

# Minutes

## Nevada State Emergency Response Commission (SERC)

### Bylaws Committee Meeting

*State Emergency Response Commission  
107 Jacobsen Way  
Carson City, Nevada*

August 29, 2012

#### Members Present

Larry Farr, Chair  
Richard Brenner\*

#### Members Absent

Stacey Giomi

#### Staff

Suzie Adam  
Karen Pabón  
Will Geddes

#### Guests

Peter Mulvihill

\*teleconferenced

#### 1. **CALL TO ORDER**

Larry Farr called the meeting to order at 9:04 a.m.

#### 2. **INTRODUCTIONS**

Members, staff and guests introduced themselves. A quorum was present.

#### 3. **PUBLIC COMMENT**

Mr. Farr called for public comment. There was none.

#### 4. **APPROVAL OF MARCH 24, 2009 MEETING MINUTES**

Richard Brenner made a motion to approve the minutes of the March 24, 2009 meeting. Mr. Farr seconded the motion which was approved unanimously.

#### 5. **REVIEW OF LOCAL EMERGENCY PLANNING COMMITTEE (LEPC) MEMBERSHIP LISTS FOR COMPLIANCE WITH THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)**

Karen Pabón advised SERC had a citizen call complaining the SERC does not actually appoint LEPCs pursuant to federal law.

Ms. Pabón stated SERC policy requires staff to review LEPC membership lists and as exceptions are noted, the Bylaws Committee will review and notify the SERC of any deficiencies. But what policy does not address is the request from the LEPC to modify its membership list regarding certain categories as required in EPCRA.

Ms. Pabón advised she learned going through the exercise preparing for this meeting, EPCRA requires, by using the word “shall”, membership from five specific groups or organizations. From these five groups there are 13 categories. The law does not require membership in all 13 categories.

Ms. Pabón stated EPCRA urges the states to appoint a broadbased LEPC that includes representatives from the 13 individual categories. SERC Policy 8.3 requires current membership lists identifying representation from the 13 categories to be submitted by January 31 each year.

Ms. Pabón advised several years ago SERC developed a form for submitting membership lists. This form includes check boxes to acknowledge an attempt was made to gain membership from the 13 categories. The form also includes a statement from the LEPC Chair to certify diligent attempts were made to gain full membership. In addition, a petition to modify membership pursuant to EPCRA is also on that form. Ms. Pabón stated this form has not been required although it is widely used. Further discussion of the policy will be included later in the agenda.

The following are the categories the LEPCs do not have covered on their membership lists.

*Carson City LEPC* – The LEPC does not have an elected state official and requested a modification to the membership.

Mr. Brenner made a motion to approve Carson City LEPC’s membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Churchill LEPC* – The LEPC does not have an elected state official and requested a modification to the membership.

Mr. Brenner made a motion to approve Churchill LEPC’s membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Clark LEPC* – The LEPC does not have an elected state official or a transportation representative and requested a modification to the membership.

Mr. Brenner advised Clark LEPC does have representation from the Highway Patrol. Mr. Farr advised the Highway Patrol member could possibly also represent transportation.

Mr. Brenner made a motion to approve Clark LEPC’s membership list as submitted, noting the Bylaws Committee would like to see someone represented in the transportation area. Mr. Farr seconded the motion. Mr. Farr stated staff could advise the LEPC it may already have members that could also represent the transportation area. A vote was taken and the motion was approved unanimously.

*Douglas LEPC* – The LEPC does not have an elected state official or a local environmental representative and requested a modification to the membership.

Mr. Brenner made a motion to approve Douglas LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Elko LEPC* – The LEPC does not have an elected state official or a media representative and requested a modification to the membership.

Mr. Brenner made a motion to approve Elko LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Esmeralda LEPC* – The LEPC does not have an elected state official, local environmental, or media representatives and requested a modification to the membership.

Mr. Brenner made a motion to approve Esmeralda LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Eureka LEPC* – The LEPC does not have a hospital representative and requested a modification to the membership. Eureka County is unique as it does not have a hospital in the area.

Mr. Brenner made a motion to approve Eureka LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Humboldt LEPC* – The LEPC did not submit a membership list. Humboldt LEPC is out of compliance.

*Lander LEPC* – The LEPC does not have an elected state official, local environmental or media representatives and requested a modification to the membership.

Mr. Brenner made a motion to approve Lander LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Lincoln LEPC* – The LEPC does not have an elected state official and requested a modification to the membership.

Mr. Brenner made a motion to approve Lincoln LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Lyon LEPC* – The LEPC does not have any exceptions.

*Mineral LEPC* – The LEPC did not submit a membership list.

*Nye LEPC* – The LEPC does not have an elected state official and requested a modification to the membership.

Mr. Brenner made a motion to approve Nye LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Pershing LEPC* – The LEPC does not have an elected state official and requested a modification to the membership.

Mr. Brenner made a motion to approve Pershing LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Storey LEPC* – The LEPC does not have an elected state official and requested a modification to the membership.

Mr. Brenner made a motion to approve Storey LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

*Washoe LEPC* – The LEPC does not have an elected state official. Washoe LEPC submitted a membership list but not on a form. Mr. Pabón advised she discovered Washoe LEPC did not have an elected state official and asked if the LEPC had such a member or would they be requesting to modify their membership list. Washoe LEPC does not believe it is out of compliance and is not asking for a modification. The LEPC believes since they have a local elected official, they do not need an elected state official. A discussion ensued regarding Washoe LEPC completing a form to request a waiver for an elected state official.

Mr. Farr made a motion to deny Washoe LEPC's membership list as submitted due to lack of an elected state official and no submission of a request for modification. Mr. Farr further directed SERC staff to contact the LEPC Chair and have him submit the proper form to request a waiver for an elected state official. Mr. Brenner seconded the motion. A discussion ensued regarding compliance with federal law and SERC policy.

Mr. Farr advised the SERC applied federal law and EPA recommendations to require the 13 categories. The SERC allows exceptions to be made in writing for audit purposes.

Mr. Geddes, Deputy Attorney General, asked who the party or entity would be that would complain, or want to challenge SERC's position. Ms. Pabón replied it would generally be the public that would bring up an issue. Mr. Geddes stated for open meeting law purposes, if there was a person who wanted to come and express his/her point of view regarding this issue, they had notice and could have attended this meeting. Mr. Geddes stated there is no member of the public at this meeting offering an opinion. At such a time when they give a specific opinion or perspective regarding this issue, that may be something within this Committee's discretion to evaluate.

A vote was taken and the motion to deny Washoe LEPC's membership list as submitted due to lack of an elected state official and no submission of a request for modification was approved unanimously.

*White Pine LEPC* – The LEPC does not have an elected state official and requested a modification to the membership.

Mr. Brenner made a motion to approve White Pine LEPC's membership list as submitted. Mr. Farr seconded the motion which was approved unanimously.

## **6. REVIEW OF LEPC BYLAWS FOR COMPLIANCE WITH EPCRA**

Ms. Pabón stated, pursuant to SERC policy, staff reviews the LEPC bylaws and this Committee will review exceptions if they are noted. The Bylaws Committee will notify LEPCs of any deficiencies. When reviewing the bylaws, Ms. Pabón focused on memberships and quorums.

*Clark LEPC* – Clark LEPC has an erroneous citation of public law. The citation should be Public Law 99-499; the LEPC cited Public Law 99-949 CFR. They also listed 11 categories which are different than the EPCRA 13 categories. Ms. Pabón advised, on behalf of this Committee, staff should ask Clark LEPC to update its bylaws with the proper citation and membership list. A discussion ensued. Mr. Farr advised this as an administrative issue, not an exception. Mr. Brenner agreed with Mr. Farr. Staff can let Clark LEPC know of this error in its bylaws. Mr. Farr stated if there is a problem, this item can be agendaized at a future Bylaws Committee meeting.

*Lander LEPC* – LEPC bylaws were not discussed as this issue is similar to Clark LEPC. Ms. Pabon will handle administratively.

*Lincoln LEPC* – Lincoln LEPC has a quorum issue. Ms. Pabón stated the LEPC's bylaws state that a quorum equals a majority of members present. Lincoln LEPC is in violation of the Nevada Open Meeting Law (OML). Ms. Pabón had a discussion with Rick Stever who was one of the previous co-chairs. He advised he tried to get the bylaws changed with no success. Mr. Brenner made a motion to have SERC staff send a notice to Lincoln LEPC regarding its bylaws and its definition of a quorum. The notice will cite the Nevada OML in which the LEPC is in violation of. Mr. Farr seconded the motion. Mr. Geddes quoted section 5.01 of the OML, regarding what constitutes a quorum. A vote was taken and the motion was approved unanimously.

*Storey LEPC* – Storey LEPC's bylaws state a quorum equals three members of its LEPC.

Mr. Farr made a motion to have SERC staff send a notice to Storey LEPC regarding their bylaws and its definition of a quorum. The notice will cite the Nevada OML in which the LEPC is in violation of. Mr. Brenner seconded the motion which was approved unanimously.

## **7. DISCUSSION REGARDING POSSIBLE RECOMMENDATION TO CHANGE SERC POLICY 8.9, LEPC SUBMISSION OF BYLAWS AND MEMBERSHIP LISTS**

Ms. Pabón stated this is a discussion of how items are to be brought to this Committee. Federal law provides that interested persons may petition the SERC to modify the membership of the LEPC. Virtually all LEPCs have exceptions. Should the SERC provide an official approval on these petitions as done at this meeting? If so, and if it is a general modification due to inability to gain membership, should the Bylaws Committee make those recommendations to the SERC for approval, or should Ms. Pabón make a report directly to the SERC for approval?

Ms. Pabón received two phone calls from a private citizen who was upset with Nye County claiming the LEPC membership was out of compliance with EPCRA, and the Nevada SERC was in violation of EPCRA as EPCRA requires the SERC to appoint the LEPC members. Ms. Pabón invited this person to attend a SERC meeting or submit his concerns in writing. He stated he notified the governmental entity and should not have to do anything further.

Ms. Pabón stated in Nevada, SERC has traditionally let LEPCs appoint the members and the SERC accepted the membership forms. Ms. Pabón advised if the LEPC identified vacant positions and requested a modification of membership, the form is placed in a file and not reviewed by the SERC. She asked if the membership exceptions should be reviewed by this Committee or be addressed directly to the SERC.

Mr. Brenner advised it is important for the SERC to know what is going on with the LEPCs. There has to be that connection between the SERC and the LEPCs.

Mr. Farr stated SERC policy 8.9 states bylaws must be reviewed and if necessary updated annually by the LEPC. Membership lists must be updated and submitted. Current membership lists and bylaws must be submitted by each LEPC to the SERC by January 31. SERC staff will review the LEPC bylaws and membership lists to ensure compliance with federal and state laws and regulations. If exceptions are noted, the Bylaws Committee will review and notify the LEPCs of any deficiencies. The Bylaws Committee will report any deficiencies to the SERC which will take appropriate action. Mr. Farr advised he does not know that the Bylaws Committee needs to change anything. Ms. Pabón asked if checking the box on the Membership List form noting the LEPC attempted to get a membership is an exception. Mr. Farr advised it is an exception. Therefore, all requests for modification will be presented to the Bylaws Committee annually.

The Bylaws Committee agreed SERC Policy 8.9 does not need revision.

No action was necessary.

## **8. PUBLIC COMMENT**

Mr. Farr called for public comment. There was none.

## **9. ADJOURNMENT**

Mr. Farr made a motion to adjourn the meeting at 10:00 a.m.