EXECUTIVE ORDER NO. 284

WHEREAS, it is important that public health, safety, and the environment be protected from chemical hazards; and

WHEREAS, public knowledge and access to information on chemicals at individual facilities, their uses, and releases into the environment can help improve chemical safety and protect public health and the environment; and

WHEREAS, Executive Order No. 161 (1987) established the State Emergency Response Commission ("SERC") and authorized the SERC to perform all duties and acts prescribed by the "Superfund Amendments and Reauthorization Act of 1986," commonly known as the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001-11050, which provides for public access to certain information relevant to chemical hazards; and

WHEREAS, Executive Order No. 161 (1987) provided that, in designating emergency planning districts, the SERC would utilize existing political subdivisions consistent with the provisions of N.J.S.A. App. A:9-30 et seq.; and

WHEREAS, sharing services across counties and municipalities can reduce costs and improve service delivery; and

WHEREAS, the EPCRA requires that members of a local emergency planning committee ("LEPC") be appointed for each emergency planning district; and

WHEREAS, terrorist attacks and other significant events, both domestic and foreign, have occurred since Executive Order No. 161 (1987) was issued, requiring counter-terrorism and preparedness efforts to enhance the public's safety, which can be seen through the creation of the Domestic Security Preparedness Task Force and the Office of Homeland Security and Preparedness ("OHSP"); and

WHEREAS, Executive Order No. 21 (2002) provides that the following documents "shall not be subject to public inspection, copying or examination": "Any government record where the inspection, examination or copying of that record would substantially interfere with the State's

ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism"; and

WHEREAS, information in certain documents referenced in 42 U.S.C. § 11044(a) ("11044 documents") may contain emergency and security information and procedures for buildings and facilities, that, if made widely available to the public, would jeopardize the security of such buildings and facilities; and

WHEREAS, it is possible to strike a balance between the public access requirements under EPCRA and the need to safeguard against security threats; and

WHEREAS, EPCRA requires each LEPC to make 11044 documents available to the general public during normal business hours at the location or locations designated by certain public officials; and

WHEREAS, amendments and clarifications to Executive Order No. 161 (1987) are warranted to better protect public health, safety, and the environment;

Now, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1.   The SERC shall consist of at least nine members: including the Attorney General; the Adjutant General of the Department of Military and Veterans Affairs; the Commissioner of the Department of Community Affairs; the Commissioner of the Department of Environmental Protection; the Commissioner of the Department of Transportation; the President of the Board of Public Utilities; the Commissioner of the Department of Health; the Superintendent of the New Jersey State Police who also serves as the State Director of Emergency Management; and the Director of the OHSP. All members of the SERC shall serve ex officio and may identify a designee to participate on their behalf. The Governor may, as determined to be appropriate, appoint additional members to the SERC,

who shall serve at the pleasure of the Governor, without compensation. Paragraph 2 of Executive Order No. 161 (1987) is superseded to the extent inconsistent with this Order.

2.   The SERC is authorized to call upon any department, office, division, or agency of the State to supply the SERC with information and other assistance available to such department, office, division, or agency as the SERC deems necessary to discharge its duties under federal law, Executive Order No. 161 (1987), and this Order. Each department, office, division, or agency is hereby required, to the extent not inconsistent with law, to cooperate fully with the SERC and to furnish such assistance on as timely a basis as is necessary to fulfill the SERC's duties.

3.   The SERC is authorized to designate and revise its designations of emergency planning districts, as contemplated by Executive Order No. 161 (1987), utilizing as the basis for its designations one or more of the following political subdivisions: municipalities, multiple municipalities that have entered into a mutual aid agreement, counties, or multiple counties that have entered into a mutual aid agreement. Paragraph 4 of Executive Order No. 161 (1987) is hereby superseded to the extent inconsistent with this Paragraph.

4.   The LEPC for each planning district shall include, at a minimum, representatives from each of the following groups or organizations: elected county or municipal officials, as appropriate; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to EPCRA. Members of LEPCs shall be designated in the first instance as follows:

      a.   <u>Municipalities</u>. For each municipality designated as an emergency planning district, the mayor or chief executive officer of the municipality shall be

responsible for appointing and removing members to the municipality's LEPC;

b.   Multiple-Municipalities.   For multiple municipalities designated as an emergency planning district, the multiple mayors or chief executive officers of the municipalities for those municipalities shall be responsible for appointing and removing members to the municipalities' LEPC;

c.   Counties.   For each county designated as an emergency planning district, the county emergency management coordinator (appointed pursuant to N.J.S.A. App. A:9-42.1) shall, subject to any required governing body's approval, be responsible for appointing and removing members to the county's LEPC; and

d.   Multiple-Counties.   For multiple counties designated as an emergency planning district, the multiple county emergency management coordinators for those counties shall, subject to any required governing bodies' approvals, be responsible for appointing and removing members to the counties' LEPC.

In the event of a vacancy on a LEPC, the authority or authorities identified in paragraph 4 (a) – (d) above shall appoint a replacement. If any member of a LEPC fails to fulfill their duties, or the LEPC fails to comply with any of its duties, the authority or authorities identified in paragraph 4 (a) – (d) above shall remove the member(s) from the LEPC and appoint one or more new members to fill the vacancy(ies). In the event that a vacancy remains unfilled for 90 days by the authority or authorities identified in paragraph 4 (a) – (d), the SERC is authorized to appoint a replacement. Similarly, if the appointing authority fails to act within an appropriate time to remove a member that fails to fulfill their duties, and appoint a replacement, the SERC is authorized to remove the member and/or appoint a replacement.

5. Each LEPC shall:

    a.   Draft an emergency response plan ("ERP") that complies with the requirements set forth in 42 U.S.C. § 11003(c), and update the ERP once per year or more frequently if circumstances in the community change;

    b.   Submit a copy of the ERP, and each amendment thereto, to the SERC;

    c.   Make the ERP and other 11044 documents available to the general public in a reading room during normal business hours or through another secure method as may be prescribed by the SERC in the future. The LEPC must establish procedures for receiving and processing requests for these documents and designate an official to serve as the coordinator for information. The SERC may provide advice and assistance to LEPCs regarding public access to these documents;

    d.   Annually publish a notice in a local newspaper or maintain a webpage providing the procedures that members of the public may utilize to review or request documents under EPCRA;

    e.   Designate a chairperson;

    f.   Establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the ERP, public comments, response to such comments by the committee, and access to the ERP. Such public meetings shall be subject to the Open Public Meetings Act, N.J.S.A. 10:4-6 to -21; and

    g.   Evaluate and make recommendations regarding the need for resources necessary to develop, implement, and exercise the ERP.

6.   The immunities provided to members of the LEPC under N.J.S.A. 2A:62A-15 shall continue.

7.   Municipalities and counties shall cooperate with and provide information to the LEPCs as necessary to accomplish the purpose of EPCRA, and this Order.

8.   The SERC may establish a procedure for LEPCs to apply for homeland security exemptions for one or more portions of their ERP or the other 11044 documents in their possession from the public's right of access under EPCRA.   The OHSP shall be responsible for reviewing requests for homeland security exemptions and providing a recommendation to the SERC.

9.   Nothing in this Order shall be construed to create a private right of action to enforce the requirements outlined herein.

10.   This Order shall take effect immediately.

GIVEN, under my hand and seal this 20th day of January, Two Thousand and Twenty-two, and of the Independence of the United States, the Two Hundred and Forty-Sixth.

[seal]

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor