

**CHAPTER 74, ARTICLE 4B NMSA 1978
EMERGENCY MANAGEMENT ACT**

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74-4B-1. Short Title.

Chapter 74, Article 4B NMSA 1978 may be cited as the "Emergency Management Act".

74-4B-2. Findings and purpose. (1983)

- A. The legislature finds that the use of hazardous materials, including radioactive materials, and the transportation of such materials through or within New Mexico occurs on a daily basis, and, no matter how safety-conscious facilities, users, shippers or carriers are, accidents may occur.

In the event of an accident involving hazardous materials, resource requirements may be beyond the capability of local governments, and the state must be prepared to respond quickly and effectively to protect the health and safety of its citizens and the environment.

- B. The legislature further finds that at the present time there is no statewide hazardous materials emergency response or emergency management plan and that no state agency is given explicit statutory authority for the management of an emergency involving radioactive materials.
- C. It is the purpose of the Emergency Management Act [Chapter 74, Article 4B NMSA 1978] to:
- (1) provide that adequate hazardous materials emergency management capability exists in the state to protect the health and safety of New Mexico citizens and the environment;
 - (2) delineate those state agencies that are responsible for responding to a hazardous materials accident and providing for the control and management of such an accident, and to provide for the cooperation of other state agencies and local governments in emergency management; and
 - (3) provide for the formulation of a comprehensive hazardous materials emergency management plan which will be distributed statewide and which will be complied with by all persons who may be involved in responding to a hazardous materials accident.

74-4B-3. Definitions. (1997)

As used in the Emergency Management Act [Chapter 74, Article 4B NMSA 1978]:

- A. "accident" means an event involving hazardous materials that may cause injury to persons or damage to property or release hazardous materials to the environment;
- B. "administrator" means the hazardous materials emergency response administrator;
- C. "board" means the hazardous materials safety board;
- D. "chief" means the chief of the New Mexico state police;
- E. "commission" means the state emergency response commission;
- F. "department" means the department of public safety;
- G. "emergency management" means the ability to prepare for, respond to, mitigate, recover and restore the scene of an institutional, industrial, transportation or other accident;

- H. "first responder" means the first law enforcement officer or other public service provider with a radio-equipped vehicle to arrive at the scene of an accident;
- I. "hazardous materials" means hazardous substances, radioactive materials or a combination of hazardous substances and radioactive materials;
- J. "hazardous substances" means flammable solids, semisolids, liquids or gases; poisons; corrosives; explosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents, but does not include radioactive materials;
- K. "orphan hazardous materials" means hazardous substances, radioactive materials, a combination of hazardous substances and radioactive materials or substances used in the manufacture of controlled substances in violation of the Controlled Substances Act where an owner of the substances or materials cannot be identified;
- L. "plan" means the statewide hazardous materials emergency response plan;
- M. "radioactive materials" means any material or combination of materials that spontaneously emits ionizing radiation.

Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material are not considered to be radioactive materials unless determined to be so by the hazardous and radioactive materials bureau of the water and waste management division of the department of environment for purposes of emergency response pursuant to the Emergency Management Act;

- N. "responsible state agency" means an agency designated in Subsection D of Section 74-4B-5 NMSA 1978 with responsibility for managing a certain type of accident or performing certain functions at the scene of such accident;
- O. "secretary" means the secretary of public safety; and
- P. "task force" means the emergency management task force.

74-4B-4. State responsibility for management of accidents; immunity from liability; cooperative agreements; private property. (1996)

- A. The secretary shall have final authority to administer the provisions of the Emergency Management Act [Chapter 74, Article 4B NMSA 1978].
- B. As between state and local governments, the state government has the primary responsibility for the management of an accident, and the local government in whose jurisdiction the accident occurs shall assist the state in its management of the accident.
- C. Nothing in the Emergency Management Act shall be construed as a waiver or alteration of the immunity from liability granted under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] or as a waiver of any other immunity or privilege under law.
- D. The state, through the secretary or his designee, may enter into cooperative agreements with county and municipal governments for the management of accidents based on the severity of the accident and the resources of the local government. The plan shall set forth the criteria for determining when an accident may be managed by the local government in whose jurisdiction the accident occurred.

- E. The secretary shall support emergency response capabilities by assisting local and state responders in the acquisition of equipment, training and hazardous materials information.
- F. The state, through the secretary or his designee, may enter into cooperative agreements with the federal government, Indian tribes and pueblos and bordering states for assistance in the management of accidents.
- G. Whenever an accident appears imminent or has occurred employees or authorized persons of responsible state agencies as defined in Section 74-4B-5 NMSA 1978 are authorized to enter upon any premises for the purpose of determining whether it is necessary for emergency management procedures to be implemented. The state on-scene coordinator or a responsible state agency may take full control and custody of the premises for the purpose of managing the accident.

74-4B-5. State police emergency response officer; procedure for notification; cooperation of other state agencies and local governments. (1989)

- A. The secretary, in addition to having final authority to administer the provisions of the Emergency Management Act [Chapter 74, Article 4B NMSA 1978], shall be responsible for central coordination and communication in the event of an accident.
- B. The chief shall designate one or more persons to be known as "state police emergency response officers". A state police emergency response officer shall be trained in accident evaluation and emergency response and shall be available to answer an emergency response call from the first responder.
- C. In the event of an accident, if the first responder is a law enforcement officer, he shall immediately notify the state police district emergency response officer in his area, who shall in turn immediately notify the state police emergency response center.

If the first responder is a person with radio capability tied into the radio communications bureau of the information systems division of the general services department, he shall immediately notify Santa Fe control, who shall in turn immediately notify the state police emergency response center. The state police emergency response center shall:

- (1) evaluate and determine the scope of the accident based on information provided by the first responder;
 - (2) instruct the first responder on how to proceed at the accident scene;
 - (3) immediately notify the appropriate responsible state agency and advise it of the necessary response;
 - (4) notify the sheriff or chief of police in whose jurisdiction the accident occurred; and
 - (5) coordinate field communications and summon additional resources requested by the emergency management team.
- D. The responsible state agencies shall be:
 - (1) the New Mexico state police division of the public safety department for coordination, law enforcement and traffic and crowd control;
 - (2) the environmental improvement division of the health and environment department [department of environment] for assistance with accidents involving radioactive or hazardous materials or hazardous substances;

- (3) the state fire marshal's office for assistance with any accident involving hazardous materials;
 - (4) the emergency medical services bureau of the health services division of the health and environment department [department of health] for assistance with accidents involving casualties;
 - (5) the emergency planning and coordination bureau of the public safety department and the military division of the department of military affairs for assistance with accidents which require the evacuation of the vicinity of the accident or the use of the national guard of New Mexico; and
 - (6) the state highway and transportation department for assistance with road closures, designating alternate routes and related services.
- E. Other state agencies and local governments shall assist the responsible state agencies when requested to do so.
- F. Any driver of a vehicle carrying hazardous materials involved in an accident which may cause injury to persons or property or any owner, shipper or carrier of hazardous materials involved in an accident who has knowledge of such accident or any owner or person in charge of any building, premises or facility where such an accident occurs shall immediately notify the New Mexico state police division of the public safety department by the quickest means of communication available.

74-4B-6. Emergency management task force; created; powers and duties. (1989)

- A. The "emergency management task force" is created, composed of:
- (1) the chief or his designee, who shall serve as vice chairman of the task force;
 - (2) the state fire marshal or his designee;
 - (3) a staff member of the environmental improvement division who is knowledgeable about radioactive materials, to be designated by the director of the division;
 - (4) a staff member of the environmental improvement division who is knowledgeable about hazardous substances, to be designated by the director of the division;
 - (5) the director of the technical and emergency support division or his designee;
 - (6) the chief of the emergency medical services bureau or his designee;
 - (7) the secretary of highway and transportation or his designee;
 - (8) the chairman of the state corporation commission [public regulation commission] or his designee;
 - (9) a representative of the governor, to be appointed by the governor, who is not an employee of any agency represented on the task force and who shall serve as chairman of the task force;
 - (10) the secretary of taxation and revenue or his designee; and
 - (11) the director of the information systems division of the general services department or his designee.
- B. The attorney general's office shall serve as attorney for the task force.

- C. The task force shall, at the direction of the state emergency response commission, develop and monitor a comprehensive plan, to include:
- (1) procedures for initially assessing the scope and nature of an accident;
 - (2) procedures for notifying and assembling the proper emergency management team from the responsible state agencies;
 - (3) procedures for siting and operating an on-scene command post;
 - (4) an inventory and assessment of manpower, equipment and training within each responsible state agency as well as other state agencies and local governments and federal and private sources;
 - (5) an assessment of the adequacy and availability of training materials and facilities to train and cross-train emergency response teams and other persons involved in responding to an accident and an identification of training requirements to assure that such persons are adequately trained;
 - (6) the development of training programs for emergency response teams and other persons involved in responding to an accident;
 - (7) procedures for decontamination of emergency management personnel and equipment as well as medical and other facilities which may be used in the management of the accident;
 - (8) identification of the medical resources in the state and the location of specialized medical facilities for use in medical emergencies;
 - (9) information and training programs for hospital emergency room personnel and doctors;
 - (10) procedures for accident assessment and record keeping;
 - (11) procedures for periodic emergency management preparedness exercises and testing of the plan;
 - (12) a designation of areas of responsibility in the emergency management plan, including but not limited to:
 - (a) command and control of the accident scene and overall responsibility and authority for all emergency response activity;
 - (b) public health and safety, including rescue operations, emergency medical services, evacuation and containment of the accident scene;
 - (c) sanitation and decontamination services at the accident scene;
 - (d) communications, including statewide and on-scene communications;
 - (e) public works and engineering;
 - (f) transportation;
 - (g) social services;

- (h) accident assessment, investigation and record keeping;
 - (i) protective response, including hazardous materials exposure control;
 - (j) environmental monitoring, control and cleanup; and
 - (k) public information;
- (13) criteria for determining when an accident may be handled by a local government;
 - (14) procedures for entering into cooperative agreements between the state and local governments and between the state and the federal government, Indian tribes and pueblos and bordering states pursuant to Section 74-4B-4 NMSA 1978; and
 - (15) identification of information management resources necessary for effective emergency response activity.
- D. The task force shall develop liaison with the trucking industry, the railroads and other areas of the private sector in the formulation of the plan.

74-4B-6.1. Hazardous materials emergency response administrator; created; duties. (1989)

- A. The position of "hazardous materials emergency response administrator" is created within the technical and emergency support division of the public safety department.
- B. The administrator shall, subject to the approval of the director of the technical and emergency support division of the public safety department, provide staff support to the task force and the board and shall:
- (1) maintain inventories and data bases relevant to the task force and board activities;
 - (2) maintain current rosters of emergency response personnel and other contact persons with knowledge, resources and capabilities for emergency response functions;
 - (3) update the plan and accompanying documents at the direction of the task force;
 - (4) schedule activities required by the task force and board; and
 - (5) perform other duties requested by the task force and board in accordance with the provisions of the Emergency Management Act [Chapter 74, Article 4B NMSA 1978] and the plan.
- C. Money appropriated to the public safety department for administering the Emergency Management Act or received through grants or other sources shall be expended upon vouchers signed by the director of the technical and emergency support division of the public safety department.

74-4B-7. Training officers. (1983)

Each responsible state agency shall designate one person who is knowledgeable in the area of hazardous materials accident response, as it applies to the functions of that agency, to be its training officer. It is the duty of the training officer to teach the appropriate personnel within the agency the proper methods of discharging the agency's responsibilities in responding to hazardous materials accidents.

The training officer is also responsible for providing cross-training to personnel of other responsible state agencies and other persons as may be required by the hazardous materials safety board.

74-4B-8. Hazardous materials safety board; creation; duties. (1989)

- A. There is created the "hazardous materials safety board", composed of the training officers of the responsible state agencies. The chairman of the board shall be elected by the members of the board.
- B. The board shall, at the direction of the state emergency response commission:
 - (1) establish a curriculum of accident response training for the personnel of each responsible state agency designed to implement the plan adopted by the task force;
 - (2) certify to each responsible state agency those persons who have completed the training curriculum or parts of the curriculum;
 - (3) meet at least every four months to review the training needs of each responsible state agency and formulate a plan to meet those needs;
 - (4) conduct, under the direction and administration of the state fire marshal, an annual comprehensive training course for all appropriate personnel from responsible state agencies, other state agencies and local governments, which course shall include teaching the basic duties, responsibilities and procedures of responsible state agencies, other state agencies and local governments;
 - (5) in conjunction with the task force, prepare and submit to the state emergency response commission a budget for statewide training needs; and
 - (6) cooperate with and assist the task force as requested, including providing the task force with any requested information regarding safety and training of emergency response personnel.

74-4B-9. Accident review; report. (1984)

After any hazardous materials accident which required the presence of an emergency management team, including a local government team pursuant to a cooperative agreement, the board shall meet to review the performance of the team and to establish the probable cause of the accident.

The board shall report its findings to the task force and the local government in whose jurisdiction the accident occurred; provided, however, the conclusions contained in the report shall not be admissible in evidence in any court proceeding to prove or disprove the negligence of any party found by the report to have contributed to the cause of the accident.

The report shall be filed with the state corporation commission [public regulation commission] and the administrator.

74-4B-10. Clean-up. (1983)

Nothing in the Emergency Management Act [Chapter 74, Article 4B NMSA 1978] shall be construed to relieve hazardous materials owners, shippers or carriers of their responsibilities and liability in the event of an accident. Such persons shall assist the state as requested in responding to an accident and are responsible for restoring the scene of the accident to the satisfaction of the state.

74-4B-10.1. Good Samaritan law. (1984)

- A. Notwithstanding any provision of law to the contrary, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened release of hazardous materials, or in preventing, cleaning up or disposing or attempting to prevent, clean up or dispose of such release, shall be subject to civil liabilities or penalties of any type.
- B. The immunity provided for in Subsection A of this section does not apply to any person:
 - (1) whose act or omission caused, in whole or in part, the actual or threatened release of hazardous materials and who would otherwise be liable; or
 - (2) who receives compensation other than reimbursement for out-of-pocket expenses for his services in rendering assistance or advice.
- C. Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from that person's gross negligence or reckless, wanton or intentional misconduct.