



PENNSYLVANIA EMERGENCY
MANAGEMENT AGENCY
2605 Interstate Drive
Harrisburg, Pennsylvania 17110-9364

**EMERGENCY MANAGEMENT
DIRECTIVE NO. D2001-1**

**SUBJECT: Expenditure of Act 165-Generated Revenues At the
County Level**

DATE: January 25, 2001

I. PURPOSE and APPLICABILITY

- A. To clarify the funding/budgeting/expenditure process of the hazardous material safety program at the county level, providing policy guidance for the expenditure of all Act 165-generated funds. Based upon Sections 207, 208, 210, and 302 of Act 165, and Agency policy, Act 165-generated funds, also referred to as Act 165 revenues, include all of the following:
1. Chemical and planning fees collected by the county from owners or operators of facilities subject to the payment of Act 165 fees, as established by county ordinance.
 2. Private donations provided specifically to support a county's hazardous material safety program.
 3. Penalties and fines collected by the county for violations of the provisions of Act 165.
 4. Interest accrued on Act 165 revenues listed above and on grant funds provided under Act 165.
 5. Emergency management grants, also known as matching grants, awarded annually to counties from the State's Hazardous Material Response Fund.
 6. Funds received as reimbursement for Act 165 revenue expenditures in response to hazmat incidents.
- B. The expenditure policy explained herein applies to all Act 165-generated funds for expenditure at county level.

II. AUTHORITY

Hazardous Material Emergency Planning and Response Act (35 P.S. §6022.101-6022.307) (Act 1990-165), hereinafter Act 165.

III. **BACKGROUND**

- A. Act 165 implements Title III of the federal Superfund Amendments and Reauthorization Act (SARA Title III) in Pennsylvania. The Act was established to create a strong working relationship between business and industry and the Commonwealth and its municipalities to protect our citizens from the health hazards and other risks incident to the use, storage, distribution and transportation of hazardous materials. The Act also provides a source of funding for the county hazardous material safety program by requiring facilities within the Commonwealth which use, store, or distribute hazardous chemicals to pay fees to the counties and to the Commonwealth, and by establishing civil penalties and fines for violations of the Act.
- B. Act 165 designated the Pennsylvania Emergency Management Council to supervise and coordinate the activities of the Local Emergency Planning Committees (LEPCs). PEMA was designated as the primary/executive agent for the Council.
- C. PEMA has interpreted its role under Act 165 to be dual - to assist counties in developing an effective hazardous material safety program, and to manage the statewide program in a manner that protects the interests of the Commonwealth's citizens as well as those of industry. This role requires the development of policy guidance for the expenditure of Act 165-generated funds.
- D. Each county is required by the Act to have a hazardous material safety program. In some counties the total cost of the program can be funded with the fees and fines collected from SARA facility owner/operators within the county. In others, a portion of the program costs is assumed by the county.

IV. **BUDGETING PROCESS**

- A. A county should give careful attention to the costs of an effective hazardous material safety program during its annual budgeting process. This should be done at the same time that the county develops its overall annual budget. A separate budget/proposed spending plan should be developed for the hazmat program.
- B. The development of a complete, detailed, and accurate spending plan (budget) for the hazardous material safety program in the county is essential. This spending plan should be based on the guidance contained herein which is derived from Act 165. All collections and expenditures of Act 165-generated funds are subject to audit.

- C. The annual budget for Act 165-generated funds at county level should be developed as follows:
1. Estimate the total costs of the hazmat program for the coming year considering past expenses, planned activities, and known requirements for training, equipment, etc.
 2. Estimate the income to be received for the program through the chemical and planning fees based on the number of paying facilities and the number of hazardous chemicals for which fees are collected in the county.
 3. Determine the balance of unobligated funds available in the county's Hazardous Material Emergency Response Account established as directed by Section 207(b) of Act 165.
 4. If estimated costs exceed the estimated income and the unobligated balance, county funds may be necessary to finance the remainder of the program.
 5. Place into the hazmat safety program budget essential activities/costs.
 6. Shortfalls from the above step become the county's unmet needs.
 7. These unmet needs are items to which the annual Act 165 Match Grant from the State may be applied if they fall within one of the seven eligible costs listed in Section 208(c) of the Act. The Match Grant program under Act 165 is intended to enhance the county's hazardous material safety program through supplementation of funds.

V. **VALID PROGRAM COSTS.**

- A. Act 165 revenues, including grant funds and interest earned by Act 165 revenues in the county's Hazardous Material Emergency Response Account, are to be expended only for the county hazardous material safety program. They are not to be used to fund general county expenditures, nor to fully fund the costs of general emergency management/public safety items and activities.
1. Act 165-generated revenues can only be used to pay for actual hazardous materials program costs, to train emergency responders for hazmat emergencies, and to pay for other costs that directly advance and improve the county's hazmat program.
 2. No county employees or elected or appointed officials (e.g., commissioners, the treasurer, the comptroller, and county purchasing staff), except the county emergency management agency staff or others

who work directly in the hazmat program, can be paid or compensated with funds generated by or under Act 165.

3. Act 165 revenues may be used to fund multi-hazard/multi-program items provided that the percentage of the item's cost that is funded by Act 165 revenues is equivalent to the percentage of that item's use in the county's hazardous material safety program. For example, if the item will be used 50% of the time for hazmat program purposes, then 50% of the item's cost may be funded by Act 165 revenues.
 4. Determination of usage is to be made by the county Emergency Management Coordinator, or higher qualified authority, and is to be based on experience factors or documented analyses, consistently applied. An acceptable alternate method for determining the percentage of costs to be applied to Act 165 funds is to divide the costs equally among all the departments/agencies/functions utilizing the item regardless of the actual usage in each.
- B. Examples of authorized expenditures for Act 165-generated funds are listed below. Expenditures for any costs which do not conform to the following guidelines require prior approval of the Pennsylvania Emergency Management Agency acting on behalf of the Pennsylvania Emergency Management Council. A county is not required to purchase or accomplish all of the items listed below. The list of program costs is provided for guidance purposes only and is not to be construed as a priority list. Each county may determine which program costs/items should have funding priority based upon the county's decision-making process.
1. Administration
 - a. office supplies, telephone usage, postage, printing/document reproduction.
 - b. software purchases and license fees which are directly related and necessary for the county hazmat safety program.
 - c. acquisition of computers, peripherals, and office equipment (Note: maintenance of such equipment is a county general fund responsibility).
 - d. cost of billing and collecting chemical and planning fees, records keeping, files maintenance of Act 165 documents, and any costs directly related to an audit of the Hazardous Material Emergency Response Account in compliance with Act 165.

- e. costs associated with making facility off-site emergency response plans available to the public in accordance with SARA Title III.
- f. costs associated with development of grant applications and required program activity reports.

2. Detection and Warning Equipment

- a. devices to detect the presence of hazardous materials.
- b. alarms and alert notification systems.
- c. maintenance and calibration of these items of equipment.

3. Drills and Exercises

- a. planning hazmat drills and exercises.
- b. travel within the county, and lodging, if required, for county employees, LEPC members or representatives, and volunteers for the purpose of developing hazmat drills and exercises. Travel expense payment not to exceed current approved State rates.
- c. cost of usage of county and volunteer organization vehicles in hazmat drills and exercises, including gasoline, maintenance, tires, etc. Cost standards to be applied must be consistent with the county cost applications for vehicle usage for all other official purposes.
- d. replenishment of consumable supplies used in hazmat drills and exercises.
- e. meals and snacks for participants in hazmat drills and exercises.
- f. lodging and subsistence, if required, for participants in drills and exercises.

4. Hazmat Team Equipment

- a. equipment required by the county certified hazmat team, or contract certified hazmat team (provided that ownership of the equipment is retained by the county), as outlined in the required equipment list set forth in PEMA Emergency Management Directive No. D99-2, dated October 1, 1999, or its successor.

- b. reference materials to assist the certified hazmat team in its operations.
- c. other appropriate hazmat team equipment deemed necessary by the county for safe and effective hazmat team operations. Purchase to be approved by the LEPC and documentation of need to be retained for audit purposes.

5. LEPC Support (See also 8. Plans Development)

- a. office supplies, postage, use of computers and office equipment, and printing/document reproduction directly related to LEPC activities.
- b. reference materials to assist in SARA facility off-site response plans development.
- c. local travel costs of LEPC members to county facilities for meetings, inspections, etc. Travel reimbursement not to exceed current approved State rates.
- d. attendance at hazardous material/SARA Title III, LEPC conferences and training for LEPC members, to include travel, lodging and subsistence costs. Travel reimbursement not to exceed current approved State rates.
- e. public announcements of LEPC meetings and other LEPC activities.
- f. costs associated with public information or outreach programs, including the development, printing and distribution of brochures and information pamphlets.

6. Hazmat Operations

- a. stockage or replenishment of absorbent, containment, and overpacking materials, and other consumables for use by first responders to hazmat incidents.
- b. cost of usage of county and volunteer organization vehicles, including gasoline, tires, maintenance, etc. Cost standards to be applied must be consistent with the county cost application for vehicle usage for other official purposes.
- c. communications equipment, including battery replacement, message transmission costs, etc.

- d. specialized needs for the county EOC and command post support operations.
- e. protective clothing and equipment for county emergency response personnel who respond to hazmat incidents.
- f. reference materials required by emergency responders who respond to hazmat incidents.
- g. decontamination equipment and supplies.
- h. hazmat incident response costs, in accordance with Section 210 of Act 165, for a county's certified hazmat team and its supporting paid or volunteer emergency service organizations that qualify under Section 210(b) of Act 165, when those costs cannot be recovered from the person (as defined in Section 103 of Act 165) responsible for the release. However, each supporting paid or volunteer emergency organization may receive from Act 165-generated funds no more per response than the amount provided for in Section 207(b)(1) of Act 165.

7. Personnel

- a. proportionate share of wages and benefits of full-time county personnel involved in the hazmat program consistent with the actual amount of time spent on the hazmat program. However, for any county position which is also funded by federal or state funds from other programs, the Act 165 revenues that are applied may not result in the wages and benefits for that position being funded at more than 100%.
- b. funding of wages for temporary or part-time employees' work in the hazmat program.
- c. contract personnel employed for specific functions in the hazmat program. Contracts must be approved by the LEPC and must pass the test of reasonableness.
- d. initial and maintenance physical examinations and health surveys of members of state-certified hazmat teams.

8. SARA Facility Off-site Response Plans Development

- a. travel to county SARA Title III planning facilities; reimbursement not to exceed current approved State rates.

- b. clerical support needed to prepare SARA facility off-site response plans.
- c. printing/document reproduction, and distribution costs associated with the preparation of SARA facility off-site response plans.
- d. reference materials needed to prepare SARA facility off-site response plans.
- e. consultation or contract services needed to prepare facility plans. Requires approval of the LEPC and need and cost must pass the test of reasonableness.

9. Specialized Equipment

- a. specialized communications or other types of equipment that are needed to coordinate emergency response activities at a hazmat incident, including generators and portable lighting.
- b. weather monitoring devices.

10. Supplies

- a. replacement of other hazmat program consumables, such as batteries, components of detection devices, etc.
- b. purchase of specialized hazmat tools.

11. Training

- a. adequate training for all personnel who respond to and participate in a hazardous material incident. Certified hazmat team members must be trained in accordance with PEMA Emergency Management Directive No. D99-2, dated October 1, 1999, or its successor. Fire Department personnel are required to be trained to the Operations Level. Other emergency responders from police departments, emergency medical services, public works, the county Emergency Management Agency, and the LEPC, must be trained at the Awareness/Recognition Level at a minimum, but preferably at the Operations Level.
- b. technical and other advanced hazmat training for emergency response personnel as needed at the discretion of the county, to include specialized training for response to incidents of terrorism,

particularly those involving employment of weapons of mass destruction (WMD).

- c. emergency medical service personnel and hospital staffs must be trained in the proper handling of persons contaminated by hazardous materials.
- d. county administrative personnel require training in the use of communications and computer equipment, etc.
- e. other specialized training as may be required to meet the needs of the county hazardous material safety program.
- f. the PA State Fire Academy in Lewistown is a primary hazardous materials training facility. The Federal Emergency Management Institute in Emmitsburg, Maryland, is another valuable hazmat training center. Other institutions that have appropriate training resources such as community colleges, which offer approved courses at little or no cost to the counties, should also be used. Other training sources may be funded with Act 165 revenues only when the above are not able to meet the training requirements of the county.
- g. Authorized training expenditures, all of which must pass the test of reasonable and prudent current practice, include:
 - (1) travel, registration fees, subsistence, and lodging of students.
 - (2) instructor fees.
 - (3) course materials, including video tapes for individualized study.
 - (4) equipment needed to conduct training.
 - (5) costs associated with conducting LEPC/county-sponsored Business and Industry seminars or training sessions, "Outreach" programs, etc.

12. Vehicles

- a. purchase and/or modification of county vehicles, including trailers, to transport personnel and equipment to a hazmat incident scene.

- b. purchase or modification of county vehicles to be used as on-scene command posts.
- c. operating costs and maintenance of county hazmat response vehicles, including gasoline, tires, maintenance, etc., consistent with county cost applications for vehicle usage for all other official purposes.
- d. county hazmat response vehicle insurance costs.

13. Other Costs

- a. insurance costs for the county's certified hazmat team.
- b. temporary equipment rental.
- c. retainer fee for the county's contracted certified hazmat team.
- d. contingency fund to reimburse the county or contract certified hazmat team and/or supporting paid or volunteer emergency service organizations for response costs in the event reimbursement cannot be obtained from spiller. The amount of this fund is to be approved by the LEPC.
- e. county hazmat facility rental, purchase, construction, or modification.
- f. legal and other costs associated with the county's enforcement program against Act 165 violators or the collection of county hazardous material emergency response costs from known spillers.

14. Initiatives

Other new projects or programs that would enhance the hazmat safety program in the county, as approved by the LEPC. An example is terrorism weapons of mass destruction (WMD) planning, training, and equipment.

15. Reserve Fund

- a. Purchases of high cost equipment, such as vehicles, may not be possible in any one year with Act 165-generated funds. In such cases, a portion of the costs of these items may be set aside and accumulated over a period of time for future expenditure when sufficient funds are available.

- b. The amount of this fund is to be determined by the LEPC and is to be based on a documented determination of need. Because fund accumulations of this nature are unusual and may become quite large, having an ancillary impact on state-wide hazmat program activities, final approval of such funds shall rest with PEMA. Reserve Funds proposals will be forwarded upon LEPC approval to the serving PEMA Region Office for review and then to the Chemical Preparedness Program Manager, PEMA Bureau of Plans, for final approval. Documentation is to be retained for audit purposes.

VI. RETENTION OF RECORDS FOR AUDIT

- A. Each county is required to retain all financial records of Act 165-generated funds, including receipts, invoices, vouchers, supporting documents, statistical records, and other records that will support and document the collection and expenditure of the funds.
- B. All such financial records must be retained for a period of three years after the completion of the year in which each expenditure occurs.
- C. A county shall make the records described above available for audit by Commonwealth auditors and Agency officials within ten (10) working days after receiving a written request for those records. The audit request may be made at any time during the record retention period.

VII. INFORMATION

For further information or with questions, please contact the Bureau of Plans, Chemical Emergency Preparedness Program Manager at 717-651-2199 or through 1-800-HBG-PEMA.

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Director

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