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Minutes of the
South Dakota Emergency Response Commission Meeting
Conducted via Digital Dakota Network
Matthew Training Center, Joe Foss Building, Pierre, SD

March 18th, 2024
10:00 AM Central Time

COMMISSION MEMBERS PRESENT: Chairman Dustin Willett, Vice Chairman Paul Merriman, Trish Kindt, Dave Ackerman, Sean Kruger, Andrew Canham, Jason Bauder, Kaitlin Thomas

COMMISSION MEMBERS ABSENT: Tina Titze, Jason Humphrey, Becky Pitz

OTHERS PRESENT: Rhett Howard, OEM, Kelsey Newling, SD DANR, Bre Bockstahler, EPA Region 8, Matt Mitravich, CISA, Dan Richards, PHMSA, Brenda Binengar (DANR), Betty Dunaway (DANR)

INTRODUCTIONS: Participants introduced themselves.

CALL TO ORDER AND ROLL CALL: Chairman Willett called the meeting to order. The roll was called, and a quorum was present.

Chairman Willett announced the meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

LEPC ROSTER REVIEW /APPOINTMENTS: Kelsey Newling stated that there are 60 designated LEPC's in South Dakota. Prior to the meeting, the SERC members were sent copies of the LEPC rosters submitted by the LEPC's. Ten of the LEPC's did not submit rosters: Aurora, Haakon, Hamlin, Jackson, Jerauld, Lyman, Oglala Lakota, Sanborn, Todd, and Union. These LEPCs are not active, and in 2023 the SERC appointed individuals to serve as the LEPC for all but Hamlin County. The LEPCs have not been active mostly because they cannot generate enough interest in the county to have meetings.

Hyde, Kingsbury, and Lake counties are either reorganizing or having elections after the SERC meeting date. These three counties have requested more time to submit rosters. Those rosters will be presented to the SERC for consideration at the June meeting.

Staff has not heard from Mellette, Roberts, Tripp, and Hutchinson counties. Hutchinson County has had multiple emergency managers in a short period of time. The other three counties have typically submitted rosters in the past. Ms. Newling requested input from the SERC regarding giving those

counties until the next meeting to submit rosters or if the SERC would rather appoint these LEPCs. She noted that if the LEPCs submit a roster, the SERC could then approve it at the next meeting. Chairman Willett requested up discussion regarding the four counties that were not heard from. Ms. Kindt asked if these four counties previously had rosters. Ms. Newling stated that each of the counties had submitted rosters in the previous years. Chairman Willett stated that if there are a handful of counties that need more time to submit rosters, they should be looped into the same group of rosters that need to be approved. However, if the rosters are not submitted by the next meeting date, the SERC should appoint the LEPCs.

Ms. Thomas agreed with the statements made by Chairman Willett.

Mr. Bauder asked if DANR has reached out to the counties that have not been heard from. Ms. Newling stated that multiple attempts were made to contact the counties, and no contact was made with DANR.

Ms. Kindt mentioned she tried contacting the counties and she had spoken with a few of them, but she was not able to make contact with some of them at all. Hutchinson County's Emergency Manager has changed several times and DANR is not sure when the new Emergency Manager started. DANR has had no contact with Hutchinson County.

Mr. Canham asked if the four counties had rosters due to the SERC appointing them or if they had submitted their rosters for approval. Ms. Newling stated that each of the counties submitted rosters in the past.

Mr. Ackerman asked if it would inconvenience Ms. Newling by waiting for the next meeting to approve the rosters. Ms. Newling responded that the SERC can vote however they would like. If, the SERC votes to wait on approval, it is fine with DANR because rosters have been approved at the June meeting in prior years.

Motion by Ackerman, seconded by Canham, to wait until the June meeting to consider the rosters for Mellette, Roberts, Tripp, and Hutchinson LEPCs. A rollcall vote was taken, and the motion carried unanimously.

Regarding the 43 LEPC's that submitted rosters for SERC review and approval, Ms. Newling stated that in many cases, one or two sectors are not filled, mainly because it is hard to fill all the membership sectors. There is representation from most sectors, but in some cases, there is a lack of interest from a certain sector. For instance, they may not have a member of the media, or they may not have a representative from a regulated facility. Typically, this happens in the more rural counties.

Ms. Newling recommended the SERC approve the 43 LEPC rosters that were submitted.

Motion by Thomas, seconded by Bauder, to approve the rosters for Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Butte, Charles Mix, Clark, Clay, Codington, Custer, Davison, Day, Deuel, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Hand/Buffalo, Hanson, Harding, Hughes/Stanley, Jones, Lawrence, Lincoln, Lyman, Marshall, McCook, McPherson, Meade, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Spink, Sully, Turner, War Hawk District, and Yankton LEPCs. A roll call vote

was taken, and the motion carried with Bauder, Canham, Kindt, Kruger, Merriman, and Thomas voting aye. Chairman Willett and Ackerman abstained from voting.

Ms. Newling recommended the SERC wait until the June meeting to approve the rosters for Hyde, Kingsbury, and Lake counties.

Motion by Kindt, and second by Merriman, to consider approval of the rosters for Hyde, Kingsbury, and Lake LEPCs at the June meeting. A roll call vote was taken, and the motion carried unanimously.

Ms. Newling recommended the SERC appoint Emergency Manager, States Attorney, Sheriff, and County Commission to serve as the LEPC for Aurora, Haakon, Jackson, Jerauld, Lyman, Oglala Lakota, Sanborn, Todd, and Union counties.

Motion by Canham, seconded by Thomas, to appoint the Emergency Manager, States Attorney, Sheriff, and County Commission to serve as the LEPC for Aurora, Haakon, Jackson, Jerauld, Lyman, Oglala Lakota, Sanborn, Todd, and Union counties. A roll call vote was taken, and the motion carried unanimously.

Chairman Willett dismissed himself for another meeting at 10:30am, and Vice Chairman Merriman then presided.

APPROVAL OF DECEMBER 19, 2023, SERC MEETING MINUTES: Motion by Kindt, seconded by Ackerman, to approve the minutes from the December 19, 2023, State Emergency Response Commission meeting. A roll call vote was taken, and the motion carried unanimously.

FEDERAL UPDATES: Bre Bockstahler, EPA, thanked those who were able to attend/participate in the Western Regions SERC/TERC conference in February. She thought the conference turned out well, had great networking, participation, and hoped everyone found it just as useful. Presentations can be found here: response.epa.gov/WesternSERC2024

The group Ms. Bockstahler is a part of at EPA has gone through a reorganization recently. Anyone outside of the agency should not see any changes, as this was more internal staffing shifts.

The Safer Communities by Chemical Accident Prevention (SCCAP) is now in place. This provides updates and a few changes to the RMP rule. There are some implications for LEPCs as there is a requirement for facilities to conduct a field exercise by March 2027 (unless they have done one previously). They want to ensure LEPCs are aware of this so no one is overwhelmed by exercise participation requests. She will push out guidance as she receives and digests the rule. If you hear of any specific questions, feel free to pass those on. <https://www.epa.gov/rmp/risk-management-program-safer-communities-chemical-accident-prevention-final-rule>

Lastly, they are awaiting word on the signature for the CWA Hazardous Substance Worst Case Discharge Planning Regulations. Ms. Bockstahler will forward more information as she receives it. Dan Richards, PHMSA, reported that they have been in the process of hiring a new community liaison officer and two more investigators in the central state's region. Updates to the ERG will be on time this year. Here is a link and his email address:

<https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/2024-03/PHH50-0207-0224-ERG2024-Summary-of-Changes.pdf>
daniel.richards@dot.gov

Matt Mitravich, CISA, did not have an update, but he wanted to share his email:

matthew.mitravich@cisa.dhs.gov

REGIONAL HAZ MAT TEAM UPDATE: Jon Groen, SD HLS, was not present during the meeting, so Kelsey Newling presented his report. There is no new information on the Haz Mat Team other than they are busy doing training. SD Task Force One are meeting in Sioux Falls next week. They've only had one hazmat incident that had eight team members from Rapid City were deployed to in Martin, SD. A package of an unknown substance was sent to the state lab in Pierre but is not known if the testing is completed yet.

HMEP GRANTS. TRAINING AND PLANNING REPORT: Rhett Howard, OEM, reported that the HMEP grant is on a three-year grant cycle and the current HMEP is for 2023. For the HMEP 2022 grant, \$103,000 has been spent out of the \$122,000, and different ways to spend the extra approximately \$19,000 are being explored. There have been two grant reimbursements from Codington County that totaled \$3,000 dollars. Starting out there was \$115,080 and at this time \$112,867.00 is remaining. This is the time of year when activities get completed. The HMEP 2024 grant applications are due April 1, 2024. There are five counties and four fire departments participating this year. One last activity for HMEP 2019-2021 will be completed this month, and that should spend all the money available for those three grant years.

TIER II REPORT SUBMITTALS: Tier II reports are for facilities that store hazardous substances are required to file on an annual basis. The reporting threshold for most substances is 10,000 pounds, but the threshold is lower for certain substances. The reason facilities are required to report is to ensure planners, responders, and the general public know what is stored in the local community.

The Tier II reporting deadline was March 1, 2024. This year it seemed like it was steady for reports coming in since the first of the year. Every year fewer paper reports are submitted. Ms. Newling is working hard on encouraging facilities to report online. When facilities do make the switch, they are finding the reporting online to be easier than paper reports.

To date, reports have been received from 1,662 facilities. There are still several facilities that have not submitted reports. Staff is in the process of contacting those facilities and reminding them to submit their reports as the reporting deadline has passed.

Summarized Tier II data is available to the general public online and detailed data, including copies of the reports, is available to planners and first responders via a password protected website.

Beginning in May, DANR will begin receiving the Toxic Release Inventory (TRI) reports. Ms. Newling will discuss the TRI reports at the June SERC meeting.

LEGISLATIVE UPDATE: Ms. Kindt, DANR, reported that this year the last day of session will be Monday, March 25, 2024. That day is reserved for consideration of gubernatorial vetoes.

Ms. Kindt provided an update on 2024 legislation of interest to the State Emergency Response Commission or are environmental protection related. For information about any of the 2024 bills go to <https://sdlegislature.gov/Session/Bills/69>.

SB 16 is an Act to make appropriations for water and environmental purposes. There is a version of this bill every year because this is how funds are appropriated for grants and loans awarded by the Board of Water and Natural Resources for water and solid waste projects. The bill also added three water resources projects to the list of projects considered important to the general welfare of the citizens of the state. The new projects on the list include the Dakota Mainstem regional water system study, the Water Investment in Northern South Dakota project, and the Western Dakota Regional Water System study. The Bill was signed by the Governor on February 15, 2024.

SB 53 is An Act to make an appropriation for eligible water and wastewater projects and to declare an emergency. The bill deals with American Rescue Plan Act or ARPA funding for water and wastewater projects. The bill appropriated \$89,384,221 in federal fund expenditure authority for grants for eligible water and wastewater projects previously awarded American Rescue Plan Act state fiscal recovery funds. The bill also appropriated another \$28,000,000 in federal fund expenditure authority only if Acts previously approved by the Legislature for the use of ARPA state fiscal recovery funds contain moneys that are not obligated. This Bill was on the Governor's desk the last time of Ms. Kindt's report.

SB 78 was An Act to provide for an E15 fuel tax refund. Beginning in fiscal year 2025 and ending in fiscal year 2030, money deposited into the ethanol infrastructure incentive fund will be used to provide fuel tax refunds. Licensed marketers that demonstrate compliance with alternative fuel compatibility requirements may claim a fuel tax refund in an amount equal to five cents multiplied by the total number of gallons of ethanol blended gasoline classified as E15 sold and dispensed. If the amount of money in the ethanol infrastructure fund is not sufficient to pay in full all the allowable tax refunds for the calendar year, the payments would be prorated among the applicants. This Bill was signed by the Governor on February 25, 2024.

SB 111 was An Act to revise requirements for mining and mineral exploration. The bill amended sections of mining law pertaining to mining of sand, gravel, rock to be crushed and used in construction, pegmatite minerals, limestone, and iron ore, gypsum, shale, pozzolan, and other materials used in the process of making cement or lime.

The bill increased surety amounts for mining operations. Operations licensed after July 1, 2024, will be required to have surety of \$3,850 per acre of affected land or \$300,000 for statewide mining. Operations licensed prior to July 1, 2024, will see surety requirements increase each year until July 1, 2029, when the surety will equal that for operations licensed after July 1, 2024. In lieu of the required surety, operators may provide an irrevocable letter of credit, a cash deposit, a certificate of deposit made payable to the board, or government securities. The Governor signed this bill on March 15, 2024.

HB 1030 is an Act to update statutory and regulatory references pertaining to water pollution. The bill essentially updated dates and reference numbers to US Code and American Society for Testing and Materials (ASTM) Standards. The bill was signed by the Governor on February 5, 2024.

Ms. Kindt encouraged everyone to visit Governor Noem’s website, which lists the bills she signed and provides a bit more information about each bill. The link for the Governor’s website is <https://governor.sd.gov/>.

Vice Chairman Merriman mentioned a few bills that included a disaster fund bill, annual wild land fire suppression appropriation, and fire service-related bills. None of the bills had any impact on the Department of Public Safety.

PUBLIC COMMENT PERIOD: Vice Chairman Merriman opened the floor for public comment. No comments were made.

OTHER BUSINESS: Ms. Newling reported that the next SERC meeting is June 25, 2024, at 10:00 a.m. Central time.

Vice Chairman Merriman entertained a motion to adjourn. Kindt made the motion, seconded by Thomas. Meeting adjourned.

Signature: _____

Date: _____