

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INDIANA EMERGENCY RESPONSE COMMISSION,
THE INDIANA DEPARTMENT OF HOMELAND SECURITY
AND
THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

Contract # 000000000000000000XXXXX

This Memorandum of Understanding (“MOU”) is entered into by and between the Indiana Emergency Response Commission (“IERC”) established under IC § 13-25-1-1, the Indiana Department of Homeland Security (“IDHS”) established under IC § 10-19-2-1, and the Indiana Department of Environmental Management (“IDEM”) established under IC § 13-13-1-1, hereinafter referred to as a “Party” or “Parties”. In consideration of the mutual understandings and covenants set forth herein, the Parties agree as follows:

1. BACKGROUND AND PURPOSE.

The Indiana General Assembly, in IC § 13-25-1 and IC § 13-25-2, established duties for the IERC including encouraging and supporting the development of emergency planning efforts to provide information concerning potential chemical hazards in Indiana and assisting the State of Indiana in complying with the requirements of the federal Superfund Amendments and Reauthorization Act (SARA), Title III (also known as the Emergency Planning and Community Right to Know Act of 1986 or EPCRA) which includes designing and supervising the operation of emergency planning districts in Indiana and gathering and distributing the information needed for effective emergency response planning.

The General Assembly also established a fee for certain facilities under IC § 13-25-2-10.5 to provide financial support to the IERC and the local emergency planning committees (LEPCs) in their efforts to comply with these state and federal requirements. The Indiana Department of Revenue (“DOR”) administers this fee.

IDHS collects and stores Tier II reports and data for the State of Indiana while IDEM and the IERC support IDHS in this mission. The purpose of this MOU is to memorialize the relationship between the Parties and list the duties of each agency.

2. DUTIES OF THE PARTIES.

- A. **Exhibit A**, attached to and fully incorporated into this MOU, describes the duties of the Parties.
- B. To implement the notification requirements of section 304(e) of the EPCRA, as amended by section 2018 of the America’s Water Infrastructure Act of 2018, IDHS shall, on behalf of IDEM, provide community water systems potentially affected by a

reportable release with the initial release notification and follow-up written report through its Tier 2 Manager System.

- C. IDEM shall provide IDHS with changes or updates to the mapping location and contact information for all community water systems twice a year in January and July.
- D. IDHS shall update its licensing of its Tier 2 manager System and add to the system all community water systems so that they can receive initial release notifications and follow-up written reports automatically.

3. CONSIDERATION.

Each Party shall be responsible for its own expense(s) incurred while performing its duties defined in this MOU.

4. TERM.

This MOU shall begin July 1, 2024, and terminate June 30, 2026.

5. SOFTWARE TECHNICAL SUPPORT AND MAINTENANCE FEE.

The IERC shall be responsible for the annual payment of the software technical support/maintenance fee for the web-based Tier II reporting/fee payment system.

6. MODIFICATION.

- A. This MOU may be amended by mutual agreement of the Parties. Any such amendment shall be by written mutual consent of the Parties with the same formality as this original MOU.
- B. No waiver of any provision hereunder shall operate as an amendment or bind a Party to future waiver of the same unless incorporated in an amendment pursuant to 6.A herein.

7. SEVERABILITY.

If any provision of this MOU is found unenforceable, the remaining provisions shall continue in full force and effect.

8. FUNDING CANCELLATION.

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this memorandum, the memorandum shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

9. TERMINATION OR SUSPENSION

This MOU may be terminated or suspended by either Party if the other Party has failed to comply with the terms of this MOU, or for any reason if such termination is in the best interest of the terminating agency, upon thirty (30) days written notice. The notice of termination or suspension shall state the reasons for termination or suspension. Regardless of the reason for termination or suspension, the Parties will be compensated for services properly rendered prior to termination or suspension of this MOU. The written notice of termination must be sent through SCM and signed by the State Budget Agency.

10. NOTICE TO PARTIES.

Whenever any notice, statement or other communication is required under this MOU, it shall be sent to the following addresses, unless otherwise specifically advised:

A. Notices to IDEM shall be sent to:

Brian Wolff
Assistant Commissioner
Office of Land Quality
100 North Senate Avenue, ICGN 1101
Indianapolis, IN 46204
Email: bwolff@idem.in.gov

B. Notices to IDHS shall be sent to:

Casey Kenworthy
SARA Title III Program Manager
302 West Washington Street, Room E-208
Indianapolis, IN 46204
Email: ckenworthy@dhs.in.gov

C. Notices to the IERC shall be sent to:

Stephen Jones
Chair
c/o Indiana Department of Homeland Security
302 West Washington Street, Room E-208
Indianapolis, IN 46204
Email: stejones@dhs.in.gov

Exhibit A

Description	Statutory Citation	Law (applicable portions and paraphrased)	Responsibilities
Administration of local emergency planning and right to know fund	I.C. § 13-25-2-10.5	The local emergency planning and right to know fund is established for the purpose of providing each county with funds to help implement SARA (42 U.S.C. § 11001 <i>et seq.</i>). DOR shall administer the fund.	DOR administers this fund by statute.
Submission of emergency and hazardous chemical inventory form	I.C. §§ 13-25-2-9, 10	<p>I.C. § 13-25-2-9 Establishes the required information a facility must provide for each chemical listed in a Tier II hazardous chemical inventory form.</p> <p>I.C. § 13-25-2-10 A facility subject to this section shall submit to the IERC a Tier II emergency and hazardous chemical inventory form and a fee established by I.C. § 13-25-2-10.4.</p>	The IERC has this responsibility by statute. However, IDHS shall implement this provision on behalf of and in coordination with the IERC.
Distribution of 10% of collected funds to IERC account	I.C. § 13-25-2-10.6(a)(1)	Before July 1 of each year, DOR shall distribute ten percent (10%) of the money in the local emergency planning and right to know fund to the IERC.	DOR shall distribute 10% of the fund to the IERC.
Administration of the IERC account	I.C. § 13-25-2-10.6(a)(1)	Ten percent (10%) of the local emergency planning fund shall be allocated to the IERC and administered by IDHS.	IDHS shall administer the IERC's 10% allocation.
Distribution of funds to counties for use by LEPCs	I.C. § 13-25-2-10.6(a)(2)	<p>(2) A distribution of the remaining money as follows:</p> <p>(A) To each county, two thousand five hundred dollars (\$2,500).</p> <p>(B) To each county, an additional distribution in an amount determined in STEP TWO of the following formula:</p> <p style="padding-left: 40px;">STEP ONE: Divide the amount available for distribution by the number of facilities that paid the fee required under I.C. § 13-25-2-10(a)(2) in the calendar year preceding the distribution.</p> <p style="padding-left: 40px;">STEP TWO: Multiply the quotient determined in STEP ONE by the number of facilities located in each county.</p> <p>The department of state revenue may make a distribution to a county under this subdivision only after receiving notice from the emergency response commission that the LEPC for the county has met the requirements of I.C. § 13-25-1-6(b).</p>	DOR shall make the required distributions. The IERC is responsible for deciding if an LEPC is eligible to receive funds. IDHS shall assist the IERC in determining the LEPCs/counties eligible to receive funds.

IERC oversight and support of LEPCs	I.C. § 13-25-1-6(a)	<p>(a) IERC shall do the following:</p> <ol style="list-style-type: none"> (1) Encourage and support the development of emergency planning efforts to provide: <ol style="list-style-type: none"> (A) state government entities; (B) local governments; and (C) the public; with information concerning potential chemical hazards in Indiana. (2) Assist the state in complying with the requirements of SARA. (3) Design and supervise the operation of emergency planning districts in Indiana. (4) Gather and distribute information needed for effective emergency response planning. (5) Appoint the members of the LEPC of each emergency planning district. 	The IERC has this responsibility by statute. IDHS shall assist the IERC in implementing this oversight role.
LEPC compliance requirements	I.C. § 13-25-1-6(b)	<p>(b) LEPCs shall do the following:</p> <ol style="list-style-type: none"> (1) Satisfy the requirements of SARA. (2) Prepare and submit a roster of committee members to IERC at least one time each year. (3) Meet at least two (2) times, on separate days, every six (6) months. (4) Prepare and submit the report required under I.C. § 13-25-1-6. 	LEPCs shall follow these requirements. The IERC shall monitor and assist LEPCs in complying with these requirements.
Facility notification to the IERC and notification to EPA	I.C. §§ 13-25-2-3, 4(1)	<p>I.C. § 13-25-2-3</p> <p>(a) The owner or operator of a facility subject to this chapter shall notify the IERC that the facility is subject to this chapter.</p> <p>(b) If:</p> <ol style="list-style-type: none"> (1) a substance on the list of substances referred to in I.C. § 13-25-2-2(a) becomes present at a facility in an amount that exceeds the threshold planning quantity established for the substance; or (2) there is a revision of the list referred to in I.C. § 13-25-2-2(a) and the facility has present a substance on the revised list that exceeds the threshold planning quantity established for the substance; <p>the owner or operator of the facility shall notify the IERC and the appropriate LEPC that the facility is subject to this chapter not later than sixty (60) days after the acquisition of the substance or the revision of the list.</p> <p>I.C. § 13-25-2-4</p> <p>(1) The IERC shall notify the EPA administrator of the facilities subject to I.C. § 13-25-2 by notifying the administrator of:</p> <ol style="list-style-type: none"> (1) Each notification received from a 	IDHS, on behalf of the IERC, shall receive the notifications submitted by the facilities and shall provide the required notification to EPA.

		<p>facility under I.C. § 13-25-2-3.</p> <p>(2) Each facility designated by the IERC under I.C. § 13-25-2-2(c).</p>	
Facility notification of LEPCs	I.C. § 13-25-2-5(d)	<p>(d) For each facility subject to this chapter:</p> <p>(1) the owner or operator of the facility shall notify:</p> <p>(A) the appropriate LEPC; or</p> <p>(B) the IERC if there is no LEPC; of a facility representative who will participate in the emergency planning process as a facility emergency coordinator;</p> <p>(2) the owner or operator of the facility shall promptly inform the LEPC of any relevant changes occurring at the facility as the changes occur or are expected to occur; and</p> <p>(3) upon request from the LEPC, the owner or operator of the facility shall promptly provide information to the LEPC necessary for developing and implementing the emergency plan.</p>	The IERC statutorily receives this notification when there is no LEPC. However, IDHS shall receive the required notices from the facility on behalf of the IERC
Review of LEPC Plans	I.C. § 13-25-2-5(e)	<p>(e) After completion or update of a local emergency plan under I.C. § 13-25-2-5(a) for an emergency planning district, the LEPC shall submit a copy of the local emergency plan to the IERC. The IERC shall review the local emergency plan and make recommendations to the LEPC on revisions of the local emergency plan that may be necessary to ensure coordination of the local emergency plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, the review may not delay implementation of the local emergency plan.</p>	IDHS shall implement this provision on behalf of the IERC. Should IDHS hire a contractor to conduct this review, IDHS shall obtain the services of the contractor in compliance with state procurement requirements. The IERC agrees to fund such plan review should IDHS hire a contractor.
Notice of release of substances	I.C. §§ 13-25-2-6, 6.5(c), 7	<p>I.C. § 13-25-2-6; I.C. § 13-25-2-7</p> <p>These statutes state the circumstances under which the owner or operator of a facility shall give notice of any substance releases, what to include in the given notice, and to whom the notice is to be given.</p> <p>I.C. § 13-25-2-6.5</p> <p>(c) IDEM shall provide a toll free long distance telephone line through which a person required to provide notice under I.C. § 13-25-2-6 may contact the office described in I.C. § 13-13-3-1.</p>	IDEM shall continue to maintain a toll free telephone line that shall be used to provide the required verbal notice. Upon verbal notice of a SARA Title III release, IDEM shall enter initial spill information into IDHS's Tier 2 Manager system by

			<p>the following business day. After normal business hours, calls to this telephone line shall be transferred to IDHS EOC Watchdesk. The Watchdesk Officer will then provide notification via email and phone to designated on-call IDEM personnel. The required follow-up written reports shall be submitted to IDHS. IDHS shall provide the required notification to the IERC.</p>
Submission of safety data sheets or list	I.C. § 13-25-2-8	(a) The owner or operator of a facility that is required to prepare or have available a safety data sheet for a hazardous chemical under the federal Occupational Safety and Health Act (29 U.S.C. §§ 651 through 658) and regulations adopted under the Act shall submit a safety data sheet for each chemical or, preferably, a list of chemicals described in I.C. § 13-25-2-8(b).	The IERC receives these by statute. However, IDHS shall receive these safety data sheets or list of chemicals on behalf of the IERC.
Provision of Tier II information to state and local officials upon request	I.C. § 13-25-2-10(d)	(d) A state or local official acting in the official's capacity may have access to Tier II information by submitting a request to the IERC or an LEPC. Upon receipt of a request for Tier II information, the IERC or appropriate LEPC shall request the facility owner or operator to provide the Tier II information and make the information available to the official.	The IERC receives these requests by statute. However, IDHS shall receive and respond to these requests on behalf of the IERC.
Disclosure to general public	I.C. §§ 13-25-2-10(f), 10(g), 10(h), 14(a)	<p>I.C. § 13-25-2-10</p> <p>(f) Any Tier II information that the IERC or an LEPC possesses shall be made available to a person making a request under this section in accordance with I.C. § 13-25-2-14. If the IERC or an LEPC does not possess the Tier II information requested, the IERC or LEPC shall request the facility owner or operator to:</p> <ol style="list-style-type: none"> (1) provide the Tier II information with respect to a hazardous chemical that a facility has stored in an amount of at least ten thousand (10,000) pounds present at the facility at any time during the preceding year; and (2) make the information available in accordance with I.C. § 13-25-2-14; to 	<p>IDEM shall provide information requested for Reporting Year 2014 and earlier. IDHS shall provide information requested for Reporting Year 2015 and later.</p> <p>IDEM and IDHS shall implement this on behalf of</p>

		<p>the person making the request.</p> <p>(g) For Tier II information that is not in the possession of the IERC or an LEPC with respect to a hazardous chemical that a facility has stored in an amount that is less than ten thousand (10,000) pounds at the facility at any time during the preceding year, a request from a person must include a statement specifying the general need for the information. The IERC or LEPC may request the facility owner or operator for the Tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of the person, the IERC or LEPC shall make the information available in accordance with I.C. § 13-25-2-14 to the person.</p> <p>(h) The IERC or LEPC shall respond to a request for Tier II information under this section not later than seven (7) days after the date the request is received.</p> <p>I.C. § 13-25-2-14</p> <p>(a) An emergency response plan, safety data sheet, list of chemicals described in I.C. § 13-25-2-8(b), inventory form, and follow-up emergency notice shall be made available to the general public during normal working hours at the location or locations designated by the IERC or LEPC, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of I.C. § 13-25-2-9 and I.C. § 13-25-2-10, the IERC and the appropriate LEPC shall withhold from disclosure under this section the location of any specific chemical required by I.C. § 13-25-2-10(a) to be contained in an inventory form as Tier II information.</p>	<p>the IERC (depending on information requested)</p> <ol style="list-style-type: none"> (1) Emergency response plan (IDHS) (2) Safety data sheets/list of chemicals (IDHS) (3) Tier II inventory form (IDHS) (4) Written notices of releases (IDEM).
State notification of potentially affected community water systems	42 U.S.C. § 11004(e)	<p>(e) Addressing Source Water Used for Drinking Water</p> <p>(1) Applicable State Agency Notification – A State emergency response commission shall –</p> <p>(A) promptly notify the applicable State agency of any release that requires notice under subsection (a); (B) provide to the applicable State agency the information identified in subsection (b)(2); and</p> <p>(C) provide to the applicable State agency a written follow up emergency notice in accordance with subsection (c).</p> <p>(2) Community Water System Notification.—</p> <p>(A) In General.—An applicable State agency receiving notice of a release under paragraph (1) shall—</p>	IDHS, on behalf of IDEM, shall issue notifications required under 42 U.S.C. § 11004(e)(2).

		<p>(i) promptly forward such notice to any community water system the source waters of which are affected by the release;</p> <p>(ii) forward to the community water system the information provided under paragraph (1)(B); and</p> <p>(iii) forward to the community water system the written follow up emergency notice provided under paragraph (1)(C).</p> <p>(B) Direct Notification.—In the case of a State that does not have an applicable State agency, the State emergency response commission shall provide the notices and information described in paragraph (1) directly to any community water system the source waters of which are affected by a release that requires notice under subsection (a).</p> <p>(3) Definitions.—In this subsection:</p> <p>(A) Community Water System.—The term ‘community water system’ has the meaning given such term in section 1401(15) of the Safe Drinking Water Act.</p> <p>(B) Applicable State Agency.—The term ‘applicable State agency’ means the State agency that has primary responsibility to enforce the requirements of the Safe Drinking Water Act in the State.</p>	
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