



**North Dakota Emergency  
Response Commission  
PO Box 5511  
Bismarck, ND 58506-5511**

**State Emergency Response Commission Minutes**

**Commission  
Members**

Office of the  
Governor

Division of  
Homeland Security

Office of the State  
Fire Marshal

Division of State  
Radio

ND Health  
Department

State Highway  
Patrol

Office of  
Management  
And Budget

Office of  
The Attorney  
General

Workforce Safety  
& Insurance

Department of  
Agriculture

Department of  
Transportation

Office of the  
Adjutant General

Oil & Gas Division  
of Industrial  
Commission

ND Insurance  
Department

Dakota Plains  
COOP

Tesoro Refinery

ND Motor Carriers  
Association

The 114th meeting of the State Emergency Response Commission (SERC) was called to order by the State Emergency Response Commission (SERC) Chairman, Greg Wilz, on Wednesday, June 7, 2017 at 1:30 pm in the North Dakota Department of Emergency Services – Division of Homeland Security Conference Room, Building 35 Bismarck, North Dakota.

As the roll call was conducted, Chairman Wilz asked each member to introduce themselves and to identify the agency they represent. It was noted that a quorum was achieved, but the, Attorney General’s Office, and Workforce Safety and Insurance, were absent.

Guests (on phone) included Chad Cutshaw, the Grand Forks County Emergency Manager, Ilene Hardmeyer, the Hettinger County Emergency Manager and Kari Cutting representing the ND Petroleum Council which is being considered for inclusion as a ND State Emergency Response Commission representative. Chairman Wilz then related that the Secretary had sent out a copy of the minutes from the 113<sup>th</sup> SERC Meeting and all members should have had a chance to read them. SERC members were given a few minutes to quickly read through the minutes and Kathleen Spilman, representing the ND Motor Carriers Association indicated that there was a need for a correction. The correction was on page 6, paragraph 3, line 1 and was changing “petroleum marketers” to “petroleum producers”.

With this correction, Kent Theurer representing the ND Department of Agriculture made a motion to accept the minutes from the last meeting, which was seconded by Jeff Bitz representing the ND Insurance Department.

Chairman Wilz then asked the SERC Secretary Ray DeBoer to identify the documentation in the packets provided to the members. All items were identified.

**OLD BUSINESS**

**Committee Reports**

Secretary DeBoer then provided copies of the ND Department of Emergency Services (NDDDES) Reporting, Planning & Outreach Activities Quarterly report which was discussed.

Secretary DeBoer then went on to discuss the documentation/handouts in the folders provided to all SERC members and guests. Secretary Ray DeBoer then provided and explained the information in the Quarterly Report.

Rob Knuth representing the ND Firefighter’s Association (NDFFA) indicated that there had been a change in personnel within the NDFFA. Mr. Knuth related that he is the acting Executive

Director of the ND Firefighter's Association. He also reported that NDFA had just finished their 133<sup>rd</sup> Annual State Convention in Dickinson, which was a huge success.

### **FY 2016/17 HMEP Grant**

Karen Hilfer from the ND Department of Emergency Services Grant Section provided the following information regarding Hazardous Materials Emergency Preparedness (HMEP) Grants.

The 2015-16 grant has been closed out so the information you have there will be going out regarding this particular grant. On the 2016-2017 grant, we're in full mode there. People are spending money, which is good. As you can see from the figures, we still have a way to go, but I've now got a lot of folks that already have their exercise scheduled for this summer. So the next report you should see some of this money going out.

Note, the hazmat conference we did put aside \$27,000. We only spent a little over \$20,000. Some of those additional funds were travel to get some folks to some conferences. And other than that, we'll try to slide funds that can go into some other training opportunities before the end of the grant year in September. The one thing I forgot to add here, is that we have received the allocation for the 2017-2018 grant period, and it did go up to that 500 thousand dollar threshold. We do not have to put in for a full fledged grant, all we have to do is an updated budget as to what we're going to be funding, after setting aside the funds for post-study contract and \$67,000 towards fire fighter's training. I still had \$90,000 left to go to local grants. So we have an announcement out, which the deadline is the 21<sup>st</sup> of June. Karen then asked SERC members if anyone had any ideas that the \$90,000 could be spent on in case there are no applications received.

Chairman Greg Wilz then stated that he and the other SERC members would give that some thought.

Chairman Wilz then asked Karen to provide an update on the state flow-study.

Karen Hilfer stated the contractor has been busy putting data together from some existing information sources. They did their first road traffic surveys, mid-May to the end of May. And now they're working to put together the data from the surveys. NDDDES should have something by the end of this month as far as preliminary data from that particular round of surveys. The contractors have already indicated there are some spots where some adjustments could be made in future studies. During the survey time frames there were areas where they only saw about ten vehicles but then there were other locations where they saw 600 vehicles so it's really a mix. There may be some sites eliminated in future surveys.

The contractor attempted to use photography during the survey. They had cameras set up in a few locations for a test. While they got really good images of the trucks, they couldn't always get the placard. This had the potential to reduce needed staffing for the surveys; however, because of the inability to guarantee a shot of the placard they will not be using cameras in the future. To be complete they would have had to use both the cameras and staff.

Chairman Wilz then asked if there were any questions on the ongoing flow study? Seeing none he indicated he would be doing the Homeland Security Update. The grant was just released last week for the upcoming year. Homeland securities grant dollars are hanging about the same, I think we received about \$3.1 million dollars. A chunk of that will get peeled off for the regional response teams, hazmat teams, and other

various regional response platforms that we've built over the years. This'll sustain and maintain them. Another part of that will get peeled off to help fund the Fusion Center/State and Local Intelligence Center (SLIC) , and then beyond what's used here for salaries, there's a fourth chunk. We will open that up for local grants again this year. We think that's going to be just a little over a million dollars for local Homeland Security Grants. What we have found out by doing, kind of ahead of the game NOFA, Notice of Funding Opportunities, is that there's about \$17 million dollars' worth of needs out there for about \$1.2 million dollars' worth of grant dollars.

Chairman Wilz then reported that the week of May 30 – June 2, 2017, the department's advisory council

met and we went through that with them. The advisory committee indicated they are going to set priorities for the funding. First priority will be all training and exercise and planning activities that meet the requirements of the grant. Second will be, basic equipment that's needed. Less communications. Given the fact that the state is undertaking a project called SIRNs, State Interoperable Radio Network. We are too early in identifying what the standard would be for that system, we're not going to approve any communications equipment for this round, but there's literally more than enough other things to spend that \$1.2 million dollars that's available. A lot of the requests were for upgrades in public safety and that's specifically something that, SIRN would be looking at to upgrade so we don't want to spend money now and then buy something that's not to the standard that the whole network will be built off and then we would have to reinvest. Grant applications are on a fast track because the grant came out so late this year, but literally, by the end of the month, we have to have our whole grant application in. So we had to give the local jurisdictions, a heads-up with the pre-NOFA and they have to have their apps in within a week and a half so we can review and approve and then get them into the Feds. That's what we'll have to work with. Again we've have about \$3,2 million dollars. It's based on a national scale of risk in the state of North Dakota and even though we went up in various categories of risk, other states also went up and we stayed at #49 out of the #50 contiguous states in terms of risk. The good news story, we all live in North Dakota, and it's a nice safe place, most of the time. There you have it. Any questions on Homeland Security Grants?

Chairman Wilz then went on to provide an information on Legislative updates. I'm going to pass around

a handout. This is the only real big legislative initiative that will be near and dear to your hearts, Senate Bill 2110. This is the final version that came out and was signed by the Governor. This was kind of interesting going back into history. We have addressed this particular bill in the March timeframe, and what happened was we had our hearing on the Senate side and they made some changes to it and there was a lot of industry there in the room at the time. We thought we had some concurrence from industry going into this thing about our issues of being short money for responders and thought this might be an avenue for the legislature for bringing some additional dollars into local governments that are struggling because of the growth, based on some of the oil field development and other chemical development surges that we've seen in the state but that did not come out of the committee. Industry, at the end of the day, thought it was just an unfair tax, I can't argue with that, and so the bottom line was after one hearing, even though we made ourselves available for

any

work committees and sessions if they wanted to get the final language. We were never invited or asked to participate and even the hallway meetings never really happened. We ended up getting this bill through, but it's not as we took it to them.

I'm going to cover some of the important things. Obviously on the first page, it was pretty important that the reporting process include the name of the chemical. How that was missed a couple of sessions ago, I'm not too sure. There is some basic housekeeping stuff in here. But in Paragraph C, a little more than half way down into that paragraph, it says "The Director of the Homeland Security Division may impose fees for both late filing of records and late payment of fees. A late fee must be equal to the amount of hazardous chemical fees owed under this subdivision. After 6 months, the director shall process further violations under local violations in subsection 4". We went to them asking for what we thought was a reasonable fee. We did not ask them to basically double the, or make the fee the same amount as whatever they're paying in. Had no input. No say on that whatsoever, but that's what came out of it. So right now, we're working on a couple of things, Jeff, you correct me if I'm wrong, we're wanting to get an Attorney General's opinion,

Jeff Thompson, the DES Haz-Chem Officer confirmed the information about obtaining an opinion from the Attorney General's Office.

Chairman Wilz continued and reported you know, it's really kind of clumsily worded. It's either "late fees

"or "late payments" and "late reports," that's again, not language we went in with. But that's what came out and

then, the other thing is; we're going to have to put some policy together that governs how we'll implement this fee or fining ability. Then one of the things that's really on the back of my mind, and I know Jeff and Ray feel the same way, is we have to provide good, ample, proper notification to industry that this is now law. So I

think,

Jeff, we talked about implementing 1 January next year, or after, I'm sorry, after the reporting period of 1 March, correct?

Jeff Thompson related that the late fee and late payment fining will go in effect for next year's reporting period. So if we still have some late stuff coming in from this year, we are not going to try to implement half way

through, but just start fresh with the new 2017 reports. This has been the thought process and we're trying to make sure that we do the legal notifications in a way that we don't get companies coming back and saying "we've always been late." "I've always filed on March 15<sup>th</sup>, why this year –this," so we just want to make sure we get good notification to them.

Jeff Bitz representing the ND Insurance Department then stated, with the word "may" in there, doesn't that give you the option then, it doesn't say "shall." Typically in state law when you're required to do something, it says "you shall."

Thompson replied that Bitz's statement was correct.

Jeff Bitz continued with stating, the document says “may”, so basically the director has the ability to apply fines on late filings.

Wilz responded by stating, that yes, that is what we asked for, so what the process and policy needs to be on that, I’m not too sure. He continued with stating, I would submit to you all as SERC members that we’ll draft that and bring it before you before it goes final so you can see what has been put into policy. The other thing is, is I’m not looking to put anybody out of business. I don’t want late reports, but if I don’t get the reports, however I’ve got to have some way to motivate industry to file the reports. It’s not about the dollars to me. This is going to be small potatoes. I want it to be small potatoes. Okay? It’s about getting the reports in and fulfilling the letter of the law in terms of getting the reports. I think I’m also asking for input. How do we do this? Does it take personal letters from the departments/Hazchem section, up to the reporting entities? In addition to that, should we also be placing that in some of the major papers? You know, kind of a notice of change of policy? I’m not too sure but if you’ve got some thoughts and concerns regarding that, please share those with us, specifically Jeff and Ray as they’ll be putting a draft policy together.

Michael Ziesch representing the Department of Mineral Resources, asked the Chairman, “Do you have the flexibility to choose the time period to implement this? Is it not August 1<sup>st</sup>, 2017?”

Chairman Wilz then replied that law goes into effect July 1, 2017, but we are presently mid-cycle through the period.

Ziesch stated, “so you’ve got that flexibility?”

Wilz responded by stating, “I think we need to wait and catch up on or after March 1, 2018.”

Kent Theurer representing the ND Department of Agriculture that stated, “Wouldn’t you, because of the “shall” or the “may”, if there was a “shall”, then I do not think you have the flexibility if it said “shall.” If it said “shall” then you have to implement it because it said “may” in there. Create the program and then decide. So in addition to that, I would just like to state, that I think what I heard when I talked with, you guys, but also, Eric Delzer from Department of Ag was, I think your emphasis and their emphasis should be on on-time reporting. So I think that one should have, potentially a more substantial late fee than the late payment. I think you should make it up from that late fee to recoup that expense, but I think really, the goal and I think the goal, from what I heard from him was to make sure people are reporting on time so that information can get out to the department instead of it dragging along for 6-8 months.”

Chairman Wilz responded by stating, that’s part of why we want an Attorney General’s opinion.

Jeff Thompson replied with; yes, the word being, it says “the late fee must equal the amount of hazardous fee owed”. Where we’re having a little confusion is that both fines have to equal that, or we can’t exceed that, or is late filing separate and only the late payment fee automatically doubles? So just trying to get an interpretation of that and what that truly reads is, we’ve had some discussion and haven’t really gotten ourselves a good answer, so we really wanted some help with that one, Because that’s where, I think, in my opinion, it reads “late filings” is up to the director,” And the late fee for payment is double your Hazchem fee. That’s how I read it, but I’m not the one going stand up in court and try to defend that so we’d like some help in that interpretation.

Chairman Wilz then asked if any member had any other thoughts or feedback.

Kathleen Spilman representing the ND Motor Carriers Association asked for clarification and stated, that the expectation is this would apply to reports for reporting year 2017, which would be filed March 1, 2018?

Jeff Thompson replied, that her statement was correct.

Chairman Wilz stated, okay, moving on to the next paragraph I'll address is E, and that's been a big win here for the SERC. For the last number of years, we struggled with hearing from LEPC's it's tough to get their local memberships, to the meetings. A couple years prior to that, we pretty much cut off the ability for them to buy pizza and Coke and get a good meeting after work before they go home. So this language is pretty much a mirror of what we took to the legislature, and we thought it was reasonable that local emergency planning committee members can get stipends. In lieu of stipends, if the committee chair says "I want to buy pizza and Coke," you know, he can do that. There's a limit of 30% of the state per diem/rate per day. They would get about \$10-11 dollars to pitch in for each of the members and give them a refreshment or whatever. So, I think this is a good thing.

Getting people to get involved at the local level at the LEPC level is important. Any questions there? And the rest is really just kind of housekeeping. So it's not perfect, but I'm going to chalk this whole initiative up in the win column and if there are any other comments, please provide them to us now. And again, communication is going to be key here and we have to figure out how best to do that so Ray, I would say carry this initiative forth on the agenda and make sure that we're working draft policy and we're working the plan in how best to communicate this to industry across the state. Okay. Ray, next. Hazmat materials spill maps.

Secretary Ray DeBoer then stated to members, there are no maps for this meeting because our GIS mapping system is not working properly in Web EOC, which allows our GIS folks to download the hazmat reports. They've been working on it with IT and also the company that provided Web EOC, so hopefully by the next meeting we'll have maps available to provide. That's all I have. Any questions?

Chairman Wilz then stated, in general, we've seen a slight uptick in the number of spills, right?

Jeff Thompson replied by stating, yes, the last three months have been up.

Chairman Wilz continued and mentioned, and that's, I think, indicative of the scaled up activity we're seeing in some of the areas of the state. I had a chance, a week and a half ago, to attend the symposium the Governor had with pipeline industry and spoke very highly of the fact that we've got to do a better job of leak detections and using technology in various sensor packages. He said "our goal should be never to have our alert be a farmer, be it tripping through his range land, or seeing a black oil spot in his corn field." We have to do things better than that. He was way more articulate than I am being right now, but it was a good conference and industry is working hard, at least they told us they were working hard, for the most part. I truly believe they are, because it's in their best interest as well. Nobody wants to have spills/leaks and the reality is it's, you know, I got a chance to briefly tell industry, you know, for what we have been seeing here at DES, is kind of a repository for all hazmat spills statewide, you know, and we probably peaked out in that 2014-2015 range with the amount of spills we were seeing on a daily basis, and since then it has come down. My personal belief is not only do we see part of that because of the downtick in oil play over the last year and a half, but largely, I

think that the employee base, that was here, I think we've kept the good employees and those that weren't good, got sent away, you know, with the down turn. So I think the degree of caring and the competence of some of the employees has made a big difference as well. So, hopefully, we will continue to work on that.

Michael Ziesch from the Department of Mineral Resources then related, I'll just tack on to this. It looks like probably the appropriate spot, the Rural Electric Cooperatives in that area were in touch with Sean Johnson

in regards to the second river surge and some potential for minor flooding in the Williston area. We again notified, like last meeting period, we notified operators in the affected area and they shut in 22 wells. After the 2011-2012 time period when we had wells that flooded, we now have a system in place to notify operators to shut in their wells.

Chairman Wilz stated we have to look at the river gauge up on the Missouri by Williston. You'll note that it's in flood stage and the actual performance of increase is outstripping the predictions and I think I last looked it was around 23 something, and literally as we learned in 2011, some of our operators have well sites that are below that grade and getting those things surrounded by water and then trying to go in and do something was pretty tough, so great, I'm glad that process is in place and working so I'm glad to hear that happened.

Okay, so moving on to the next item of business, State Emergency and Response Commission membership and the next one is kind of also related. Draft executive orders. So over the last, I think three meetings, we talked about expanding the SERC and bringing in additional private industry partners to the SERC. We think there are some real advantages of having some industry sit around the table with us as we work to do our business and so I think at this stage of the game, with the players we've got around the table, we would like to ask the Governor to reissue the executive order and not too sure what the final order will look like. Our new Governor does take poetic license to some of this stuff, change things a little bit, but I think with what; Ray has here from the old Executive Order, adding Oil and Gas Production, Refinery, Pipeline, Mineral Leasing, and Oil Field Service Activities and Oil and Gas Pipeline Activities, that opens the door in a generic way for us to keep the SERC membership at a level with local and private industry partners in attendance.

Along with the Executive Order, I can tell you the Governor will have a keen interest in who sits around the table and a roster of names will go up with this as well. Names and the agencies, or industries that are represented at the table. If there is no comment or further discussion on this, I'd like a motion to submit to the Governor to refresh the Executive Order, naming the SERC.

Captain Eric Pederson representing the ND Highway Patrol made a motion to submit the Executive Order to the Governor for his signature adding the agencies mentioned by Chairman Wilz.

Kent Theurer seconded the motion which passed with a unanimous vote.

### **NEW BUSINESS**

#### **Local Emergency Planning Committee (LEPC) Brief**

Chairman Wilz then stated, okay, we will hopefully have that done and in your hands before the

next meeting of the SERC. Okay, we're going to get into New Business here and we've got Chad Cutshaw, the Grand Forks County LEPC Chairman and Ilene Hardmeyer, the Hettinger County Emergency Manager for LEPC Briefs.

Chad Cutshaw, the Grand Forks County LEPC Chairman introduced himself and stated, I currently Chair the Grand Forks County LEPC, and I'm a Battalion Chief Special Operations with Grand Forks Fire. So, our LEPC had been present, but not active, is probably the best way to put it. In 2012 we reinvigorated the LEPC. A big reason for the restart was primarily due to the West Texas explosion and the Northern Plains nitrogen plant that was proposed for Grand Forks that still may come someday. Ray actually came out, did some training and some discussions on LEPCs and how they're set up and how they run and what their role is and whatnot. We started moving forward, our Emergency Manager retired in late 2014, and we had an interim Emergency Manager up until November of 2015. We just did the status quo up until about 2015 when Kari Goelz came on board. We didn't want to start down a path and then find out our new Emergency Manager has a different view so we just kept things going until then. Since November of '2015, we've kicked the LEPC in to over drive. We have about 20 people that attend on a regular basis. We hold meetings quarterly. We do have a mix of government, private industry, energy sector, it's pretty much a wide spread membership that we have.

Again, we do have energy partners. We do get Ryan Nelson from EnBridge pretty regular; Paul Derbine

from Excel Energy's pretty regular; ag industries, we have CF industries, AgDepot, etc. It's all on a road map with who attends on a regular basis, but we're happy with our membership. We get good input, depending on what we're talking about. We do have 3 sub-committees, or working groups. We have a planning committee. Right now they are in the process of rewriting our hazmat plan as part of the overall rewrite of the local emergency operations plan. We have a training and exercise committee. Primarily right now, the training is individually based. We do have a full scale exercise coming up later this fall at the air base and that's one of the main things we're involved with there.

Then we have a public outreach committee. They've come up with a preparedness guide that will be rolled out soon and will be basically handing it out to members of the community. Also as part of our membership, we have two communities within our county that have their own emergency management. The University of North Dakota has an emergency manager, who regularly attends, and the Grand Forks Air Force Base also has emergency management, and their emergency manager attends. We try to work collectively, but each entity has its own nuisances that we have to work through. If you would like a breakdown of the membership, I can give that to you, but we are widespread as far as our membership and actively meeting every quarter.

Chairman Wilz responded, Good, well hats off to you, Chad, for getting this thing spun back up. And I'll open it up to any SERC members who may have a question or two. Go ahead, Kathy.

Kathy Spilman representing the ND Motor Carriers Association asked Chad, "On a scale from 1-10, with



10 being the most prepared, how would you rate the preparedness of Grand Forks County to deal with an expected emergency within your boundaries.”

Chad Cutshaw responded with, “Once we get outside of Grand Forks proper, it varies quite a bit. I would say on average a 5 or a 6. Within Grand Forks proper, we are the regional hazmat team, regional structural response team and we have career fire service, so we’re fairly prepared. There’s always room for improvement, I wouldn’t even give us a 10 just because I don’t believe anybody’s perfect, so I’d say outside the city, we’re mediocre. 5 or 6 is probably about as high as I’d want to go.

Ms. Spilman then asked, “And if there was one thing that the SERC could do to enhance the effectiveness of your LEPC, what would that be?”

Mr. Cutshaw responded with stating, “Continue doing what you are doing. That’s funding training within our county. We do take advantage of some of the HMEP grants. I know there’s departments that attempt to utilize the local grants and whatnot, and then providing funding for equipment and so on. Training and funding. It comes down to that. Everyone’s mantra.

Chairman Wilz then stated, we’re going to move to Ilene Hardmeyer, the emergency manager from Hettinger County.

Ilene Hardmeyer introduced herself and stated, the Hettinger County LEPC has 20 members, which involve the county. We have 3 cities; New England, Regent, and Mott, and everybody just works together really well when we get together. We have emergency management, we have the auditors, deputy auditors, commissioners, all EMS, fire chiefs, the County Extension Agent which has been very helpful, especially with information on drought issues. We do get together and discuss other issues outside of hazardous materials as we are not an oil impact county and we have no railroads. All of our people are volunteers, so with that, we have decided to use email as our meetings. I’m really glad to hear now that there’s the ability to provide food when we get together. Each year we send out the Section 324 Notice which we put in the local newspaper (the Herald). We have several Tier II location in the county, New England has 4 Tier II sites, Regent has 5, and Mott has 6.

Our responders really do enjoy the North Dakota pipeline awareness training that they have once a year. We have Trans-Canada come through here with the Bison Pipeline and so basically, between that and then we have Brady 2, NextAir Energy and they have 72 towers. But the only hazardous materials from that would be the sealed lead acid batteries, which is, I would say very minuet. The LEPC distributes the emergency response guidebooks. I give it to them and they give it to all the fire chiefs and whoever else they think is necessary. We have memorandums of agreement with the surrounding counties and the North Dakota Hazardous Material Regional Response Team. The Southwest emergency managers are working on a 3 year regional plan for training and exercise. What we are planning, is to do more regional training and exercising.

The Southwest Emergency Managers conduct meetings by utilizing webinars. We work very closely

with Southwest Health. Since we are a farming community, our environmental response, health and safety, chemicals and anhydrous training comes from them. There's hazardous materials training available in Dickinson that all the firefighter's can go to if they want, or anything else. We do have in place a hazard specific checklist for preparedness, response, and recovery. So I think, pretty much, right now, since we do work with other things other than hazard materials, we are very interested in the drought. Our extension agent is testing for nitrate poisoning in the crops. Farmers, would like to make hay for sale. To be able to sell hay, we have to have the nitrate poison testing. He's also doing quick water drought testing of the water, and streams. Our wheat, hay, land, and pasture are extreme. They're pretty much gone. Corn, sunflowers, and canola, might survive if we get some rain. We are also checking with FSA on disaster payments, of which there are none, so are hopeful FSA will open up the CRP lands in August, which they usually do so. With all this being said, I think I'm done.

Chairman Wilz then stated, Okay, Ilene, thank you very much. Any questions from SERC members relating to Ilene's report. Kathy, go ahead.

Kathy Spilman representing the ND Motor Carriers Association asked Ilene. On a scale of 1-10, with ten being the most prepared, how would you generally rank your counties preparedness to deal with emergency situations that you would expect to encounter.

Ilene responded with, I would rank us at 7, because we are not prepared to do that, but all of us do have the knowledge of where to go to get the equipment, etc. If we have any anhydrous problems, we know we go to the state health, hazardous oil spills, whatever, Dickinson comes down and helps us. So like I say, I think we're prepared as much as we probably ever will be.

Kathy Spilman then asked Ilene, If there was one thing that the SERC could do to enhance the effectiveness of the LEPC, what would that be?

Ilene responded with, of course, like everybody says, more money, but actually right now, I don't know. We need a generator, but you know, that is nothing to do with the SERC. I've got a grant request through homeland security for an active shooter course. As far as hazardous materials issues, I think we'll leave that up to the larger counties that have the better equipment. No sense for us all to do that, and then we'd just do a mutual aid agreement with them.

Chairman Greg Wilz continued, so other new business. We've got a guest sitting behind us, I met him this morning. Jim Williams, and he's in to talk to us a little bit today about seatbelts, and with that, you have a presentation on the computer?

Mr. Williams started by replying; Greg, I appreciate the offer to provide the presentation. My name's Jim Williams. I'm out of Denver. I just transferred from Region 4. I was a supervisor in that region, right now I'm the Chief Regulatory Compliance Officer for Global Harmonization System (GHS) in Region 8, primarily, under CFATS (Chemical Facility Anti-Terrorism Standards), which is the absolute worst acronym in DHS, but is there

anybody that's not heard of CFATS. Okay, so our responsibility is to protect particular chemicals of interest that the department has identified that can be used by nefarious folks, organizations, individuals who would attack. Examples are identified up here, chlorine, gas, we had the West Texas incident, which was not a nefarious incident, however it emphasizes the impact of certain chemicals of interest. The background of the CFATS program, in 2006 the authorization was signed. It got off the ground in 2007. Very slow start. We didn't actually start getting the feet underneath the program until about 2011. In 2014, they had the Reauthorization Act, and what that did was it extended the department's authority over some of the chemical facilities and extended the program for four year. But what it also did was mandate us to, what we actually should have been doing before, was to coordinate better with federal agencies; EPA, OSHA primarily, and the state agencies. The Department of Agriculture, Fire Marshals, public safety, we even reach out to the national guards. I met with the hazmat folks in Colorado last week. The emphasis on the, we call it ACT, which really is to emphasize to the community that CFATS is important. It's something that we need to take more seriously, and make sure the facilities are coordinating properly with their local and state officials.

So following a risk base approach, which is a little different than most regulations, there's 18 risk base performance standards that CFATS uses. It covers everything, from perimeter security all the way to the record keeping process. In perimeter security, we go over the perimeter, we go over their asset specific measures. The asset specific measures could be the actual COI, the 'chemicals of interest' itself, or it could be the alarm system, it could be their cyber system that's connected that may have access control that's tied to it, etc. The assets itself could be a broad term. To determine if a facility needs to report on their top-screen, there's particular chemicals of interest, which are on the Appendix A. Appendix A, there's 322 chemicals on it, and they are divided up into security concerns. Theft/Diversion is one, where a chemical could be stolen or diverted from shipment. Release could be a release explosive, could be a release flammable, or Sabotage. We have very few in the country that are actually sabotage concerns. Most of them are theft/diversion. I would say the majority of our facilities are smaller companies. You know, we do have larger companies like the chemical manufactures in the program. Almost all of those are covered, but the majority of them are the smaller ones. And those are the ones that we reach out to more to help them create their plans. I'll talk about the plans in a little bit.

As far as exemptions, there are a few. Nuclear Regulatory Commission/GAO covers those. Department of Defense or Energy, public water systems, water treatment works, they currently have an exemption. There's some talk about that exemption going away. The Maritime Transportation Security Act, the Coast Guard manages, that is also exempt from our program. We work with the Coast Guard with that program, because

there are some melding areas, because they cover from the water way to the first joint of the pipe, and if it's on land, and if it's stored on land, depending on where it is, then CFATS would cover it. So we have to work with them on where there's waterways or Coast Guard assets to make sure we don't have a gap. Currently, agriculture production facilities still have an extended top-screen. They're trying to figure out how do we do that without impacting farmers and such, too much. That's still in the works. For the basic background of the CFATS program, there's four tiers. All four are considered high risk. Tier I being the most high-risk. These facilities are very small in number. A total of about 2,600 facilities right now. We started out, well when I joined the program in 2010, we had about 5,000 facilities. Since then, many of them have, what we called 'tiered out,' or become unregulated. That may be through a couple of reasons; they may have removed their chemical of interest, they may have reduced the concentration of the chemical. We also had new tiering methodology that occurred over the last year, and that is actually affecting a lot of companies where they may be tiered out because the tiering methodology got more precise. Instead of doing a broad sweep of plumbing for example, we now have more accurate plumbing. They use a threat vulnerability and consequence to determine exactly if the facility is more likely to be a threat.

Okay, so this is the process. A facility has a chemical of interest, and these are published in federal register, but what we like to do, and one of the reasons why I'm here, is to try to get the word out. I would like to work with the Department of Agriculture, for the states, fire marshals, public safety, and try to figure out, the ones for me that are the threat are not the ones that are on the list that we already have covered. The ones for me are the ones that don't know about the program or that maybe they're just keeping their head low until somebody comes knocking on their doors and says "hey, maybe you should be reporting this." This program is self-reporting so even though it's a regulation, it's self-reporting so you know, we encourage the folks to report.

We try to get the word out so that the facility actually reports their chemical in top-screen. So they'll submit it in the top-screen that literally takes 10 minutes. It's a very easy process now, and I want to say 'now,' because before it was very cumbersome. And then they're given a tier. And that's where the tiering engine works, in the top-screen process. So if they're going to be regulated, they'll get a tier. If they're not, they'll get a letter that says, you know, "you're not considered a high risk facility," and they'll get the caveat and let you change your COI holdings, and re-report. So at that point, they're advised to complete the SVA, Security Vulnerability and Site Security Plan, and that's a much easier process than it used to be. Fairly simple, it walks the individual through. They also have the ability to do an alternative security plan. I recommend folks do that if they have the ability to, because it's about a 26 page document, depends on the facility, versus you know, a document now, it's actually smaller, but it's still over 100 pages. One thing I do want to say about the plan itself, or actually about any point in this process, is the facility, if they're not sure if they should be covered, all they have to do is reach out.

We have 7 inspectors in the region. I have one, the closest one here is in South Dakota. They can contact myself or anyone of the inspectors and hopefully we'll reach out to one of you and you can provide our information to them. We'll come out to the facility and help them walk through this process. We don't go out to

write tickets, anything like that. What we want is for them to secure the chemical. So what we do is we go out, we help them through the process, and then, we'll even help them create their plan. So we'll go through all their physical security measures; all of their documentations, their inventory procedures, cyber procedures, and we'll help them get their plan together, and then it goes through the process and will get approved. Now that approval process, that's actually when they become regulated. They're actually not required to do any of the measures on the plan until DHS says "good to go." And like I said, its risk-based performance, so it's not "you must have a six foot fence with top guard, you must use case hard lock." A co-op is much different than a facility with one chemical. So we can't compare the two. And that's why the inspectors go in and we look at what they have and we provide recommendations and options for them to complete their plan. So once they get that authorization, they're given an authorization inspection and that's kind of the in the middle of this process of us helping them with their plan. And then, the plans approved and then at that point, that plan becomes the regulation. That's what we are going to look at when we go to the facility. We're going look at that plan, make sure their COI holdings haven't changed, and that plan becomes the only thing we look at when we go out to the facility.

So this is kind of a snapshot of what I said. There's different facilities, they look completely different; could be a farm cooperative, could be an oil refinery, colleges, hospitals, wineries, I found out yesterday that apparently there are some taxidermy folks that actually may order COI above the screening threshold quantity, which is on Appendix A, which is the list of the chemicals. These are some of the industries that are covered. You can see there's quite a bit of variation between the companies. Semi-conductors and it depends on the geographic area of the country. Some are more prevalent in areas than others. And these are the standards that I talked about. Risk-Based Performance Standard (RBPS) 8 is cyber, and what we look for there is access. How do they control the access to their cyber system. Are they doing their inventory through their cyber system? Is there access? Control system, if they have one, is it tied to the cyber piece? Can it, do they have the proper measures in place to prevent somebody from getting into it and say for example, diverting some of their inventory orders. Monitoring is a piece where they have the monitors here, but that's really not what that RBPS is about. It's really about maintenance of their camera systems and their access control systems.

We want to make sure that if they have these systems. If a camera goes out, or if their access control system has an issue, that there's a process that they've identified where they will have that repaired. And in recordkeeping, is basically just that. You must have X Y and Z on the document and it's basic recordkeeping requirements. The two required RBPS's are RBPS 18 and 12. 12 is a personnel surety piece. Personnel surety, we want to make sure that folks have had background checks. We don't check to make sure that a background check doesn't show a particular crime, that's on the facility. All we want to do is make sure the facility has gone through that process. When you make that call to the facility as far as "yes, we want to hire that person, or keep them hired, or no, we don't want that person." That's their call. We just want to make sure they've gone through that process. There is a part 4 of Risk-Based Performance Standard 12, and what that is, is a Terrorist Screening Database. I've been able to get that connected to, our system which is connected to

the Terrorist Screening Database. So if the facility is a Tier I or Tier II, they are now required to submit names to the Terrorist Screening Database. And that particular transaction occurs, a Tier I or Tier II facility would submit those names in the Terrorist Screening Database, and then that piece is handled. If there was a hit, that piece is handled through the FBI and coordination with some folks at headquarters. The facility may or may not get notified, but it depends on, that's going to become the FBI's call.

So chemical security inspectors themselves, in Region 8, there are 8 of us, counting myself. I don't have any particular position in North Dakota, I have one in South Dakota and they weren't put there for any reason. It was just when the program was developed, these folks were hired on and they happened to be in those states. This is just where they lived because the inspectors work out of their home so they cover geographic areas and this just happened to be where the hires were at the time. Okay, so CSAT is the real basic information. CSAT is the assessment tool that a facility would use to input their data. And CVI is the protection category. It's not a classification like secret or anything like that, what it is, is a protection. So if an individual needs access to CSAT's data, such as a list of facilities in North Dakota, then we would request that they go to CVI training. It's literally 15 minutes, 15-20 minutes, you take a quick quiz, and that's it. You're given a CVI number and then if you ever need to contact the CSAT help desk, or you need to get information from me on a particular facility. I like to get that information through the HSA and his representatives to disseminate it out to those folks, but if public safety or fire need that information, I'm going to provide it to them, if they can't get it locally, and that's regardless of CVI. If I've got an emergency situation, which takes priority, but on a regular basis for routine handling, that's going to be the CVI. I'm going to require someone give me their CVI number before I give them information.

This is just real quick. A timeline of the program. As you can see, it really didn't get started until 2006, signed in 2007, and here we are not even moving until 2012. Authorization inspection, again, those are the preliminary step where inspectors go out and we help the facility create new plans. The approvals the next step. The compliance inspections is where we are today, so those number should be switching drastically right now, because we've actually inspected all of the facilities. Those numbers are a little off and so what we go into right now is "steady state." So there will be periodic authorization inspections as new facilities come into the program, or a facility decides they want to obtain their COI again as they previously got rid of it, or reduced the quantity.

So, North Dakota. This number's a little off, because during the re-tiering methodology, your numbers went up, I think to 10 or 11 now, and I'm expecting as the country is expecting about 1,200 more to be added to the numbers. I don't have any idea what North Dakota may end up being. This is the basic tiering methodology that I explained earlier. Just a basic timeline really is all that is. There's more timelines of tiering methodology. They've been working on it for quite a while as you can see, because in 2012, they did the study. 2013 I think it was with the Homeland Security studies and analysis and they figured out that the tiering methodology we were using previously was really not good. So there were a lot of facilities that were covered that didn't need to be and some facilities that weren't covered that really should have been.

And this is the personnel surety program that I talked about. And again, it's just for Tier I and Tier II

facilities. It's just has terrorist ties. And these are the available resources. I know you guys are familiar with Don Ronsberg with PSA, locally. We like to make sure that whenever we give a briefing that we make sure everybody understands that the Protective Service Advisor is there. The programs that they offer, the voluntary programs, we're working together with them now. The DHS protection office has created a regional office in each of the regions under a regional director. We're working closely with protective security advisors to try to get the word out without compromising their position, because they're a voluntary program, so we want to work with them. This brings me to the end of my presentation, but one thing I just wanted to talk about real quick is, and I can get with the different departments later on, it's just us trying to get the word out. My concern isn't the facilities that are already regulated as much, my concern is for those ones that we don't know about. I've only been in the office about four months, but what I'm doing is trying to reach out to the states and trying to identify organizations, industries, that we may be able to reach out to provide them presentations and briefings to get the word out about CFATS so that we can make sure we've covered all of our bases and to help a facility not be on the 10 o'clock news for a bad thing so if we can cover our bases and make sure no accidents are going to happen. If we can make sure we've done our part to protect those chemicals then we're good to go. Like I said, we don't write tickets. If the facility has any concern, or the SERC has any concern about a particular facility, just contact me and we can coordinate with the facility and with you to provide them with a briefing. Go out, help them with their top-screen from cradle to grave, we'll walk them through the process and that all I have for you.

Chairman Wilz thanked Mr. Williams for his presentation and stated; I think the bottom line is there's probably some entities in North Dakota that are not reporting. They probably don't know to even report. He continued by stating, "The meeting this morning that we had with Jim and the Hazchem personnel is talking about sharing Tier II reports so they can go through and spot check and be the friendly helper and get these industries, or locations in compliance. I mean, it's not a bad news story, it's a good thing. We just want to be a helping hand here. So that's the game plan moving forward for the SERC.

Chairman Wilz introduced Lori Reed from EPA Region 8 and asked her what type of information she had for the SERC.

Lori Reed replied with, money and LEPC's. She also stated that DES Haz-Chem staff participated in the Chemical Inventory Workshops that were held in North Dakota in April of this year and she was wondering what kind of feedback was received from attendees.

Jeff Thompson stated that DES hazardous chemical section had received tons and tons of data along with feedback.

Lori Reed then mentioned, so maybe we can use that information. The other thing I want to mention is workshops. There are several tiered levels of workshops with more detail which doesn't transfer to what North Dakota does though your programs, so it's not really needed as much. The one we just finished was

local

emphasis so when there is an actual spill, they know who gets called or how the response to the spill goes. A local spill does not normally involve EPA if local first responders and LEPC's knows what needs to be

done. One thing that was highlighted, is the facilities expect more guidance from the locals. So highlighting that, it's one thing we can consider at some point if the LEPCs are looking for support. We have an exercise scheduled, which is a table top exercise that involves emergency planning for a hazmat spill. Looking at emergency plans and comparing your emergency plan to be tested out. If there's an LEPC that would like a table top exercise, or wants to do training, or wants to take a look at emergency planning, we have an exercise we could do for free. HMEP funding could be utilized for travel expenses. Things are changing very slowly at the EPA. I've been here for 2 ½ years, and I thought things would change abruptly on November 9<sup>th</sup>, but they haven't. It's a big shift, moving slowly, but we're starting to see some of the effects of it. Just recently there was decision made in DC that surprised us, it was CAFO (Concentrated Animal Feeding Operations) operations and the emissions that are associated with methane.

Lori Reed continued and reported, for years, EPA has said agriculture and continuous feed operations are exempt from EPCRA reporting and the DC court came back a couple of weeks ago and said they're not exempt. They need to be reporting their emissions. EPA, does not have an ability for those feed operations to calculate what their emissions are. So EPA has asked the court for a stay in that decision so we can at least figure out a way to calculate those emissions. I just wanted you to know so you are aware of the decision and the monitoring, as the EPA is really surprised and is now trying to figure out how to determine the calculations. So that's CAFO Operations. South Dakota has been continuously requiring that so they're a little ahead of the game actually, so DC is looking to South Dakota for a little guidance. We also have, I don't know if Cameo is available or is it obsolete?

Jeff Thompson replied that CAMEO is not obsolete, but our Tier II database doesn't work well with Cameo.

Lori continued by stating that EPA does have CAMEO training that can be provided to any LEPC or emergency response personnel who are interested. She then went on to state that there have been some personnel, OSC's (On Scene Coordinators) that have retired that were responsible for this particular area. With that Ms. Reeds presentation ended.

### **Adjourn**

Chairman Wilz then continued, alright, before we adjourn, the next meeting. The date of the 115<sup>th</sup> SERC Meeting was established as September 20, 2017, with a make-up date of September 27, 2017 if needed.

A motion was made by Jeff Bitz to adjourn, with a second from Bill Suess. The motion passed unanimously. The 114th SERC meeting adjourned at 2:55 p.m.



Respectfully submitted:

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Greg Wilz, Chairman