodification Citation: 13-7-36-7.]

As added by P.L.1-1996, SEC.15. Amended by P.L.92-2001, SEC.2; P.L.26-2010, SEC.17; P.L.85-2015, SEC.10; P.L.68-2016, SEC.2.

IC 13-25-1-7 Assistance from public or private sources; implementation of chapter

Sec. 7. The commission may receive:

- (1) appropriations;
- (2) grants;
- (3) donations;
- (4) equipment;
- (5) supplies; and
- (6) services;

from a public or a private source to assist the commission in implementing this chapter.

[Pre-1996 Recodification Citation: 13-7-36-8.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2 Chapter 2. Emergency Planning and Notification

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IC 13-25-2-1 Applicability of chapter

Sec. 1. Except as provided in sections 6 and 7 of this chapter, this chapter does not apply to:

- (1) the transportation; or
 - (2) storage incident to transportation;
- of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas.

[Pre-1996 Recodification Citation: 13-7-37-21.]

As added by P.L. 1-1996, SEC. 15. Amended by P.L. 63-1996, SEC. 2.

IC 13-25-2-2 Applicability of chapter; designation of additional facilities

Sec. 2. (a) A substance is subject to this chapter if the substance is on the list published under 42 U.S.C. 11002(a)(2).

(b) Except as provided in section 6 of this chapter, a facility is subject to this chapter if a substance on the list referred to in subsection (a) is present at the facility in an amount that exceeds the threshold planning quantity established for the substance.

(c) For purposes of emergency planning, the Indiana emergency response commission may designate additional facilities that are subject to this chapter if the designation is made after public

notice and opportunity for comment. The commission shall notify a facility affected by a designation under this section.

[Pre-1996 Recodification Citation: 13-7-37-9.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-3 Notice that facility is subject to requirements of chapter

Sec. 3. (a) The owner or operator of a facility subject to this chapter shall notify the commission that the facility is subject to this chapter.

(b) If:

(1) a substance on the list of substances referred to in section 2(a) of this chapter becomes present at a facility in an amount that exceeds the threshold planning quantity established for the substance; or

(2) there is a revision of the list referred to in section 2(a) of this chapter and the facility has present a substance on the revised list that exceeds the threshold planning quantity established for the substance; the owner or operator of the facility shall notify the commission and the appropriate local emergency planning committee that the facility is subject to this chapter not later than sixty (60) days after the acquisition of the substance or the revision of the list.

[Pre-1996 Recodification Citation: 13-7-37-10.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-4 Notice to administrator

Sec. 4. The commission shall notify the administrator of the facilities subject to this chapter by notifying the administrator of:

(1) each notification received from a facility under section 3 of this chapter; and

(2) each facility designated by the commission under section 2(c) of this chapter.

[Pre-1996 Recodification Citation: 13-7-37-11.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-5 Local emergency plan

Sec. 5. (a) A local emergency planning committee shall complete the preparation or review and update of a local emergency plan in accordance with this section before October 17 of each year. The local emergency planning committee shall review the plan:

(1) at least one (1) time each year; and

(2) more frequently if required by a change in circumstances in the community or at a facility.

(b) A local emergency planning committee shall:

(1) evaluate the need for resources necessary to develop, implement, and exercise the local emergency plan; and

(2) make recommendations with respect to additional resources that may be required and the means for providing the additional resources.

(c) A local emergency plan must include the following:

(1) Identification of the following:

(A) Facilities subject to this chapter that are within the emergency planning district.

(B) Routes likely to be used for the transportation of substances on the list of extremely hazardous substances.

(C) Additional facilities contributing to or subjected to additional risk due to the proximity of the facilities to facilities subject to this chapter, including hospitals or natural gas facilities.

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

(3) Designation of a community emergency coordinator and facility emergency coordinators who shall make determinations necessary to implement the local emergency plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to:

(A) persons designated in the local emergency plan; and

(B) the public;

that a release has occurred consistent with the emergency notification requirements of section 7 of this chapter.

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

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to this chapter and an identification of the persons responsible for the equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

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

(9) Methods and schedules for exercising the emergency plan.

(d) For each facility subject to this chapter:

(1) the owner or operator of the facility shall notify:

(A) the emergency planning committee; or

(B) the commission if there is no emergency planning committee;

of a facility representative who will participate in the emergency planning process as a facility emergency coordinator;

(2) the owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at the facility as the changes occur or are expected to occur; and

(3) upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to the emergency planning committee necessary for developing and implementing the emergency plan.

(e) After completion or update of a local emergency plan under subsection (a) for an emergency planning district, the local emergency planning committee shall submit a copy of the local emergency plan to the commission. The commission shall review the local emergency plan and make recommendations to the local emergency planning committee on revisions of the local emergency plan that may be necessary to ensure coordination of the local emergency plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, the review may not delay implementation of the local emergency plan.

[Pre-1996 Recodification Citation: 13-7-37-12.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-6 Notice of release of substances

Sec. 6. (a) This section does not apply to any release that results in exposure to persons solely within the site or sites on which a facility is located.

(b) If:

(1) a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored; and

(2) the release requires a notification under 42 U.S.C. 9603(a); the owner or operator of the facility shall immediately provide notice as described in section 7 of this chapter.

(c) If a release of an extremely hazardous substance that is on the list referred to in section 2 of this chapter occurs from a facility at which a hazardous chemical is produced, used, or stored and the release is not subject to the notification requirements under 42 U.S.C. 9603(a), the owner or operator of the facility shall immediately provide notice as described in section 7 of this chapter if the release:

- (1) is not a federally permitted release (as defined in 42 U.S.C. 9601(10));
- (2) is in an amount that exceeds a quantity that the administrator has determined by regulation requires notice; and
- (3) occurs in a manner that would require notification under 42 U.S.C. 9603(a).

(d) If a release of a substance that is not on the list referred to in section 2 of this chapter occurs at a facility at which a hazardous chemical is produced, used, or stored, and the release requires notification under 42 U.S.C. 9603(a), the owner or operator shall provide notice as follows:

- (1) If a reportable quantity has been established for the substance under 42 U.S.C. 9602(a), the owner or operator shall provide the notice as described in section 7 of this chapter.
- (2) If a reportable quantity has not been established for the substance under 42 U.S.C. 9602(a), the owner or operator shall provide the notice as described in section 7 of this chapter for any release of at least one (1) pound of the substance.

[Pre-1996 Recodification Citation: 13-7-37-13.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-6.5 Evaluation of notification options; toll free telephone line to be provided

Sec. 6.5. (a) The department shall work with interested stakeholders, including the federal government, the general public, members of the general assembly, and businesses, to evaluate the feasibility of simplifying and expediting notification under IC 13-25-2-6. Options to be evaluated include:

- (1) connecting persons required to provide notice under IC 13-25-2-6 with the National Response Center; and
- (2) recommending any appropriate changes in federal law.

(b) The department shall implement an option evaluated under subsection (a) if the option:

- (1) is practical to implement;
- (2) is technically feasible;
- (3) is economically feasible;
- (4) is protective of human health and the environment; and
- (5) would adequately serve persons required to provide notice under IC 13-25-2-6.

(c) The department shall provide a toll free long distance telephone line through which a person required to provide notice under IC 13-25-2-6 may contact the office described in IC 13-13-3-1 of this chapter.

As added by P.L.126-1996, SEC.5.

IC 13-25-2-7 Notice from owner or operator

Sec. 7. (a) The owner or operator of the facility shall give the notice required by section 6 of this chapter immediately after the release to the following:

- (1) The community emergency coordinator for the appropriate local emergency planning committees for any area likely to be affected by the release.
- (2) The commission.

(3) The state emergency planning commission of any other state likely to be affected by the release.

(b) If a substance that is subject to the reporting requirements under this section is being transported or is being stored incident to being transported, the notice requirements of this section may be satisfied by:

- (1) dialing the local 911 emergency telephone number; or
- (2) if a local 911 emergency telephone number is not available, calling the telephone operator.

(c) The notice required by section 6 of this chapter must include each of the following to the extent known at the time of the notice and if no delay in responding to the emergency results:

- (1) The chemical name or identity of any substance involved in the release.
- (2) An indication of whether the substance is on the list referred to in section 2 of this chapter.
- (3) An estimate of the quantity of any substance that was released into the environment.
- (4) The time and duration of the release.
- (5) The medium or media into which the release occurred.
- (6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
- (7) Proper precautions to take as a result of the release, including evacuation, unless the information is readily available to the community emergency coordinator under the local emergency plan.
- (8) The name and telephone number of persons to be contacted for additional information.

(d) As soon as practicable after a release that requires notice by section 6 of this chapter, the owner or operator shall provide written follow-up emergency notices that include and update the information required by this section, including additional information with respect to the following:

- (1) Actions taken to respond to and contain the release.
- (2) Any known or anticipated acute or chronic health risks associated with the release.
- (3) If appropriate, advice regarding medical attention necessary for exposed individuals.

[Pre-1996 Recodification Citation: 13-7-37-14.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-8 Material safety data sheet

Sec. 8. (a) The owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act shall submit a material safety data sheet for each chemical or, preferably, a list of chemicals described in subsection (b) to each of the following:

- (1) The appropriate local emergency planning committee.
- (2) The commission.
- (3) The fire department that has jurisdiction over the facility.

(b) The list of chemicals referred to in subsection (a) includes the following:

(1) A list of the hazardous chemicals for which a material safety data sheet is required under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act grouped:

(A) in categories of health and physical hazards as set forth in the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act; or

(B) in other categories as the administrator may establish under 42 U.S.C. 11021.

(2) The chemical name or the common name of each chemical as provided on the material safety data sheet.

(3) Any hazardous component of each chemical as provided on the material safety data sheet.

(c) An owner or operator may meet the requirements of this section with respect to a hazardous chemical that is a mixture by doing one (1) of the following:

(1) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture that is a hazardous chemical. If more than one (1) mixture has the same element or compound, only one (1) material safety data sheet or one (1) listing of the element or compound is necessary.

(2) Submitting a material safety data sheet for, or identifying on a list, the mixture.

(d) If an owner or operator of a facility submits a list of chemicals under subsection (a), the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to the committee.

(e) A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 14 of this chapter. If the local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 14 of this chapter.

(f) The initial material safety data sheet or list required by this section with respect to a hazardous chemical shall be provided not later than three (3) months after the date the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act.

(g) A revised sheet shall be provided to a local emergency planning committee not later than three (3) months after the date of a discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a).

[Pre-1996 Recodification Citation: 13-7-37-15.]

As added by P.L. 1-1996, SEC. 15.

IC 13-25-2-9 Emergency and hazardous chemical inventory form; tier II information

Sec. 9. (a) A tier II emergency and hazardous chemical inventory form required to be submitted under section 10 of this chapter must provide the following information for each hazardous chemical present at the facility:

(1) The chemical name or the common name of the chemical as provided on the material safety data sheet.

(2) An estimate in ranges of the maximum amount of the hazardous chemical present at the facility at any time during the preceding year.

(3) An estimate in ranges of the average daily amount of the hazardous chemical present at the facility during the preceding year.

(4) A brief description of the manner of storage of the hazardous chemical.

(5) The location at the facility of the hazardous chemical.

(6) An indication of whether the owner of the facility elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 14 of this chapter.

(7) The tier II inventory information specified in 40 CFR 370.42.

When the tier II inventory information is being submitted using an online system approved by the commission, an electronic signature that meets the conditions established by the commission will satisfy the signature requirement specified in 40 CFR 370.42(a).

(b) An owner or operator may meet the requirements of this section and section 10 of this chapter with respect to a hazardous chemical that is a mixture by doing one (1) of the following:

- (1) Providing information on the inventory form on each element or compound in the mixture that is a hazardous chemical. If more than one (1) mixture has the same element or compound, only one (1) listing on the inventory form for the element or compound at the facility is necessary.
- (2) Providing information on the inventory form on the mixture.

(c) A hazardous chemical for which a material safety data sheet or a listing is required by section 8 of this chapter is subject to this section and section 10 of this chapter.

[Pre-1996 Recodification Citation: 13-7-37-16(a), (b), (c), (d), (e).]

As added by P.L.1-1996, SEC.15. Amended by P.L.85-2015, SEC.11.

IC 13-25-2-10 Filing of emergency and hazardous chemical inventory form with commission

Sec. 10. (a) On or after January 1 and before March 1 of each year, a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act shall submit the following to the commission:

- (1) A tier II emergency and hazardous chemical inventory form containing the information required by section 9 of this chapter.
- (2) A fee in the amount established by section 10.4 of this chapter. This fee shall be deposited in the local emergency planning and right to know fund established in section 10.5 of this chapter. The tier II inventory form must contain data with respect to the preceding calendar year, and the inventory form and the fee shall be submitted in the form and manner established by the commission.

(b) The commission shall make the tier II emergency and hazardous chemical inventory form information provided to the commission by a facility under subsection (a)(1) available to the following:

- (1) The appropriate local emergency planning committee.
- (2) The fire department that has jurisdiction over the facility.

(c) Upon the request of:

- (1) a local emergency planning committee; or
- (2) a fire department with jurisdiction over a facility;

the owner or operator of a facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the federal Occupational Safety and Health Act (29 U.S.C. 651 through 658) and regulations adopted under the Act shall provide the tier II emergency and hazardous chemical inventory form information to the person making the request. A request must be made with respect to a specific facility.

(d) A state or local official acting in the official's capacity may have access to information on the tier II emergency and hazardous chemical inventory forms by submitting a request to the commission or a local emergency planning committee. If the commission or the emergency planning committee does not already possess the requested information, upon receipt of a request for tier II emergency and hazardous chemical inventory form information, the commission or committee shall request the facility owner or operator to provide the tier II emergency and hazardous chemical inventory form information. The commission or the local emergency planning committee shall make the information available to the official.

(e) A person may make a request to the commission or a local emergency planning committee for tier II emergency and hazardous chemical inventory form information relating to the preceding year with respect to a facility. The request must be in writing and must be made with respect to a specific facility.

(f) Any tier II emergency and hazardous chemical inventory form information that the commission or a local emergency planning committee possesses shall be made available to a person making a request under this section in accordance with section 14 of this chapter. If the commission or local emergency planning committee does not possess the tier II emergency and hazardous chemical inventory form information requested, the commission or local emergency planning committee shall request the facility owner or operator to:

- (1) provide the tier II emergency and hazardous chemical inventory form information with respect to a hazardous chemical that a facility has stored in an amount of at least ten thousand (10,000) pounds present at the facility at any time during the preceding year; and
- (2) make the information available in accordance with section 14 of this chapter; to the person making the request.

(g) For tier II emergency and hazardous chemical inventory form information that is not in the possession of the commission or a local emergency planning committee with respect to a hazardous chemical that a facility has stored in an amount that is less than ten thousand (10,000) pounds at the facility at any time during the preceding year, a request from a person must include a statement specifying the general need for the information. The commission or local emergency planning committee may request the facility owner or operator for the tier II emergency and hazardous chemical inventory form information on behalf of the person making the request. Upon receipt of any information requested on behalf of the person, the commission or local emergency planning committee shall make the information available in accordance with section 14 of this chapter to the person.

(h) The commission or a local emergency planning committee shall respond to a request for tier II emergency and hazardous chemical inventory form information under this section not later than seven (7) days after the date the request is received.

(i) The following provisions apply to the fee required by subsection (a)(2):

(1) A facility that is subject to the fee required by subsection (a)(2) that fails to pay the entire fee by March 1 of each year shall pay to the commission a late fee of twenty dollars (\$20) in addition to the fee payable under subsection (a)(2). This late fee shall increase by twenty dollars (\$20) for each month that the required fee is not paid. This late fee shall never exceed one hundred percent (100%) of the fee required by subsection (a)(2).

(2) If a payment is made by bank draft, check, cashier's check, electronic check, or money order, the liability is not finally discharged and the person has not paid the fee until the draft, check, or money order has been honored by the institution on which it is drawn. If the payment is made by credit card, debit card, charge card, or similar method, the liability is not finally discharged and the person has not paid the fee until the commission receives payment or credit from the institution responsible for making the payment or credit.

(3) If a financial institution reports that it dishonors or rejects a person's check, credit card payment, electronic funds transfer, or other form of payment, the commission shall assess and collect the fees and charges authorized in IC 35-43-5, if applicable, in addition to the applicable late fee assessed under subdivision (1). If the person subject to the penalty under this subsection can show that there is reasonable cause for the payment not being honored, the commission may waive the fees and charges imposed under this subsection.

[Pre-1996 Recodification Citation: 13-7-37-16(f), (g), (h), (i), (j), (k), (l).]

As added by P.L.1-1996, SEC.15. Amended by P.L.85-2015, SEC.12; P.L.174-2021, SEC.14.

IC 13-25-2-10.4 Annual fee; exceptions

Sec. 10.4. (a) Except as provided in subsection (c), each year, a fee is imposed on a facility that must submit an emergency and hazardous chemical inventory form under section 10 of this chapter. The amount of the fee is as follows:

(1) For a facility in which at least one million (1,000,000) pounds of any hazardous chemical was present at one (1) time during the year preceding the year in which the fee is imposed, a fee of two hundred dollars (\$200).

(2) For a facility in which, in the year preceding the year in which the fee is imposed, one (1) or more hazardous chemicals were present in amounts exceeding the threshold quantities established under 42 U.S.C. 11022(b), but the total amount of any hazardous chemical present did not at any one (1) time equal or exceed one million (1,000,000) pounds, a fee of one hundred dollars (\$100).

(3) For a facility that contains underground storage tanks (as defined in IC 13-11-2-241) and was subject to the reporting requirement in 42 U.S.C. 6991a(a), but in which, in the year preceding the year in which the fee is imposed, no hazardous chemicals were present in amounts exceeding the threshold quantities established under 42 U.S.C. 11022(b) (other than substances stored in underground storage tanks that must be reported under 42 U.S.C. 6991a(a)), a fee of fifty dollars (\$50).

(b) A facility subject to the fee imposed by this section shall pay this fee as required by section 10 of this chapter.

(c) The fee established by this section is not applicable to a facility that is owned or operated by any of the following:

(1) The United States government or an agency or instrumentality of the United States government.

(2) The state and its agencies.

(3) A state educational institution as defined in IC 21-7-13-32.

(4) A political subdivision as defined in IC 36-1-2-13.

As added by P.L.85-2015, SEC.13. Amended by P.L.10-2017, SEC.1.

IC 13-25-2-10.5 Local emergency planning right to know fund

Sec. 10.5. The local emergency planning and right to know fund is established for the purpose of providing each county with funds to help implement SARA (42 U.S.C. 11001 et seq.). The department of state revenue shall administer the fund. The fund consists of:

(1) revenue produced by any fee or charge imposed under section 10 or 10.4 of this chapter; and

(2) accrued interest and other investment earnings of the fund.

Money in the fund does not revert to the state general fund at the end of a state fiscal year.

As added by P.L.85-2015, SEC.14.

IC 13-25-2-10.6 Distribution of money in local emergency planning and right to know fund

Sec. 10.6. (a) Before July 1 of each year, the department of state revenue shall distribute the money in the local emergency planning and right to know fund as follows:

(1) Ten percent (10%) allocated to the commission and administered by the department of homeland security to be used for the implementation and administration of IC 13-25-1 and this chapter. Money received as an allocation under this subdivision does not revert to the state general fund at the end of a state fiscal year.

(2) A distribution of the remaining money as follows:

(A) To each county, two thousand five hundred dollars (\$2,500).

(B) To each county, an additional distribution in an amount determined in STEP TWO of the following formula:

STEP ONE: Divide the amount available for distribution by the number of facilities that paid the fee required under section 10(a)(2) of this chapter in the calendar year preceding the distribution.

STEP TWO: Multiply the quotient determined in STEP ONE by the number of facilities located in each county.

The department of state revenue may make a distribution to a county under this subdivision only after receiving notice from the commission that the local emergency planning committee for the county has met the requirements of IC 13-25-1-6(b).

(b) The revenue distributed to the county under this section shall be deposited in a separate fund established by the county for the purpose of:

- (1) preparing and updating a comprehensive emergency response plan required under 42 U.S.C. 11003 for the county or emergency planning district;
- (2) establishing and implementing procedures for receiving and processing requests from the public for information about hazardous chemicals under SARA (42 U.S.C. 11001 et seq.);
- (3) training for emergency response planning, information management, and hazardous materials incident response and exercising hazardous materials response plans;
- (4) equipping a hazardous materials response team that provides at least a district wide emergency planning response if the equipment purchased is consistent with current training levels of the response team members;
- (5) purchasing communication equipment for a local emergency planning committee's administrative use;
- (6) paying an optional stipend to local emergency planning committee members who attend regularly scheduled meetings at which a quorum is present in an amount:
 - (A) determined by a majority of the local emergency planning committee membership; and
 - (B) that is not more than twenty dollars (\$20) per member per meeting;
- (7) paying for Title III risk communication, chemical accident related, and accident prevention projects submitted to and approved by the commission; and
- (8) maintaining, repairing, and calibrating equipment purchased for a hazardous materials response team under subdivision (4).

However, revenue distributed to a county under this section may be used for the purposes set forth in subdivisions (3) through (8) only if the local emergency planning committee appointed for the county has prepared and submitted to the commission an emergency plan that meets the requirements of 42 U.S.C. 11003(a) and has received approval for the training programs from the commission.

(c) The fund established under subsection (b) shall be administered by the county executive. The expenses of administering the fund shall be paid from money in the fund. Money in the fund not currently needed to meet the obligations of the fund may be invested in the same manner as other public funds. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of the fiscal year remains in the fund and does not revert to any other fund.

(d) Money shall be appropriated by a county fiscal body (as defined in IC 36-1-2-6) from a fund established under subsection (b) upon the receipt by the county fiscal body of the local emergency planning committee's spending plan. The spending plan must:

- (1) have been approved by a majority of the members of the local emergency planning committee; and
- (2) conform with the provisions of this chapter.

The county fiscal body may not appropriate money from the fund established under subsection (b) for any person or purpose other than the local emergency planning committee.

(e) All equipment, apparatus, and supplies purchased with money from a fund established under subsection (b) remain under the direction and control of the local emergency planning committee.

As added by P.L.85-2015, SEC.15.

IC 13-25-2-10.7 Withholding funding for noncompliance

Sec. 10.7. (a) The commission may withhold a local emergency planning committee's funding for failure to provide annually to the commission one (1) of the following:

- (1) The report required under IC 13-25-1-6(b)(4).
- (2) Proof of published legal notice required under SARA.
- (3) An updated version of the local emergency planning committee's emergency preparedness plan as required under SARA.
- (4) A copy of the current bylaws of the local emergency planning committee as required by SARA.
- (5) Evidence of an exercise of the response plan required under SARA.
- (6) A roster of the current membership of the local emergency planning committee as required under IC 13-25-1-6(b)(2).
- (7) Minutes of the local emergency planning committee meetings conducted at least two (2) times, on separate days, every six (6) months as required under IC 13-25-1-6(b)(3).

(b) If the commission withholds funding under subsection (a), and notwithstanding section 10.6(a)(1) of this chapter, the commission may use the balance of the withheld funding for purposes of hazardous material training and preparedness.

As added by P.L.85-2015, SEC.16.

IC 13-25-2-11 Fire department; access for onsite inspection; notice of location information

Sec. 11. Upon the request of the fire department that has jurisdiction over a facility that files an inventory form under section 9 of this chapter, the owner or operator of the facility shall:

- (1) allow the fire department to conduct an onsite inspection of the facility; and
- (2) provide to the fire department specific location information on hazardous chemicals at the facility.

[Pre-1996 Recodification Citation: 13-7-37-16(m).]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-12 Permission to withhold chemical name and identity information

Sec. 12. A person required under section 5(d)(2), 5(d)(3), 8, 9, 10, or 11 of this chapter to submit information to any other person may withhold from the information the specific chemical identity, including the chemical name and other specific identification as provided in 42 U.S.C. 11042 and regulations adopted by the administrator under 42 U.S.C. 11042.

[Pre-1996 Recodification Citation: 13-7-37-17.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-13 Duty to release chemical identity information

Sec. 13. (a) An owner or operator of a facility that is subject to the requirements of section 8, 9, 10, or 11 of this chapter shall provide the specific chemical identity, if known, of a hazardous chemical or extremely hazardous substance to any health professional who requests the information in writing if the health professional provides a written statement of need under this section and a written confidentiality agreement under subsection (e). The written statement of need must specify that the health professional has a reasonable basis to suspect that:

- (1) the information is needed for purposes of diagnosis or treatment of an individual;

(2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned; and

(3) knowledge of the specific chemical identity of the chemical will assist in diagnosis or treatment. After receiving a written request under this subsection, the owner or operator to whom the request is made shall promptly provide the requested information to the health professional. Except as provided under subsection (e), the authority to withhold the specific chemical identity of a chemical under section 12 of this chapter when the information is a trade secret does not apply to information required to be provided under this subsection.

(b) An owner or operator of a facility that is subject to the requirements of section 8, 9, 10, or 11 of this chapter shall provide a copy of a material safety data sheet or an inventory form, including the specific chemical identity, if known, of a hazardous chemical or extremely hazardous substance to any treating physician or nurse who requests the information if the physician or nurse determines that:

(1) a medical emergency exists;

(2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned. Immediately after receiving a request under this subsection, the owner or operator to whom the request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet or an inventory form under section 12 of this chapter when the information is a trade secret does not apply to information required to be provided to a treating physician or nurse under this subsection. A written confidentiality agreement or statement of need is not required as a precondition of the disclosure. However, the owner or operator disclosing the information may require a written confidentiality agreement in accordance with subsection (e) and a statement setting forth the items listed in subdivisions (1) through (3) as soon as circumstances permit.

(c) An owner or operator of a facility subject to the requirements of section 8, 9, 10, or 11 of this chapter shall provide the specific chemical identity, if known, of a hazardous chemical or an extremely hazardous substance to any health professional, including a physician, toxicologist, or epidemiologist who:

(1) is a local government employee or a person under contract with the local government; and

(2) requests the information in writing and provides a written statement of need under subsection

(d) and a written confidentiality agreement under subsection (e). After receiving a written request under this subsection, the owner or operator to whom the request is made shall promptly provide the requested information to the local health professional. Except as provided in subsection (e), the authority to withhold the specific chemical identity of a chemical under section 12 of this chapter when the information is a trade secret does not apply to information required to be provided under this subsection.

(e) The written statement of need described in subsection (c) must describe with reasonable detail at least one (1) of the following health needs for the information:

(1) To assess exposure of persons living in a local community to the hazards of the chemical concerned.

(2) To conduct or assess sampling to determine exposure levels of various population groups.

(3) To conduct periodic medical surveillance of exposed population groups.

(4) To provide medical treatment to exposed individuals or population groups.

(5) To conduct studies to determine the health effects of exposure.

(6) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(e) A person who obtains information under subsection (a) or (c) shall, in accordance with subsection (a) or (c), agree in a written confidentiality agreement that the person will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing the information. This subsection does not preclude the parties to a confidentiality agreement from pursuing any remedy to the extent permitted by law.

[Pre-1996 Recodification Citation: 13-7-37-18.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-14 Disclosure to general public

Sec. 14. (a) An emergency response plan, material safety data sheet, list of chemicals described in section 8(b) of this chapter, inventory form, and follow-up emergency notice shall be made available to the general public during normal working hours at the location or locations designated by the commission or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of sections 9 through 10 of this chapter, the commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 10(a) of this chapter to be contained in an inventory form as tier II information.

(b) A local emergency planning committee shall annually publish a notice in local newspapers stating that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice must:

- (1) state that follow-up emergency notices may subsequently be issued; and
- (2) announce that members of the public who desire to review:
 - (A) an emergency response plan;
 - (B) a material safety data sheet;
 - (C) an inventory form; or
 - (D) a follow-up notice;

may do so at the location designated under subsection (a).

[Pre-1996 Recodification Citation: 13-7-37-19.]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-15 Civil actions by persons

Sec. 15. (a) A person may commence a civil action on the person's behalf against the following:

- (1) An owner or operator of a facility, for failure to do any of the following:
 - (A) Submit a follow-up emergency notice under section 7(d) of this chapter.
 - (B) Submit a material safety data sheet or a list under section 8 of this chapter.
 - (C) Complete and submit an inventory form under section 9 of this chapter containing tier I information as described in section 9 of this chapter unless the requirement does not apply under section 9(b) of this chapter.
- (2) The commission, for failure to provide a mechanism for public availability of information in accordance with section 14 of this chapter.
- (3) The commission, for failure to respond to a request for tier II information under section 10 of this chapter not later than one hundred twenty (120) days after the date the request is received.

(b) An action under subsection (a) against an owner or operator of a facility must be brought in a court having jurisdiction.

(c) A court has jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to:

- (1) enforce the requirement concerned; and
- (2) impose any civil penalty provided for violation of the requirement.

(d) An action may not be commenced under subsection (a)(1)(A) until at least sixty (60) days after the date the plaintiff gives notice of the alleged violation to the state and the alleged violator. Notice must be given in the manner prescribed by the administrator under regulations adopted under 42 U.S.C. 11001 et seq.

(e) An action may not be commenced under subsection (a)(1)(B) or (a)(1)(C) until at least sixty (60) days after the date the plaintiff gives notice to the commission that the plaintiff will commence the action. Notice must be given in a manner prescribed by the administrator under regulations adopted under 42 U.S.C. 11001 et seq.

(f) An action may not be commenced under subsection (a) against an owner or operator of a facility if the administrator has commenced and is diligently pursuing an administrative order or a civil action to:

- (1) enforce the requirement concerned; or
 - (2) impose a civil penalty under 42 U.S.C. 11001 et seq.
- [Pre-1996 Recodification Citation: 13-7-37-20(a), (d), (e), (f), (g), (h).]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-16 Civil actions by state or unit of local government

Sec. 16. The state or a unit of local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

- (1) Provide notification to the emergency response commission under section 3 of this chapter.
- (2) Submit a material safety data sheet or a list under section 8 of this chapter.
- (3) Make available information requested under section 8 of this chapter.
- (4) Complete and submit an inventory form under section 9 of this chapter containing tier I information unless the requirement does not apply under section 9(b) of this chapter.

[Pre-1996 Recodification Citation: 13-7-37-20(b).]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-17 Civil actions by commission or local emergency planning committee

Sec. 17. The commission or a local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to:

- (1) provide information under section 5(d) of this chapter; or
- (2) submit tier II information under section 10 of this chapter.

[Pre-1996 Recodification Citation: 13-7-37-20(c).]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-18 Costs, attorney's fees, and expert witness fees; enforcement under federal or state law; intervention

Sec. 18. (a) A court, in issuing a final order in an action brought under section 15, 16, or 17 of this chapter, may award costs of litigation, including reasonable attorney's fees and expert witness fees, to the prevailing or the substantially prevailing party if the court determines that the award is appropriate.

(b) Sections 15, 16, and 17 of this chapter do not restrict or expand any right that a person may have under federal or state law to seek enforcement of a requirement or to seek other relief.

(c) In an action brought under section 15, 16, or 17 of this chapter, the state, if the state is not a party, may intervene as a matter of right.

(d) In an action brought under section 15, 16, or 17 of this chapter, a person may intervene as a matter of right if:

- (1) the person has a direct interest that is or may be adversely affected by the action; and
- (2) the disposition of the action may impair or impede the person's ability to protect that interest; unless the state shows that the person's interest is adequately represented by existing parties to the action.

[Pre-1996 Recodification Citation: 13-7-37-20(i), (j), (k), (l).]

As added by P.L.1-1996, SEC.15.

IC 13-25-2-19 Commission's right of entry, inspection, and copying

Sec. 19. To carry out the responsibilities of the commission, the commission, or an authorized representative or agent of the commission, shall have a right to enter upon, to, or through public or private premises to investigate, copy all records related to hazardous chemicals, and inspect for compliance with the requirements imposed under this chapter.

As added by P.L.85-2015, SEC.17.

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