

39E.010 Kentucky Emergency Response Commission -- Duties.

The Kentucky Emergency Response Commission is established to:

- (1) Implement all provisions of Title III, Pub. L. No. 99-499, associated federal regulations, and subsequent related legislation and regulations related to hazardous substances; develop policies related to the response of state and local governments to releases of hazardous substances; develop standards for planning for these events; develop reporting requirements for those who manufacture, use, transport, or store these substances; provide information to the public concerning hazardous substances in the community; develop training requirements; and develop requirements for local governments and covered facilities to exercise plans related to hazardous substance response; and
- (2) Perform any other functions assigned by statute or by the chairman.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 58, effective July 15, 1998.

39E.020 Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

- (1) "Commission" means the Kentucky Emergency Response Commission and those persons appointed by the Governor to implement provisions of Title III, Pub. L. No. 99-499 and this chapter.
- (2) "Local emergency planning committee," hereafter referred to as the "local committee," means those persons appointed by the commission to assist in the implementation of Title III, Pub. L. No. 99-499 and this chapter.
- (3) "Release" means, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers and other closed receptacles, of any hazardous substance.
- (4) "Reportable quantity" means an amount of hazardous substances released which requires notification to local and state warning points.
- (5) "Hazardous substance" means a substance specified by Title III, Pub. L. No. 99-499, subsequent federal regulations, this chapter, and subsequent administrative regulations as requiring notification if released or if stored, manufactured, or used.
- (6) "Warning point" means that location, operated by state or local government, and identified by the state commission or local committee, and which is continuously staffed, and which has the capability or responsibility to contact governmental emergency response organizations and, if capability exists, to warn the public of hazards which may affect them.
- (7) "Emergency response organization" means a unit of local government or a unit authorized by local government which may be called to make a response because of a release of a hazardous substance, and whose responsibilities are included in plans developed under this chapter.
- (8) "Facility" means all buildings, equipment structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person, or by any person which controls, is controlled by, or under common control with such person, and which manufactures, stores, or uses substances covered under this chapter. For purposes of KRS 39E.190, the term includes motor vehicles, rolling stock, and aircraft.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 59, effective July 15, 1998.

39E.030 Members -- Meetings.

- (1) The commission shall be composed of not more than twenty-five (25) members and shall be chaired by the director of the Division of Emergency Management of the Department of Military Affairs, who shall also be a member. Other members shall include, but not be limited to, the executive director of the Commission on Fire Protection Personnel Standards and Education or the executive director's designee, representatives of the Environmental and Public Protection Cabinet, the office of the state fire marshal, the Kentucky State Police, the Office of the Attorney General, affected industry, local government, health services, environmental interests, and other persons who have technical expertise in the emergency response field as the Governor deems appropriate.
- (2) Members of the commission shall be appointed by the Governor. All appointments shall be for a term of two (2) years. Members shall serve until their successors are appointed and qualified and shall be eligible for reappointment.
- (3) The commission shall meet not less than semi-annually, or as convened by the chairman.
- (4) If a member misses three (3) consecutive meetings of the full commission or three (3) meetings in two (2) consecutive years, the position shall be declared vacant by the commission. In these cases, the Governor shall make an appointment to fill the unexpired term.
- (5) The presence of thirteen (13) members shall constitute a quorum and actions taken at these meetings shall be considered as actions of the full commission.
- (6) Members of the commission shall not receive a salary for serving on the commission, but travel and per diem may be paid if funds are appropriated or otherwise made available for these purposes.

Effective: June 20, 2005

History: Amended 2005 Ky. Acts ch. 82, sec. 1, effective June 20, 2005. -- Created 1998 Ky. Acts ch. 226, sec. 60, effective July 15, 1998.

Legislative Research Commission Note (6/20/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.

39E.040 Duties -- Appointment of committees.

The commission shall:

- (1) Appoint local emergency planning committees and revise these committees as it deems appropriate. The committees shall include, as a minimum, representatives from each of the following groups:
 - (a) Elected local officials;
 - (b) Law enforcement;
 - (c) Emergency management;
 - (d) Fire service;
 - (e) First aid;
 - (f) Health service;
 - (g) Local environmental;
 - (h) Hospital;
 - (i) Transportation;
 - (j) Broadcast and print media;
 - (k) Community groups; and
 - (l) Owners and operators of facilities subject to this chapter;
- (2) Adopt standards and procedures for the operations of local committees;
- (3) Develop reporting requirements and procedures consistent with those of Title III, Pub. L. No. 99-499, for individuals, businesses, and governmental agencies that manufacture, use, store, or transport hazardous substances;
- (4) Develop guidance and standards for plans related to hazardous substances;
- (5) Approve, disapprove, and, where necessary, make recommendations to improve plans developed by local emergency planning committees;
- (6) Recommend administrative regulations to the director for issuance by the Division of Emergency Management to implement provisions of this chapter, consistent with Title III, Pub. L. No. 99-499;
- (7) Receive from any source and authorize the expenditure of funds;
- (8) Develop policies relating to the training of committees and persons subject to respond to releases of hazardous substances;
- (9) Develop policies relating to exercising and testing plans developed by local emergency planning committees;
- (10) Specify a warning point to which all required emergency notifications shall be made;
- (11) Develop a procedure by which facilities may report the presence and inventories of hazardous substances and by which members of the public may obtain these reports;
- (12) Annually review all commission policies and procedures and update them as necessary; and
- (13) Adopt policies for the conduct of the business and duties of the commission.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 61, effective July 15, 1998.

39E.050 Fees -- Trust and agency accounts -- Administrative regulations.

- (1) The commission shall institute a fee system to assist in the administration of its programs and activities at both state and local levels.
- (2)
 - (a) Any facility required to report under the provisions of this chapter shall annually submit to the commission the required fee of forty dollars (\$40) no later than March 1. This paragraph shall not apply to facilities that pay a fee pursuant to paragraph (b) of this subsection.
 - (b) Any facility required to report under the provisions of this chapter and which meets any of the following standards shall annually submit to the commission the required fee of two hundred fifty dollars (\$250) no later than March 1:
 1. The facility has any of the extremely hazardous substances identified in 40 C.F.R. Part 355, as amended;
 2. The facility has eleven (11) or more hazardous substances as defined in KRS 39E.020; or
 3. The facility has a total inventory of hazardous substances as defined in KRS 39E.020 of over four hundred ninety-nine thousand nine hundred ninety-nine (499,999) pounds.
 - (c) If the same owner or owners own two (2) or more facilities in a single county and all of the facilities are required to submit fees pursuant to paragraph (a) of this subsection, the fees due from the owner or owners shall not exceed a total of two hundred fifty dollars (\$250) for all those facilities in that county.
 - (d) The provisions of this subsection shall not apply to a facility owned or operated by local, state, or federal government.
- (3) The funds derived from the fee system shall be placed in a trust and agency account, which shall be known as the "Kentucky Emergency Response Commission Fee Account," and which shall not lapse. The funds in the account shall be expended only for the purpose specified in subsection (1) of this section.
- (4) The commission shall promulgate administrative regulations to implement the provisions of this section, for issuance by the Division of Emergency Management.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 62, effective July 15, 1998.

39E.060 Permissive activities of commission.

The commission may undertake other activities that are:

- (1) Required by federal law or regulation;
- (2) Authorized by federal law or regulation;
- (3) Authorized by executive order of the Governor;
- (4) Clearly adjunct to the duties specified in KRS 39E.040;
- (5) Necessary to approve or disapprove actions of the local committees;
- (6) Necessary to effectively implement the requirements of Title III, Pub. L. No. 99-499; and
- (7) Necessary to commence a civil action against the owner or operator of a facility for failure to comply with the provisions of Section 326, Title III, Pub. L. No. 99-499.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 63, effective July 15, 1998.

39E.070 SARA Title III programs account.

- (1) The "SARA Title III Programs Account" is hereby established as a trust and agency account in the State Treasury for the purpose of assisting in the administration and operation of programs authorized by this chapter.
- (2) Funds from civil and other penalties, donations, and sources other than fees shall be placed in the account. The account shall not lapse.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 64, effective July 15, 1998.

39E.080 Administrative support by Division of Emergency Management -- Protection of federal funds -- Administrative regulations.

- (1) The Division of Emergency Management shall provide administrative support to the commission within the limitation of staff resources. The division may employ staff and may acquire technical or professional assistance as determined to be necessary by the director of the division, and for whom federal, state, or other funds have been provided.
- (2) Persons employed under this section shall report to the director of the division and shall implement policies and directives of the commission as specified by the director. Other employees of the division may also support the commission and assist in the implementation of hazardous substance planning, reporting, investigation, training, and exercising as directed by the director. In cases when the commission develops policies or directives which cannot reasonably be implemented by division staff, the director may defer implementation until sufficient resources exist. In cases when the director advises the commission, in writing, that the division cannot provide requested resources, the commission may seek assistance from other agencies of state government.
- (3) In no case shall the director devote division resources to support the commission if that support would result in the withdrawal of federal or state funds from the division.
- (4) The division shall, upon concurrence by the director, promulgate administrative regulations recommended by the commission and consistent with Title III, Pub. L. No. 99-499. The regulations shall include, but not be limited to:
 - (a) Substances which require inventory reporting;
 - (b) Quantities of each substance covered; and
 - (c) Emergency notification procedures and requirements.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 65, effective July 15, 1998.

39E.090 Local emergency planning districts.

Local emergency planning districts shall be consistent with county boundaries. The commission may authorize two (2) or more districts to combine, upon request of the committees of the affected districts. There shall be only one (1) emergency planning committee within a district.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 66, effective July 15, 1998.

39E.100 Local planning committees.

- (1) Local emergency planning committees are created as part of the state commission.
- (2) Local committee members shall be appointed by the commission, and shall be considered as agents of the state for all purposes, including purposes of liability protection.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 67, effective July 15, 1998.

39E.110 Committee duties.

- (1) Duties of the committees shall include:
 - (a) Development of plans to prepare emergency response organizations within cities, counties, urban-county governments, and charter county governments to respond effectively to releases of hazardous substances;
 - (b) Identification of a twenty-four (24) hour warning point within the district to which persons responsible for releases of hazardous substances must report those releases;
 - (c) Establishment of a method, consistent with federal law, commission policies, and administrative regulations, by which manufacturers, users, or storers of hazardous substances may report the presence of those substances, and by which members of the public may obtain information about those substances;
 - (d) Appointment of a committee chairman, from among its members, for a term of two (2) years. Chairmen may be reappointed;
 - (e) Development and maintenance of plans consistent with administrative regulations promulgated by the commission; and
 - (f) Development of procedures for the annual review of emergency plans and procedures developed under this chapter.
- (2) Local committees shall advise the commission of their actions by providing a copy of minutes to the commission within thirty (30) days of the date of the meeting. If the minutes are later changed before approval, a copy of the revised minutes shall be submitted to the commission within thirty (30) days of the approval.
- (3) Local committees may request the chief of the fire department with jurisdiction over a facility which has, or may have, substances subject to Title III, Pub. L. No. 99-499, to make on-site inspections of the facilities and to report all findings to the chairman of the committee.
- (4) Members of local committees shall serve for terms as specified by the commission, though not to exceed four (4) years except by reappointment. Committees may establish attendance standards for continued membership and shall advise the commission of any additions or deletions from the membership that are desired. These changes may be approved or disapproved by the commission.
- (5) Committee meetings shall be subject to provisions of KRS 61.805 to 61.850 relating to public meetings and to KRS 61.870 to 61.884 relating to open records, provided that trade secrets, as determined by the federal Environmental Protection Agency, are processed in accordance with 42 U.S.C. 11042.
- (6) The local committee may, after consultation with the commission chairman, seek civil remedies prescribed in Section 326, Pub. L. No. 99-499.
- (7) The local committee may, with the advice and consent of the commission chairman, submit information to the county attorney for prosecution.
- (8) Consultations pursuant to subsection (6) of this section shall be made prior to the giving of notice of intent to commence a civil action.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 68, effective July 15, 1998.

39E.120 Commission to be advised of receipt of excess quantities of hazardous substances.

Owners or operators of facilities which manufacture, use, or store extremely hazardous substances, as identified in 40 C.F.R. Part 355, and in quantities as identified in administrative regulations promulgated by the Division of Emergency Management shall advise the commission, local committee, and fire department in whose jurisdiction the facility resides, of the name of the substance and its quantity, within sixty (60) days of the date the facility first receives the substance or substances in excess of the quantities as identified in the administrative regulations, or if there is a revision of these regulations and the facility has present a substance or substances on the revised list in excess of the quantity established for those substances, within sixty (60) days.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 69, effective July 15, 1998.

39E.130 Naming of facility representatives -- Liaison duties.

Owners or operators of facilities covered under KRS 39E.120 shall identify, within thirty (30) days of notifying the commission that the facility is subject to this chapter, the name of a facility representative who will work with the local committee in the development of emergency plans, and that person shall provide information necessary to the development of those plans.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 70, effective July 15, 1998.

39E.140 Political entities required to participate in local planning process.

- (1) City, county, urban-county governments, and charter county governments, school districts, special purpose district boards, or other municipal corporations or political subdivisions of the state or local government shall participate in the planning process conducted by local emergency planning committees. This participation shall include, as a minimum, providing information concerning government-owned or controlled emergency response assets, reviewing plans developed by the committee, and concurring that the final plan can be executed with existing resources.
- (2) In local governments where local emergency management agencies receive state or federal funds, those agencies shall provide administrative and planning support to the committee as specified by the director of the division.
- (3) If state or federal funds are appropriated specifically to support emergency response planning or other portions of Pub. L. No. 99-499, these funds may be allocated to local emergency management agencies and may be expended as specified by the director.
- (4) Local governments may enact ordinances specifying standards which owners or operators of facilities shall meet to provide warning of releases to workers and to the public which may be affected by a release.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 71, effective July 15, 1998.

39E.150 Plan development, approval, and review.

- (1) Plans developed under the guidance of the state commission shall be a part of the local emergency operations plan's hazardous materials annex. These plans shall be consistent with the requirements and criteria prescribed by the Kentucky Emergency Operations Plan's hazardous materials annex and shall emphasize a coordinated response by all local emergency response organizations.
- (2) If, in the judgment of the commission, the local plan is inadequate, or is inconsistent with the Kentucky Emergency Operations Plan, the local plan shall be returned to the committee and the committee shall revise the plan until approved by the commission.
- (3) Local committees shall annually review and update, where appropriate, each plan and submit revisions to the commission.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 72, effective July 15, 1998.

39E.160 Response to be consistent with plan.

After the state commission approves plans developed by each local emergency planning committee, emergency response organizations of each city, county, urban-county government, and charter county government shall respond in a manner consistent with those plans.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 73, effective July 15, 1998.

39E.170 State agency response.

Agencies of state government shall respond, within the confines of the Kentucky Emergency Operations Plan and agency policies, to releases of hazardous substances. Each response shall be consistent with the hazardous materials annex of the Kentucky Emergency Operations Plan. If an on-scene response is required by the Kentucky Emergency Operations Plan or by agency policy, state agencies shall cooperate with one another and with local emergency response organizations and with the party or parties responsible for that release.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 74, effective July 15, 1998.

39E.180 Claims to be filed with Board of Claims.

Any claims against the commission or committees or their members shall be filed with the State Board of Claims in accordance with KRS Chapter 44.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 75, effective July 15, 1998.

39E.190 Report of release of substance.

When a release of a substance covered under Title III, Pub. L. No. 99-499 and administrative regulations promulgated under this chapter occurs in a reportable quantity, the owner or operator of the facility where the release occurs, or the owner or operator of the vehicle transporting the hazardous substance, shall notify the local and state warning points within times established by administrative regulation. These regulations shall also specify information to be provided upon initial report and in written follow-up reports.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 76, effective July 15, 1998.

39E.200 Establishment of warning and notification standards.

- (1) The state commission shall, by administrative regulation promulgated by the Division of Emergency Management, establish warning and notification standards, which shall include, but not be limited to:
 - (a) The establishment of twenty-four (24) hour warning points;
 - (b) Public warning; and
 - (c) Notification of local emergency response organizations.
- (2) Any notification made pursuant to this chapter shall not relieve the facility owner or operator or other responsible party of any notification required by other state or federal laws or regulations.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 77, effective July 15, 1998.

39E.210 Report of inventories and location of extremely hazardous substances.

The division shall, upon direction of the commission, promulgate administrative regulations requiring manufacturers, users, or storers of hazardous substances to report information concerning inventories and locations of those substances. These administrative regulations shall use, by reference, lists of extremely hazardous substances and forms issued by the United States Environmental Protection Agency or by the Kentucky Emergency Response Commission.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 78, effective July 15, 1998.

39E.220 Additional information may be required.

Upon request of the commission or local committee, facilities covered by those administrative regulations required in KRS 39E.210 shall, within the time periods prescribed by federal law, provide additional information necessary for developing and implementing the emergency plan about each substance to include, but not be limited to, material safety data sheets.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 79, effective July 15, 1998.

39E.230 Reports available to public -- Protection of trade secrets.

Reports to the commission or committee shall be available to the public upon request in accordance with the provisions of KRS 61.870 to 61.884 relating to open records, if this information is not protected from release to the general public as a trade secret under federal law. Reasonable fees, consistent with KRS 61.874, may be charged for reproduction of these reports.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 80, effective July 15, 1998.

39E.240 Chapter supplemental to other laws.

No section of this chapter shall be construed as repealing any other laws of the Commonwealth, but it shall be held and construed as ancillary and supplemental to those laws.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 81, effective July 15, 1998.

39E.990 Penalties.

- (1) Any person violating any provision of this chapter or any administrative regulation promulgated or order issued pursuant to this chapter for which another penalty is not specified shall be guilty of a Class A misdemeanor.
- (2)
 - (a) When a person violates KRS 39E.120, 39E.130, 39E.190, or 39E.220, the commission chairman shall proceed against that person under paragraph (b) of this subsection or subsection (3) of this section but not both.
 - (b) Any person violating KRS 39E.120, 39E.130, or 39E.220 shall, upon the first conviction thereof, be fined not less than two hundred and fifty dollars (\$250) nor more than five hundred dollars (\$500). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating KRS 39E.120, 39E.130, or 39E.220 shall, upon subsequent convictions, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000). If any offense is continued for more than one (1) day, each day upon which such offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating KRS 39E.190 shall, upon the first conviction, be fined not less than one thousand dollars (\$1,000) nor more than twenty-five hundred dollars (\$2,500). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed. Any person violating KRS 39E.190 shall, upon subsequent conviction, be fined not less than twenty-five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000). If any offense is continued for more than one (1) day, each day upon which the offense occurs or is continued shall be considered and constitute a separate offense and a separate fine may be imposed.
- (3) Any person violating any provision of this chapter shall be assessed a civil penalty of not less than two hundred and fifty dollars (\$250) nor more than five hundred dollars (\$500). If any violation is continued for more than one (1) day, each day upon which the violation occurs or is continued shall be considered and constitute a separate violation and a separate civil penalty may be imposed therefor.

Effective: July 15, 1998

History: Created 1998 Ky. Acts ch. 226, sec. 82, effective July 15, 1998.