

Military Affairs — Division of Emergency Management

Subject

Revises Chapter WEM 1 relating to fees for facilities housing hazardous chemicals, hazardous materials, and extremely hazardous substances.

Objective of the Rule

The objective is to make certain that grants to county governments are funded at a level that will ensure ongoing chemical emergency planning and response locally. Additionally, state staff and oversight are essential and must continue to be funded at present levels in order to appropriately support local units of government.

Furthermore, state planning, exercising, training and response activities for chemical emergencies need to be funded at current levels in order to meet federally mandated criteria and state law. **Due to a projected shortfall of funds to sustain the program at current levels, a fee increase is necessary.**

The intent of the rule is to increase fees to facilities housing hazardous chemicals, hazard materials, and extremely hazardous substances to the extent that grants to counties will continue to be funded. Furthermore, state activities would be funded adequately at current levels to support counties with planning and response to chemical emergencies. The funding to counties assists with salaries for planning staff, planning activities, exercise activities, and response activities which are all mandated to counties by federal and state law. Counties must submit a Plan of Work in order to receive grant awards and must complete the work in order to receive grant dollars.

Policy Analysis

As a result of the chemical release in Bopal India in 1987 which killed and injured thousands of individuals and a similar accident within the United States four months later, Congress implemented The Emergency Planning & Community Right-to-Know Act (EPCRA) in 1988 which is an unfunded mandate requiring states to designate a State Emergency Response Commission (SERC), appoint Local Emergency Planning Committees (LEPCs) at the local level, collect chemical information from facilities, provide chemical information to first responders and the public, and much more. Since Wisconsin is a local control state, much of this responsibility would fall to local units of government. In order to comply with the federal law and to assist local units of government with the planning, training, exercising and response requirements and to provide funds for administration of the program at the state level, the Wisconsin Legislature in 1989 adopted the federal law as state law and gave the SERC the authority to collect fees from facilities that store hazardous materials, hazardous chemical or extremely hazardous substances.

In 1990, the SERC promulgated Chapter WEM 1 relating to fees to facilities housing hazardous chemicals, hazardous materials and extremely hazardous substances. The fees were modest and took into consideration the needs of small business by exempting from fees those facilities which have 10 or fewer employees. That exemption will still be applicable should this rule be adopted. The fees have not increased since the initial promulgation of WEM 1 in 1990. Wisconsin Emergency Management (WEM) and the SERC have successfully stretched every dollar that is collected from facilities over the last few years, knowing that eventually action would be necessary to increase fees to keep the program a very successful program functioning and improving. The SERC is facing a serious shortfall of funds needed to sustain Emergency Planning Citizens Right to Know Act (EPCRA) activities.

A moderate increase will insure that planning and response activities at the county level as well as state support functions will continue at a level that will protect and defend the citizens, and environment of the state of Wisconsin from an accidental or intentional chemical release.

The alternative to the proposed amendment to Chapter WEM 1 is a serious reduction in grants to counties to fund their staff and associated administrative needs required to carry out state and federal law with regard to planning and response to chemical emergencies. Planning, training, exercising and response activities at the state level will also be greatly reduced due to lack of adequate funds to support local units of government and to support EPCRA program requirements.

Statutory Authority

Section 166.20 (7) (a), Stats.

Entities Affected by the Rule

Facilities that house hazardous chemicals, hazardous substances and extremely hazardous substances to include certain small businesses that have in excess of 11 employees.

Comparison with Federal Regulations

Wisconsin adopted the federal law as state law and included in state law fees to facilities that house hazardous chemicals, hazardous materials, and extremely hazardous substances in order to fund the federal mandate and provide grant monies to counties so they can comply with federal and state law.

Estimate of Time Needed to Develop the Rule

Approximately 6 months from the time of the agency hearing in December, 2008.