

35-9-151. Short title.

This act shall be known and may be cited as the "Wyoming Emergency Response Act".

35-9-152. Definitions.

(a) As used in this act:

(i) "Emergency responders" means public, state or federal fire services, law enforcement, emergency medical services, public health, public works, homeland security and other public response services or agencies that would be involved in direct actions to contain or control a hazardous material release or weapons of mass destruction incident. The term "emergency responders" does not include private on-site facilities with immediate emergency response capabilities unless formally requested to assist off the private facility site by the state or a political subdivision of the state;

(ii) "Emergency response" means a response to any occurrence, including a weapon of mass destruction incident, which has resulted, or may result, in a release of a hazardous material;

(iii) "Hazardous material" means any substance, material, waste or mixture designated as hazardous material, waste or substance as defined in 49 C.F.R. part 171.8, as amended as of April 1, 2004;

(iv) "Incident" means the release, or imminent threat of release, of a hazardous material, or a situation involving a potential weapon of mass destruction that requires the emergency action of responders to limit or prevent damage to life or property. "Incident" also includes the discovery of hazardous materials related to clandestine laboratory operations as defined in W.S. 35-7-1058;

(v) "Incident commander" means the person in charge of all responders at the site of an emergency response;

(vi) "Local emergency response authority" means the single point of contact designated for a political subdivision for coordinating responses to incidents;

(vii) "Political subdivision" means any county, city, town or fire protection district of the state;

(viii) "Regional emergency response team" means any group of local government emergency responders brought together and supported by the state and confirmed by the director, office of homeland security to assist an affected jurisdiction within the different regions of the state with the intent to protect life and property against the dangers of incidents and emergencies involving hazardous materials or weapons of mass destruction;

(ix) "Transporter" means an individual, firm, copartnership, corporation, company, association or joint stock association, including any trustee, receiver, assignee, or similar representative, or a government or Indian tribe, or an agency or instrumentality of any government or Indian tribe, that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. "Transporter" does not include the following:

(A) The United States Postal Service;

(B) Any government or Indian tribe, or an agency or instrumentality of any government or Indian tribe, that transports hazardous material for a governmental purpose;

(x) "Director, office of homeland security" means as defined in W.S. 19-13-102(a)(v);

(xi) "Unified command" means a system of command that allows all parties with jurisdictional or functional responsibility for the incident to work together to develop a common set of incident objectives and strategies, share information, maximize the utilization of available resources and enhance the efficiency of the individual response organizations;

(xii) "Weapons of mass destruction" means as defined in 18 U.S.C. 2332(a) as of April 1, 2004, or as subsequently defined by rules and regulations of the director, office of homeland security;

(xiii) "This act" means W.S. 35-9-151 through 35-9-159.

35-9-153. State emergency response commission; creation; duties.

(a) There is created a state emergency response commission that shall consist of members appointed by the governor to advise the director, office of homeland security with respect to

activities under this act. The commission shall consist of not less than four (4) members representing the mining, trucking, manufacturing and railroad industries, one (1) member each from the legislature, local government, local law enforcement, fire services, the Joint Tribal Council, homeland security, the media, the medical field, emergency medical services and the general public, and one (1) representative from each of the following state agencies:

- (i) The department of environmental quality;
- (ii) The department of health;
- (iii) The department of transportation;
- (iv) The department of agriculture;
- (v) The department of fire prevention and electrical safety;
- (vi) The University of Wyoming environmental health and safety office.

(b) The governor may remove any member as provided in W.S. 9-1-202.

(c) The commission shall appoint a chairman and other officers deemed necessary from among its members. The commission may meet as often as deemed necessary by a majority of the commission or at the request of the director, office of homeland security. Commission members who are not state employees may be reimbursed for per diem and mileage for attending commission meetings in the same manner and amount as state employees.

(d) The governor may give consideration to the geographical location of the commission members, to the extent possible, in order to have broad representation of the geographical areas of the state.

(e) The commission shall review collection and disbursement of funds and advise the director, office of homeland security on activities and responsibilities under this act.

(f) The commission shall, by rule, establish emergency planning districts in accordance with the requirements of 42 U.S.C. 11001 et seq. and in compliance with the Wyoming Administrative Procedure Act, to consist of twenty-three (23)

districts corresponding to the jurisdictions of the twenty-three (23) counties of the state. The commission shall appoint members of the local emergency planning committees for each emergency planning district to include representatives required by 42 U.S.C. 11001, et seq. The commission shall annually review memberships and activities of the local emergency planning committees and report to the governor annually on those activities. The commission shall work with each board of county commissioners and city council to promote support by the board for the local emergency planning committee in the county.

(g) The commission shall perform all duties and acts prescribed by 42 U.S.C. 11001 et seq., and all other applicable law, with the assistance of the Wyoming office of homeland security and other state agencies determined to be necessary by the commission.

(h) The commission shall, by rule and regulation, establish standards for protection of the safety of responding personnel during clandestine laboratory incident responses, standards for determining a site uninhabitable under W.S. 35-9-156(d), standards for determining the extent of contamination and standards for remediation required to render former clandestine laboratory operation sites safe for re-entry, habitation or use with respect to the following:

(i) Decontamination and sampling standards and best management practices for the inspection and decontamination of property and the disposal of contaminated debris;

(ii) Appropriate methods for the testing of buildings and interior surfaces, furnishings, soil and septic tanks for contamination;

(iii) When testing for contamination may be required; and

(iv) When a site may be declared remediated.

(j) The commission shall, by rule and regulation, establish due process standards for the protection of the property interests of real estate owners, subject to subsection (h) of this section.

35-9-154. Emergency response training, planning and reporting.

(a) After consultation with the commission and the state fire marshal, the director, office of homeland security shall:

(i) Coordinate, develop, implement and make available a comprehensive voluntary training program designed to assist emergency responders in hazardous material or weapons of mass destruction incidents;

(ii) Provide for ongoing training programs for political subdivisions, state agency employees and private industry employees involved in responding to hazardous materials or weapons of mass destruction incidents.

(iii) Assist with emergency response planning by appropriate agencies of government at the local, state and national levels.

35-9-155. Regional response teams; rulemaking.

(a) The state, political subdivisions of the state and other units of local government, may contract or coordinate to make available for use in any county, city or fire protection district any part of a regional emergency response team of appropriately trained personnel and specialized equipment necessary to respond to an incident or emergency.

(b) Members of the regional emergency response teams shall be indemnified and defended from liability by the state self-insurance program:

(i) While engaged in response to incidents outside their normal jurisdiction and pursuant to an appropriate request for assistance; or

(ii) While traveling to or from an operation authorized by this act.

(c) The state may lend equipment and personnel and make grants from available state or federal funds for the purchase of equipment to any local government participating in the regional emergency response program.

(d) The director, office of homeland security, in consultation with the state fire marshal and subject to approval by the state emergency response commission, shall:

(i) Promulgate rules and regulations establishing:

(A) Standards for regional response teams;

(B) Hazardous material emergency response training confirmation;

(C) Local and regional hazardous materials or weapons of mass destruction incident response reporting.

(ii) Establish criteria for providing aid to regional emergency response teams.

35-9-156. Local response authority.

(a) Every political subdivision of the state shall designate a local emergency response authority for responding to and reporting of hazardous material or weapons of mass destruction incidents that occur within its jurisdiction. The designation of a local emergency response authority and copies of any accompanying agreements and other pertinent documentation created pursuant to this section shall be filed with the director, office of homeland security within seven (7) days of the agreement being reduced to writing and signed by all appropriate persons.

(b) Every local emergency response authority shall coordinate the response to an incident occurring within its jurisdiction in a fashion consistent with standard incident command protocols. The local emergency response authority shall also coordinate the response to an incident which initially occurs within its jurisdiction but which spreads to another jurisdiction. If an incident occurs on a boundary between two (2) jurisdictions or in an area not readily ascertainable, the first local emergency response authority arriving at the scene shall coordinate the initial emergency response and shall be responsible for seeking reimbursement for the incident on behalf of all responding authorities entitled to reimbursement under W.S. 35-9-157(a).

(c) Any unusual incident involving hazardous materials or weapons of mass destruction and any incident involving a clandestine laboratory operation shall be investigated to determine if a criminal act has occurred until it is determined otherwise. To ensure preservation of evidence while mitigating the threat to life and property under this subsection, a command structure with primary command authority by the appropriate law enforcement agency shall be implemented.

(d) The incident commander shall declare an incident ended when he has determined the threat to public health and safety has ended. Until the incident commander has declared the threat to public safety has ended the incident commander shall have the authority to issue an order on behalf of the political subdivision that any portion of the building, structure or land is uninhabitable, secure the portion of the building, structure or land that is uninhabitable and take appropriate steps to minimize exposure to identified or suspected contamination at the site or premise. If the subject of the site or premise is commercial real estate, the incident commander shall limit the declaration of uninhabitable to the areas affected by the clandestine laboratory operation and shall not declare the entire commercial real estate uninhabitable unless the entire commercial property has been documented and determined uninhabitable using the standards promulgated by the state emergency response commission under W.S. 35-9-153(h). The incident commander shall provide written notice to the commercial real estate owner, describing with specificity the extent of the commercial property deemed uninhabitable. Any property that is ordered uninhabitable under this subsection shall only be transferred or sold prior to remediation if full, written disclosure is made to the prospective purchaser, attached to the earnest money receipt if any, and shall accompany the sale documents but not be a part of the deed nor shall it be recorded. The transferor or seller shall notify the incident commander of the transfer or sale within ten (10) days of the transfer or sale.

(e) The order issued under subsection (d) of this section shall be in writing, shall state the grounds for the order and shall be filed in the office of the clerk of the district court of the county in which the building or structure is situated. A copy of the order shall be served in accordance with the Wyoming Rules of Civil Procedure upon the owner and any occupants of the building or structure with a written notice that the order has been filed and shall remain in force, unless the owner or occupant files his objections or answer with the clerk of the district court within the time specified in subsection (f) of this section. A copy of the order shall be posted in a conspicuous place upon the building or structure.

(f) Within twenty (20) days of service of an order issued under subsection (d) of this section, the owner or occupant may file with the clerk of the district court and serve upon the political subdivision issuing the order, an answer denying the

existence of any of the allegations in the order. If no answer is filed and served, the court shall affirm the order declaring the site uninhabitable and fix a time when the order shall be enforced. If an answer is filed and served, the court shall hear and determine the issues raised as set forth in subsection (g) of this section.

(g) The court shall hold a hearing within eleven (11) days from the date of the filing of the answer. If the court sustains the order, the court shall fix a time within which the order shall be enforced. Otherwise, the court shall annul or set aside the order declaring the property to be uninhabitable.

(h) An appeal from the judgment of the district court may be taken by any party to the proceeding in accordance with the Wyoming Rules of Appellate Procedure.

35-9-157. Right to claim reimbursement.

(a) The state, political subdivision of the state or other unit of local government is hereby given the right to claim reimbursement for the costs resulting from action taken to remove, contain or otherwise mitigate the effects of a hazardous materials abandonment, a hazardous materials spill or a weapons of mass destruction incident.

(b) Notwithstanding subsection (a) of this section and except with respect to a response to a clandestine laboratory operation incident, no person shall be liable under this act if the incident was caused by:

(i) An act of God; or

(ii) An act or omission of a person not defined as a transporter under this act, provided that:

(A) The potentially liable person exercised reasonable care with respect to the hazardous material involved, taking into consideration the characteristics of the hazardous material in light of all relevant facts and circumstances; and

(B) The potentially liable person took reasonable precautions against foreseeable acts or omissions of any third person and the consequences that could foreseeably result from those acts or omissions.

(c) Local emergency response authorities and regional emergency response teams shall be entitled to recover their reasonable and necessary costs incurred as a result of their response to a hazardous material or weapons of mass destruction incident. Costs subject to recovery under this act include, but are not limited to, the following:

(i) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response;

(ii) Remuneration of employees for the time and efforts devoted to responding to a hazardous materials or weapons of mass destruction incident outside the responders' normal jurisdiction;

(iii) A reasonable fee, as established through rules and regulations of the director, office of homeland security, for the use of equipment, including rolling stock, in responding to a hazardous materials or weapons of mass destruction incident outside the responders' normal jurisdiction;

(iv) Rental or leasing of equipment used specifically for the response;

(v) At value replacement costs for equipment owned by the person claiming reimbursement that is contaminated beyond reuse or repair, if the loss occurred as a result of the response;

(vi) Decontamination of equipment contaminated during the response;

(vii) Special technical services specifically requested and required for the response;

(viii) Medical monitoring or treatment of response personnel;

(ix) Laboratory expenses for analyzing samples taken during the response; and

(x) If determined to involve criminal activity, all costs and expenses of the investigation.

(d) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provision of law.

35-9-158. Expense recovery and civil remedies.

(a) The decision to commence a civil action to recover expenses shall be made by the state, political subdivision of the state or other unit of local government, including local emergency response authorities and regional response teams, in consultation with the attorney general or county or municipal attorney as appropriate. With respect to a civil action to recover expenses for a clandestine laboratory operation incident, the governing body shall first make such claim against the party responsible for the clandestine laboratory operation and shall use the proceeds of any asset forfeiture directly related to the building or structure containing the clandestine laboratory to offset expenses, including expenses for remediation of the site. Claims of expenses for remediation for a clandestine laboratory operation incident may be made against the owner of a building or structure containing a clandestine laboratory operation only as follows:

(i) The law enforcement agency acting as an emergency responder shall keep an accurate account of the expenses incurred in carrying out the remediation and shall report the actions and present a statement of the expenses incurred and the amount received from any salvage sale to the court for approval and allowance;

(ii) The court shall examine, correct, if necessary, and allow the expense account to the extent the expenses exceed those recovered from the party responsible for the clandestine laboratory operation. If the owner did not know or could not with reasonable diligence have known of the clandestine laboratory operation, the amount recoverable from the owner shall be limited to one percent (1%) of the fair market value as determined by the county assessor of that portion of the building, structure or land declared uninhabitable by the incident commander;

(iii) The amount allowed by the court constitutes a lien against the real property on which a clandestine laboratory operation incident occurred or was situated. If the amount is not paid by the owner within six (6) months after the amount has been examined and approved by the court, the real estate may be sold under court order by the county sheriff in the manner provided by law for the sale of real estate upon execution;

(iv) The proceeds of the sale shall be paid into the treasury of the governing body of the law enforcement agency

acting as the emergency responder. If the amount received as salvage or upon sale exceeds the expenses allowed by the court, the court shall direct payment of the surplus to the previous owner for his use and benefit;

(v) Whenever any debt which is a lien pursuant to this subsection is paid and satisfied, the law enforcement agency acting as an emergency responder shall file notice of satisfaction of the lien statement in the office of the county clerk of any county in which the lien is filed; and

(vi) If the expenses of the law enforcement agency exceed the amount allowed by the court pursuant to paragraph (ii) of this subsection, the law enforcement agency acting as an emergency responder may apply for reimbursement of the excess expenses from the funds as authorized by W.S. 1-40-118(g)(i)(C). If the expenses further exceed amounts available under W.S. 1-40-118(g)(i)(C), the emergency responder may apply for reimbursement from the clandestine laboratory remediation account created pursuant to W.S. 35-9-159(f).

(b) Prior to commencing a civil action for recovery of expenses pursuant to this act, the governmental entity shall afford the person alleged to owe those expenses a reasonable opportunity to engage in nonbinding mediation. Each party to mediation shall bear his own costs and expenses, including a proportionate share of the fees of the mediator.

(c) In the event that the attorney general or county or municipal attorney prevails in a civil action for reimbursement under this act, the court shall award costs of collection including reasonable attorney's fees, investigation expenses and litigation expenses.

(d) Any person who receives remuneration for the emergency response expenses pursuant to any other federal or state law shall be precluded from recovering reimbursement for those expenses under this act. Nothing in this act shall otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury or loss resulting from the release of any hazardous material or for remedial action or the expenses of remedial action for the release.

35-9-159. Exceptions to reimbursements; exception to act; clandestine laboratory remediation fund.

(a) This act shall not apply to releases of a hazardous material where there is an immediate on-site private industry response capability to the emergency. The exemption under this subsection shall apply only if the private industry files evidence of its immediate response capability to respond to emergency releases of hazardous materials that may be present at the site of the private industry or the responsible party and incident commander have determined that the local or regional response team is no longer required and should be released. The exemption shall not apply if emergency responders responded to a release of hazardous materials at the request of the on-site private industry where the emergency occurred.

(b) Except with respect to a response to a clandestine laboratory operation incident, the state, political subdivisions of the state or other unit of local government shall not be entitled to reimbursement under this act from any responsible party for an incident involving less than the following quantities of hazardous materials:

Hazard Class/Division from 49 CFR Article 100-185	Hazard Type	Quantity subject to reimbursement
1.1, 1.2, 1.3 (Table 1 materials)	Explosive Materials	Any quantity
1.4, 1.5, 1.6 (Table 2 materials)	Explosive Materials	1001 pounds
2.1 (Table 2 material)	Flammable Gas	150 gallons
2.3 (Table 1 material)	Poison Gas	Any quantity
3 (Table 2 material)	Flammable Liquid	150 gallons
3 (Table 2 material)	Combustible Liquid	300 gallons
4.1 4.2 (Table 2 materials)	Flammable Solid or Spontaneously Combustible Material	11 pounds
4.3 (Table 1 material)	Dangerous When Wet	3 pounds
5.1 (Table 2 material)	Oxidizer (Includes inorganic Peroxides)	1001 pounds
5.2 (Table 1 material)	Organic Peroxide	66 pounds
6.1 (Table 1 material)	Poison (Inhalation Hazard Zone A or B)	32 pounds
6.1 (Table 2 material)	Poison (Other than Inhalation Hazard Zone A or B)	1001 pounds
6.2 (Table 2 material)	Infectious Substance	1001 pounds

Class 7 (Table 1 material)	Radioactive Material (Yellow Label III only)	Any quantity
Class 8 (Table 2 material)	Corrosive Material	1001 pounds
Class 9 (Table 2 material)	Miscellaneous Hazardous Material	1001 pounds

(c) The initial response authority shall seek reimbursement on behalf of all responders entitled to reimbursement under this act from any responsible party for an incident involving hazardous materials under this act.

(d) Notwithstanding any other provision of this act, if a local law enforcement agency acting as an emergency responder does not find an immediate and substantial threat to public health when responding to a clandestine laboratory operation incident the local law enforcement agency discovering the clandestine laboratory operation shall provide written notice of the discovery to the owner of the property. The owner of the property shall have ninety (90) days to remediate the property in accordance with standards established pursuant to W.S. 35-9-153(h). If the property is not remediated within ninety (90) days of receipt of notice pursuant to this subsection, the law enforcement agency acting as an emergency responder may take remediation action as provided in rules authorized under W.S. 35-9-153(h). If the owner is unable to complete the remediation within ninety (90) days, the owner may request an extension of time from the local law enforcement agency which shall grant the extension if it finds:

(i) The owner is making a good faith effort to remediate the property; and

(ii) The owner has a practical time schedule to complete the remediation.

(e) If the law enforcement agency denies an extension pursuant to subsection (d) of this section, the owner may appeal to the district court within sixty (60) days of the issuance of the denial. The law enforcement agency's authority to take remediation action shall be stayed while the appeal is pending.

(f) There is created the clandestine laboratory remediation account to be administered by the attorney general. A local law enforcement agency acting as an emergency responder may apply for reimbursement from the account for expenses incurred in responding to a clandestine laboratory operation incident as provided in W.S. 35-9-158(a)(vi).

