

ORDINANCE OF THE FISCAL COURT OF THE COUNTY OF MADISON, KENTUCKY, AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF COUNTY OF MADISON (KENTUCKY) RESIDENTIAL FACILITIES REVENUE BONDS (BEREA CONTINUING CARE PROJECT), DATED DECEMBER 1, 1985, IN THE AMOUNT OF \$15,000,000.

WHEREAS, the County of Madison, Kentucky (the "County"), a political subdivision of the Commonwealth of Kentucky, is authorized and empowered by the Industrial Building Revenue Bond Act (Sections 103.200 to 103.285, inclusive, of the Kentucky Revised States, hereinafter referred to as the "Act"), to issue bonds and lend the proceeds of the bonds to any person to defray the costs of an "industrial building" or "building" as defined in the Act; and

WHEREAS, the County, through an Inducement Resolution and Memorandum of Agreement adopted on October 7, 1985, induced Berea Continuing Care Center Associates, a Kentucky limited partnership (the "Borrower"), or its designee or assignee, to acquire, construct and equip certain residential rental retirement housing facilities within the corporate limits of the County, in which facilities at least 20% of its units shall be reserved for the use and occupancy by low to moderate income individuals (the "Project"); and

WHEREAS, under the terms of a proposed Loan Agreement (the "Loan Agreement"), the County will receive payments from the Borrower sufficient to pay the principal and interest requirements of the Bonds, and which payments shall be pledged, together with the Loan Agreement itself, as security for the payment of the principal of, premium (if any), and interest on the Bonds; and

WHEREAS, it has been determined that bonds designated the County's Residential Facilities Revenue Bonds (Berea Continuing Care Project) in the principal amount of \$15,000,000 (the "Bonds") should be issued, sold and delivered and the proceeds thereof loaned to the Borrower to pay the Costs of the Project (as defined in the Loan Agreement); and

WHEREAS, the County is satisfied as to the ability of the Borrower to make the required payments over a period of years, and that the operation of the proposed Project will tend to relieve existing conditions of unemployment in the area and will otherwise promote the general health care, welfare and economic development of the County and all of its citizens and inhabitants;

NOW, THEREFORE, THE FISCAL COURT OF THE COUNTY OF MADISON, KENTUCKY, DOES ORDAIN AS FOLLOWS:

1. AUTHORIZATION OF BONDS.

For the purpose of paying the Costs of the Project (as defined in the Loan Agreement), the County hereby authorizes and approves the issuance of County of Madison (Kentucky) Residential Facilities Revenue Bonds (Berea Continuing Care Project), dated December 1, 1985 (the "Bonds"), in the principal amount of Fifteen Million Dollars (\$15,000,000), consisting of the maturities, denominations, and numbering; and bearing the interest rates and other features set out in the Bond Purchase Agreement and other documents hereinafter approved; provided, however, that the maximum rate of interest on the Bonds shall not exceed twenty percent (20%) per annum.

2. APPROVAL AND AUTHORIZATION OF EXECUTION OF VARIOUS DOCUMENTS; LOAN AGREEMENT; TRUST INDENTURE; BOND PURCHASE AGREEMENT AND OFFICIAL STATEMENT.

The following documents in the respective forms attached to this Ordinance, are hereby approved, subject to such minor changes, insertions, or omissions as may be approved by the County Judge/Executive, such approval to be conclusively evidenced by his execution of said documents, in order to effectuate the purposes of this Ordinance; and the County Judge/Executive is hereby authorized to execute and acknowledge same for and on behalf of the County; and the County Clerk is authorized to attest same and to affix thereto

the corporate seal of the County. Said documents are hereby ordered to be filed in the office of the County Clerk, labelled respectively, Exhibits A through D, as identified below, and each of said documents is ordered to be recorded with this Ordinance in the official records of the County:

(a) The Loan Agreement, dated as of December 1, 1985, between the County and the Borrower. (Exhibit A)

(b) The Trust Indenture (the "Indenture"), dated as of December 1, 1985, between the County and First Security National Bank & Trust Company, Lexington, Kentucky, Trustee. (Exhibit B)

(c) The Bond Purchase Agreement dated as of the date of adoption of the Sales Resolution described in Section 3 below, between the County and ~~Matthews & Wright, Inc.~~ and J.C. Bradford & Co. (hereinafter collectively referred to as the "Underwriter" or the "Purchaser"), and also approved by the Borrower, providing for the sale of the Bonds to the Underwriter at the aggregate price, at the interest rates, and upon the respective terms and conditions set forth in said Bond Purchase Agreement. The approval of said Bond Purchase Agreement by the Borrower and a separate attached letter from the Borrower to the County evidences the request of the Borrower that the Bonds be sold at private sale upon a negotiated basis, as authorized by KRS 103.230. (Exhibit C)

(d) The Official Statement (the "Official Statement"), setting out information concerning the County, the Borrower and the Project, for the Underwriter and potential purchasers of the Bonds. (Exhibit D)

3. EXACT AMOUNT OF BONDS, MATURITIES, PURCHASE PRICE, AND INTEREST RATES TO BE SET BY RESOLUTION.

The Fiscal Court shall, in a Resolution to be adopted at a single meeting, following the second reading and enactment of this Ordinance, at the time of approval of the Bond Purchase Agreement, determine the schedule of principal maturities, the original purchase price of the Bonds to be paid by the Underwriter, and the exact interest rates which the Bonds will bear.

4. DISBURSEMENT OF PROCEEDS OF BONDS.

The Borrower and the Trustee are authorized to carry out the procedures specified in the Indenture for the completion of the Project. Such procedures shall include reimbursement to the Borrower for all advances made by

the Borrower toward the Costs of the Project in contemplation of the issuance of these Bonds, in reliance on the commitment of the County in the original Memorandum of Agreement approved by Inducement Resolution adopted by the County on October 7, 1985.

5. REVENUES OF THE PROJECT.

The revenues and other payments to be received by the County under the terms of the Loan Agreement are determined to be sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable; and all of said payments and other payments received under the Loan Agreement and all other revenues arising out of or in connection with the Project, together with the Loan Agreement, are hereby pledged to secure such payments and revenues, and in addition, for such other purposes as are more fully specified in the Indenture.

6. DESIGNATION OF TRUSTEE AND REMARKETING AGENT.

First Security National Bank & Trust Company, Lexington, Kentucky, is hereby designated as the corporate trustee under the Indenture and also as the paying agent and bond registrar for the Bonds. ^{J.C. Bradford and Co.} ~~Matthews & Wright, Inc.~~ is hereby designated as the Remarketing Agent for the Bonds.

7. EXECUTION OF BONDS.

The Bonds shall be executed in the manner provided in the Indenture and shall be delivered to the Trustee for proper authentication and delivery by the Trustee to the Underwriter, with instructions to that effect, as provided in the Indenture.

8. COUNTY JUDGE/EXECUTIVE AND OTHER URBAN COUNTY GOVERNMENT OFFICIALS TO TAKE ANY OTHER NECESSARY ACTION.

Pursuant to the Constitution and Laws of the Commonwealth of Kentucky, the County Judge/Executive, the County Clerk and all other

appropriate officials of the County are hereby authorized and directed to take any and all further action and to execute and deliver all other documents as may be necessary to effect the issuance and delivery of the Bonds.

9. LIMITED OBLIGATION.

The Bonds shall not be a general obligation of the County but a limited obligation payable solely from the amounts payable under the Loan Agreement and other revenues of the Project. Neither the County, the Commonwealth of Kentucky nor any other political subdivision of the Commonwealth shall be obligated to pay the principal of or interest on such Bonds or other costs incident thereto except from the revenues of the Project pledged therefor. Neither the faith and credit nor the taxing power of the County, the Commonwealth or any political subdivision of the Commonwealth is pledged to the payment of the principal of, or premium, if any, or interest on the Bonds or other costs incident thereto.

10. COMPLIANCE WITH FEDERAL ARBITRAGE REQUIREMENTS.

Based on representations of the Borrower, the County covenants that sums derived from the proceeds of the Bonds shall not be invested in investments in a manner which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 103 of the Internal Revenue Code, as amended, and the applicable Regulations thereunder.

Prior to or at the time of delivery of the Bonds, the County Judge/Executive and/or the County Treasurer, who are jointly and severally charged with the responsibility for the issuance of the Bonds, are authorized to execute the appropriate certification with reference to the matters required and contemplated by such statute and Regulations, setting out all known and contemplated facts concerning the anticipated construction, expenditures, and

investments, including the execution of necessary and/or desirable certifications contemplated by the aforesaid regulations in order to assure that interest on the Bonds will be exempt from all federal income taxes and that the Bonds will not be treated as "arbitrage bonds". Such officer(s) is entitled to rely upon information furnished by the Borrower in making such certifications and representations unless they, or either of them, shall be aware of any fact or circumstances which would cause such certifications or representations to be questioned.

11. SEVERABILITY CLAUSE.

If any section, paragraph, clause, or provision of this Ordinance shall be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the remaining provisions hereof.

12. CAPTIONS OF CLAUSES.

The captions of this Ordinance are for convenience only and are not to be construed as part of this Ordinance nor as defining or limiting in any way the scope or intent of the provisions hereof.

13. PROVISIONS IN CONFLICT REPEALED.

All ordinances, resolutions, and orders, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

14. EFFECTIVE DATE OF ORDINANCE.

This Ordinance shall take effect from and after its enactment, approval, and publication of Notice of Enactment hereof (including the title to this Ordinance), which publication is hereby approved and ordered to be made by the County Clerk, pursuant to KRS 103.210 and KRS 67.

Introduced at a duly convened meeting held on the 9th day of December, 1985, given first reading, and ordered by the County Judge/Executive to be held over in the office of the County Clerk, subject to public inspection, pending consideration by the Fiscal Court at a subsequent meeting.

GIVEN SECOND READING AND ENACTED BY THE FISCAL COURT OF THE COUNTY OF MADISON, KENTUCKY, at a duly convened meeting held on the 16th day of December, 1985, signed by the County Judge/Executive indicating his approval, attested under seal by the County Clerk, ordered to be recorded and declared to be in full force and effect.

APPROVED:

(Seal)

By _____
Mayor

Attest:

County Clerk

CERTIFICATION

I, C.S. WAGERS, the duly qualified and acting Madison County Clerk, do hereby certify that the foregoing is a true, complete, and correct copy of an Ordinance which received first reading on December 9, 1985, and that it was placed and remained on file in my office for public inspection in substantially the same form and which was given second reading, finally enacted by the Fiscal Court or said County, approved by the County Judge/Executive, and attested by me as County Clerk, upon the occasion of a properly convened meeting of the Fiscal Court of said County held on December 16, 1985, as shown by the official records of said County in my custody and under my control.

I further certify that said meetings were duly held in accordance with all applicable requirements of Kentucky law, including KRS 61.810, 61.815, 61.820 and 61.825, that a quorum was present at each of said meetings, that said Ordinance has not been modified, amended, revoked, or repealed and that the same is now in full force and effect.

WITNESS my hand and the seal of said County, this _____ day of December, 1985.

County Clerk

(Seal)



Commonwealth of Kentucky
KENTUCKY EMERGENCY RESPONSE COMMISSION
Boone Center
Frankfort, Kentucky 40601-6168
502-564-8660

MEMORANDUM

TO: LEPC Chairman, Madison County
THRU: DES Area Coordinator, Area #13. Mr Bob Buntin
FROM: JAMES H. (Mike) MOLLOY, CHAIRMAN KY EMERGENCY RESPONSE COMMISSION (KERC) *JHM*
DATE: 27 Dec 88
SUBJECT: Review of TAB Q-7, Covered Facilities, for Extremely Hazardous Substances (EHS), under the provisions of Title III, SARA

1. The enclosed TABs for covered facilities located in your county have been reviewed by the KERC Planning Committee and KyDES Planning Staff and are returned for noted corrective actions. Items checked (X) require corrections as indicated. All data should be type written.

- () A. Complete description of EHS was not provided for each item. Each chemical must be listed to include chemical, not trade name, both CAS and UN ID numbers, form (gas, liquid, solid, etc.) packaged container (cylinder, bag, bulk, etc), maximum quantity (amount on hand at any given time) and health risks (what is effect on population, See MSDS or DOT Handbook).
- (X) B. Sketch of facility and storage areas was not legible. Sketch should show location of the chemical on site (a simple, uncluttered floor plan of the building), access roads into the site (highway numbers, street names), and indicate on the sketch a north direction arrow. Also the sketch and lettering should be in black ink so it will reproduce legibly.
- () C. Response point was not identified. This is the location where response personnel will meet facilities people when an incident occurs. This location may be on the facility property or nearby, but should be identifiable such as street intersection, main gate, etc.

- D. Staging area was not located safely beyond facility boundary. Staging area should not be the same location as response point. Staging area is where equipment and response personnel are assembled, organized, instructed and prepared to move to the incident location. Staging area should provide sufficient space, entrance and exit capability and be out of immediate danger. A large parking lot or similar facility is desirable.
- E. Primary transportation routes were not identified. The main highways, interstates, and streets leading into the county and to the facility location that are normally used to transport hazardous substances.
- F. Major suppliers of the extremely hazardous substances were not listed, to include telephone numbers. Should include name of company and telephone number (unless a large number of suppliers are involved).
- G. Special facilities were not identified, to include points of contact and telephone number. Special facilities are those that normally house people, such as hospitals, schools, nursing homes, populated areas within the vicinity of the facility that would be affected by a spill or incident. Should list the facility name and day/night telephone numbers.
- H. Protective actions were not discussed to indicate what measures would be taken should a spill or incident occur. This pertains to precautions that the local population would be instructed to take, not facility employees, and includes such things as in-place sheltering (remain inside, close windows, doors and turn off ventilation systems), evacuation, etc.
- I. Emergency equipment on hand was not listed and training provided employees was not discussed. Company owned, on site, emergency equipment that would be used in an emergency should be listed, to include what training employees have received on the equipment and if an exercise program is in effect to evaluate the capability of the facility to respond to an emergency.

(✓) J. Community resources were not identified that could be utilized during an emergency or incident. In addition to company owned emergency equipment there are resources available in the community that should be listed, such a fire and rescue, ambulance service, etc. Also include a discussion of the training that these response personnel have received and any exercise program that exists. This information should be available from the local DES Coordinator/Director.

(✓) K. Procedures to be followed to contain, clean-up and dispose of spilled EHS were not listed. Procedures should identify containment (preventing spread into other areas, or run off into streams), clean-up (what materials will be used, who will do the clean-up and how) and disposal (when the spilled chemical has been contained and must be removed from the site how will this be accomplished).

(✓) L. Emergency notification telephone numbers were not listed for the emergency response agencies in the county. As a minimum, a local 24 hour warning number (LEPC) will be listed which may be the 911 number if this system is used. Also the Kentucky Emergency Response Commission (KERC) number will be listed.

2. A Q-7 TAB is required for all facilities that use, store and/or handle extremely hazardous substances. Extremely hazardous substances are those 366 items identified by the U.S. Environmental Protection Agency and published in a list according to section 302 of the Emergency Planning and Community Right to Know Act (Title III). Unless the hazardous material is listed in this publication there is no requirement to prepare a Q-7 TAB as a part of the Facility Response Plan. Fuels such as gasoline, diesel and propane are hazardous materials and require MSDS submission however, they are not classified as extremely hazardous substances by EPA. Therefore Q-7 TABs are not required.

3. If you have questions concerning this correspondence please contact the Area Coordinator whose name is shown at the heading of this memo, or you may contact any member of the KyDES Planning Staff AC (502)-564-8627, 8639, or 8687. Your corrected Q-7 TABS should be returned to your KyDES Area Coordinator by As soon as possible but no later than May 12, 1989.

LEP ADMINISTRATIVE SUB-COMMITTEE

OBJECTIVES

1. Continually review and update the Madison County Emergency Response Plan.
2. Develop and maintain systems for collecting and managing information on hazardous chemicals used or stored in our community.
3. Develop and implement public education programs which will include procedure for responding to citizens' requests for information.
5. Liaison with the State Emergency Response Commission and Environmental Protection Agency.

Meeting - Civil Defense Office located in the Ephram McDowell House on the left side of the building in Richmond, KY
Thursday - March 16 - 10:00 AM

LM
3/15/89

TITLE III FACT SHEET



EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

August 1988
(Revised)

U.S. Environmental Protection Agency

INTRODUCTION

The Emergency Planning and Community Right-to-Know Act of 1986 establishes requirements for federal, state, and local governments and industry regarding emergency planning and "community right-to-know" reporting on hazardous and toxic chemicals. This legislation builds upon EPA's Chemical Emergency Preparedness Program (CEPP) and numerous state and local programs aimed at helping communities to better meet their responsibilities in regard to potential chemical emergencies. The community right-to-know provisions will help to increase the public's knowledge and access to information on the presence of hazardous chemicals in their communities and releases of these chemicals into the environment. States and communities, working with facilities, will be better able to improve chemical safety and protect public health and the environment.

Nothing in this document should be construed to indicate that EPA has determined states have Title III authority over Indian reservations. For purposes of this document, definition of the terms "state" and "governor" includes "Indian tribe" and "Tribal Chairman." EPA has issued a draft policy for comment regarding the application of the emergency

planning and community right-to-know law to Indian lands.

The emergency planning and community right-to-know (also known as Title III) provisions have four major sections: emergency planning (Section 301-303), emergency release notification (Section 304), community right-to-know reporting requirements (Sections 311, 312) and toxic chemical release reporting-emissions inventory (Section 313). Information from these four reporting requirements will help states and communities develop a broad perspective of chemical hazards for the entire community as well as for individual facilities.

SECTION 301-303: Emergency Planning

The emergency planning sections are designed to develop state and local governments' emergency response and preparedness capabilities through better coordination and planning, especially within the local community.

The Emergency Planning and Community Right-to-Know Act required the governor of each state to designate a state emergency response commission. Many state emergency response commissions include public agencies and departments

concerned with issues relating to environment, natural resources, emergency services, public health, occupational safety, and transportation. Also, interested public and private sector groups and associations with experience in emergency planning and community right-to-know issues may be included in the state commission. At this time, all governors have established state emergency response commissions.

The state commission must also have designated local emergency planning districts and appointed local emergency planning committees for each district. State commissions have designated over 4,000 local districts. Thirty-five state commissions chose counties as the basic district designation (often with separate districts for municipalities), ten state commissions designated substate planning districts and five state commissions designated the entire state as a district. The state commission is responsible for supervising and coordinating the activities of the local emergency planning committees, for establishing procedures for receiving and processing public requests for information collected under other sections of Title III, and for reviewing local emergency plans.

This local emergency planning

KEY DATES TO REMEMBER

November 17, 1986	EPA published Interim List of Extremely Hazardous Substances and Threshold Planning Quantities in Federal Register (Sections 302, 303, 304)
November 17, 1986	EPA initiated comprehensive review of emergency systems (Section 305 (b))
January 27, 1987	EPA published proposed format for Emergency Inventory Forms and reporting requirements in Federal Register (Sections 311 & 312)
March 17, 1987	National Response Team published guidance for preparation and implementation of emergency plans (Section 303(f))
April 17, 1987	State governors appointed state emergency response commissions (Section 301(a))
April 22, 1987	EPA published Final List of Extremely Hazardous Substances and Threshold Planning Quantities in Federal Register (Sections 302, 303, 304)
May 17, 1987	Facilities subject to Section 302 planning requirements notified state emergency response commission (Section 302(c)). Interim report on emergency system review submitted to Congress (Section 305(b))
June 4, 1987	EPA published proposed toxic chemical release (i.e., emissions inventory) form (Section 313(g))
July 17, 1987	State emergency response commission designated emergency planning districts (Section 301 (b))
August 17, 1987 (or 30 days after designation of districts, whichever is sooner)	State emergency response commission appointed members of local emergency planning committees (Section 301 (c))
September 17, 1987 (or 30 days after local committee is formed, whichever is earlier)	Facilities notified local planning committee of selection of a facility representative (Section 303(d)(1))

committee must include, at a minimum, elected state and local officials, police, fire, civil defense, public health professionals, environmental, hospital, and transportation officials as well as representatives of facilities subject to the emergency planning requirements, community groups, and the media. As soon as facilities are subject to the emergency planning requirements, they must designate a representative to participate in the planning process. The local committee must establish rules, give public notice of its activities, and establish procedures for handling public requests for information.

The local committee's primary responsibility is to develop an emergency response plan by October 17, 1988 and review it at least annually thereafter. In developing this plan, the local committee evaluates available resources for preparing for and responding to a potential chemical accident. The plan must:

- identify facilities and transportation routes of extremely hazardous substances;
- describe emergency response procedures, on-site and off-site;
- designate a community coordinator and facility coordinator(s) to implement the plan;
- outline emergency notification procedures;
- describe methods for determining the occurrence of a release and the probable affected area and population;

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- describe community and industry emergency equipment and facilities and the identity of persons responsible for them;
- outline evacuation plans;
- describe a training program for emergency response personnel (including schedules); and,
- present methods and schedules for exercising emergency response plans.

In order to assist the local committees in preparing and reviewing plans, Congress required the National Response Team (NRT), composed of 14 federal agencies with emergency response responsibilities, to publish guidance on emergency response planning. This guidance, the "Hazardous Materials Emergency Planning Guide," was published by the NRT in March 1987.

The emergency response plan must be initially reviewed by the state commission and, at least, annually by the local committee. Regional Response Teams, composed of federal regional officials and state representatives, may review the plans and provide assistance to the local committees upon request.

Planning activities of local committees and facilities should be initially focused on, but not limited to, the 366 extremely hazardous substances published in the Federal Register. Plans should be comprehensive, addressing all hazardous materials of concern and transportation as well as fixed facilities. The list includes the threshold planning quantities (minimum limits) for each substance. Through rulemaking, EPA can revise the list and threshold

planning quantities based on the toxicity, reactivity, volatility, dispersability, combustibility, or flammability of a substance.

Any facility that has present any of the listed chemicals in a quantity equal to or greater than its threshold planning quantity is subject to the emergency planning requirements. In addition, the state commission or the Governor can designate additional facilities, after public comment, to be subject to these requirements. Covered facilities must notify the state commission and local committee that they are subject to these requirements within 60 days after they begin to have present any of the extremely hazardous substances in threshold planning quantities.

Each state commission must notify the EPA Regional Office of all facilities subject to the emergency planning requirements, including facilities designated by the state commission or the governor.

SECTION 304: Emergency Notification

Facilities must immediately notify the local emergency planning committees and the state emergency response commissions likely to be affected if there is a release into the environment of a listed hazardous substance that exceeds the reportable quantity for that substance. Substances subject to this requirement are those on the list of 366 extremely hazardous substances as published in Federal Register (40 CFR 355) or on a list of 721 substances subject to the emergency notification requirements under CERCLA Section 103(a) (40 CFR 302.4). Some chemicals are common to both lists.

Initial notification can be made by telephone, radio, or in person. Emergency notification requirements involving transportation incidents can be met by dialing 911, or in the absence of a 911 emergency number, calling the operator.

This emergency notification needs to include:

- the chemical name;
- an indication of whether the substance is extremely hazardous;
- an estimate of the quantity released into the environment;
- the time and duration of the release;
- whether the release occurred into air, water, and/or land;
- any known or anticipated acute or chronic health risks associated with the emergency, and where necessary, advice regarding medical attention for exposed individuals;
- proper precautions, such as evacuation; and,
- name and telephone number of contact person.

Section 304 also requires a written follow-up emergency notice after the release. The follow-up notice or notices must:

- update information included in the initial notice, and
- provide information on
 - *actual response actions taken; and,

KEY DATES TO REMEMBER (Continued)

October 15, 1987	EPA published final format for emergency inventory forms and reporting requirements in the Federal Register (Sections 311 and 312)
	EPA published proposed regulation governing trade secret claims (Sections 322 and 323)
October 17, 1987	Manufacturing facilities submitted MSDS's or lists of MSDS chemicals to state commission, local committee and local fire department (Section 311 (d))
December 17, 1987	EPA published a final rule delisting four chemicals from the Extremely Hazardous Substance List (Section 302)
February 16, 1988	EPA published final toxic chemical release regulations, form and instructions (Section 313 (g))
February 25, 1988	EPA published a final rule delisting 36 chemicals from the Extremely Hazardous Substance List (Section 302)
March 1, 1988 (and annually thereafter)	Manufacturing facilities submit their hazardous chemical inventory forms to state commission, local committee and local fire department (Section 312(a)(2))
June 1988	Final report on emergency systems study submitted to Congress (Section 305(b))
June 20, 1988	EPA published final rule delisting titanium dioxide from the Toxic Chemical List (Section 313)
July 1, 1988 (and annually thereafter)	Covered facilities submitted initial toxic chemical forms to EPA and designated state officials (Section 313 (a))
July 29, 1988	EPA published final regulation governing trade secret claims (Sections 322 and 323)
August 4, 1988	EPA clarified Reporting Dates for facilities newly covered by the OSHA expansion of the Hazard Communication Standard (Sections 311 and 312)

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•advice regarding medical attention necessary for exposed individuals.

If local committees are not yet formed, releases should be reported to appropriate local response officials.

SECTION 311-312: Community Right-To-Know Requirements

There are two community right-to-know reporting requirements within the Emergency Planning and Community Right-to-Know Act. Section 311 requires facilities that must prepare material safety data sheets (MSDS) under the Occupational Safety and Health Administration (OSHA) regulations to submit either copies of their MSDSs or a list of MSDS chemicals to:

- the local emergency planning committee;
- the state emergency response commission; and,
- the local fire department.

If the facility owner or operator chooses to submit a list of MSDS chemicals, the list must include the chemical or common name of each substance and must identify the applicable hazard categories. These hazard categories are:

- immediate (acute) health hazard;
- delayed (chronic) health hazard;
- fire hazard;
- sudden release of pressure hazard; and,
- reactive hazard.

If a list is submitted, the facility must submit a copy of the MSDS for any chemical on the list upon the request of the local emergency planning committee or state commission. Also, EPA has established threshold quantities for hazardous chemicals below which no facility must report. The current thresholds for Section 311 are:

- for extremely hazardous substances: 500 pounds or the threshold planning quantity, whichever is lower.
- for all other hazardous chemicals: before October 17, 1989: 10,000 pounds; on or after October 17, 1989: zero pounds (Note: the zero threshold will be revised pending further study.)

The initial submission of the MSDSs or a list of MSDS chemicals was due on October 17, 1987, or three months after the facility is required to prepare or have available an MSDS under OSHA regulations. Currently, OSHA regulations require only manufacturers and importers in Standard Industrial Classification (SIC) codes 20-39 to have or prepare MSDSs for their chemicals. But as of June 24, 1988, those OSHA regulations expanded to include non-manufacturers except the construction industry. Thus, under the emergency planning and community right-to-know statute, facilities newly covered by the expanded OSHA regulations must submit MSDSs or a list of MSDS chemicals within 3 months after they become covered.

An MSDS or a revised list must be provided when new hazardous chemicals become present at a facility in quantities above

the established threshold levels after the deadline. A revised MSDS must be provided to update the original MSDS if significant new information is discovered about the hazardous chemical.

Reporting under Section 312 requires a facility to submit an emergency and hazardous chemical inventory form to the local emergency planning committee, the state emergency response commission, and the local fire department. Hazardous chemicals covered by Section 312 are those for which facilities are required to prepare or have available an MSDS under OSHA's Hazard Communication Standard and that were present at the facility at any time during previous calendar year above specified thresholds.

EPA established threshold quantities for Section 312 for hazardous chemicals below which no facility must report. Currently those thresholds are:

- for extremely hazardous substances: 500 pounds or the threshold planning quantity, whichever is lower
- for all other hazardous chemicals:

January to December 1987 or first year of reporting...10,000 pounds.

January to December 1988 or second year of reporting ...10,000 pounds.

January to December 1989 or third year of reporting...zero pounds. (Note: the zero threshold will be revised pending further study.)

The inventory form incorporates

a "two-tier" approach. Under Tier I, facilities must submit the following aggregate information for each applicable hazard category:

- an estimate (in ranges) of the maximum amount of chemicals for each category present at the facility at any time during the preceding calendar year;
- an estimate (in ranges) of the average daily amount of chemicals in each category; and,
- the general location of hazardous chemicals in each category.

If requested by a local committee, state commission or local fire department, the facility must provide the following Tier II information for each substance subject to the request:

- the chemical name or the common name as indicated on the MSDS;
- an estimate (in ranges) of the maximum amount of the chemical present at any time during the preceding calendar year;
- a brief description of the manner of storage of the chemical;
- the location of the chemical at the facility; and,
- an indication of whether the owner elects to withhold location information from disclosure to the public.

EPA published a uniform format for the inventory forms on October 15, 1987. Since many state commissions have additional requirements or have incorporated the federal con-

tents in their own forms, Tier I/II forms should be obtained from the state commission. Tier I information must be submitted for covered manufacturing facilities on or before March 1, 1988 and annually thereafter on March 1, for all covered facilities.

The Tier II form may be sent by the facility instead of a Tier I form. The public may also request Tier II information from the state commission and the local committee. The information submitted by facilities under Sections 311 and 312 must generally be made available to the public by local emergency planning committees (LEPCs) and state emergency response commissions (SERCs)

during normal working hours.

SECTION 313: Toxic Chemical Release Reporting

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 requires EPA to establish an inventory of routine toxic chemical emissions from certain facilities. Facilities subject to this reporting requirement are required to complete a Toxic Chemical Release Form (Form R) for specified chemicals. The form must be submitted to EPA and those state officials designated by the governor, on or before July 1, 1988, and annually thereafter on July 1.

These reports should reflect releases during the preceding calendar year.

The purpose of this reporting requirement is to inform the public and government officials about routine releases of toxic chemicals to the environment. It will also assist in research and the development of regulations, guidelines, and standards.

The reporting requirement applies to owners and operators of facilities that have 10 or more full-time employees, that are in Standard Industrial Classification (SIC) codes 20 through 39 (i.e., manufacturing facilities) and that manufacture (including importing), process or otherwise use a listed toxic chemical in excess of specified threshold quantities.

Facilities manufacturing or processing any of these chemicals in excess of 75,000 pounds in 1987 must report by July 1, 1988. Facilities manufacturing or processing in excess of 50,000 pounds in 1988 must report by July 1, 1989; thereafter, facilities manufacturing or processing more than 25,000 pounds in a year are required to submit the form. Facilities otherwise using listed toxic chemicals in quantities over 10,000 pounds in a calendar year are required to submit toxic chemical release forms by July 1 of the following year. EPA can revise these threshold quantities and covered SIC codes.

The list of toxic chemicals subject to reporting consisted initially of chemicals listed for similar reporting purposes by the States of New Jersey and Maryland. There are over 300 chemicals and categories on these lists. Through rule-

KEY DATES TO REMEMBER (Concluded)

September 24, 1988 (three months after the OSHA expansion)	Non-manufacturing facilities covered under the new OSHA expansion as of June 24, 1988 submit MSDSs or a list of chemicals present in quantities over the first year threshold to the state commission, local committee, and local fire department (Section 311)
October 17, 1988 (and review at least annually thereafter)	Local emergency planning committees complete preparation of an emergency plan (Section 303(a))
March 1, 1989	Non-manufacturing facilities submit their emergency inventory forms to state commission, local committee, and local fire department (Section 312 (a)(2))
October 17, 1989	Manufacturing facilities submit MSDS or a list of chemicals over the final threshold to the state commission, local committee, and local fire department (Section 311)
June 20, 1991	Comptroller General submits Report to Congress on toxic chemical release information collection, use and availability (Section 313 (k))
October 17, 1991	EPA submits to Congress a Mass Balance Study (Section 313 (l))

making, EPA can modify this combined list.

The final Toxic Chemical Release Form and regulations were published in the Federal Register on February 16, 1988. The following information is required on the form:

- the name, location and type of business;
- off-site locations to which the facility transfers toxic chemicals in waste;
- whether the chemical is manufactured (including importation), processed, or otherwise used and the general categories of use of the chemical;
- an estimate (in ranges) of the maximum amounts of the toxic chemical present at the facility at any time during the preceding year;
- quantity of the chemical entering each medium--air, land, and water--annually;
- waste treatment/disposal methods and efficiency of methods for each waste stream;
- optional information on waste minimization; and,
- a certification by a senior facility official that the report is complete and accurate.

Reports are sent to EPA and designated state agencies. EPA must establish and maintain a national toxic chemical inventory based on the data submitted. The public must be able to access this national database, and obtain the data through other means.

In addition to the toxic chemical release reporting requirements, Section 313 authorizes EPA to arrange for a Mass Balance Study to be carried out by the National Academy of Sciences (NAS). The study will determine the feasibility, utility, and alternatives to collecting mass balance type information as a supplement to the currently required toxic release data. A report of this study must be submitted by EPA to Congress no later than October 17, 1991. An interim report from NAS is due to EPA in early 1989.

OTHER TITLE III PROVISIONS

Trade Secrets

Section 322 of the Emergency Planning and Community Right-to-Know Act addresses trade secrets as they apply to emergency planning, community right-to-know, and toxic chemical release reporting. Any facility may withhold the specific chemical identity on these submittals. No trade secrets are allowed to be claimed under Section 304 of the statute. The withholder must show that:

- the information has not been disclosed to any person other than a member of the local planning committee, a government official, an employee of the withholder or someone bound by a confidentiality agreement; measures have been taken to protect the confidentiality; and the withholder intends to continue to take such measures;
- the information is not required to be disclosed to the public under any other Federal or State law;

- the information is likely to cause substantial harm to the competitive position of the withholder; and,
- the chemical identity is not readily discoverable through reverse engineering.

However, even if chemical identity information can be legally withheld from the public, Section 323 provides for disclosure of this information to health professionals who need the information for diagnostic and treatment purposes or local health officials who need the information for prevention and treatment activities. In non-emergency cases, the health professional receiving the information must sign a confidentiality agreement with the facility and provide a written statement of need. In medical emergency situations, the health professional must, if requested by the facility, provide these documents as soon as circumstances permit.

Information claimed as a trade secret and substantiation for that claim must be submitted to EPA. More detailed information on the procedure for submitting trade secrecy claims can be found in the trade secrets final rule, published in the Federal Register on July 29, 1988. Any person may challenge trade secret claims by petitioning EPA. The Agency must then review the claim and rule on its validity.

The trade secret regulations cover the process for submission of claims, petitions for disclosure and the review process for petitions.

Title III Penalties

Section 325 of the Emergency Planning and Community Right-to-Know Act addresses the penalties for failure to comply with the requirements of this law. Civil and administrative penalties ranging from up to \$10,000 – \$75,000 per violation or per day per violation can be assessed to facilities that fail to comply with the emergency planning (Section 302), emergency notification (Section 304), community right-to-know (Sections 311 and 312), toxic chemical release (Section 313) and trade secret (Sections 322 and 323) reporting requirements.

Criminal penalties up to \$50,000 or five years in prison may also be given to any person who knowingly and willfully fails to provide emergency release notification. Penalties of not more than \$50,000 and/or up to one year in prison may be given to any person who knowingly and willfully discloses any information entitled to protection as a trade secret. In addition, Section 326 allows citizens to initiate civil actions against EPA, state emergency response commissions, and/or the owner or operator of a facility for failure to meet the requirements of the emergency planning and community right-to-know provisions. A state emergency response commission, local emergency planning committee, state or local government may institute actions against facility owner/operators for failure to comply with Title III requirements. In addition, states may sue EPA for failure to provide trade secret information.

Training Grants

Section 305(a) of the Emergency Planning and Community Right-to-Know Act authorizes the Federal Emergency Management Agency to provide \$5 million for each of fiscal years 1987, 1988, 1989, and 1990 for training grants to support state and local governments. These training grants are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs must provide special emphasis to hazardous chemical emergencies. The training grants may not exceed 80 percent of the cost of any such programs. The remaining 20 percent must come from non-federal sources. These training grants are coordinated within each state by the state emergency response commission.

Emergency Systems Study

Under Section 305(b), EPA is required to review emergency systems for monitoring, detecting, preventing and warning of accidental releases of extremely hazardous substances at representative U.S. facilities that produce, use, or store these substances. EPA reported interim findings to Congress in May 1987 and issued a final report of findings and recommendations to Congress in June 1988.

Public Access

Section 324 of the Emergency Planning and Community Right-to-Know Act provides for public access to information gathered under this law. Under this section, all material safety data sheets, hazardous chemical inventory forms, toxic chemical release form follow-up emergency notices, and the emergency response plan must be made available during normal working hours by the state commissions and local committees. In order to inform the public of the availability and location of the information provided to the local emergency planning committee, the local committee must publish a notice annually in the local newspaper. In addition, Toxic Release Inventory (Section 313) information is being collected by EPA and will be made available by telecommunications and other means.

For more information, contact the Emergency Planning & Community Right-to-Know Information Hotline:

Hotline: 1-800-535-0202
(In Washington, D.C. -
(202) 479-2449)

Hours: 8:30 am - 7:30 pm
(Eastern Time) Monday - Friday

—————
This is NOT an
emergency number.

**CHEMICAL LISTS ASSOCIATED WITH
EMERGENCY PLANNING/COMMUNITY RIGHT-TO-KNOW**

LIST	SECTION	PURPOSE
<p><u>List of Extremely Hazardous Substances</u> (366 Substances) (40 CFR 355)</p>	<p>§302: Emergency Planning §304: Emergency Notification §311/312: Material Safety Data Sheets and Emergency Inventory</p>	<ul style="list-style-type: none"> • Facilities with more than estimated planning quantities of these substances must notify the State commission and local committee • Initial focus for preparation of emergency plans by local emergency planning committees. • Certain releases of these substances trigger Section 304 notification to State commission and local committees. • Separate and lower thresholds are established for these substances of concern for the MSDS and Tier I/II reporting requirements.
<p>Substances requiring notification under Section 103(a) of CERCLA [721 substances] (40 CFR 302.4)</p>	<p>§304: Emergency Notification</p>	<ul style="list-style-type: none"> • Certain releases of these trigger Section 304 notification to State commission and local communities as well as Section 104(a) requirement for National Response Center notification.
<p><u>Hazardous Chemicals</u> considered physical or health hazards under OSHA's Hazard Communication Standard (29 CFR 1910, 1200) [This is a performance standard; there is no specific list of chemicals.]</p>	<p>§304: Emergency Notification §311: Material Safety Data Sheets §312: Emergency Inventory</p>	<ul style="list-style-type: none"> • Identifies facilities subject to emergency notification requirements. • MSDS or list of MSDS chemicals provided by covered facilities to state commissions, local committees and local fire departments. • Tier I/II hazardous chemical inventory forms must be provided by facilities to state commissions, local committees and local fire departments.
<p><u>Toxic Chemicals</u> [327 chemical/chemical categories] (40 CFR 372)</p>	<p>§313: Toxic Chemical Release Reporting</p>	<ul style="list-style-type: none"> • These chemicals are reported on an emissions inventory to inform government officials and the public about the release of toxic chemicals into the environment.

INDUCEMENT CONTRACT

THIS CONTRACT, made and entered into this 7th day of October, 1985, by and between Madison County, Kentucky, party of the first part, hereinafter referred to as the "County," and Berea Continuing Care Associates, a Kentucky limited partnership, party of the second part, hereinafter referred to as the "Company,"

W I T N E S S E T H :

A. RECITATION OF FACTS

As a means of setting forth the matters of mutual inducement which have resulted in the making and entering into of this Contract, the following statements of fact are herewith recited:

1. The County is a political subdivision of the Commonwealth of Kentucky, and is authorized and empowered by the provisions of Sections 103.200 to 103.285 of the Kentucky Revised Statutes, as amended (the "Act"), to acquire, own, lease, and dispose of industrial building projects or "building" projects as defined in Section 103.200 of the Act.

2. The Company proposes to construct and equip a new economic development project (the "Project") either on a tract of land of approximately 12 acres located at the north side of Elipse Road at the intersection with and on the west side of Rash Road or on a tract of land of approximately 10 acres on the north side of Glades Road just east of U.S. Highway 25 in the County, which Project will be used by the Company as a 100 unit congregate care housing facility for the elderly and infirmed, 20% of the units of which will be occupied by residents of low to moderate income, and will provide employment for approximately 33 employees. The cost of the Project, including land, building, equipment, and furnishings, is estimated to be approximately \$15,000,000.

3. The Company has advised the County that its contemplated program is largely dependent upon assistance which the County might render through the issuance and sale of County of Madison (Kentucky) Residential Facilities Revenue Bonds (the "Bonds"), pursuant to the Act, and that if the County will agree to render such assistance and to make possible the financing and construction of the Project through the issuance of such Bonds, then the Company will undertake the Project.

4. The Company proposes that the proceeds of the Bonds be lent by the County to the Company pursuant to a Loan Agreement whereby the Company will agree to pay all principal of and interest on the Bonds as same become due, and the County will assign such Loan Agreement (including a mortgage to the County of all rights of the Company in the Project) to the Trustee for the Bondholders.

5. It is necessary and desirable for the general welfare and economy of the County and its surrounding area that the County provide additional permanent opportunities for employment in such area.

6. As provided in the Act, the proposed Bonds would not be a general obligation debt of the County, but would be secured only by a first pledge of the revenues of the Project, including the loan payments under the Loan Agreement, and by a first foreclosable mortgage lien against the Project. The Bonds will mature over a period of approximately 30 years.

B. UNDERTAKINGS ON THE PART OF THE COUNTY

The County agrees as follows:

1. That the County will authorize the issuance under the Act of approximately \$15,000,000 principal amount of Bonds, which Bonds shall not be a general obligation debt of the County and shall be payable solely from the

revenues and receipts of the Project, including the loan payments under the Loan Agreement, as required by the Act.

2. That the County acquiesces in the designation by the Company of the Trustee for the Bondholders and the Purchasers of the Bonds; and the County will adopt such proceedings as are necessary to effect the execution of a proposed Loan Agreement between the County and the Company and the issuance and securing of the Bonds in the manner contemplated by the Act.

3. That the Company is hereby authorized to commence the acquisition, construction, equipping, and furnishing of the Project on behalf of the County. The Bond-Authorizing Ordinance and related proceedings (including the appropriate Trust Indenture) will provide that the proceeds of the Bonds shall be applied to the payment of the costs theretofore and thereafter to be incurred in the acquisition, construction, and equipping of the Project and to the reimbursement of the Company, the County, and/or others who may have advanced the payment of such costs, including the necessary building, equipment, and furnishings.

4. That the County agrees to enter into the appropriate Loan Agreement between the County and the Company and agrees that this Contract commits the County insofar as the laws of the Commonwealth of Kentucky allow, to issue said Bonds for the use and benefit of said Company, to lend the proceeds of the Bonds to the Company, to adopt the appropriate Ordinance authorizing said Bonds and approving the Trust Indenture to secure the Bonds; provided all of the proceedings for the issuance of said Bonds must be approved by Bond Counsel designated below and by the governing body of the County. Since Kentucky law (KRS 103.230) permits the sale of such Bonds to be made at a negotiated interest rate and price without public advertising, if such rate and price are agreeable to the Company, and since the Company desires that such

Bonds be sold in that manner by negotiation, the County agrees to cooperate fully in effecting such negotiated sale.

5. That the County will perform such other acts and adopt such further proceedings as may be reasonably required to effect such financing.

C. UNDERTAKINGS ON THE PART OF THE COMPANY

1. The Company has obtained the services of Rubin & Hays, Suite 300, 209 South Fifth Street, Louisville, Kentucky 40202, as Bond Counsel, to prepare the necessary proceedings for the authorization, issuance, sale, and delivery of the Bonds; provided all fees and charges of such Bond Counsel will be borne by the Company, and/or paid out of the proceeds of the Bonds. Under no circumstances will any part of said fees and expenses be borne by the County.

2. The Company further agrees as follows:

(a) To enter into the Loan Agreement with the County, under the terms of which the Company will agree to borrow the proceeds of the Bonds from the County and will obligate the Company to pay to the County loan payments sufficient to pay the principal of and interest on the Bonds, as and when the same become due and payable, until all of the Bonds have been retired, said instrument to be in form and contain such provisions as shall be satisfactory to the County, the Company and Bond Counsel.

(b) To hold the County harmless from all liability and to reimburse the County for all expenses which the County might incur in the fulfillment of its obligations under this Contract.

(c) To pay all costs of completing the Project, if, and to the extent that the proceeds of the Bonds shall be inadequate.

(d) To complete such further steps, perform such further acts, and adopt such further proceedings as may be required to implement its undertakings.

D. GENERAL PROVISIONS

1. All commitments of the County herein are subject to the condition that nothing contained in this Contract shall result in the County becoming liable for the payment of the principal of or interest on the Bonds, or for the performance of any pledge, mortgage, obligation, or agreement of any kind whatsoever; and none of the Bonds nor any of the County's agreements or obligations shall be construed to constitute an indebtedness of the County, within the meaning of any constitutional or statutory provision whatsoever.

2. All costs of the Project and all fees and expenses of the financing (including all amounts payable to Bond Counsel), will be paid out of the proceeds of the Bonds or separately by the Company.

3. This proposed financing shall not exempt the Company from paying any and all ad valorem, City, State, or County taxes otherwise payable on the Project as the Company will retain title to the Project and will not transfer title to the County.

4. The County and the Company hereby covenant to agree to reasonable provisions and documents concerning each phase of the proposed financing.

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Contract on the date indicated.

COUNTY OF MADISON, KENTUCKY

Dated: _____

By _____
County Judge/Executive

BEREA CONTINUING CARE ASSOCIATES

By _____
Signature

Dated: _____

Title