Article 2.

Hazardous Materials Emergency Response.

§ 166A-20. Title, purpose.

(a) This Article may be cited as the "North Carolina Hazardous Materials Emergency Response Act."

(b) The purpose of this Article is to establish a system of regional response to hazardous materials emergencies and terrorist incidents in the State to protect the health and safety of its citizens. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(a).)

§ 166A-21. Definitions.

The following definitions apply in this Article:

(1) Department. – The Department of Public Safety.

(2) Division. – The Division of Emergency Management.

(3) Hazardous material. – Any material defined as a hazardous substance under 29 Code of Federal Regulations § 1910.120(a)(3).

(4) Hazardous materials emergency response team or hazmat team. – An organized group of persons specially trained and equipped to respond to and control actual or potential leaks or spills of hazardous materials.

(5) Hazardous materials incident or hazardous materials emergency. – An uncontrolled release or threatened release of a hazardous substance requiring outside assistance by a local fire department or hazmat team to contain and control.

(6) Regional response team. – A hazmat team under contract with the State to provide response to hazardous materials emergencies occurring outside the hazmat team's local jurisdiction at the direction of the Department of Public Safety, Division of Emergency Management.

(7) Secretary. – The Secretary of the Department of Public Safety.

(8) Technician-level entry capability. – The capacity of a hazmat team, in terms of training and equipment as specified in 29 Code of Federal Regulations § 1910.120, to respond to a hazardous materials incident requiring affirmative measures, such as patching, plugging, or other action necessary to stop and contain the release of a hazardous substance at its source.

(9) Terrorist incident. – Activities that occur within the territorial jurisdiction of the United States, involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, and are intended to do one of the following:

a. Intimidate or coerce a civilian population.

b. Influence the policy of a government by intimidation or coercion.

c. Affect the conduct of a government by mass destruction, assassination, or kidnapping. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 1997-456, s. 27; 2002-179, s. 21(b); 2011-145, s. 19.1(g); 2014-100, s. 16B.3(a).)

§ 166A-22. Hazardous materials emergency response program.

(a) The Secretary shall adopt rules establishing a regional response program for hazardous materials emergencies and terrorist incidents, to be administered by the Division of Emergency Management. To the extent possible, the regional response program shall be coordinated with other

emergency planning activities of the State. The regional response program shall include at least seven hazmat teams located strategically across the State that are available to provide regional response to hazardous materials or terrorist incidents requiring technician-level entry capability and 24-hour dispatch and communications capability at the Division of Emergency Management Operations Center. The rules for the program shall include:

(1) Standards, including training, equipment, and personnel standards required to operate a regional response team with technician-level entry capability.
(2) Guidelines for the dispatch of a regional response team to a hazardous materials or terrorist incident.
(3) Guidelines for the on-site operations of a regional response team.
(4) Standards for administration of a regional response team, including procedures for reimbursement of response costs.
(5) Refresher and specialist training for members of regional response teams.
(6) Procedures for recovering the costs of a response to a hazardous materials or terrorist incident from persons determined to be responsible for the emergency.
(7) Procedures for bidding and contracting for the provision of a hazmat team for the regional response program.
(8) Criteria for evaluating bids for the provision of a hazmat team for regional response.
(9) Delineation of the roles of the regional response team, local fire department and local public safety personnel, the Division of Emergency Management's area coordinator, and other State agency personnel responding to the scene of a hazardous materials or terrorist incident.

(b) In developing the program and adopting rules, the Secretary shall consult with the Regional Response Team Advisory Committee established pursuant to G.S. 166A-24. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(c); 2014-100, s. 16B.3(d).)

§ 166A-23. Contracts; equipment loans.

(a) The Secretary may contract with any unit or units of local government for the provision of a regional response team to implement the regional response program. Contracts are to be let consistent with the bidding and contract standards and procedures adopted pursuant to G.S. 166A-22(a)(7) and (8). In entering into contracts with units of local government, the Secretary may agree to provide:

(1) A loan of equipment, including a hazmat vehicle, necessary for the provision technician-level entry capability;
(2) Reimbursement of personnel costs when a regional response team is authorized by the Department to respond to a hazmat or terrorist incident, including the cost of call-back personnel;
(3) Reimbursement for use of equipment and vehicles owned by the regional response team;
(4) Replacement of disposable materials and damaged equipment;
(5) Costs of medical surveillance for members of the regional response team, including baseline, maintenance, and exit physicals;
(6) Training expenses; and
(7) Other provisions agreed to by the Secretary and the regional response team.

(b) The Secretary shall not agree to provide reimbursement for:

(1) Costs of clean-up activities, after a spill or leak has been contained;
(2) Local response not requiring technician-level entry capability; or
(3) Standby time.

(c) Any contract entered into between the Secretary and a unit of local government for the provision of a regional response team shall specify that the members of the regional response team, when performing their duties under the contract, shall not be employees of the State and shall not be entitled to benefits under the Teachers' and State Employees' Retirement System or for the payment by the State of federal social security, employment insurance, or workers' compensation.

(d) Regional response teams that have the use of a State hazmat vehicle may use the vehicle for local purposes. Where a State vehicle is used for purposes other than authorized regional response to a hazardous materials or terrorist incident, the regional response team shall be liable for repairs or replacements directly attributable to the nonauthorized response. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(d).)

§ 166A-24. Immunity of Regional Response Team Personnel.

Members of a regional response team shall be protected from liability under the provisions of G.S. 166A-19.60(a) while responding to a hazardous materials or terrorist incident pursuant to authorization from the Division of Emergency Management. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(e); 2012-12, s. 2(y).)

§ 166A-25. Right of entry.

A regional response team, when authorized to respond to a release or threatened release of hazardous materials or when authorized to respond to a terrorist or threatened or imminent terrorist incident, may enter onto any private or public property on which the release or terrorist incident has occurred or on which there is an imminent threat of such release or terrorist incident. A regional response team may also enter, under such circumstances, any adjacent or surrounding property in order to respond to the release or threatened release of hazardous material or to monitor, control, and contain the release or perform any other action in mitigation of a hazardous materials or terrorist incident. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2002-179, s. 21(f).)

§ 166A-26. Regional Response Team Advisory Committee.

(a) The Regional Response Team Advisory Committee is created. The Secretary shall appoint the members of the Committee and shall designate the chair. In making appointments, the Secretary shall take into consideration the expertise of the appointees in the management of hazardous materials emergencies. The Secretary shall appoint one representative from:

(1) The Division of Emergency Management;
(2) The North Carolina Highway Patrol;
(3) The State Fire and Rescue Commission of the Department of Insurance;
(4) The Department of Environmental Quality;
(5) The Department of Transportation;
(6) The Department of Agriculture and Consumer Services;
(7) The Chemical Industry Council of North Carolina;
(8) The N.C. Association of Hazardous Materials Responders;
(9) Each regional response team;
(10) The State Bureau of Investigation.

In addition to the persons listed above, the Secretary shall appoint to the Advisory Committee three persons designated jointly by the North Carolina Fire Chiefs Association and the North Carolina State Firefighters' Association.

(b) The Advisory Committee shall meet on the call of the chair, or at the request of the Secretary; provided that the Committee shall meet no less than once every three months. The Department of Public Safety shall provide space for the Advisory Committee to meet. The Department also shall provide the Advisory Committee with necessary support staff and supplies to enable the Committee to carry out its duties in an effective manner.

(c) Members of the Advisory Committee shall serve without pay, but shall receive travel allowance, lodging, subsistence, and per diem as provided by G.S. 138-5.

(d) The Regional Response Team Advisory Committee shall advise the Secretary on the establishment of the program for regional response to hazardous materials emergencies in the State. The Committee shall also evaluate and advise the Secretary of the need for additional regional response teams to serve the State. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 1997-261, s. 108; 1997-443, s. 11A.123; 2002-179, s. 21(g); 2011-145, s. 19.1(g); 2015-241, s. 14.30(u); 2016-51, s. 6.)

§ 166A-27. Action for the recovery of costs of hazardous materials emergency response.

(a) A person who causes the release of a hazardous material requiring the activation of a regional response team shall be liable for all reasonable costs incurred by the regional response team in responding to and mitigating the incident. The Secretary shall invoice the person liable for the hazardous materials release, and, in the event of nonpayment, may institute an action to recover those costs in the superior court of the county in which the release occurred.

(b) A person who causes the release of a hazardous material that results in the activation of one or more State Medical Assistance Teams (SMATs) or the Epidemiology Section of the Division of Public Health of the Department of Health and Human Services shall be liable for all reasonable costs incurred by each team or the Epidemiology Section that responds to or mitigates the incident. The Secretary of Health and Human Services shall invoice the person liable for the hazardous materials release and, in the event of nonpayment, may institute an action to recover those costs in the superior court of the county in which the release occurred. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2007-107, s. 3.1(a).)

§ 166A-28. Hazardous Materials Emergency Response Fund.

There is established in the Department of Public Safety a fund for those monies collected pursuant to G.S. 166A-27. The Fund is also authorized to accept any gift, grant, or donation of money or property to facilitate the establishment and operation of the regional response system. (1993 (Reg. Sess., 1994), c. 769, s. 22.4(b); 2011-145, s. 19.1(g).)

§ 166A-29. Emergency planning; charge.

(a) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Public Safety an annual fee of at least thirty thousand dollars ($30,000) for each fixed nuclear facility which is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee is to be applied to the costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. Said fee is to be paid on a schedule set

by the Department of Public Safety. This minimum fee may be increased from time to time as the costs of such planning and implementation increase. Such increases shall be by agreement between the State and the licensees or operators of the fixed nuclear facilities.

(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Public Safety, for the use of the Radiation Protection Section of the Division of Health Service Regulation of the Department of Health and Human Services, an annual fee of at least thirty-six thousand dollars ($36,000), not to exceed the cost of the service provided, for each fixed nuclear facility that is located within this State or that has a Plume Exposure Pathway Emergency Planning Zone any part of which is located within this State. This fee shall be applied only to the costs of planning and implementing emergency response activities as required by the Federal Emergency Management Agency for the operation of nuclear facilities. This fee is to be paid on a schedule set by the Department of Public Safety.

(c) The fees imposed by this section do not revert at the end of a fiscal year. The amount of fees carried forward from one fiscal year to the next shall be taken into consideration in determining the fee to be assessed each fixed nuclear facility under subsection (a) in that fiscal year. (1981, c. 1128, ss. 1, 2; 1983, c. 622, ss. 1-3; 1989, c. 727, s. 219(42); 1989 (Reg. Sess., 1990), c. 964, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 18; 1997-443, s. 11A.123; 2000-109, s. 6; 2002-70, s. 5; 2011-145, ss. 13.3(ooo), 19.1(g); 2012-12, s. 1(a); 2020-83, s. 11.1(a).)

§ 166A-29.1. Hazardous materials facility fee.

(a) Definitions. – The following definitions apply in this section:

(1) EPCRA. – The federal Emergency Planning and Community Right-to-Know Act, P.L. No. 99-499 et. Seq.

(2) Extremely hazardous substance. – Any substance, regardless of its state, set forth in 40 C.F.R. Part 355, Appendix A or B.

(3) Hazardous chemical. – As defined in 29 C.F.R. 1910.1200(c), except that the term does not include any of the following:

a. Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.

b. Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

c. Any substance to the extent that it is used for personal, family, or household purposes or is present in the same form and concentration as a product packaged for distribution and use by the public.

d. Any substance to the extent that it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

e. Any substance to the extent that it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(b) Annual Fee Shall Be Charged. – A person or business required under Section 302 or 312 of EPCRA to submit a notification or an annual inventory form to the Division shall be required to pay to the Department an annual fee in the amount set forth in subsection (c) of this section.

(b1) Account Created. – There is created the Hazardous Material Facility Account as a special, nonreverting account within the Department. All fees collected under this section shall be credited to the Account and shall be used to support the hazardous materials response programs established in accordance with subsection (f) of this section.

(c) Amount of Fee. – The amount of the annual fee charged pursuant to subsection (b) of this section shall be calculated in accordance with the following, up to a maximum annual amount of five thousand dollars ($5,000) per reporting site:

(1) A fee of fifty dollars ($50.00) shall be assessed for each substance at each site reported by a person or business that is classified as a hazardous chemical.

(2) A fee of ninety dollars ($90.00) shall be assessed for each substance at each site reported by a person or business that is classified as an extremely hazardous substance.

(d) Late Fees. – The Division may impose a late fee against a person or business for failure to submit a report or filing that substantially complies with the requirements of EPCRA by the federal filing deadline or for failure to pay any fee, including a late fee. This fee shall be in addition to the fee imposed pursuant to subsection (c) of this section. Prior to imposing a late fee, the Division shall provide the person or business who will be assessed the late fee with written notice that identifies the specific requirements that have not been met and informs the person or business of its intent to assess a late fee. The assessment of a late fee shall be subject to the following limitations:

(1) If the report filing or fee is submitted within 30 days after receipt of the Division's notice that it intends to assess a late fee, no late fee shall be assessed.

(2) If the report filing or fee has not been submitted by the end of the period set forth in subdivision (1) of this subsection, the Division may impose a late fee in an amount equal to the amount of the fee charged pursuant to subsection (c) of this section.

(e) Exemptions. – No fee shall be charged under this section to any of the following:

(1) An owner or operator of a family farm enterprise, a facility owned by a State or local government, or a nonprofit corporation.

(2) An owner or operator of a facility where motor vehicle fuels are stored and from which such fuels are offered for retail sale. However, hazardous chemicals or extremely hazardous substances at such a facility, other than motor vehicle fuels for retail sale, shall not be subject to this exemption.

(3) A motor vehicle dealer, as that term is defined in G.S. 20-286(11).

(f) Use of Fee Proceeds. – The proceeds of fees assessed pursuant to this section shall be used for the following:

(1) To offset costs associated with the establishment and maintenance of a hazardous materials database and a hazardous materials response application.

(2) To offset costs associated with the operations of the regional response program for hazardous materials emergencies and terrorist incidents.

(3) To provide grants to counties for hazardous materials emergency response planning, training, and related exercises.

(4) To offset Division costs that directly support hazardous materials emergency preparedness and response. (2014-100, s. 16B.3(b); 2015-241, s. 16B.8(a); 2023-92, s. 8.)