

PROCEDURE FOR REQUEST AND APPROPRIATION OF LEPC FUNDS

RE: Procedure for Request and Appropriation of Funds to Local Emergency Planning Committee (LEPC)

Dear County Council President, County Auditor and LEPC Chair:

We are writing on behalf of the Indiana Emergency Response Commission (IERC) and the State Board of Accounts (SBA) to share with you our common approach to the request for, and appropriation of, funds for LEPCs. This is a matter which has caused some confusion in the past, due to the LEPC's unusual nature as a state agency which receives its funds through the counties, which act as custodians of those funds.

I. The Law on LEPC Expenses

The requirements of the Emergency Planning and Right to Know Act (EPCRA) mandate the structure of the IERC and LEPCs. EPCRA is part of Title III of the Superfund Amendment and Reauthorization Act of 1986 (SARA Title III), which is found at 42 United States Code Sections 11001-11050. The requirements of EPCRA were enacted into law in Indiana at Indiana Code (IC) 13-25-2. The IERC's organization and specific duties of the IERC and LEPCs are found at Indiana Code 13-25-1.

The funds for the LEPC originate from the Indiana Local Emergency Planning and Right to Know Fund, whose statutory requirements derive from federal law. The Indiana statute, IC 13-25-2-10.6(d), requires that the county fiscal body "shall" appropriate the funds requested by the LEPC in a compliant spending plan. The intent and effect of this law is that the county act as custodian of the funds, but that it have no say as to the actual expenditure of the funds. The actual expenditure of these funds is overseen by the IERC. This independence from the county government results from the LEPC's nature as a state agency, under the oversight of the IERC.

The funds derived from the Indiana Local Emergency Planning and Right to Know Fund may, by law, be expended only on LEPC activities. The reason for this limitation is that the funds come from SARA Title III fees, and the funds are earmarked for expenditure on preparing for response to releases of the substances generating the funds. Although some county leaders may question this straightforward limitation, it derives from both federal and state statute. Both the Indiana legislature and the U.S. Congress have decided that these funds may be spent only on LEPC budget items.

II. LEPC Expense Categories

Money from the Indiana Local Emergency Planning and Right to Know Fund may be spent by LEPCs on eight categories of items specified in IC 13-25-2-10.6(b):

1. Preparing and updating the SARA Title III plan;
2. Establishing and implementing procedures for dealing with public information requests;

3. Training for emergency response planning, information management, and hazardous materials (HAZMAT) incident response;
4. Equipping a HAZMAT response team which provides response throughout the LEPC's district if the equipment is consistent with team training;
5. Purchasing communications gear for the LEPC's administrative use;
6. Paying LEPC members a \$20 meeting stipend; and
7. Paying for SARA Title III risk communication, chemical accident related, and accident prevention projects submitted to and approved by the IERC.
8. Maintaining, repairing, and calibrating equipment purchased for a hazardous materials response team under subdivision (4)

The law clearly mandates that an LEPC may receive new, post-1997 funds only if it has met the requirements of Indiana Code 13-25-1-6(b). Funds distributed before 1997, under IC 13-25-2-10.6 (b), may be spent on categories 3 through 7 only if a current, compliant plan has been submitted and the training program has been approved by the IERC.

III. The Procedure for LEPCs Requesting and Receiving Funding

The procedure for the LEPC to request and receive funding is as follows:

1. The LEPC must prepare a funding request, listing as line items the seven (7) categories for expenditure specified under IC 13-25-2-10.6(b). The funding request must be approved by the LEPC in a regular meeting and this approval must be reflected in official minutes of the LEPC.
2. The LEPC must submit its funding request and a copy of the LEPC's official minutes reflecting approval to the County Auditor and County Council.
3. The LEPC may participate in the annual budget hearings held by the County Council.
4. The County Council "shall" approve the LEPC's budget, as required by IC 13-25-2-10.6(d).
5. The County Auditor shall act as the custodian of the approved funds, writing checks to cover expenditures from the various line items as requested.
6. The County Auditor must ensure that appropriated funds are not invested in a manner which prohibits their ready access upon request of the LEPC.
7. Additional expenditure requests for funding beyond the appropriated funds must include a funding request and a copy of the LEPC's official minutes reflecting approval of the supplemental funding request to the County Auditor.
8. As the LEPC is a state agency, the county must not impose any requirements upon the nature or manner of expending LEPC funds beyond those outlined above in the relevant state law.