



## **DESCRIPTION**

### **Special Report on Options for the Implementation of a Hazardous Materials Fee To Fund the Commonwealth's Hazardous Materials Activities**

## **SUBJECT**

A Study Relating to the Implementation of a Hazardous Materials Fee to Fund the Virginia Hazardous Materials Emergency Response Program Pursuant to Section 44-146.34 et seq. of the *Code of Virginia*

Enabling Authority

**Appropriations Act - Item 399 A. (Regular Session, 2008)**

Virginia Department of Emergency Management

September 15, 2008

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## Executive Summary

The 2008 Session of the Virginia General Assembly directed the Virginia Department of Emergency Management (VDEM) prepare a report on options for the implementation of a hazardous materials fee to fund the Commonwealth's Hazardous Materials Emergency Response Program pursuant to Section 44-146.34 et seq. of the *Code of Virginia*. The report was authorized by The Appropriations Act, Item 399.A, 2008 Session.

This special report was commissioned specifically to identify options for the implementation of a hazardous materials fee to fund the Commonwealth's hazardous materials activities such as the costs of providing funding to local hazardous materials teams and providing hazardous materials training to team members. This report shall include at a minimum the level of fee recommended to be imposed, the industries that would be impacted, the projected revenue generated, and activities the fee would support. The Appropriations Act further directed that VDEM shall provide copies of the report to the Secretary of Public Safety; the Director, Department of Planning and Budget; and to the Chairmen of the Senate Finance and House Appropriations Committees by September 15, 2008.

VDEM surveyed several states that have a program in place similar to the one under study for the Commonwealth of Virginia. With few exceptions, the programs are reportedly working very well and have achieved the intended result. For purposes of this special report, a "sense of community" survey was conducted of several groups that would be impacted by the proposed hazardous materials fee. The questionnaire addressed where in the hazardous materials life cycle the fee should be assessed. Overall, the sense of the community was that it should be assessed at the point of manufacture of the hazardous materials.

As noted in this report, it appears that there may be support for a hazardous materials fee levied on manufacturing and/or transportation intended to collect between \$2 million to \$3 million per year. This is an approximate amount that would replace the current use of general and special funds in supporting the program.

## **Background**

Item 399.A. of the Virginia Appropriations Act has directed the Virginia Department of Emergency Management (VDEM) to prepare a report on the options for implementing a proposed fee on hazardous materials to support Virginia's Hazardous Materials Emergency Response Program. The report is required to include a recommendation regarding the level of the fee to be levied, the industries that would be impacted, the projected revenue that would be generated, and the activities the fee would support. This report is due to the General Assembly by September 15, 2008.

VDEM currently supports four elements of the Hazardous Materials Emergency Response Program—general administration, hazardous materials response, and hazardous materials training within the Technological Hazards Division; and terrorism and hazardous materials planning within the Preparedness Division. These programs have a current base annual budget of approximately \$2.25 million, inclusive of both personal and nonpersonal costs.

General administration provides oversight and direction of the program through the office of the Director of Technological Hazards.

The hazardous materials response program provides on-scene response and technical assistance to local governments throughout the Commonwealth. VDEM receives approximately 2,000 hazardous materials notifications annually. A cadre of eight Hazardous Materials Officers, located regionally throughout Virginia, is alerted for each notification in their respective area and coordinates actions through local government representatives (usually within Virginia's Fire Service). When conditions warrant, the Hazardous Materials Officers call upon one or more of 13 Regional Hazardous Materials Response Teams to respond to and mitigate the release. Each team is affiliated with a single local government or is a composite team formed from two or more local government entities. The 13 teams are contracted to VDEM and receive an annual stipend, tuition-free training, and reimbursement for actual expenses during response activities. Virginia's hazardous materials response program is nationally and internationally recognized for providing professional hazardous materials response services to all of Virginia's localities.

The hazardous materials training program provides advanced hazardous materials training to team members and to state agency personnel and local government employees as space is available. Advanced hazardous materials training consists of multi-week in-residence courses for Hazardous Materials Technicians and Hazardous Materials Specialists. VDEM partners with the Virginia Department of Fire Programs (VDFP) in the delivery of Hazardous Materials Awareness and Operations-level training within the Fire Service. There is currently a backlog for advanced hazardous materials training and all classes are full. The training program also offers specialized hazardous materials courses for law enforcement and other public safety personnel. A key component of the training program is VDEM's support and partnership with the Virginia Association of Hazardous Materials Response Specialists (VAHMRS) to sponsor Virginia's annual Hazardous Materials Conference. Like the response program, the hazardous materials training program is recognized as a national leader by the hazardous materials community.

The terrorism and hazardous materials planning program is tasked with maintaining the Commonwealth's Hazardous Materials and Terrorism Consequence Management Plan and assisting local governments with their hazardous materials planning. This includes coordination with Local Emergency Planning Committees (LEPCs) throughout Virginia.

In addition to the 13 state-contracted Regional Hazardous Materials Response Teams, there are an additional 11 local government Hazardous Materials Response Teams recognized in the Commonwealth. These local government teams are not directly supported by the Hazardous Materials Emergency Response Program, although team members are eligible to attend the Commonwealth's hazardous materials training program as space permits.

### **Impact of the Fee**

VDEM believes that the levy of such a fee could have several beneficial impacts on the Commonwealth's Hazardous Materials Emergency Response Program:

- Eliminate general funding for this series of programs;
- A cost saving of approximately \$1 million in Highway Transportation funds;
- Reduce the reliance on funding from the VDFP Fire Fund to support advanced hazardous materials training into the future and increase training and other programs supporting hazardous materials;
- Increase the funding to current contract teams and provide funding for additional teams that could be added to the program;
- Decrease response times in some portions of the Commonwealth as additional teams are added to the program;
- Provide funding for the development of a state Hazardous Materials and Terrorism Training Center;
- Enhance support to LEPCs; and
- Expand training to include other demographics (more local government personnel, other state agency staff, private-sector partners) that currently are not being served.

In light of the existence of other fees within Virginia, the proposed hazardous materials fee is **not** intended to be levied on petroleum or oil within the Commonwealth. Oil and petroleum would be exempted from the proposed hazardous materials fee.

## **Approaches by Other States**

Several other states have implemented hazardous materials fees to provide monetary support to their hazardous materials programs. For the purposes of this report we have chosen to focus on only a few of these programs. These few states represent a range of approaches from levying a hazardous materials fee to computing the fee based upon the number of employees at a facility to the volume of hazardous materials produced or transported.

In 1993, the General Assembly passed House Resolution 666 that requested the Virginia Department of Emergency Management to report on the state of preparedness in Virginia for a catastrophic disaster. The Virginia Department of Emergency Management did prepare the attached report entitled “*State of Preparedness in Virginia for a Catastrophic Disaster, House Document No. 21.*” The report recommended establishment of two trust funds:

- An Emergency Management Preparedness and Assistance Trust Fund, supported by a dedicated funding source, to be administered by the Virginia Department of Emergency Management, for the purpose of supporting state and local emergency services preparedness programs.
- A Hazardous Materials Administration Trust Fund, capitalized by a fee system imposed on the chemical community, for the purpose of supporting hazardous material preparedness and response programs and initiatives.

The recommendation to establish these trust funds was not pursued at that time. Several years later, the issue of establishing a SARA (Superfund Amendments and Reauthorization Act) Title III (also known as the Emergency Planning and Community Right to Know Act or EPCRA) Tier II fee system was revisited, but no formal actions were taken.

## **Pennsylvania’s Act 165**

To support their program, Pennsylvania enacted Act 165 shortly after the SARA Title III legislation was implemented in 1986. Act 165 establishes two funds, one at the county level known as the Hazardous Material Emergency Response (HMER) Account, and the other at the state level known as the Hazardous Material Response Fund (HMRF).

### **Hazardous Material Emergency Response Account (County)**

The county fund consists of chemical and planning fees paid by the facilities. For each chemical reported on the Tier II report on March 1 of each year, there is a fee of \$35-\$75 as established by county ordinance. Additionally, up to \$100 will be paid to the county on March 1 each year by each facility requiring an off-site emergency response plan. This dollar amount is also set by county ordinance. In 2006, a total of \$2.92 million generated through the counties' chemical and planning fee schedules was approved by the Pennsylvania Emergency Management Agency (PEMA) on behalf of the Council for expenditure by the counties on

hazardous materials preparedness projects/initiatives. Pennsylvania has developed a policy in regard to the utilization of Act 165 revenues.

*Hazardous Material Response Fund (State)*

The state Hazardous Material Response Fund (HMRF) is a restricted revenue account used to carry out the purposes, goals, and objectives of SARA Title III and the Commonwealth's hazardous material safety program. It consists of a \$10 fee for each chemical on the Tier II reports to be paid by the owners or operators of chemical facilities to the state by March 1 of each year, plus a fee of \$250 for each toxic chemical that is capped at \$5,000 per facility. These fees are required by Section 313 of SARA Title III to be listed on the toxic chemical form by July 1 of each year. Civil penalties and fines and funds appropriated by the General Assembly are included in this fund. The state HMRF is used for costs related to training, public and facility owner education, information and participation programs, general administration and operational expenses of this Act, and supplements to local programs and special needs. The Pennsylvania Department of Labor and Industry, Bureau of PENNSAFE, is the recipient of all such reports and fees submitted to the state HMRF. Monies in the fund with accumulated interest are appropriated annually to PEMA for disbursement.

Section 207(a) (2) of Act 165, as amended, directs PEMA to administer and allocate monies in the state's HMRF as follows:

1. Up to 10% may be expended for training programs;
2. Up to 10% may be expended for public and facility owner education, information, and participation programs.
3. Up to 10% may be expended for general administration and operational expenses of this Act.
4. The remaining revenue in the fund shall be used as grants to support the activities of the counties under this Act.

Counties submit grant applications annually. All county hazardous material emergency response preparedness assessments, their inclusive program descriptions and goals, plus match grant applications are reviewed and approved by PEMA as primary agent of the Council.

The Pennsylvania Department of Labor and Industry, Bureau of PENNSAFE, indicated that Pennsylvania receives approximately \$1.5 million in revenues from fees associated with the SARA Title III and the Toxic Release Inventory programs. Of these funds, labor and industry receives approximately \$105,000 from fees associated with the Toxic Release Program, and the Pennsylvania Emergency Management Agency receives approximately \$300,000 from the Tier II program. Approximately \$824,000 is passed through to local jurisdictions.

## **Florida HAZMAT Fees**

Florida's SARA Title III fees, which are explained in Chapter 9G-14 of their Administrative Code ( <https://www.flrules.org/gateway/RuleNo.asp?ID=9G-14.003> ), are based primarily on the number of employees at a facility. The fee structure is summarized as follows:

1. Any owner or operator of a facility required to submit a notification or an annual inventory form to the Commission for any calendar year shall be required to pay an annual registration fee based on the total number of employees as provided in this subsection.
2. The registration fee shall be due on March 1 of each year during which one or more facilities became or remained subject to the requirements of this section.
3. For any facility owner or operator regulated under Chapter 368, Chapter 527, or Section 376.303, F.S., which does not have present any extremely hazardous substance, as defined by EPCRA, equal to or in excess of the applicable threshold planning quantity established pursuant to EPCRA, the amount of the registration fee shall be \$2.50 for each employee employed within the State by such facility owner or operator, but shall be not less than \$25.00 nor more than \$500.00 per year.
4. For any owner or operator of an agricultural facility, the amount of the registration fee for any company shall be \$10.00 for each agricultural employee employed within the state by such facility owner or operator, but shall not be less than \$25.00 nor more than \$2,000.00 per year. For any owner or operator of a facility with a Standard Industrial Classification code of 01, 02, or 07, which is eligible for the routine agricultural use exemption provided under EPCRA, Section 311(e), the amount of the fee shall be \$10.00 for each employee employed within the state by such facility owner or operator, but shall not be less than \$25.00 nor more than \$1,000.00 per year.
5. For all other facilities the amount of the registration fee shall be \$10.00 for each employee employed within the State by such facility owner or operator, but shall be not less than \$25.00 nor more than \$2,000.00 per year.
6. Governmental bodies as defined in Section 252.87, F.S., are exempt from the annual registration fee.

Approximately \$450,000 is passed through to 11 regional LEPCs and another \$450,000 is passed to counties via contracts. Florida generates an estimated \$2.5 million annually from this program.

## **Virginia's Sense of the Community Questionnaire**

VDEM has performed a survey of several groups that would be impacted by the proposed Hazardous Materials Fee. This was not a formal survey and the Department's intent was to



receive a “sense of the community” through the use of an informal questionnaire (see Appendix 1 for a copy of the questionnaire).

The questionnaire was distributed to four categories of potentially impacted entities—state agencies, local governments (primarily through the Local Emergency Planning Committees), industry and industry organizations, and professional associations with a focus on hazardous materials.

Some of the groups that received the questionnaire chose to distribute the questionnaire to their membership, increasing the number of questionnaires returned. All of the questionnaires returned to VDEM, whether they were in the original distribution or not, have been included in this “sense of the community” survey. A total of 36 questionnaires were received during the survey. Of these, 4 were from state agencies, 10 from local governments, 19 from industry and industry organizations, and 2 from professional organizations. One additional questionnaire was received from a regulated utility, and it was included as well. The questionnaire addressed the question of where in the hazardous materials life cycle the fee should be assessed. Overall, the sense of the community was that it should be assessed at the point of manufacture of the hazardous materials (36% of respondents). Twenty-five percent of respondents believed that it should be assessed during transportation. The “Other” category (22%) of the questionnaire included proposals to impose the fee based upon Tier I and Tier II hazardous materials reporting. Nearly 14% of respondents believe that the appropriate place to impose the fee is at disposal, despite the fact that there are no hazardous materials disposal facilities located in the Commonwealth.

A second question addressed the amount of funding that should be collected by the fee. The most common answer was “None” reflecting the high proportion of industry respondents and a clear opinion of that group that a hazardous materials fee should not be imposed. Of the other answers, the responses were centered in the range of \$2 million to \$3 million, sufficient to maintain the services of the Hazardous Materials Emergency Response Program at near its present level but not expanding it significantly. Nearly 23% of respondents did not express an opinion as to the funding generated by such a fee.

The questionnaire also asked about the community’s sense of how the funds should be used. Seventy-two percent believe that the funding should go to support the Commonwealth’s Hazardous Materials Response Program. Also receiving strong support is the Hazardous Materials Training Program (58%) and the support to local government through the annual stipend delivered to the contract Hazardous Materials Response Teams (47%). There is less support for providing funds to the non-contract teams (25%), public outreach (22%), and the development of a state Hazardous Materials Training Facility (25%).

When asked whether the respondents would support such a fee as a bill moved through the General Assembly, there are almost equal numbers that would support it (33%), oppose it (36%), or express no preference (31%). There is general opposition to such a fee from the industry sector, general support from local government, and mixed (no preference) support from state agencies and professional associations.

VDEM wishes to emphasize that this is not an exhaustive survey and that the sense of the community expressed here is dependent upon the organizations that responded. There may be support for a hazardous materials fee levied on manufacturing and/or transportation intended to collect \$2 million to \$3 million per year—approximately an amount that would replace the current use of general and special funds in supporting the program. The primary use of such a fee should be focused on hazardous materials response, training, and support of the existing contract hazardous materials response teams. There may be less support for an expansion of the current Hazardous Materials Emergency Response Program.

**Table 1: Summary of the Questionnaires Received by VDEM**

<u>Category</u>	<u>State Agency</u>	<u>Local Government</u>	<u>Industry</u>	<u>Professional Associations</u>	<u>Other</u>	<u>Sum</u>
Respondents	4	10	19	2	1	36
<b>Question 1 - Point of Fee</b>						
Manufacturing	1	4	8	0	0	13
Transport	2	3	3	1	0	9
Wholesale	0	0	2	0	0	2
Retail	0	0	2	0	0	2
Disposal	1	1	3	0	0	5
Other	1	2	3	1	1	8
<b>Question 2 - Amount</b>						
None	0	1	9	0	0	10
\$0 to \$1M	0	1	2	0	0	3
\$1M to \$2M	1	0	0	1	1	3
\$2M to \$3M	2	3	2	0	0	7
\$3M to \$4M	0	2	2	0	0	4
More than \$4M	0	1	0	0	0	1
No Answer	0	2	5	1	0	8
<b>Question 3 - Use</b>						
Response	4	9	11	1	1	26
Training	3	7	10	1	0	21
Contract Teams	3	9	3	1	1	17
Non-Contract Teams	1	6	1	1	0	9
Outreach	1	3	4	0	0	8
Training Center	2	3	4	0	0	9
Other	0	0	3	1	0	4
<b>Question 4 - Support</b>						
Yes	1	7	3	1	0	12
No	0	1	12	0	0	13
No Preference	3	2	4	1	1	11

## Recommendations

In light of the information gathered from other states and the “Sense of the Community” survey, there are several possible approaches to the development of a potential hazardous materials fee in Virginia. There is no definitive public information on the production, transportation, or sale of hazardous materials in the Commonwealth—this information may exist but may also be proprietary to the companies and corporations involved. Perhaps the most complete public data set on hazardous materials from industry in Virginia can be found in the annual *Virginia Toxics Release Inventory (TRI) Report* produced by the Virginia Department of Environmental Quality (DEQ) under authority of the Code of Virginia, Title 10.1-1186.1.

The most current TRI data for Virginia can be found on the DEQ web site at: <http://www.deq.state.va.us/sara3/3132006.html> and encompasses information from calendar year 2006. The TRI data are self-reported by these companies and corporations using the best-available information to them. The TRI data is collected annually from chemical facilities having:

- Ten or more full-time employees
- A primary business within one of the covered North American Industrial Classification System (NAICS) codes
- A facility that manufactured, processed, or otherwise used a reportable toxic chemical in quantities greater than the established threshold during the course of a calendar year

These data report the releases and disposal of hazardous materials from facilities in Virginia. The data are not perfect. There are several limitations on these data which include:

- The data do not reflect risk. None of the chemicals are weighted for toxicity.
- The program captures only a portion of all toxic chemical releases in Virginia.
- The majority of the reports are based upon estimates made by the regulated entity.
- Reporting requirements change from year to year.

Nevertheless, these data provide a snapshot of releases of toxic chemicals involved in manufacturing in Virginia to the air, to the waterways, and to the land. All of these releases are permitted or are “fugitive releases” under environmental regulations.

Using the TRI data as a basis for the proposed hazardous materials fee provides a reasonable and understandable metric that includes both manufacturing and disposal, two of the preferred areas identified by the “Sense of the Community” questionnaire as being the appropriate areas where the fee should be collected. It also has relevance with respect to the levy of a fee where hazardous and toxic materials are managed and where they are released to the environment.

There are risks associated with the levy of the proposed fee on TRI data. These include:

- The data are based upon self-reporting from the industries involved. A fee attached to these reports may encourage under-reporting of the release of these materials.
- Progress made by regulated industries that decrease the reported releases through improved hazardous and toxic materials management will decrease the amount received annually. At some point the improved environmental performance of industry will decrease the funds to a level below that needed to support the Hazardous Materials Emergency Response Program.

The *2006 Virginia Toxics Release Inventory (TRI) Report* discloses that there are 467 facilities statewide that report to the TRI. During calendar year 2006 a total of 769.5 million pounds of TRI chemicals were reported released, transferred, or managed on site—a 29.4% increase over those reported in 2005. Specifically, 66.3 million pounds were released on site; 69.0 million pounds were transferred off site for treatment, recycling, energy recovery, or disposal; and 634.2 million pounds were managed on site through treatment, recycling, or energy recovery. All of these represent increases over the 2005 data (from 18.6% to 40.4%).

Using the 2006 Virginia TRI data (769.5 million pounds) could be assessed a fee of \$0.004 (4/10<sup>ths</sup> of a cent) for each pound of hazardous and toxic chemicals released by Virginia's industry to generate approximately \$3 million per year.

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**APPENDIX 1**

**Sense of the Community Questionnaire**

## “SENSE OF THE COMMUNITY” QUESTIONNAIRE

### Proposed Hazardous Materials Fee

Please fill out and mark/circle your answer and return via facsimile to (804) 897-6506 or via email to [brett.burdick@vdm.virginia.gov](mailto:brett.burdick@vdm.virginia.gov) by close of business Wednesday, August 13, 2008.

1. What organization do you represent? \_\_\_\_\_
  
2. How would you characterize the organization for which you work?
  - State agency?
  - Local government?
  - Industry or Industry Association?
  - Professional Association?
  - Other? \_\_\_\_\_
  
3. If the proposed Hazardous Materials Fee were established, at what point in the hazardous materials lifecycle should it be levied?
  - Manufacturing?
  - Transportation?
  - Wholesale?
  - Retail?
  - Disposal?
  - Other? \_\_\_\_\_
  
4. If the proposed Hazardous Materials Fee were established, how much revenue should it be designed to collect annually?
  - None?
  - \$1 to \$1,000,000?
  - \$1,000,001 to 2,000,000?
  - \$2,000,001 to \$3,000,000?
  - \$3,000,001 to \$4,000,000?
  - More than \$4,000,000?

5. If the proposed Hazardous Materials Fee were established, what activities should be targeted for support? (Mark all that apply)
- Hazardous Materials Emergency Response?
  - Hazardous Materials Training?
  - Support for Contract Teams (local government pass-through)?
  - Support for Non-Contract Teams?
  - Expanded hazardous materials awareness and public outreach?
  - Development and maintenance of a statewide Hazardous Materials and Terrorism Training Center?
  - Other? \_\_\_\_\_
6. Would your organization support the proposed Hazardous Materials Fee as it moved through the General Assembly?
- Yes
  - No
  - No preference

Comments (all comments will be attributed to organizations, not to individuals):