



INDIANA EMERGENCY RESPONSE COMMISSION (IERC) Meeting
Indiana Government Center South
302 West Washington St.
Indianapolis, Indiana 46204
September 9th, 2019, 1:30pm [Start Time: 1:35pm]

COMMISSION MEMBERS PRESENT:

Ian Ewusi – State Fire Marshal Designee,
Larry Hamby—Designee for IDHS Executive Director
Jeff Larmore—Local Government Representative
Bruce Palin—Public Representative
James Pridgen—Business/Industry Representative
Laura Steadham—Designee for IDEM Commissioner, Interim Chair
Cara Cyrus—Business and Industry Representative

COMMISSION MEMBERS ON THE PHONE:

Shawn French—Business/Industry Representative

COMMISSION MEMBERS ABSENT:

Matt Bilkey—Designee for Superintendent of ISP
Bernie Beier—Local Government Representative

The following IDHS staff members were present:

Sarah Chaney—IDHS
Kraig Kinney—IDHS
Dawn Mason--IDHS
Madison Roe—IDHS

The following audience members were present:

Becky Waymire—Morgan County LEPC
Bill Beranek—Marion County LEPC Chair

WELCOME AND INTRODUCTION

Ms. Steadham announced she will be the interim Chairperson till the new Fire Marshal is announced. Mr. Kinney noted that before former Marshal Greeson retired he appointed Ian Ewusi as the State Fire Marshal Designee until a new Fire Marshal was appointed.

QUORUM

Chairman Steadham indicated a quorum was present after roll call.

Roll Call

Chairperson Steadham—Yes Mr. Larmore—Yes
Mr. Palin—Yes Mr. Hamby—Yes
Ms. Cyrus—Yes
Mr. French—Yes (On Phone)
Mr. Ewusi—Yes
Mr. Pridgen—Yes

CONSIDERATION OF MINUTES

Mr. Palin made a motion to approve the July 9, 2019, meeting minutes. Mr. Hamby seconded the motion. No further discussion occurred.

Roll Call

Chairperson Steadham—Yes Mr. Larmore—Yes
Mr. Palin—Yes Mr. Hamby—Yes
Ms. Cyrus—Yes
Mr. French—Yes (On Phone)
Mr. Ewusi—Yes
Mr. Pridgen—Yes

Motion Carried.

REPORT OF THE CHAIR

Chairperson Steadham had nothing to report.

ROSTER APPROVAL

Ms. Mason reported twenty-six (26) LEPCs submitted rosters for membership appointments or removals as of September 9th, 2019, at 08:11 AM.

Adams	Blackford	Daviess	Dubois
Grant	Hamilton	Hancock	Huntington
Jay	Johnson	Knox	Lawrence

Marshall	Miami	Monroe	Montgomery
Morgan	Perry	Pike	Pulaski
Rush	Shelby	Tippecanoe	Vigo
Washington	Wayne		

Mr. Palin made a motion to approve the submitted rosters and was seconded by Mr. Hamby. No further discussion occurred.

Roll Call

Chairperson Steadham—Yes Mr. Larmore—Yes
 Mr. Palin—Yes Mr. Hamby—Yes
 Ms. Cyrus—Yes
 Mr. French—Yes (On Phone)
 Mr. Ewusi—Yes
 Mr. Pridgen—Yes

Motion Carried.

COMMITTEE REPORTS

Communications Committee-Jeff Larmore, Chair

Chairperson Steadham introduced Mr. Larmore who discussed the newsletter and brochure. He stated that staff gave updates on the brochure and newsletter. He said there were some edits for the brochure like making the Indiana Emergency Response Commission (IERC) logo the primary display on the front to indicate that the brochure is an IERC produce. Mr. Larmore went on to state that a motion was made to approve the brochure pending changes. Chairperson Steadham believes the Fiscal Committee voted on a budget for printing a number of brochures for each county. Mr. Larmore mentioned he would like to have these brochures in the gift bags for the EMAI/IERC conference in October. He continued on about the staff finalizing the newsletter. A motion was made to approve the newsletter with edits. Ms. Chaney recapped her discussion with Ms. McKinney about the classes IERC staff will be hosting.

Mr. Larmore debriefed the commission on the four LEPC Award nominations plus an award for former State Fire Marshal Jim Greeson. Lastly, he stated the committee approved for the recommendation to provide the \$10,000 grant to EMAI for the EMAI/IERC conference be given to the IERC. Ms. Waymire also asked that it be clarified that grant money also covers registration for the commission staff, commission members, and committee members. Mr. Larmore agreed.

Mr. Larmore made a motion to approve the grant for \$10,000 dollars to be given to EMAI for the EMAI/IERC Conference with the understanding that this covers the cost of IERC Commissioners, IERC Committee members, and IERC staff to attend the conference. Ms. Cyrus seconded the motion.

Mr. Kinney wanted to clarify that during the Communications meeting Ms. Waymire expressed concerns about the value of the content the LEPCs are receiving for the money the IERC grants to EMAI. Mr. Kinney restated that he believed this year the IERC verbally committed to the grant, but that the content should be discussed in the coming years.

Roll Call

Chairperson Steadham—Yes Mr. Larmore—Yes
Mr. Palin—Yes Mr. Hamby—Yes
Ms. Cyrus—Yes
Mr. French—Yes (On Phone)
Mr. Ewusi—Yes
Mr. Pridgen—Yes

Motion Carried.

Mr. Larmore made a second motion to approve the brochure and newsletter with conditions. Ms. Cyrus seconded that motion.

Roll Call

Chairperson Steadham—Yes Mr. Larmore—Yes
Mr. Palin—Yes Mr. Hamby—Yes
Ms. Cyrus—Yes
Mr. French—Yes (On Phone)
Mr. Ewusi—Yes
Mr. Pridgen—Yes

Motion Carried.

Policy-Technical Committee-Jim Pridgen, Chair

Chairperson Steadham introduced Mr. Pridgen who updated the commission on the IERC Handbook updates in which the staff will need more time before presenting to the committee. Mr. Pridgen stated that two iPads will be used during the October meeting as a test according to Mr. Ewusi. He moved on to talk about the LEPC Plan report given by staff. Mr. Pridgen stated the goal of the commission is to ensure compliance and identify counties that may need extra help. He ensured the commission this would be discussed with staff in a pre-meeting.

Lastly, He reported on Delaware County's request for the committee's position on LEPCs having electronic meetings. He stated the county representatives spoke of hardships brought on by varying schedules, county employees wearing multiple hats, and industry personnel constraints. Mr. Pridgen mentioned that other voting bodies use electronic signatures to ensure accurate attendance. From the Committee meeting, Mr. Kinney restated the statutes which impact electronic meetings and what bodies they pertain to. He went on to state that Delaware County LEPC wanted a more formal clarification of the statute since IDHS legal staff is not the definitive agency to interpret Open Door Law as that is handled by the Office of the Public Access Counselor.

Mr. Pridgen made a motion to have legal staff contact the Public Access Councilor for an advisory interpretation of the statute in regards to LEPCs holding electronic meetings. Mr. Palin seconded this motion.

Roll Call

Chairperson Steadham—Yes Mr. Larmore—Yes
Mr. Palin—Yes Mr. Hamby—Yes
Ms. Cyrus—Yes
Mr. French—Yes (On Phone)
Mr. Ewusi—Yes
Mr. Pridgen—Yes

~~Motion Carried~~

APPROVAL OF COMMITTEE REPORTS

Mr. Palin made a motion to approve the Committee Reports and was seconded by Ms. Cyrus. No further discussion occurred.

Roll Call

Chairperson Steadham—Yes Mr. Larmore—Yes
Mr. Palin—Yes Mr. Hamby—Yes
Ms. Cyrus—Yes
Mr. French—Yes (On Phone)
Mr. Ewusi—Yes
Mr. Pridgen—Yes

Motion Carried.

NEW BUSINESS

PURCHASING EQUIPMENT

Chairperson Steadham opened the floor was this topic. Mr. Ewusi wasn't sure why this was on the agenda. Mr. Kinney stated that before former Marshall Greeson retired, he requested this be added to the agenda in the pre-meeting. Mr. Kinney stated the intent was to request the IERC consider buying equipment with our general fund for first responders. Mr. Kinney stated he believed it wasn't something this IERC was directly permitted to purchase as this isn't a planning or training feature.

SARA TITLE III PROGRAM REPORT

Ms. Roe gave the commission the SARA Title III Program Report. Please see the SARA Title III report for details.

Discussion

Ms. Roe spoke to the commission about the Colorado Emergency Response Commission (CERC) conference she attended from 9/3/-9/6. She went in-depth about the different practices the CERC use there to get more participation from LEPCs. Mr. Larmore asked how the LEPCs were structured in Colorado. Ms. Roe made mention that LEPCs there can vary from city, county to regional LEPCs with varying numbers of reporting facilities. She wanted to make note the CERC is highly involved with the LEPCs and reporting facilities. Mr. Pridgen asked if EMAs were the majority of chairs for LEPCs in Colorado. Ms. Roe stated most of the chairs appeared to be industry. She noted the LEPCs there believe the conference is an important part to the CERCs involvement. Mr. Pridgen stated the IERC use to have its own LEPC focuses conference and thinks the commission should revisit this. Mr. Ewusi made mention that IERC staff use to offer half day seminars for reporting Tier 2 facilities on reporting in which he believed increased facility involvement. He asked restarting this practice would be helpful. Ms. Roe stated this practice should be restarted.

APPROVAL OF SARA PROGRAM ACTIVITY REPORT

Mr. Palin made a motion to approve the SARA Program Activity Report and was seconded by Mr. Hamby. No further discussion occurred. All present were in favor.

PUBLIC COMMENTS

Chairperson Steadham opened public comments. Mr. Larmore wanted to thank Mr. Ewusi and Ms. Chaney for visiting Marion County to table about the LEPC Hazmat Response Plan. He stated they had a good discussions.

Bill Beranek, Marion County LEPC Chair, expressed his opinions to the commission about a couple of the LEPC Hazmat Response Plan requirements and the issue of LEPCs being county boards. Mr. Beranek provided a written list outlining the Marion County LEPC concerns, said letter is attached and incorporated into these minutes. Mr. Pridgen stated the commission would discuss his concerns with IERC legal staff and respond appropriately.

No further discussion occurred.

ADJOURNMENT

Chairperson Steadham opened the floor for adjournment Mr. Larmore made a motion to adjourn. Ms. Cyrus seconded this motion No further discussion occurred.

Roll Call

Chairperson Steadham—Yes	Mr. Larmore—Yes
Mr. Palin—Yes	Mr. Hamby—Yes
Ms. Cyrus—Yes	
Mr. French—Yes (On Phone)	
Mr. Ewusi—Yes	
Mr. Pridgen—Yes	

Motion Carried at 3:04pm

NEXT MEETING

Indianapolis Marriot East
7202 E. 21st. Street
Indianapolis, Indiana 46219
October 24, 2019
4 PM – 5:30 PM



Ian Ewusi, Designee Chair

LEPC EMERGENCY PLAN FACILITY INFORMATION

Bill Beranek

IC 13-25-2-5(b)(6) "A description of emergency equipment and facilities in the community and at each facility in the community subject to this chapter and an identification of the persons responsible for the equipment and facilities."

Without formal rulemaking, the IERC is requesting that each year Tier II and EHS facilities provide to the LEPC a list of all its employees that are HZWOPER trained and of its equipment for controlling hazardous chemical releases within a facility. This moves the LEPC from its role of protecting the emergency responders and the public into an OSHA role of a facility's workplace safety.

I agree with the value of preplanning at facilities by emergency responders but this approach by the IERC is counterproductive and is wrong for several reasons.

1. **THERE IS NO LEGAL AUTHORITY FOR LEPC TO DEMAND THIS INFORMATION**

Neither EPCRA nor State Law gives the LEPC authority to mandate facilities provide such information. Neither federal nor State law mandates facilities to provide the information nor are penalties proscribed for facilities who choose not to provide it.

2. **PENALTY IS TO WITHHOLD LOCAL COMMUNITY HAZMAT PROTECTION FUNDS WHICH HAD BEEN PAID BY LOCAL INDUSTRIES**

The IERC is not only interpreting state law to require the LEPC to obtain this specific information outside the authorities and responsibilities of the LEPC, the penalty for failure is for the IERC to withhold fees local industries pay for local hazmat emergency responder preparedness.

3. **HZWOPER CERTIFICATION IS NOT EVIDENCE OF**

CAPABILITY Evidence that an employee has completed a HZWOPER training is not evidence the employee is either capable of or authorized to respond to any particular release at a facility. HZWOPER training is designed by OSHA to assure the employee can protect himself when encountering a HAZMAT incident. That includes knowing when not to engage.

4. AGENCIES RELYING ON THE INFORMATION THREATEN SAFETY OF EXTERNAL EMERGENCY RESPONDERS

An external emergency responder must not depend for help from any facility person no matter how well credentialed unless the responder personally knows and is confident in the person's competency and behavior under pressure.

An external emergency responder must not trust any piece of equipment at a facility that he does not know has been maintained properly.

An external emergency responder must never enter a facility unless invited in by the facility and is accompanied by facility personnel knowledgeable of the safety hazards that day. Responding inside a facility without permission and relying only on dated information about internal capabilities is dangerous for the responders. Any joint response led by external responders using facility personal and equipment must be planned in person well in advance.

To do otherwise puts responders at unnecessary risk.

~~5. INCREASED LEGAL LIABILITY OF LEPC VOLUNTEER MEMBERS~~

This IERC policy to overwhelm the emergency responders with detailed facility internal response information exacerbates the legal liability of the LEPCs created by the 2016 State law. That 2016 law states the LEPC is simultaneously a county board and a commission composed entirely of Special State Appointees. Addressing the tort lawsuits and criminal enforcement after a major incident, the Courts will need to sort through whether LEPC members were acting as State government appointees or county government officials or were neither and thus personally liable for damages.

Now this new IERC policy adds the liability in the lawsuits of whether the LEPC members performed reasonably to collect in a timely fashion and thorough fashion irrelevant information from the facility that the LEPC had no authority to demand and the facility had no legal mandate to provide.

I request that the IERC review this new policy with the advice of LEPCs and affected parties.