

Minutes

Nevada State Emergency Response Commission (SERC)

Third Quarterly Meeting

Thursday, July 9, 2009 – 9:00 a.m.

Sparks Job Connect
1675 E. Prater Way, Suite 103
Sparks, Nevada

Members Present

Richard Brenner, Co-Chair
Tom Clark
Stacey Giomi
John Helmreich
Dale Lotspeich
Jim O'Brien (teleconferenced)
Jim Reagan
James Wright, Co-Chair

Members Absent

Carl Byrd
Ty Cobb (nonvoting)
Susan Crowley
Larry Farr
Craig Nixon
Dennis Nolan (nonvoting)
Tom Porta
Frank Siracusa
Doug Webb

Staff

Suzie Adam
Shelley Fleming
Karen Pabón
Glade Myler

Guests

Mike Ardito
Mark Bennett
Sandra Carroll
Joe Curtis
Ken Elgan
Brent Jones (teleconferenced)
Ron Juliff
Mark Langston

Matt Luellen
Jean Lucht (teleconferenced)
Chris Magenheimer
Cherie Nevin
Tony Philips
William Schaeffer (teleconferenced)
Rick Stever (teleconferenced)
John Woytak

I. *CALL TO ORDER

James Wright called the meeting to order at 9:07 a.m.

II. INTRODUCTIONS

Because members and guests teleconferencing could not hear the introductions, Karen Pabón took roll call and made introductions of guests. A quorum was present.

III. *APPROVAL OF APRIL 9, 2009 MEETING MINUTES

Ms. Pabón advised of changes recommended by Mark Bennett, Co-chair of Lander

LEPC, to be made to the April 9, 2009 SERC Quarterly minutes.

Jim O'Brien made a motion to approve the minutes of the April 9, 2009 meeting with the recommended changes. Dale Lotspeich seconded the motion which was approved unanimously.

IV. NEW BUSINESS

Mr. Wright advised there was a request to take items N and O out of order. Richard Brenner noted there was no objection to taking items out of order.

N. *Discussion/Action regarding documentation submitted by Esmeralda LEPC to appeal the decision of the SERC to deny the fiscal year 2010 SERC grant application due to late submission of items required pursuant to the notice of deficiency

Esmeralda LEPC appealed SERC's decision to deny the fiscal year 2010 SERC grant application due to late submission of items required pursuant to the notice of the deficiency.

Mr. Brenner advised according to SERC policy, the report presented to the SERC by the Executive Director or designee will include the grounds of the appeal, supporting documents, and information concerning the claim and recommendations for action by the SERC. The appellant may appear to present their appeal and the reasons why they are not satisfied with the decision of the SERC.

Glade Myler, Senior Deputy Attorney General (DAG), stated the party making the appeal has the right to present its case first and then SERC presents its case. Mr. Brenner followed policy and at DAG direction, Ms. Pabón was sworn in by Mr. Brenner. Ms. Pabón gave a chronological summary of the events leading up to the denial of Esmeralda LEPC's fiscal year 2010 SERC grant application.

Mr. Brenner swore in Ken Elgan, Esmeralda LEPC Co-chair. Mr. Elgan stated the letter of appeal was self explanatory and asked for consideration of awarding the grant. Mr. Myler asked Mr. Elgan if he received a copy of the appeal packet. Mr. Elgan replied he did receive a copy.

Dale Lotspeich asked Mr. Elgan what caused the attachment to the Level of Response and the equipment list to be submitted to SERC in an untimely manner. Mr. Elgan stated he was new to the role of working with the emergency management and LEPC committees and he and staff are learning.

John Helmreich asked if the above information was supplied a day late. Mr. Elgan stated it was.

Mr. Brenner asked if they were not aware of the deadline or did not have personnel to assist. Mr. Elgan advised there was a lack of personnel. The Esmeralda Sheriff's Office was given the responsibility of the LEPC and emergency management so Esmeralda County could maintain compliance. Both Scott Reed and Harriet Ealey

resigned from Esmeralda LEPC. Mr. Brenner then asked if the Esmeralda LEPC was aware of LEPC Handbook or SERC policy and procedures. Mr. Elgan responded he was not aware of these policies and procedures.

Mr. Wright summarized due to resignations of LEPC representatives and Esmeralda Emergency Management personnel, the Esmeralda Sheriff's Office was placed in the position of bringing the LEPC to a functioning level. Mr. Elgan advised that was correct.

Mr. Myler called Shelley Fleming and Mr. Brenner swore her in. Mr. Myler asked Ms. Fleming what her responsibilities were. Ms. Fleming advised she reviewed grants, ensured LEPCs were compliant. Mr. Myler asked if Ms. Fleming kept records of all LEPC transactions and correspondence. She advised she did. Mr. Myler asked Ms. Fleming if she had compiled the packet of evidence regarding the appeal to which Ms. Fleming advised she had. Ms. Fleming stated she had also prepared the cover summary of the packet. Mr. Myler asked if this was a true representation of what occurred with the Esmeralda LEPC grant application. Ms. Fleming advised it was. Mr. Myler went on to state Esmeralda LEPC missed the 45 day deadline to submit appropriate documentation. Mr. Myler asked what items were not submitted by the deadline. Ms. Fleming stated the LEPC had not submitted the attachment of the Level of Response and an updated equipment list.

Mr. Myler requested Ms. Fleming stamp each of the pages in the packet with a number, and provide a copy to Esmeralda County. Mr. Myler asked if there was an objection from Esmeralda County. Mr. Elgan advised there was not. Mr. Myler asked if Mr. Wright would accept the packet into evidence. Mr. Wright accepted the packet into evidence. Ms. Pabón asked if a number needed to be assigned to the appeal packet. Mr. Myler asked that it be marked as SERC's exhibit number one.

Ms. Fleming stated for the record, she spoke to Tony Philips and he stated the equipment list was not updated because the LEPC did not have anything new to report. Mr. Elgan advised Esmeralda County had no problem with SERC denying the LEPC's fiscal year 2010 SERC grant application, but is asking the Commission for the funding so it can proceed with its projects. Esmeralda LEPC understands it needed to go through the appeal process. Mr. Myler advised he had no further questions.

Mr. Lotspeich stated he supported funding Esmeralda LEPC with a 5% penalty for being late. The purpose for providing funding is found in SERC's vision and mission statements. Although there is a deadline, common sense needs to come into play. Mr. Lotspeich believes the LEPC has a valid reason. This is a new group trying to come into compliance.

Mr. Clark stated if SERC goes forward with this motion, it needs to set a policy so it is understood the SERC may impose a penalty. Mr. Myler indicated this is correct.

Mr. O'Brien asked where the 5% figure came from. Mr. Lotspeich advised it was based on a recommendation from counsel for Lander LEPC.

Mr. Brenner asked Mr. Myler if LEPCs denied grant funds in the past will be able to come back and request funds. Mr. Myler advised they cannot as this was previously adjudicated. He also stated the 5% was only a suggestion.

William Schaeffer, Lander County Assistant District Attorney, wanted to make a comment. Mr. Myler advised Mr. Schaeffer would need to wait until Lander LEPC's appeal was being discussed. Mr. Wright advised this was an open meeting and the chairs would allow Mr. Schaeffer to speak at this time. Mr. Schaeffer stated the idea is that a complete denial is draconian in this instance. Human beings make mistakes. He added it would only hurt the people who depend on the emergency services if Esmeralda LEPC was denied. Mr. Schaeffer stated he felt allowing this 5% penalty would be a good change in procedures. Mr. Wright thanked Mr. Schaeffer for his comments.

Mr. Myler asked to talk to Mr. Schaeffer later after he talks to the SERC Co-chairs. Mr. Schaeffer gave Mr. Myler his telephone number. Mr. Myler requested a recess to talk to the Co-chairs.

The Commission meeting recessed at 9:49 a.m.

The Commission meeting reconvened at 9:55 a.m.

Mr. Helmreich asked if SERC was going to put a motion in place and then debate that motion or is now the time for the Commissioners to discuss their perspectives. Mr. Helmreich recommended a motion be made with discussion to follow.

Mr. Lotspeich made a motion to approve Esmeralda LEPC's grant application minus 5% as a penalty for being late. Mr. Clark seconded the motion. A discussion ensued. Ms. Pabón advised Esmeralda LEPC is currently in compliance. Mr. Helmreich stated to support the motion there is still the possibility for SERC to deny a grant as opposed to allowing a penalty. Jim Reagan advised one concern to this process is to be able to work under the policy and support the policies SERC has written. By this motion, SERC is setting precedent. The measuring stick for what percentage may need to be awarded for the period of lateness is difficult to discern within the Policy Committee. Mr. Reagan stated it is the duty of this Commission to find fairness to be able to find a way to support those LEPCs who are intending to do the right thing. Mr. Myler advised this is a problem that needs to be worked out. Mr. Myler further added SERC cannot allow a LEPC to completely disregard everything.

Mr. O'Brien stated SERC has a Policy Committee that has dealt with a lot of these issues over the years and he does not believe it is SERC's role to issue policies by motions in a large group meeting. Mr. O'Brien advised setting precedent concerns him. Mr. O'Brien stated it was mentioned that SERC policy concerning guidelines for grant applications was draconian. Mr. O'Brien asked how giving the LEPC 45 days notification of its deficiencies in addition to the original deadline is draconian. Mr. O'Brien recommended holding a Policy Committee meeting to address the issues.

Mr. Giomi stated when these SERC policies were put into place, funds were scarce.

Money was being taken away from compliant LEPCs and given to noncompliant LEPCs. Policies were put into place because the people who sit on this Commission and SERC Committees are volunteers. The deadline is in place in order to be able to award those grants to the LEPCs who are in compliance. The members on the Commission and SERC Committees can get the work completed in a timely manner. Decisions should be made from policy and not personal feelings.

Mr. Wright asked if any one else had a comment. Brent Jones, Nye LEPC Chair, asked if public comment was allowed. Mr. Brenner advised not at this point. Mr. Wright advised the Commission was in the process of a motion and vote.

Mr. Myler requested another recess for attorney client discussion.

The Commission recessed for a closed meeting for attorney/client legal advice at 10:05 a.m.

The Commission reconvened at 10:30 a.m.

Mr. Lotspeich amended his previous motion by adding that counsel and staff will draft a stipulation as the final agreement. Mr. Clark seconded the amended motion. A vote was taken with five in favor and three opposed. The motion carried.

O. *Discussion/Action regarding documentation submitted by Lander LEPC to appeal the decision of the SERC to deny the fiscal year 2010 SERC grant application due to late submission of the grant application

Mr. Myler stated he spoke with Mr. Schaeffer and he is willing to stipulate to settle Lander County's appeal and settle for the same provision as with Esmeralda LEPC: 5% penalty fee. Mr. Schaeffer advised that was correct.

Mr. Lotspeich made a motion to have staff and counsel settle with Lander LEPC with the same stipulations as with Esmeralda LEPC. Mr. Helmreich seconded the motion. A vote was taken with five in favor and three opposed. The motion carried.

A. Local Emergency Planning Committee (LEPC) Updates (*attending LEPC Representatives*)

Carson City LEPC – Mr. Giomi advised he had nothing to report for Carson City LEPC.

Storey LEPC – Joe Curtis advised Storey LEPC has four exercises scheduled for Fall 2009 that are hazardous materials oriented towards evacuation processes. Two of the exercises are specifically related to Storey County's Emergency Operations Center (EOC) and related functions. The other two exercises are specifically for private industry personnel in Storey County's industrial complex along Interstate 80.

Storey LEPC has begun purchasing and developing a radio cache for the EOC.

The LEPC is in the final phases of completing its pre-disaster hazard mitigation plan and in conjunction with submission of such has also submitted a letter of intent for

some mitigation grant funding.

The LEPC is pursuing becoming what is called a “storm ready community” through the National Weather Service.

Mr. Curtis advised Storey LEPC has not had any significant incidents. The LEPC looked into a spill related to a steam locomotive that burns oil. This steam locomotive has dropped a significant amount of oil which is what they burn to generate the steam for the railroad. If it stays in the same location, the locomotive may eventually hit the threshold factor.

Storey LEPC meetings are well attended by industrial personnel as well as county officials.

Elko LEPC – Mr. Lotspeich advised the LEPC held a quarterly meeting in June 2009 and had good attendance. The LEPC is working on compliance issues.

There are two exercises being planned: one will be next week involving the National Guard, Civil Support Teams (CST) from Las Vegas and Boise, Idaho, along with Elko fire and police, Elko Sheriff’s Office, Nevada Division of Forestry (NDF), and ambulance and several other agencies that will be hazardous materials oriented. In August 2009 many of the same agencies will be working with Barrick Gold on an exercise which will be held at the gold mine.

Nye LEPC – Brent Jones advised Nye LEPC is proud of its accomplishments. Attendance continues to increase. Nye LEPC was pleased to have Mr. Brenner attend a LEPC meeting and visit the new Emergency Operations Center (EOC) at Station 51.

Mr. Jones stated the Hazmat Team is assisting the Sheriff’s Office in closing marijuana farms in Nye County.

Nye County had an incident in Tonopah involving a person trying to commit suicide by ingesting malathion. The Hazmat Team had to decon the hospital emergency room and ambulance.

The LEPC hazmat teams are working with Esmeralda and Lander LEPCs.

Mr. Jones stated Nye LEPC thanks the SERC for its continued support.

Lander LEPC – Mr. Bennett advised Lander LEPC is working with Ed Rybold, a consultant with Code III to update Lander’s emergency response plan. Lander County and Elko County met with Dick Mirgon with the Division of Emergency Management (DEM) to discuss emergency response plan compliance issues.

Lander LEPC is working with the American Red Cross in a community education program. Some of the programs they have implemented are a disaster health service workshop on shelters and a kids program called Masters of Disaster. The Masters of Disaster allows kids to take information back home and train their parents on what to

do in case of disaster. The LEPC also had an Adult CPR class in July 2009.

Lander LEPC has expanded its membership to 23 members. With that, the LEPC is going to designate a new Director of Training, Director of Grants and a Director of Planning. The LEPC hopes this will streamline its process in moving forward. Lander LEPC would like to thank Shelley Fleming for attending its July meeting.

Lincoln LEPC – Rick Stever advised Lincoln LEPC has no updates. Lincoln LEPC would like to thank the SERC for the support and assistance they have given to the first responders, and extend their thanks for grants that have been approved.

Washoe LEPC – Chris Magenheimer advised Washoe LEPC is in the initial planning stages of a hazmat drill scheduled for November 17, 2009. Washoe LEPC will be working with partners within the county.

Washoe LEPC will meet July 16, 2009 and review the many requests for HMEP mid-cycle funds.

The next LEPC meeting will be July 23, 2009.

B. U.S. Environmental Protection Agency Update – Mike Ardito

Mike Ardito advised there were handouts of the EPA newsletter in the back of the room. Mr. Ardito stated with HazMat Explo being cancelled, the National Association of SARA Title III Program Officials (NASTTPO) “mid-year” meeting will continue in Las Vegas the week of October 19, 2009 at the Platinum or the Tuscany Hotel. As part of those activities, EPA will have the Emergency Prevention and Preparedness Conference and the Regional Response Team meeting. More information is posted on the website, <http://www.nasttpo.com/home/>.

As a follow up to the annual NASTTPO meeting held in Boise, Idaho in April 2009, there was a request from EPA’s Office of Emergency Management to be in more communication with SERC about the Emergency Planning Community Right-to-Know Act (EPCRA) program. Debbie Dietrich, EPA’s Director of the Office of Emergency Management, will send a letter to all SERCs.

Mr. Ardito stated there are copies of EPA’s Annual Pacific Southwest Region Progress Report for 2009 on the table in the back of the meeting room.

On June 11, 2009 EPA extended the compliance for the Spill Prevention Control and Countermeasure (SPCC) regulations to November 10, 2010.

Mr. Ardito advised the EPA and the Federal Emergency Management Agency (FEMA) have been talking about the Citizen Corp Program. In their efforts to facilitate links between LEPCs and Citizen Corps groups, EPA is collaborating to identify a panel to discuss Citizen Corp and LEPCs at the mid-year NASTTPO meeting.

There are several new publications that have come from FEMA such as “The

Personal Preparedness in America: Findings from the Citizen Corps National Survey” and the “Citizen Corps Urban Area Survey.”

Since the April 9, 2009 SERC meeting, there have been some EPA news released of environmental interest. On April 22, 2009 in a settlement announcement, Atlantic Richfield Company agreed to perform cleanup work estimated at \$10.2 million at the former Anaconda Copper Mine in Yerington, Nevada.

On April 30, 2009, EPA announced it awarded \$38.9 million in Recovery Act Funds for water projects in Nevada and drinking water as well as loans for water quality protection treatment.

On May 8, 2009 Nevada received \$800,000 in Brownfields grant funds for contaminated land cleanup and economic development. Carson City is received \$400,000 and Sparks is received \$400,000 for communitywide assessments.

Mr. Brenner advised there was a request from the Department of Homeland Security (DHS) for SARA Title III facilities’ information from all states. Mr. Ardito stated the DHS sent out communications after the last NASTTPO meeting requesting Tier II information from the states so they can proceed with a project to study the critical infrastructure. EPA is working with the states on issues surrounding EPCRA information requests. Ms. Pabón advised part of the Executive Director report is regarding a request for a legal question on this issue. Mr. Myler stated he would respond to this as soon as possible.

C. U.S. Federal Emergency Management Agency (FEMA) Update – John Woytak

John Woytak stated the National Incident Management System (NIMS) compliance objectives are being discussed and should be completed in a month or two.

The FEMA 24-hour watch center is fully operational with its own private reporting area.

Mr. Woytak advised he is on the Continuing Challenge conference planning board and the cancellation of the HazMat Expo has just come to light. The Continuing Challenge board is looking at ways to incorporate additional students this year.

FEMA grants are being distributed from Washington, D.C. Grants will no longer be coming from Region IX. Mr. Woytak advised there is a new position with FEMA, Citizen Core Officer in Community Preparedness Office, held by Alex Tune. Mr. Tune’s contact information may be obtained through Mr. Woytak.

D. Occupational Safety and Health Administration Update

Ms. Pabón advised Tom Czehowski has retired and resigned as member of the SERC. There is nothing to report.

E. Nevada Division of Emergency Management Update – Frank Siracusa

Mr. Wright advised Frank Siracusa was not present and there was nothing to report.

F. Nevada Division of Environmental Protection Update – Tom Porta

Mr. Wright advised Tom Porta was not present and there was nothing to report.

G. Nevada State Fire Marshal Update – James Wright

Mr. Wright advised two weeks ago the State Fire Marshal's Division attended the annual State of Nevada Fire Fighters Association training conference held in Elko, Nevada. The attendance for this conference was low due to the economy. The SFM made hazardous materials training available through the Liquefied Petroleum Gas (LPG) fire props.

H. Report of Legislative Committee

Jim Reagan advised there were no current legislative issues affecting the SERC.

I. Report of Strategic Planning Committee

Ms. Pabón advised Susan Crowley was not present and there was nothing to report.

J. Report of Funding Committee

1) Discussion of U.S. Department of Transportation, Hazardous Materials Emergency Preparedness (HMEP) mid-cycle grant applications submitted by LEPCs

Mr. Brenner advised Lander LEPC had two HMEP mid-cycle grant application requests. Ms. Pabón stated one of Lander LEPC's grant requests was for \$47,500 to conduct a commodity flow study to determine hazardous materials going through the community and at fixed facilities which was approved by the Committee. The second grant request was for \$450 for the LEPC to conduct training on its hazmat annex to the emergency operations plan. This was originally awarded in their SERC grant but the grant ended before they could get it accomplished.

2) *Discussion/Review/Action of fiscal year 2010 United We Stand (UWS) grant applications submitted by the LEPCs and State agencies to the SERC

Mr. Giomi advised the spreadsheet handout erroneously does not indicate there was a Funding Committee recommendation for Nye LEPC.

Ms. Pabón stated there is enough money to fund the grant applications as requested. The license plate fees and interest balanced forward to and collected in fiscal year 2009 total approximately \$895,213. The expended and obligated grant amounts for fiscal year 2009, which just ended, total \$439,503. This means a balance forward of \$455,710. The fiscal year 2010 United We Stand grant requests total \$430,333. The Committee recommended approval of the grant

applications, including Nye LEPC's application with contingencies as noted in the spreadsheet. The Committee commented that some of the LEPCs should better justify their evaluation factors but they met the criteria to award the grants.

Clark LEPC – Ms. Pabón advised Clark LEPC's grant award is contingent on submission of the LEPC meeting minutes approving the grant application.

Douglas LEPC – Ms. Pabón advised Douglas LEPC's grant award is contingent on its radios being P25 compliant. Since the Committee meeting, Douglas LEPC requested a change based on this contingency to request pagers instead of the radios. Staff has not received a quote on the pagers so this is subject to SERC's approval.

Lyon LEPC – Ms. Pabón advised Lyon LEPC's grant award is contingent on submission of an Affidavit of Publication. Ms. Pabón stated in January SERC policies were approved to allow contingencies with a deadline. Lyon LEPC is coming up on a 90 day contingency deadline. They were notified of the contingency in April 2009.

Pershing LEPC – Ms. Pabón advised Pershing LEPC's grant award is contingent on submission of quotes for some of its requested items.

White Pine LEPC – Ms. Pabón advised White Pine LEPC's grant award is contingent on a denial letter for training from the Division of Emergency Management (DEM).

Churchill LEPC – Ms. Pabón advised Churchill LEPC's grant award is recommended for denial for failure to address the evaluation factors. Ms. Fleming notified Churchill LEPC of the denial and Churchill LEPC forwarded an email sent prior to the due date of the application. The email, included in the handouts, provided information on the evaluation factors which need to be reviewed and the application possibly awarded.

Mr. Myler stated White Pine LEPC's request for training came to his desk and the denial letter was sent two days ago.

Mr. Giomi made a motion to approve the Funding Committee's recommendations except for Churchill LEPC's grant application to be addressed separately, and accepting Douglas LEPC's changes. John Helmreich seconded the motion which was approved unanimously.

Churchill LEPC – Mr. Giomi stated the Funding Committee did not review the email sent by Churchill LEPC to staff. A discussion ensued and the evaluation factors were reviewed.

Mr. Reagan made a motion to approve Churchill LEPC's grant application. Mr. Lotspeich seconded the motion which was approved unanimously.

3) *Discussion/Review/Action regarding funding enhancements of the Hazardous Materials Database

Mr. Brenner stated the Committee reviewed the enhancements and wanted the Information Technology (IT) Committee to review them. A quorum for an IT meeting was not available prior to the SERC meeting.

Mr. Brenner advised there was some discussion at the Funding Committee meeting about the State Fire Marshal's fee exemption for federal facilities. Mr. Wright advised the SFM is currently aware of 60 federal facilities. Mr. Brenner advised in the past federal facilities did not pay fees. Mr. Wright stated a few years ago questions came up asking if federal facilities were required to pay fees. This matter was pursued through the Attorney General's office. Since the SFM is providing a service, federal facilities should pay.

Mr. Giomi asked if staff recommend these enhancements. Ms. Pabón advised most of them were submitted by her and a couple were based on responders' feedback. The one that is unnecessary is the one that puts the cursor on the field box for \$2,550. Ms. Pabón stated there was a discussion between Mr. Brenner and the SFM regarding having radiological as an International Fire Code (IFC) material type. It is not currently listed on the IFC but it is listed on the database as a material.

Mr. Giomi made a motion to approve funding for enhancements to the online hazardous materials reporting system in an amount not to exceed \$21,000. Mr. Lotspeich seconded the motion. Mr. Giomi clarified this motion to include both IFC material types, inert and radioactive. Mr. Clark suggested not putting the automatic cursor in the search box for \$2,550. A discussion ensued. Mr. Giomi modified his motion to remove the cost for the automatic cursor with the request staff try to negotiate it in if they believe it is beneficial. Then the total would be \$21,000 minus \$2,550. Mr. Lotspeich agreed to this modification to the motion. A vote was taken and the motion carried.

K. Report of Bylaws Committee

1) *Discussion/Review/Action of recommendation of possible changes to SERC Bylaws

Ms. Pabón advised the proposed SERC Bylaws are included in the handouts. They were provided at the April 2009 meeting and are on the agenda for approval.

Mr. Giomi made a motion to approve the recommended changes to the SERC Bylaws. Mr. Lotspeich seconded the motion which was approved unanimously.

L. Report of Information Technology Committee

Ms. Pabón advised there was no meeting and there is nothing to report.

M. Report of Policy Committee

Ms. Pabón advised there was no meeting and there is nothing to report.

N. *Discussion/Action regarding documentation submitted by Esmeralda LEPC to appeal the decision of the SERC to deny the fiscal year 2010 SERC grant application due to late submission of items required pursuant to the notice of deficiency

This item was discussed at the beginning of the New Business section

O. *Discussion/Action regarding documentation submitted by Lander LEPC to appeal the decision of the SERC to deny the fiscal year 2010 SERC grant application due to late submission of the grant application

This item was discussed at the beginning of the New Business section

P. *Discussion/Action whether or not mining companies in the State of Nevada should be exempt from fees collected by the SERC pursuant to NRS 459.744, 40 C.F.R. Part 355 and 40 C.F.R. Part 370

Ms. Pabón stated mines have been exempt from paying fees for the EPCRA section 311 and 312, requirements for storage and manufacture of chemicals. Through an error this exemption was not built into the online database. While researching into the reason for the exemption, Ms. Pabón found the premise the mines were not subject to fees was because they fall under the Mining Safety and Health Administration (MSHA) rather than the Occupational Safety and Health Administration (OSHA). The portion of EPCRA is based on OSHA requirements. Therefore, all mines were exempt. However, mines are subject to MSHA for the mining activity only. If the mine stores or produces chemicals after the mining activity, it becomes subject to OSHA and subject to SERC fees. Ms. Pabón asked if the SERC should collect fees from the mining facilities that do some sort of production activity after mining activity and, if so, how the SERC should inform the mining community of this change.

Mr. Clark asked if a statutory change would be required. Ms. Pabón does not believe exemptions are in NACs or statute. Ms. Pabón stated she would have to defer to counsel.

Mr. Myler advised the preliminary opinion is Federal law always preempts State law. Regardless of what State law says, if they are subject to MSHA and not OSHA they would definitely be exempt. Mr. Myler advised based on what Ms. Pabón stated, if they fall under OSHA, just because Nevada statute does not mention it, does not mean facilities should not have to pay that fee. A discussion ensued.

Mr. Clark volunteered to talk to the Mining Association and the Legislative Council Bureau about this issue, between now and the next SERC meeting.

Mr. Giomi stated there was not enough information to make a motion at this

time.

Q. *Discussion/Action regarding cancellation of the 2009 HazMat Explo in Clark County and possible alternative uses of FFY09 and FFY10 HMEP training funds

Ms. Pabón advised Hazmat Explo has been cancelled. Attendance of LEPC members has always been funded through HMEP grants. U.S. DOT has given staff until July 17, 2009 to provide alternative uses of the funds including who and how many are being trained and associated costs. Staff provided this information to LEPCs, received input and will amend the application to meet the short deadline of next week. Mr. Brenner suggested the Hot Zone Conference in Houston, Texas put on by Region VI, the Continuing Challenge in Sacramento, California, or the International Hazardous Materials Response Team Conference in Maryland which is in May 2010. Ms. Fleming added the 31st Annual Conference in Hazardous Materials Transportation in Texas. Other suggestions were Portable Fire and Hazmat Fire Trainer, Incident Command System (ICS) 300 and 400 courses, the Massachusetts Association of Hazardous Materials Technician Conference, contact Fred Cowie for seminar type presentations, and providing LEPCs with education materials and they can do their own training presentations.

Mr. Giomi made a motion to approve the application with amendments as staff deems appropriate, giving staff the ability to develop the application based on the information received from LEPCs. The application will be prepared for the approximately \$150,000 SERC is eligible for. Mr. Clark seconded the motion. A discussion ensued. Mr. Lotspeich suggested contacting the Fire Science Academy to see if they could put on a program that emulates what the HazMat Explo had. Mr. Giomi advised Fire Shows Reno is coming back this Fall. He will discuss it at the Nevada Fire Chiefs' Association meeting and see if a day can be added for a hazmat track to the October 2010 conference.

Mr. Giomi added to the motion staff should focus on established conferences. Mr. Clark agreed and seconded the amended motion. A vote was taken and the motion carried.

R. *Discussion/Action regarding possible approval of the HMEP grant application submitted by the SERC to the U.S. DOT

Ms. Pabón advised this item was discussed in Item Q above. Mr. Myler stated from a legal point he thinks there should be a motion ratifying the action that SERC has already submitted.

Mr. Giomi made a motion ratifying the action of SERC from Item Q. Mr. Lotspeich seconded the motion. Mr. Myler stated this is ratifying the application already submitted by staff. Ms. Pabón advised this action item was for possible approval of the HMEP application already submitted and the action on Item Q was to say that the application will be amended. A discussion ensued. Mr. Giomi withdrew his motion. Mr. Lotspeich withdrew his second. A motion for Item R is not needed.

No action is necessary.

S. *Discussion/Action regarding possible alternative use of FEMA funds allocated for HazMat Explo

Ms. Pabón stated this money came in an allocation from FEMA to support attendance to HazMat Explo. SERC can change the support to Continuing Challenge. Mr. Woytak advised the problem with the Continuing Challenge is registration is already closed and classes are full. Mr. Woytak advised there have been initial discussions to open the conference to Hazmat Explo attendees. He will know more by next week. In addition, Mr. Woytak advised if the money is returned it will be difficult to receive next year if there is a HazMat Explo. Ms. Pabón asked if SERC can switch money from HazMat Explo to any other training conference. Mr. Woytak advised SERC could. The funds would be good for any legitimate hazmat training.

Mr. Clark made a motion to recommend the \$19,000 allocation from FEMA be based on recommendations from the Funding Committee so it does not have to come back to the SERC. In addition, the Funding Committee can make a decision on how dollars are spent and on what programs. Mr. Reagan seconded the motion which was approved unanimously.

T. Report of Executive Director

1. LEPC compliance report

Ms. Pabón stated Elko LEPC is out of compliance with a number of plan related items and membership list. Lyon LEPC is out of compliance with the Affidavit of Publication.

2. Database update

Ms. Pabón gave an update on the SERC side of database and its implementation. Currently in the system there are 1,218 SERC facilities. Of those, 1,181 have completed their submissions. Ms. Pabón did a complete comparison from the old Nevada Chemical Facility Database (NCFD) with what is in the new online system. As of July 1, 2009, it has been discovered 23 companies were invoiced but not paid for a total of \$29,000. Ms. Pabón contacted those companies and \$20,900 has been paid with six companies still outstanding. There were 56 companies with errors in their reporting such as not converting from gallons to pounds and not checking the box for chemicals over 10,000 pounds subject to OSHA. From these \$3,300 is owed and \$1,200 has been paid. There are twelve companies with unknown amounts owed. Ms. Pabón stated \$1,400 has been collected from the unknown category.

Mr. Wright advised SFM shows 3,239 permits issued and 1,152 permits pending.

Ms. Pabón sent some requests for legal opinions to Mr. Myler. One was the DHS request already discussed in Item B.

Ms. Pabón advised a company contacted staff about Toxic Release Inventory (TRI) reports due July 1 and argued about the \$500 fee. The NACs state the reporting fee..... is \$500 per each person who is required to submit a TRI report. Ms. Pabón stated it has always been \$500 per report. The company advised they were only going to pay the \$500 fee. Ms. Pabón advised this matter needs to be addressed. The company did submit their report and paid the full fee.

Ms. Pabón advised there is an inconsistency with Nevada Revised Statutes (NRS) and NACs regarding the collection of fees pursuant to EPCRA. NRS cites the federal law that includes the extremely hazardous materials while the NAC includes the extreme hazardous materials and the highly hazardous chemicals over 10,000 pounds known as the OSHA chemicals.

Ms. Pabón advised at the last SERC meeting, members discussed the Legislature's request to fund Commission travel and information technology database items from SERC fees. The SERC voted not to use SERC fees because this would take money from the LEPCs and it might be difficult building it back into the budget in the future. The Legislature approved these items through the Highway Fund.

The EPA TRI process is changing. Ms. Pabón stated she has been advised of changes to the TRI online submission process. With Mr. Ardito's assistance Ms. Pabón found there is an ongoing grant process with NDEP to provide the TRI information via an exchange network. Facilities are to enter the TRI information into the EPA website and then it can be retrieved by the State through this exchange network, which is already at NDEP. Ms. Pabón contacted Tom Porta regarding this item. Mr. Porta believes the SERC access can be worked out. The concerns will be how the collection of fees will be accomplished when the information is just put into the system.

Ms. Pabón recommends SERC Chairs consider addressing committee membership. This has not been reviewed in a long time.

Ms. Pabón advised the next SERC meeting will be October 8, 2009 in Las Vegas. A venue has not been set at this time.

Mr. Lotspeich made a suggestion when the Legislature is not in session, staff have the LCB set up a video conference between Las Vegas and Reno. This might be more effective with travel restrictions. Mr. Giomi stated he prefers having members meeting in person but realizes this is not always an option. Mr. O'Brien advised he does not have any control over his travel constraints. Mr. Myler stated it was better to be together to accomplish sidebars.

V. PUBLIC COMMENTS

Jean Lucht stated she regrets there will be no HazMat Explo this year.

VI. *ADJOURNMENT

Mr. Brenner made a motion to adjourn the meeting at 12:13 p.m.

DRAFT