REGION 6
LOCAL EMERGENCY PLANNING COMMITTEE (LEPC) HANDBOOK

JUNE 2014

This document does not substitute for EPA's regulations, nor is it a regulation itself. It cannot impose legally binding requirements on EPA, states, or the regulated community, and may not apply to a particular situation based upon circumstances. This guidance does not represent final agency action and may change in the future, as appropriate.

EPA Region 6 produced their first Region 6 LEPC Handbook in 1990, and revised it periodically through 2005. We are proud several states have used the information in our publication to assist in producing their own Handbooks. At the same time, we are grateful for information shared from Handbooks developed in Arkansas, Florida, Kansas, Maine, Missouri, Nebraska, Ohio, Oklahoma, Texas, Wyoming, as well as information from the National Association of State Title III Program Officials (NASTTPO), DHS/FEMA, Louisiana State Police, and EPA Headquarters, in this latest edition.

Steve Mason
EPA Region 6
mason.steve@epa.gov

SECTION 1. Introduction 5
SECTION 2. Local Emergency Planning Committees (LEPCs) 8
SECTION 3. Dealing with Chemicals: It's Everybody's Job 18
SECTION 4. Reporting Requirements for Facilities 22
SECTION 5. Emergency Management Plan Development 28
SECTION 6. LEPC Activities 37
SECTION 7. LEPC Lessons Learned 40
SECTION 8. CAMEO Software 46
SECTION 9. EPA Superfund Local Government Reimbursement (LGR) Program 48
SECTION 10. National Association of SARA Title III Program Officials LEPC Guidance Documents 53
SECTION 11. Risk Communication Basics for LEPCs 74
SECTION 12. Facility Hazard Analysis 82
SECTION 13. Energize Your LEPC – Developed by EPA Region 7 84
SECTION 14. Facility Questionnaire 88
APPENDIX A. Crosswalk of Statute / CFR Regulations / USC Citation 93
APPENDIX B. The Emergency Planning and Community Right-to-Know Act (EPCRA) Text 94
APPENDIX C. EPCRA Regulations (40 CFR) 109
APPENDIX D. List of Extremely Hazardous Substance and Chemicals Subject to CAA 112(r) Risk Management Programs 124
APPENDIX E. NIMS Compliance Requirements for Local Emergency Planning Committees (LEPCs) 134
APPENDIX F. Sample LEPC By-Laws 135
APPENDIX G. Sample Response Reimbursement Letter for Responsible Party 141
APPENDIX H. Planning Principles and Perils: A Guide to Effective Planning 142
APPENDIX I. Hazardous Materials Planning Standards and Criteria 144
APPENDIX J. Suggested Profile of the LEPC 146
APPENDIX K. Description of Hazard Analysis 148
APPENDIX L. Conducting a Transportation Commodity Flow Study 151
APPENDIX M. Holding an Effective LEPC Meeting 156
APPENDIX N. "Report Card" for Your Local Emergency Planning Committee 159
APPENDIX O. LEPC Self-Evaluation Check 161
APPENDIX P. LEPC MEMBERSHIP UPDATE FORM 163
APPENDIX Q. Sample Public Notice or News Release 164
APPENDIX R. Examples of LEPC Membership 165
APPENDIX S. Sample Invitation Letter to Request Participation on LEPC 166

ED_002941_00002942-00002

APPENDIX T. Planning Standards Checklist for EPCRA Compliance 167
APPENDIX U. STRUCTURE OF SERCs IN REGION 6 174
APPENDIX V. Sample Facility EPCRA 302 Planning Letter Submitted to SERC / LEPC 175
APPENDIX W. Evacuation versus Shelter-In-Place 176
APPENDIX X. What to Do in a Chemical Emergency 179
APPENDIX Y. Examples of LEPC Mission Statements 181
APPENDIX Z. Region 6 State EPCRA (Right-to-Know) Statutes 184
APPENDIX AA. CRITERIA FOR REVIEW OF HAZARDOUS MATERIALS EMERGENCY PLANS – May, 1988 – National Response Team 240

ED_002941_00002942-00003

ACRONYMS and ABBREVIATIONS

ACC	American Chemistry Council
ALOHA	Areal Locations of Hazardous Atmospheres
ATSDR	Agency for Toxic Substances and Disease Registry
CAA	Clean Air Act
CAER	Community Awareness and Emergency Response
CAMEO	Computer Aided Management of Emergency Operations
CEPP	Chemical Emergency Preparedness and Prevention
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund)
CFATS	Chemical Facility Anti-Terrorism Standards
CFR	Code of Federal Regulations
CRTK	Community Right-to-Know
CWA	Clean Water Act
DHS	Department of Homeland Security (US)
DOE	Department of Energy (US)
DOL	Department of Labor (US)
DOT	Department of Transportation (US)
DPS	Texas Department of Public Safety
DSHS	Texas Department of State Health Services
EAP	Emergency Action Guidelines
EHS	Extremely Hazardous Substance
EMA	Emergency Management Assistance
EMC	Emergency Management Coordinator
EOP	Emergency Operations Plan
EPA	U.S. Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act (SARA Title III)
EPD	Emergency Planning District
ERNS	Emergency Response Notification System
ERT	Emergency Response Team
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act
FOIA	Freedom of Information Act
GDEM	Governor's Division of Emergency Management
HAZMAT	Hazardous Materials
HAZWOPER	Hazardous Waste Operations and Emergency Response
HCS	Hazard Communication Standard
HMEP	Hazardous Materials Emergency Preparedness
ICS	Incident Command System
JFO	Joint Field Office
LEPC	Local Emergency Planning Committee
LEPD	Local Emergency Planning District
MSDS	Materials Safety Data Sheet
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
NFRA	National Fire Protection Association
NIEHS	National Institute for Environmental Health Sciences
NIMS	National Incident Management System
NOAA	National Oceanic and Atmospheric Administration
NRC	National Response Center
NRF	National Response Framework
NRT	National Response Team
OCA	Off-site Consequences Analysis
OEM	Office of Emergency Management (EPA)
OSHA	Occupational Safety and Health Administration
PSM	Process Safety Management
PIO	Public Information Officer
RCRA	Resource Conservation and Recovery Act
RMP	Risk Management Program/Plan
RQ	Reportable Quantity
RRT	Regional Response Team
RTK	Right-to-Know
SARA (Title III)	Superfund Amendments and Reauthorization Act of 1986
SERC	State Emergency Response Commission
SOP	Standard Operating Procedures
TPQ	Threshold Planning Quantity
TRANSCAER	Transportation Community Awareness and Emergency Response
TRI	Toxic Release Inventory

SECTION 1. Introduction

Background

It was December, 1984. "Wake Me Up Before You Go-Go" by the supergroup, Wham!, was the number 1 pop hit in America; the novel "1984" by George Orwell, was supposed to have taken place this year; and "Beverly Hills Cop" was what we were watching at the movies. And in Bhopal, India, a release of methyl isocyanate one night at a Union Carbide facility, exposed over 500,000 victims to the lethal gas.

To prevent similar occurrences in our communities, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of Superfund Amendments and Reauthorization Act (SARA), in 1986 (the full text of EPCRA is contained in Appendix B). The foundation of this landmark legislation was the establishment of local planning bodies to plan for chemical accidents.

This handbook is designed for the 530 Local Emergency Planning Committees (LEPCs) in Region 6.

The role of LEPCs is to form a partnership with local governments and industries as a resource for enhancing hazardous materials preparedness. Local governments are responsible for the integration of hazmat planning and response within their jurisdiction. This includes ensuring the local hazard analysis adequately addresses hazmat incidents; incorporating planning for hazmat incidents into the local emergency plan and annexes; assessing capabilities and developing hazmat response capability using local resources, mutual aid and contractors; training responders; and exercising the plan.

It's necessary for industry to be a part of that planning process to ensure facility plans are compatible with local emergency plans. Every regulated facility is responsible for identifying a facility emergency coordinator; reporting hazmat inventories annually to the LEPC, SERC, and local fire department; providing material safety data sheets (MSDS) or a list of hazardous chemicals; allowing local fire departments to conduct on-site inspection of hazmat facilities ; and providing annual report of toxic chemicals released to EPA and the State.

LEPCs are crucial to local hazardous materials planning and community right-to-know programs. The membership comes from the local area and should be familiar with factors that affect public safety, the environment, and the economy of the community. That expertise is essential as the LEPC advises the writers of the local emergency management plan, so the plan is tailored to the needs of the planning district.

In addition to its formal duties, the LEPC can serve as a focal point in the community for information and discussion about hazardous substance emergency planning, and health and environmental risks. Citizens may expect the LEPC to reply to questions about chemical hazards and risk management actions.

Members of the LEPC represent the various organizations, agencies, departments, facilities, and/or other groups within the district. Each member must realize he or she represents their organization on the LEPC and they are responsible for coordinating information and activities from the LEPC to their organization and for providing accurate feedback from their organization back to the LEPC.

The LEPC has many responsibilities, mandates, and deadlines. The membership should organize to handle these various tasks by utilizing individual efforts, sub-committees, or contracted assistance.

EPCRA establishes requirements for businesses, and federal, state, and local governments regarding emergency planning and CRTK reporting for hazardous chemicals.

EPCRA has four major provisions: Emergency planning (Sections 301-303); Emergency release notification (Section 304); Hazardous chemical storage reporting requirements (Sections 311-312); and the Toxic chemical release inventory Section 313).

The CRTK provisions in EPCRA helped increase awareness about the presence of chemicals in their communities and releases of these chemicals into the environment.

Many state legislatures also enacted Community Right-to-Know (CRTK) laws consistent with federal law. As a result, states and communities, working with industry, are better able to protect public health and the environment. Two of the main goals of this law are to:

1. Provide a basis for each community to develop and tailor a chemical emergency planning and response program to suit the community's needs, and
2. Provide the public with a right-to-know attitude to identify, quantify, locate, and determine the physical and chemical properties of hazardous substances in the community.

The focus of this handbook is EPCRA's first three subtitles, which are:

- Subtitle A: Emergency Planning and Notification (Sections 301-305)
- Subtitle B: Reporting (Sections 311-313)
- Subtitle C: General Provisions (Sections 321-330)

Subtitle A established the framework for state and local emergency planning including the appointment by the Governor of members to a State Emergency Response Commission (SERC) and the SERC's subsequent appointment of members to the LEPCs.

Subtitle A (Section 302) also required the publishing of a list of extremely hazardous substances (EHS). This list is

ED_002941_00002942-00005

provided in 40 CFR 355, Appendices A and B. Facilities having any of the listed EHS in amounts greater than 500 pounds or an established threshold planning quantity (TPQ), whichever was less, were required to provide the LEPC with information to be contained in a comprehensive emergency response plan in the event of a release of the EHS.

Subtitle B provided the mechanism for informing the public of the presence of chemicals in the community. This mechanism is the Hazardous Chemical Inventory Form. The version of the form that all states now use is known as Tier II.

Subtitle C contains provisions that apply to all the information required to be obtained under both Subtitles A and B. Public access is granted to information contained on Tier II Forms and in EPCRA Plans. However, the Subtitle provides confidentiality for trade names and the site-specific location of chemicals if requested by the facility.

EPCRA establishes reporting, planning, and emergency notification requirements to help business, industry, and government reduce the danger hazardous and toxic chemicals pose to the public.

EPCRA's reporting requirements, known as Community Right-To-Know provisions, help to increase the public's knowledge about hazardous chemicals. This is done by requiring reporting by facilities which:

- store hazardous chemical in excess of specified quantities, or
- release toxic chemicals into the environment.

The law also requires that communities develop chemical emergency response plans based on the information reported by facilities.

The plans identify potential hazards, resources (manpower, facilities, and equipment), and methods of using those resources to establish operational procedures for saving lives and protecting property.

What EPCRA did, was to mandate three broad requirements:

- Local communities and states must have a basic understanding of the risks posed by chemicals in their areas and be prepared to safely deal with emergencies involving these chemicals.
- Citizens, health professionals, public interest groups, labor organizations, and the media must have access to the information.
- Industry is responsible for operating, as safely as possible, and gathering specific chemical information and reporting it to requesting agencies.

Although still very important, in the more than twenty years since the passage of EPCRA, it has become apparent community emergency planning involves far more than preparing for hazardous chemical releases.

Natural disasters such as Hurricanes Andrew, Ike, and Katrina and the terrorist bombings in Oklahoma City and at the World Trade Center in New York have made communities realize a broad based "all hazards" approach to emergency planning and preparedness is necessary.

Across the country, many communities have found the membership of their LEPCs originally established to address hazardous materials comprises just the cross-section of the community necessary to address preparedness, response and recovery planning for any hazard.

The United States Government recognized the need for this integrated all-hazards approach to emergency planning in Homeland Presidential Security Directive (HPSD-5) in 2005, which sets as policy the following "To prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies, the United States Government shall establish a single, comprehensive approach to domestic incident management.

The objective of the United States Government is to ensure all levels of government across the Nation have the capability to work efficiently and effectively together, using a national approach to domestic incident management."

This Directive resulted in the development of National Incident Management System (NIMS – See Appendix E for NIMS Compliance for LEPCs), the National Response Plan (NRP), subsequent National Response Framework (NRF), and other frameworks for mitigation, preparedness, planning and recovery.

Why This Handbook?

The EPA, other federal agencies, state agencies, and the chemical industry are cooperating with local communities to make EPCRA and related state laws effective. However, the ultimate responsibility for the success of EPCRA rests with the LEPCs. The LEPCs are the link between citizens, industry, and the government.

Because LEPCs are most familiar with the hazards in their community, and because local citizens tend to be the first responders for chemical emergencies, LEPCs are in the best position to assist local governments in developing plans to respond to hazardous material emergencies. This handbook has been developed to provide LEPCs with the guidance needed to make EPCRA work.

This handbook, while not a regulation, is a guide for LEPCs in their relationship to state and federal agencies. The State Emergency Operations Plan, EPCRA, and the NRF should be used by the LEPC when making decisions regarding hazards in their community. The Federal Register and any other appropriate document can be used to keep informed of any changes that may be made in the future.

Within Region 6, the States of Louisiana, Oklahoma and Texas have developed state-specific LEPC Handbooks. This Handbook can be used in all five states, as we have tried to include elements not covered within the State Handbooks.

ED_002941_00002942-00006

Why EPCRA?

On December 2-3, 1984, a cloud of methyl isocyanate gas, an extremely toxic chemical, escaped from a Union Carbide chemical plant in Bhopal, India.

The toxic substance made its way in and around the shanty towns located near the plant. Estimates vary on the death toll. The official immediate death toll was 2,259. The government of Madhya Pradesh confirmed a total of 3,787 deaths related to the gas release. Others estimate 8,000 died within two weeks and another 8,000 or more have since died from gas-related diseases. A government affidavit in 2006 stated the leak caused 558,125 injuries including 38,478 temporary partial injuries and approximately 3,900 severely and permanently disabling injuries.

Americans asked, "Could it happen here?"

A chemical release in West Virginia shortly after the Bhopal tragedy, though not nearly as serious as Bhopal, made the question even more urgent. Even before 1984, there were groups trained to deal with chemical emergencies at the federal, state, and local levels--the National Response Team (NRT), Regional Response Teams (RRTs), state and local response teams, and others. (The NRT is composed of representatives of 15 federal agencies with responsibilities for emergency preparedness and response. Regional Response Teams consist of regional representatives of the federal agencies on the NRT, as well as state emergency response and preparedness officials.)

But there was no mandatory national program, nor were there comprehensive state and local programs everywhere in the country, to deal with chemical accidents.

The Bhopal tragedy started a chain of events for voluntary chemical preparedness programs:

- EPA established the voluntary Chemical Emergency Preparedness and Prevention (CEPP) to raise state and local awareness of the potential for accidents involving EHSs, and to foster development of state and local emergency plans.
- At the same time, the Chemical Manufacturers Association (CMA) (now the American Chemistry Council),an industry group, also set up a voluntary program called Community Awareness and Emergency Response (CAER). The CAER program encourages plant managers to become more involved in their local community by explaining their plant's operations and participating in local emergency planning.
- Environmental and labor groups became more active in working toward local and national legislation to protect against chemical accidents.
- More than 30 states passed laws (some before Bhopal) giving workers and citizens access to information about hazardous substances in their work places and communities. There are differences in these laws, but most require reporting of toxic chemical releases and the presence of hazardous substances. In some cases, that information is made available to the public.

As mentioned above, EPA established the CEPP program as a voluntary effort to improve planning and response capabilities at the state and local levels. EPA initiated CEPP to determine and develop appropriate prevention initiatives to aid communities trying to implement chemical awareness programs.

EPA prepared the CEPP Interim Guidance manual (also known as "The Blue Book") to assist communities in identifying acutely toxic chemicals and preparing for accidental releases of such chemicals. In addition to developing the list of acutely toxic chemicals, this document provided methods for gathering data and analyzing the extent of chemical usage in an area, encouraged facilities to make public, certain information about hazardous chemicals they use and provided information on the development of plans.

CEPP did not rely on any explicit statutory authority, but on EPA's general mandate to protect human health and the environment. This gave EPA no direct power to enforce the program. The structure within EPA has changed many times over the years and with that, the CEPP office is now part of the EPA Office of Emergency Management (OEM).

With CEPP, CAER, and other efforts in mind, Congress enacted EPCRA. The new law made many of these voluntary programs mandatory. The federal law does not preempt states or local communities from having more stringent or additional requirements. It requires detailed information about the nature of hazardous substances in or near communities be made available to the public. The law also provides stiff penalties for companies that do not comply, and it allows citizens to file lawsuits against companies and government agencies to force them to obey the law.

As stated earlier, EPCRA and SARA Title III are synonymous terms. EPCRA is Title III of SARA, which makes it part of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

CERCLA was the first federal law designed to handle response to releases of chemicals into the environment, but there were many aspects of emergencies involving chemicals CERCLA did not address, which is what caused the EPCRA law to be enacted. For example, CERCLA did not:

- Identify what chemicals facilities had, or what the quantities were.
- Indicate what a facility would do to respond to an incident involving a spill or release of these chemicals, or what the role of the responder would be.
- Create or accommodate for any planning before an incident involving a release of chemicals, at the facility level or at the level of local or state government.
- Identify what chemicals were stored or used in large quantities in a community, or identify or mandate

ED_002941_00002942-00007

training for responders and medical personnel for a response to an incident involving exposure to the chemicals.

CERCLA does require facilities that accidentally spill or release certain chemicals into the environment to report this immediately to the federal government. It requires a cleanup of spills and sets forth who will pay for the cleanup. It also touches on public health issues and determining what effects such spills of chemicals into the environment may have had on citizens.

SECTION 2. Local Emergency Planning Committees (LEPCs)

General

The role of LEPCs is to form a partnership with local governments and industries as a resource for enhancing hazardous materials preparedness. Local governments are responsible for the integration of hazmat planning and response within their jurisdiction.

This includes ensuring the local hazard analysis adequately addresses HAZMAT incidents; incorporating planning for HAZMAT incidents into the local emergency plan and annexes; assessing capabilities and developing hazmat response capability using local resources, mutual aid and contractors; training responders; and exercising the plan.

It is necessary for industry to be a part of that planning process to ensure facility plans are compatible with local emergency plans. Every regulated facility is responsible for identifying a facility emergency coordinator; reporting HAZMAT inventories annually to the LEPC, SERC, and local fire department; providing MSDSs or a list of hazardous chemicals; allowing local fire departments to conduct on-site inspection of HAZMAT facilities; and providing annual report of toxic chemicals released to EPA and the state. LEPCs are crucial to local HAZMAT planning and community right-to-know programs. The membership comes from the local area and should be familiar with factors that affect public safety, the environment, and the economy of the community.

In addition to its formal duties, the LEPC can serve as a focal point in the community for information and discussion about hazardous substance emergency planning, and health and environmental risks. Citizens may expect the LEPC to reply to questions about chemical hazards and risk management actions. Members of the LEPC represent the various organizations, agencies, departments, facilities, and/or other groups within the district. Each member must realize he or she represents their organization on the LEPC, and they are responsible for coordinating information and activities from the LEPC to their organization and for providing accurate feedback from their organization back to the LEPC.

The LEPC has many responsibilities, mandates, and deadlines. The membership should organize to handle these various tasks by utilizing individual efforts, sub-committees, or contracted assistance.

Local government is responsible for planning and response within their jurisdiction for all hazards. Each County/Parish Emergency Management Director (or municipal Emergency Management Director) is responsible for submitting to the county judge/executive, mayor, or chief executive of other local governments, a County Emergency Operations Plan (EOP) that includes adequate provisions or procedures to assess, mitigate, prepare for, respond to, and recover from all disaster or emergency incidents including natural disasters, fire, enemy attacks, threats to public safety and health involving nuclear, chemical, or biological agents or weapons; infrastructure failures; transportation-related emergencies on, over, or through the highways, railways, air, land, and waters in the state; emergencies caused by spill or release of hazardous materials or substances; mass-casualty or mass-fatality emergencies; other technological, biological, etiological, radiological, environmental, industrial, or agricultural hazards; or other disaster or emergency occurrences; or catastrophe; or other causes; and the potential, threatened, or impending occurrence of any of these events.

LEPC members can assist in this effort by reviewing EOPs for their community to ensure the local hazard analysis adequately addresses any possible incidents that may occur in their jurisdiction; incorporating planning for those incidents in the local emergency operations plan; assessing capabilities and developing response capability using local resources, mutual aid and contractors; training responders; and exercising the plan. It is necessary to include all the players to ensure the plan is compatible.

That expertise is essential as the LEPC advises the writers of the local emergency management plan, so the plan is tailored to the needs of the planning district. In addition to its formal duties, the LEPC can serve as a focal point in the community for information and discussion about hazardous substance emergency planning, and health and environmental risks. Citizens may expect the LEPC to reply to questions about chemical hazards and risk management actions.

LEPC Powers and Functions

LEPCs are planning entities and generally cannot commit manpower or resources. In some states, they may be considered a subdivision of the state, in other states they

ED_002941_00002942-00008

may be considered an entity under local jurisdiction, or finally, they may be considered a quasi-authorized entity, separate from state and local entities.

Local governments, which can commit manpower and resources, should work with their LEPC, which can apply its members' expertise, to help their communities be prepared for, mitigate, and respond to disasters and emergencies.

LEPCs help involve citizens in the discussion about what an appropriate emergency response is for each community, where public funds are spent, and whether and how much of those funds should go for additional responder training, training local government officials, or purchasing response equipment.

Primary LEPC Responsibilities

As mentioned in Section 1, EPCRA establishes the LEPC as a forum at the local level for discussions and a focus for action in matters pertaining to hazardous materials planning. LEPCs also help to provide local governments and the public with information about possible chemical hazards in their communities. The major legal responsibilities of LEPCs are listed below. The citations are from EPCRA, Public Law 99-499. Each LEPC:

- Shall review local emergency management plans once a year, or more frequently as circumstances change in the community or as any facility may require (Section 303 (a)).
- Shall make available each MSDS, chemical list described in Section 311(a)(2) or Tier II report, inventory form, and follow-up emergency notice to the general public, consistent with Section 322, during normal working hours at a location designated by the LEPC (Section 324(a)).
- Shall establish procedures for receiving and processing requests from the public for information under Section 324, including Tier II information under Section 312. Such procedures shall include the designation of an official to serve as coordinator for information (Section 301(c)).
- Shall receive from each subject facility the name of a facility representative who will participate in the emergency planning process as a facility emergency coordinator (Section 303(d)).
- Shall be informed by the community emergency coordinator of hazardous chemical releases reported by owners or operators of covered facilities (Section 304(b)(1)(a)).
- Shall be given follow-up emergency information as soon as practical after a release, which requires the owner / operator to submit a notice (Section 304(c)).
- Shall receive from the owner or operator of any facility a MSDS for each such chemical (upon request of the LEPC or fire department), or a list of such chemicals as described (Section 311(a)).
- Shall, upon request by any person, make available an MSDS to the person in accordance with Section 324 (Section 311(a)).
- Shall receive from the owner or operator of each facility an emergency and hazardous chemical inventory form (Section 312(a)).
- Shall respond to a request for Tier II information no later than 45 days after the date of receipt of the request (Section 312(e)).
- May commence a civil action against an owner or operator of a facility for failure to provide information under Section 303(d) or for failure to submit Tier II information under Section 312(e)(1) (Section 32 6(a)(2)(B)).

Additional LEPC Responsibilities

- Shall appoint a Chairperson, an Information Coordinator, and establish rules by which the committee shall function (Section 301 (c)).
- Shall develop procedures, which include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, and response to such comments by the committee. Other considerations the LEPC should make in their procedures (By-Laws) include the following:
  - Term of office
  - Removal from the LEPC
  - Authority of the LEPC
  - Immunity for LEPC Members
- Shall notify the SERC of nominations for changes in the LEPC. The LEPC shall notify the SERC of address changes for LEPC chairpersons.
- Shall evaluate the need for resources necessary to develop, implement, and exercise the emergency management plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources (Section 303(a)).
- Shall annually publish a notice in local newspapers (See Appendix Q for a sample notice) the emergency management response plan, MSDS, follow-up release notifications, and inventory forms have been submitted (Section 324(b)).

Performance of LEPC Duties

Essentially, the LEPC must:

1) Establish procedures for receiving and processing requests for information under EPCRA.
2) Appoint a chair and establish rules for functioning.
3) Prepare and annually review an emergency plan in accordance with 11 U.S.C. 11003 (dealing with hazardous substances).

4) Evaluate resources needed to develop, implement, and exercise the emergency plan, and submitting recommendations to political subdivisions in the community regarding resource needs.
5) Make recommendations to other agencies and entities about the preparation of local, state, and inter-jurisdictional plans.
6) Serve as an advisory committee to the political subdivisions or the inter-jurisdictional planning and service area.

- Maintain Necessary Representation on Committee

An LEPC should work with each political subdivision in the Local Emergency Planning District (LEPD) to maintain committee representation and membership that satisfies statutory requirements (42 U.S.C. 11001(c), discussed above) and maximizes the expertise on the LEPC. The LEPC is responsible for advertising openings on the LEPC and submitting names of candidates for membership to the appropriate principal executive officer(s) within the LEPD for recommendation to the SERC.

- Adopt LEPC Rules of Operation

Each LEPC is required by law to appoint a chair and establish rules by which the committee shall function, including provisions for public notification of committee activities, public advertising of positions available on the committee, public meetings to discuss the emergency plan, public comments, response to the comments, distribution of the emergency plan, and designation of an official to serve as coordinator for information.

In establishing their rules of operation, each LEPC should consider how it will perform its required duties. To assist an LEPC, the SERC can provide example bylaws (see Appendix F) and/or rules of operation adopted by other LEPCs and assistance in adopting appropriate rules of operation.

- All-Hazards Emergency Planning

The LEPC should consider planning for all realistic hazardous situations in the LEPD. To accomplish this task, the LEPC works cooperatively with the political subdivisions in the LEPD. The decision for an LEPC to plan for all hazards must be made with cooperation and support of the local political subdivisions.

Many procedures for warning, evacuation, communications, etc., are similar to procedures used for a hazardous substance plan. Within Region 6, all LEPCs work with the local emergency management structure (County/Parish/Municipality) to include the elements of EPCRA planning within the all-hazards emergency operations plan.

- Make Recommendations to Municipal and State Agencies

LEPCs should "to the extent considered advisable by the committee, make recommendations to political subdivisions, representatives of inter-jurisdictional disaster planning and service areas, and state agencies about the preparation of local, state, and inter-jurisdictional plans."

- Serve as Advisory Committee to Political Subdivisions

Each LEPC should "serve as an advisory committee to the political subdivisions within the emergency planning district or the inter-jurisdictional planning and service area with respect to emergency planning, training, and response."

LEPC Structure

Membership

As prescribed under Section 301 of EPCRA, as a minimum, the LEPC shall include representatives from the following groups or organizations:

- Elected state or local officials.
- Law enforcement, emergency management personnel, firefighting, emergency medical personnel, health officials, local environmental groups, hospital personnel, transportation personnel.
- Broadcast and/or print media (These entities are needed to get the word out about a release or for providing a channel for public education about LEPCs and their goals.).
- Community groups (Community groups, especially environmental activists and advocates, can raise issues and be very effective in representing the public concerns about chemical risks and hazards. It is a good idea to look for participation from community groups that are active in EPCRA issues. The LEPC can help channel their energy and concerns into useful suggestions and honest work. By inviting these groups to the table, LEPCs will find it far easier to achieve the intent of EPCRA.).
- Owners and operators of covered facilities.

A single member may represent more than one of the above groups or organizations. Likewise, a group may be represented by more than one member. Ideally, members should be interested in emergency programs and community right-to-know activities.

Sometimes, it is difficult to get LEPC members from each of these areas. The purpose of the diversity of stakeholders is to get a full handle on the complex job assigned to an LEPC, and each point of view and expertise lends more substance to the planning effort. Each area of interest and expertise represented on the LEPC membership adds to the depth of the LEPC effort.

Members who do not have a background in hazardous materials should be encouraged to attend an awareness course.

Appointments

The LEPC shall appoint a Chairperson and may appoint a vice-Chairperson and other officers. A term of office should be set, but may vary in length according to the needs of each LEPC. The Chairperson can be any LEPC member.

Some LEPCs have chosen political leaders; others have selected chairs from emergency management, environmental groups, industry, or civic organizations. Important factors to consider are the leader's availability, credibility, management skills, commitment to the program, and respect from other LEPC members and the community.

EPCRA requires the LEPC to appoint an Information Coordinator.

The Information Coordinator's job is to process requests from the public for information under Section 324, including Tier II information under Section 312. The Information Coordinator can also assist other committee members.

Positions not required by law, but which have proven useful are: Vice-Chairperson, Secretary-Treasurer, and Chairpersons of standing committees (See Appendix R for sample position descriptions).

Involving individuals who have expertise in areas of LEPC concern as "at large members" can be very effective. Although not official members, they can expand the LEPC knowledge base significantly. These individuals need not be carried on official LEPC membership rosters.

LEPC term limits are not specified in EPCRA. A term of three to five years might be a good starting point.

Since the LEPC will likely meet infrequently, terms of three to five years will give new members time to become accustomed to their roles before the term expires.

The SERC is responsible for maintaining a listing of LEPC memberships.

The SERC provides this information to the public, industry, federal agencies, and other state agencies and states.

It is therefore important that the LEPC membership is current, and the SERC is kept abreast of all membership changes (See Appendix P for information about updating the LEPC membership information).

WHAT IT MEANS TO BE AN LEPC MEMBER

As an LEPC member, you are part of a broad-based collaborative effort to prepare the planning district to respond to emergencies and incidents involving hazardous materials as well as any other hazard, or emergency to which the area may be prone. Although LEPCs were originally established to deal strictly with chemical hazards, since catastrophic events such as 9/11 and Katrina, there has been a transition from the federal down to the local level for LEPCs to become involved in "all-hazard" issues.

An LEPC has many duties and challenges and as a member, the more you understand what an LEPC is and what it is supposed to do, the better for you, the LEPC, and the public it serves.

Unlike many other environmental laws that often set up those with a stake in the outcome of decisions as adversaries, EPCRA encourages those who have a stake in the outcomes to work together to solve problems. Everyone needs to understand planning for emergencies is never a finished task. Dwight Eisenhower put it best when he said, "Planning is more important than the plan."

Typically, LEPCs do not directly respond to emergencies. Rather, LEPCs are tasked with ensuring the broad issues of planning for response to a chemical incident or other disaster has occurred.

LEPCs deal with topics such as identifying in advance, what the different response entities will do during a response, assisting with arranging the appropriate training, equipment, and drills, educating the public and many other pieces of the emergency planning puzzle.

Your role as a successful LEPC member

Your active role as a LEPC member can make a difference in the successful functioning of an LEPC. As an LEPC member, you may be asked to serve on a subcommittee to help coordinate emergency planning activities that are consistent with your particular area of expertise. For example, a hospital official who is a LEPC member may serve on a subcommittee with fire department and county officials that review notification procedures for emergency rooms from emergency hazardous materials incidents.

LEPCs are expected to help coordinate various entities in both pre-incident, planning, and post incident recovery; to review the effectiveness of emergency procedures; and to make recommendations to improve the emergency response system when necessary.

The LEPC is also the designated entity the public turns to in the case of a significant chemical release to answer any questions concerning the response and to address any problems associated with the response.

The effectiveness and success of the LEPC is entirely dependent on its members and the commitment they bring to the LEPC to provide the best planning and response possible.

Having just moved from the age of "accidental release" to the age of "terrorist act," it is more important than ever to take response efforts to a new level with each LEPC member a key component to the LEPC's overall success or failure. LEPC members should try to answer the following questions:

- What are the goals of the LEPC this year?
- Do certain topics require much discussion / research?
- Is it necessary to establish subcommittees – Are there enough people, expertise, and leadership among LEPC members to maintain subcommittees?

ED_002941_00002942-00011

Subcommittees

Dividing the work among subcommittees can facilitate planning and data management. Subcommittees allow members to specialize and help the process move forward more quickly, because the LEPC can work on several projects at one time. The appointment of a subcommittee chairperson may ensure that work progresses efficiently. The number and type of subcommittees an LEPC creates depends solely on the needs of the LEPC and its members.

Subcommittees may be formed and disbanded as occasions arise to accomplish initial and on-going tasks. Subcommittee membership need not be limited to LEPC members. The LEPC is encouraged to invite persons from various sectors of the jurisdiction for input and expertise. In determining the type and number of subcommittees to establish, the LEPC should examine a number of factors regarding current LEPC status and future expectations and goals. On larger LEPCs, subcommittee chairpersons m ay sit on an Executive Committee with the LEPC Chairperson. The LEPC might appoint subcommittees for the following:

1. Gathering and reviewing existing community and facility emergency plans annually.
2. Coordinating emergency response capabilities of LEPC member organizations.
3. Checking existing response equipment in the community.
4. Identifying financial resources.
5. Coordinating with other LEPCs and the SERC.
6. Conducting a hazard analysis (see Section 12 and Appendix K).
7. Managing and providing information for citizens.
8. Providing information to facilities.
9. Promoting public awareness (see Section 6.C) of EPCRA, community chemical hazards.
10. Emergency response expected from the public.
11. Suggested subcommittees for the LEPC are:

- A Planning Subcommittee, whose responsibilities may include:
  - Developing and assisting in the revision of the hazardous material portion of the emergency operations plan.
  - Establishing a vulnerability zone determination methodology,
  - Reviewing the site-specific Hazardous Materials Response Plans submitted for each facility with EHSs.
  - Reviewing the LEPC plan annually.
- A Public Information Subcommittee, whose responsibilities may include:
  - Writing and publishing public notices.
  - Establishing an information retrieval system.
  - Performing citizen / neighborhood outreach to inform them of plans and other information that is available.
- A Training and Exercising Subcommittee, whose responsibilities may include:
  - Conducting a training needs assessment.
  - Requesting training grants to provide needed training.
  - Coordinating training programs.
  - Establishing an exercise schedule.

Once an assessment has been done by the LEPC and basic subcommittees have been formed, the LEPC may desire to create additional subcommittees to respond and expand to the needs / ideas generated from the current LEPC membership. Some examples include:

- An Executive Subcommittee, whose responsibilities may include:
  - Appointing chairpersons for each subcommittee.
  - Developing LEPC long-term goals.
  - Tending to LEPC member needs.
  - Reviewing LEPC membership terms, and soliciting volunteers to fill vacancies.
  - Being familiar with state, local, and federal laws which impact the hazardous material planning process.
  - Developing a work plan with timetables for the other subcommittees.
- A Resource Development Subcommittee, whose responsibilities may include:
  - Researching the community's resources for emergency response (e.g., various types of equipment, facilities, and expertise available).
  - Identifying alternative resources upon which the community may draw in time of emergency or disaster.
  - Updating the local Resource inventory.
  - Identifying other volunteer or in-kind assistance contributions (e.g., private sources such as local business / industry, non-profit agencies, etc.), which may be used for various types of response.
- An Emergency Response Subcommittee, whose responsibilities may include:
  - Developing emergency response procedures for local government personnel that may be utilized in hazardous materials responses.
  - Establishing local ICS procedures to strengthen and coordinate local government emergency response.
- A Finance Subcommittee, whose responsibilities may include:
  - Management of the LEPC budget.
  - Examining and recommending the use of funds.
- A Business / Industry Outreach Subcommittee, whose responsibilities may include:
  - Developing initiatives that will encourage active participation by the community's commercial businesses and industrial facilities.

ED_002941_00002942-00012

Updating reports on Sub-Committee meetings can be made at the regularly scheduled LEPC meetings.

By-laws (See Appendix F for Sample By-Law)

Rules or by-laws for the LEPC should be established as set forth in EPCRA Section 301. The by-laws should include the following minimum provisions:

- Public notification of committee activities.
- Public meetings to discuss the emergency plan.
- Public comment and response to these comments.
- Distribution of the emergency plan.
- Election of officers.

Additional information which may be contained in the LEPC By-laws include:

- Changes to procedures
- Public Comment & Response, Identification of Covered Facilities
- Request/Responding/Withheld Information
- Samples of News Releases, Advertisements
- Letter to Covered Facility and signature by appropriate authority.

Meetings

The frequency of LEPC meetings is not mandated. In order to keep the LEPC functioning effectively, regularly scheduled meetings that address diverse issues and work toward progress on key concerns are essential.

Many LEPCs try to follow the rule of thumb: at a minimum, LEPCs should consider meeting annually for populations of 1,000 or less, semi-annually for populations of 1,000-10,000, quarterly for populations of 10,000-100,000 and monthly/bi-monthly for populations over 100,000.

Circumstances may change frequently, along with key phone numbers and contacts. Regular meetings also offer the opportunity for the LEPC to broaden its role in the community. A meeting of the LEPC may be subject to the State Open Meetings Act. LEPCs should confer with their county attorney on the requirements of Open Meetings, as appropriate. Meetings should follow an organized format. Robert's Rules, or some other guidelines, can be utilized.

A well-planned agenda is an important tool for conducting effective meetings. The agenda should identify specific issues to be discussed at the meeting. If time constraints are a factor, each agenda item may be assigned a time limit. The key to this strategy is adhering to the time limit assigned for each issue. Each committee member should be sent, if feasible, a copy of the agenda one-to-two weeks prior to the scheduled meeting.

Additionally, send any information pertinent to the upcoming meeting along with the agenda. This way, members can prepare themselves for the meeting in advance and meetings should be more productive. Again, LEPC chairpersons should determine how requirements under State Meeting rules apply to LEPC meetings.

Posting of meeting times and locations, oral public comments, and recording of meeting minutes may all be subject to State rules. LEPCs are encouraged to seek topics, speakers, invitations from facilities and response organizations, and opportunities to expand knowledge from a wide variety of sources. While LEPCs should strive to establish a regularly scheduled meeting, LEPCs can also benefit from moving meetings to different locations and times. Some LEPCs meet at industry sites where a regular meeting is held, followed by a tour of the site's operations.

This has proved to be a very successful LEPC activity for those LEPCs who have embraced the "facility visit" approach. Additionally, meetings may be held alternatively during the day and evening to accommodate the needs of committee members and the interested public. This will allow participants that may not be able to attend at one place and time the opportunity to attend at another. Refer to Appendix M (Holding an Effective LEPC Meeting) for additional ideas on how to conduct a more effective meeting for your LEPC.

Administration

LEPCs are challenged with having to administer a program with little or no budget (in many cases), and no fixed facility provided to work from. Despite this, they are required by law to respond to public inquiries about hazardous chemicals in their communities within a reasonable amount of time, no later than 45 days.

They can accomplish this through efficient record keeping and using suitable work space provided by government or industry members on the committee. Co-locating the LEPC with the Emergency Management Agency office, or a local fire or police department, can be beneficial to each organization.

Maintenance of Records

At a minimum, LEPCs should maintain the following:

- Copy of local emergency management plans and pertinent annexes.
- MSDS or information on where to obtain them. • Initial and follow-up hazardous chemical spill release reports.
- Records of LEPC and committee meetings.
- LEPC membership list.
- Tier II reports for covered facilities.

Though not mandated by federal law, retention of records by the LEPC may be subject to the State retention rules. Talk to your city or county attorney concerning record retentions. LEPCs can use the following table as guidance:

ED_002941_00002942-00013

RECORD	1 YR	2 YR	5 YR	Until Superseded	No longer Useful
Local Emergency management plans and pertinent annexes				X	
MSDS or information on where to obtain them				X	
Initial and follow-up hazardous chemical spill release reports			X		
LEPC by-laws				X	
Minutes of LEPC and committee meetings					X
Tier II reports for covered facilities		X			
LEPC membership list	X				

Information Resources

EPCRA has existed for over twenty-five years. During this period, resources available to the LEPCs have increased. Today, assistance is available from all levels of government and from industry in various media formats. The good news is that with the exception of some computer software, most of this information is available free to LEPCs.

Public Inquiries and Awareness

EPCRA requires LEPCs to establish procedures for receiving and processing requests from the public for information under Section 324 within 45 days after date of receipt of the request. This includes responding to requests for Tier II information under Section 312. We have seen that EPCRA was specifically written with the citizens in mind. It is based on the principle the more known about hazardous chemicals in the community, the better prepared the community will be to manage these potential hazards and to improve public safety and health.

According to a national LEPC survey conducted by George Washington University in 1994, and updated in 1999 and 2008, LEPCs generally receive few requests for data submitted by industries. There appears to be minimal public interest in the data generated under EPCRA. Therefore, LEPCs must strive to devise more creative ways to disseminate and interpret information on chemical risk to the public. Section 6.C provides ideas on how to conduct awareness projects for the public.

LEPC Activities

To satisfy the letter of the law, LEPCs need only to do what is listed in the section of this handbook about duties and responsibilities. But there is much more that needs to be done. LEPCs can do much to safeguard the health and welfare of the citizens within their jurisdiction by undertaking projects or activities that enhance the public awareness of, and government's capability to respond to, hazardous materials incidents and natural disasters. More information and suggestions on LEPC activities can be found in Appendices F, L, and Q.

Funding LEPC Activities

When Congress passed EPCRA, it did not provide funding for LEPCs. In 1995, EPA Region 6 conducted a survey to determine the sources of funding used by LEPCs. The amounts of funding ranged from no funding at all to budgets of over $ 100,000. On the average, annual LEPC budgets ranged from $ 3,000 to $ 5,000.

The cost of implementing EPCRA at the LEPC level will vary, depending on the extent of program development, as well as other factors. Communities have found a wide range of solutions to the funding problem. Here are categories of funding used by LEPCs around the Region and country that may be available to LEPCs within Region 6.

Volunteers and Donated Services

Much of the LEPC's work can be accomplished with little or no funding. Members often donate time and other resources. Businesses and agencies have also contributed their services. Some LEPCs have found volunteers can be a great source of manpower. Senior citizens may have the time to help and their knowledge and experience is invaluable. Prison honor inmates have also been enlisted in LEPC activities with good results.

Funding from Local Government

Although LEPCs can accomplish much by using the resources already present in the community, there will still be a need for some funding. Some counties and municipalities have appropriated money from general revenues for this purpose.

City governments may also want to consider the possibility of implementing inspection fees for facilities covered by hazardous material reporting requirements to assist with LEPC expenses.

Grants

There may be limited state and federal funds available to local emergency planners through grant programs. These may be emergency planning grants, preparedness or equipment grants, or even training grants.

The LEPC should contact the State Grants Coordinator through the State Emergency Management Office to determine the availability of these grants. Members of the LEPC may also have access to special grants that can be used for planning and preparedness purposes such as the school district, hospital, or other special population centers.

ED_002941_00002942-00014

Industry Donations (Business Giving Programs)

Business giving programs are different from corporate foundations. Corporate foundations are legally a separate entity from the business. Business giving programs are part of the business and are therefore administered by the business itself.

Business giving programs provide all types of assistance to worthy causes. Assistance may include funds; use of equipment, facilities and vehicles; donation of products; donation of surplus or new equipment; free technical assistance, etc. Generally, 80% of the support provided by business giving programs is "in-kind" support. Industry has contributed these funds in the interest of providing the public with an understanding of the information.

Foundation Grants

There are approximately 16,000 + private foundations in the United States today. When choosing a foundation to submit a proposal for support, research must be done to ensure the need matches with the foundations funding interests and area of support.

Once the foundation has been identified, additional research must be done in order to meet the specific submission requirements of the foundation. There is no question funds provided to the LEPC can be used for different purposes such as computer equipment, training, exercises, or response equipment.

Fees from Industry Filings

Many LEPCs have established a filing fee for Tier II forms with local industries. These fees are established on various scales: number of chemicals reported, fixed price, or other method. LEPCs should check with the State, as well as their own local attorney to understand their authority and ability to establish fees.

Maintain a Healthy LEPC

Research shows the most successful LEPCs have the following attributes:

- Have clearly defined goals
- Train members in the law and know what is expected of them
- Appoint and retain the right people with responsibilities and interests from broad-based community representation (not dominated by one segment).
- Are committed and interested because they:
  - Feel useful and believe they are helping the community.
  - Are given tasks according to interests and expertise.
  - Have been given challenging tasks.
  - Are recognized for their contributions.
  - Have a chance to develop their own skills.
- Have "packaged" themselves to their purpose and value and sold this package to the executive level to gain its support.
- Maintain a relationship with the state agencies responsible for the program, and with their peers in other districts.
- Conduct meetings, which are scheduled at regular, convenient times.
- Adhere to the meeting agenda and are concerned with common interests.
- Have strong leadership with resources (i.e., staff, funding) to maintain a functioning LEPC.

Section 13 provides more ideas on keeping an active LEPC, or re-activating a previously dormant LEPC.

Proven Ideas to Help Keep Committees Active

- Conduct Annual Meeting to Review the Plan. Provide an opportunity for each department to review with the Committee their roles and missions during a response as detailed by the plan. This agenda item allows the committee to meet one of the legislated mandates (annual review of the plan).

- Conduct a Meeting Near the Tier II Report Deadline. This meeting provides an opportunity for facilities to hand deliver Tier II reports to the Committee. Additionally, some Committees utilize this meeting to provide assistance to facilities in completing Tier II forms. This process helps both the Committee and facility in documenting more accurate reports and more importantly it serves as a reminder to smaller industries Tier II forms are due.

- Invite Guest Speakers to Address Topics of Interest. Topics that are perennial favorites are: cost recovery, district HazMat team response considerations, industry safety programs, and clean up contractor considerations. Governmental agencies such as the State of Division of Emergency Management, HazMat Team representatives, EPA, local industry, and cleanup contractor representatives are generally willing to come to present material.

- Conduct an After Action Meeting for Incident Response. Conducting a review of a local response to identify best practices as well as lessons learned is a unique opportunity to incorporate changes to the Plan.

- Conduct a Facility Process Review. The review can serve as an awareness tool for the responder community. Having an industry explain how and why they use hazardous substances can be a beneficial means of improving awareness of the specific facility

and the hazardous substances used. It also familiarizes the responders where the various hazardous substances are used or stored.

- Conduct Review of Any New Regulation of Law. Reviewing news law or regulations recently passed or governing standard organization (NFPA) that impacts the LEPC allows members to keep current.

- Conduct a Review of Available Software. There are many software programs that are available to industry or the emergency response community to help with topics associated with committee activities. CAMEO and Tier II Submit software are all public domain programs that can provide assistance to response agencies and the LEPC.

- Tour Facilities within the Jurisdiction. Touring a regulated facility in the county is an effective way to connect the private and public sectors. It allows LEPC members to become more familiar with the hazardous materials within their jurisdiction. LEPCs can also tour non-regulated facilities, such as the local Humane Society, to review their emergency operations plans and discuss how to coordinate efforts during a disaster.
- Conduct Table-Top Exercises. LEPC meetings are the ideal location to discuss potential disaster scenarios and identify how each agency would coordinate with one another and respond to the disaster. By making the scenarios realistic, the input provided by the LEPC members can be incorporated into the emergency operations plan or hazard specific annexes. Table-top exercises provide an opportunity to identify where additional planning is required. The most effective exercise scenarios are those that are inclusive of all the LEPC members and the organizations they represent.

Tort Liability for LEPC Members

The threat of liability for government service in the context of EPCRA has been a subject about which there has been considerable interest. This report represents a review of the available information about tort liability in the EPCRA context and provides some guidance about how particular states fit within the general tort liability area. Governmental officials and employees, business representatives, and other individuals who are members of a LEPC serve in an environment where the threat of liability suits is ever-present; however, the threat of liability judgments against the individuals involved is relatively remote.

Although the threat of personal and organizational liability exists, several levels of legal determinations must be considered before liability is attached to a particular situation. First, the question of whether negligence by or on behalf of the state exists. If this question is answered in the affirmative, then there is the question of whether state law provides qualified immunity to protect the interests of the state and those who serve it. Often this discretionary, proprietary, private duty or statutory immunity provides extensive protection for official agents of the state who perform their duties within the prescribed limits of their role and responsibility. It must be noted the immunity is only qualified, and may be lost if the member's actions are willful or wanton.

Additionally, the fear of suits and the exposure of the member's personal resources is often addressed by statutory indemnification provisions. These statutes provide for legal representation and the provision of payments for any judgments that are rendered. Indemnification statutes are attempts to encourage public servants, paid and non-paid, to carry out their official obligations without fear of personal financial loss.

Because a particular state law is generally the determining factor on many questions of liability, members of LEPCs should consult legal counsel in their state to discuss their duties, authority, status (as an agent of the state), immunities, and indemnification. Legal counsel can clarify the scope of individual and organizational liability so that local committees and their members can focus their attention on planning for hazardous materials emergencies.

As the result of several well-publicized and disastrous incidents affecting individual health and the environment, accidents involving hazardous materials became real to individuals in the United States and around the world beginning in this decade.

Accidental spills or releases of hazardous materials have the potential for inflicting health and environmental damage and causing significant disruption in communities of all sizes. In recognition of this fact, in 1986 Congress enacted amendments to Superfund legislation (EPCRA) which placed federal emergency planning requirements and community right-to-know provisions on state and local government.

EPCRA requires the Governor of each State to appoint a SERC. Each state commission then designates LEPCs, appoints committee members and supervises and coordinates the activities of the committees. The LEPCs are required to develop an emergency response plan for their community and to identify available resources which can be called on to respond to emergencies involving hazardous materials. The local committees also create a means of maintaining information on hazardous materials which are present in the community, and which EPCRA now requires be reported to them.

Many members of LEPCs are concerned about the liability that may arise from their planning and administrative duties. The scope of liability is determined by both federal and state law. While governmental officials and employees, business representatives, and individuals who are members of a local planning committee may serve in an environment where the threat of liability suits is ever-present, it should be remembered the threat of liability judgments against the individuals involved is relatively remote.

Although the threat of personal and organizational liability exists, state law provides qualified immunity to protect the interests of the state. Discretionary, proprietary, private duty or statutory immunity provides extensive protection for official agents of the state who perform their duties within the prescribed limits of their role and responsibility. The immunity, however is only qualified, and could be lost if the member's actions are willful or wanton.

Finally, the fear of suits and the exposure of the member's personal resources is often addressed by statutory indemnification provisions. These provisions attempt to encourage public servants, paid and non-paid, to carry out their official obligations without fear of personal financial loss. Members of LEPCs should consult legal counsel in their state to discuss their duties, authority, status (as an agent of the state), immunities, and indemnification. Legal counsel can clarify the scope of individual and organizational liability, so local committees and their members can focus their attention on planning for hazardous materials emergencies.

GUIDE FOR DETERMINING LIABILITY

To clarify the scope of liability under state law, members of LEPCs should focus on the following points:

- IS SOVEREIGN IMMUNITY ABOLISHED, RETAINED OR PARTIALLY WAIVED UNDER STATE LAW?

If sovereign immunity is retained, abolished or partially waived, state statutes and court decisions will clarify what immunity exists in specific programs or actions.

- DOES THE STATE HAVE A COMPREHENSIVE TORT LIABILITY STATUTE OR A FEW PROVISIONS OF THE STATE CODE THAT DESCRIBE THE LIABILITY OF GOVERNMENTAL UNITS?

Since in most cases, the SERC and through them, the LEPCs are appointed by the state (Governor), state tort law will determine the extent of liability for the LEPC and its members.

- DOES STATE LAW RECOGNIZE DISCRETIONARY IMMUNITY?

Almost all states recognize immunity for public officials exercising discretionary judgments. New Mexico is the only state that does not recognize discretionary immunity by law.

- DOES THE STATE RECOGNIZE THE DISTINCTION BETWEEN GOVERNMENTAL AND PROPRIETARY ACTIVITIES, AND OFFER IMMUNITY FOR GOVERNMENTAL FUNCTIONS?

States that recognize immunity for governmental functions may specifically include state emergency management programs and activities as governmental functions. Review the introduction to the emergency management statute in your state to see if emergency management is designated as a governmental function.

IMMUNITY IN EMERGENCY MANAGEMENT ACTIVITIES

- What is a disaster?

Many state emergency management acts provide immunity jurisdictions involved in emergency management activities. The immunity provisions apply to hazardous materials emergencies if the defined in the statute to include technological, man-made events.

Most state emergency management statutes define the term “disaster” in the introduction to the statute. Review the introductory section of your state emergency management act to see if disaster includes technological or man-made incidents.

- Immunity Provision

Does the state emergency management act have an immunity provision? If so, is immunity limited to designated disasters or does it apply in any emergency management activity? If your state provides for immunity in any emergency activity, you may be protected in planning or administrative activities, practice exercises, drills or training activities.

- Local Planning Requirements

Most state emergency management acts include provisions requiring local governments to develop and maintain local emergency management plans. A jurisdiction may lose immunity provided in emergencies if they cause harm because a local plan was not developed or maintained. A citizen harmed as a result of a failure to meet a statutory duty to develop and keep current a local emergency management plan, could be the basis of a liability suit.

REGION 6 STATE-SPECIFIC NOTATIONS IN STATE EMERGENCY MANAGEMENT STATUTES

Arkansas:

Title 12 - Law Enforcement, Emergency Management, And Military Affairs, Subtitle 5 - Emergency Management, § 12-75-128 - Emergency responders -- Immunities and exemptions

b) No emergency responder, except in cases of willful misconduct, gross negligence, or bad faith, when complying with or reasonably attempting to comply with this chapter, or any other rule or regulation promulgated pursuant to the provisions of this section or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivision of the state, shall be liable for the death of or injury to persons, or for damage to property, as a result of any such activity.

c) The immunity in subsection (b) of this section shall extend to both emergency responders who are employees and to qualified emergency responders who are volunteers.

ED_002941_00002942-00017

Louisiana:

Chapter 6. The Louisiana Homeland Security and Emergency Assistance and Disaster Act, §735. Immunity of personnel

A.(1) Neither the state nor any political subdivision thereof, nor other agencies, nor, except in case of willful misconduct, the agents' employees or representatives of any of them engaged in any homeland security and emergency preparedness activities, while complying with or attempting to comply with this Chapter or any rule or regulation promulgated pursuant to the provisions of this Chapter shall be liable for the death of or any injury to persons or damage to property as a result of such activity.

New Mexico:

Nothing in the Emergency Management Act shall be construed as a waiver or alteration of the immunity from liability granted under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] or as a waiver of any other immunity or privilege under law.

41-4-4. Granting Immunity from Tort Liability

A. A governmental entity and any public employee while acting within the scope of the public employee's duty are granted immunity from liability for any tort except as waived by the New Mexico Religious Freedom Restoration Act and by Sections 41-4-5 through 41-4-12 NMSA 1978. Waiver of this immunity shall be limited to and governed by the provisions of Sections 41-4-13 through 41-4-25 NMSA 1978, but the waiver of immunity provided in those sections does not waive immunity granted pursuant to the Governmental Immunity Act.

Oklahoma:

63 O.S. 2001, Section 683 Oklahoma Emergency Management Act of 2003, 63 O.S. 2006, Section 683.14 Exemption from civil liability

B. Neither the State of Oklahoma nor any political subdivision thereof nor any officer or employee of the State of Oklahoma or of any political subdivision thereof nor volunteer whose services have been accepted and utilized by an officer or employee of the State of Oklahoma or of any political subdivision thereof for carrying out the functions of this act shall be civilly liable for any loss or injury resulting to any person's company, corporation or other legal entity as a result of any decision, determination, order or action of such employee in the performance of his assigned duties and responsibilities under this act during a stated emergency unless such loss or injury was caused by the gross negligence, willfully and unnecessarily, or by the wanton act of such state officer or employee or volunteer.

Texas:

Government Code -- TITLE 4. Executive Branch, Subtitle B. Law Enforcement and Public Protection

Chapter 418. Emergency Management, Subchapter A. General Provisions

Sec. 418.174. Personal Liability Exemption of Member of Emergency Planning Council or LEPC. A member of the emergency management council established under Section 418.013 or of a LEPC established to develop an emergency management program in accordance with Subchapter E of this chapter is not personally liable for civil damages for an action arising from the performance of the person's duties on the council or committee.

SECTION 3. Dealing with Chemicals: It's Everybody's Job

EPCRA creates a new relationship among government at all levels, business and community leaders, environmental and other public-interest organizations, and individual citizens. For the first time, the law makes citizens full partners in preparing for emergencies and managing chemical risks.

Each of these groups and individuals has an important role in making the program work.

Local communities and states have the basic responsibility for understanding risks posed by chemicals at the local level, for managing those risks, for reducing those risks, and for dealing with emergencies. By developing emergency planning and chemical risk management at the levels of government closest to the community, the law helps to ensure the broadest possible public representation in the decision-making process.

Citizens, health professionals, public-interest and labor organizations, media, and others are working with industry and government to use the information for planning and response at the community level. The new law gives everyone involved access to more of the facts they need to determine what chemicals mean to the public health and safety.

Industry is responsible for operating as safely as possible using the most appropriate techniques and technologies; for gathering information on the chemicals it

ED_002941_00002942-00018

uses, stores, and releases into the environment and providing it to agencies and local communities; and for helping set up procedures to handle chemical emergencies.

Beyond meeting the letter of the law, some industry groups and individual companies are reaching out to their communities by explaining the health hazards involved in using chemicals, by opening communication channels with community groups, and by considering changes in their practices to reduce any potential risks to human health or the environment.

The federal government is responsible for providing national leadership and assistance to states and communities so they will have the tools and expertise they need to receive, assimilate, and analyze all EPCRA data, and to take measures in accidental risk and emissions reduction at the local level.

EPA is also working to ensure industry complies with the law's requirements; the public has access to information on annual toxic chemical releases; and the information is used in various EPA programs to protect the nation's air, water, and soil from pollution. EPA is also working with industry to encourage voluntary reductions in the use and release of hazardous chemicals wherever possible.

A New Relationship

EPCRA has forged a closer, more equal relationship among citizens, health professionals, industry, public-interest organizations, and the local, state, and federal government agencies responsible for emergency planning and response, public health, and environmental protection.

In the past, most of the responsibility for these activities fell to experts in government and industry. To the extent citizens or their representatives participated, it was generally "from the outside looking in," as they did what they could to influence decisions that were, for the most part, out of their hands.

But under the provisions of EPCRA, all of these groups, organizations, and individuals have vital roles to play in making the law work for the benefit of everyone. The law requires facilities to provide information on the presence of hazardous chemicals in communities directly to the people who are most affected, both in terms of exposure to potential risks and the effects of those risks on public health and safety, the environment, jobs, the local economy, property values, and other factors.

These "stakeholders" are also the people who are best able to do something about assessing and managing risks through inspections, enforcement of local codes, reviews of facility performance, and when appropriate, political and economic pressures.

This relationship between EPCRA data and community action can best occur at the local level, through the work of the LEPC. For example, if a local firm has reported the presence of EHSs at its facility, several accidents, substantial quantities of chemicals, and continuing releases of toxic chemicals, a community has the data it needs to seek appropriate corrective action.

In short, the law opens the door to community-based decision-making on chemical hazards for citizens and communities throughout the nation.

This section describes how each of the key groups and organizations--as well as individual citizens can help to fulfill the promise of EPCRA: a safer, healthier environment for the citizens within the community.

Citizens

EPCRA was written specifically the citizen in mind. It is based on the principle that the more citizens know about hazardous chemicals in their community, the better prepared the community will be to manage these potential hazards and to improve public safety and health as well as environmental quality.

By volunteering to work with the LEPC, citizens can play a major role in making the law work.

The law requires industry and others to make available to citizens information on potential chemical hazards and inventories, and on releases of toxic chemicals into the environment. There are several ways citizens can become involved in obtaining and using this information to enhance the quality of life in the community:

- Make sure the LEPC has been formed, attend its meetings, and make sure it is fully representative of the community. Volunteer to serve on it as a citizen representative.
- Make sure the LEPC has obtained all the information it needs from local facilities to prepare a comprehensive emergency response plan.
- Review and comment on the emergency response plan, and ask questions about how procedures set out in the plan affect citizens, or places of business.
- Ask for information from the LEPC or SERC about chemical hazards, inventories, and releases in the community. Make sure both the SERC and LEPC have established procedures to make the information reported under EPCRA readily available to the public. Ask the LEPC what facilities are doing to reduce chemical hazards.
- Use the national TRI data base to obtain information on routine releases of toxic chemicals in the community. The LEPC should have this information. If not, citizens or the LEPC can get the TRI information from a local library, the state, or the EPA Reporting Center in Washington, DC.
- Call or visit facilities in the community and ask if they have complied with the reporting requirements.

Under certain conditions, facilities can withhold the name of a chemical on a "trade secret" basis (other information must be provided). Citizens can challenge trade secret claims by submitting a petition to EPA.

EPCRA also allows citizens to sue the owner or operator of a business or facility who does not comply with the law, as long as that person is not facing a government administrative order or civil action to force compliance. Citizens can also sue EPA, the SERC or the governor of the state if any of them fail to provide information that must be made public under the Act.

Finally, citizens can petition EPA to add or delete chemicals from the list of toxic chemicals that must be reported under the toxic chemical release inventory. Citizens also can petition to change the list of EHSs used for emergency planning and accidental release notification.

EPCRA creates a groundbreaking opportunity for citizens to become directly involved in the decisions that affect their safety and health. The knowledge of and participation in this program can help ensure it accomplishes its goals in the community.

Fire Departments

Because fire departments are often the first to respond to a hazardous chemical emergency, they must be involved in every aspect of the emergency planning and community right-to-know program.

Fire departments will be involved in emergency planning through their participation in the work of LEPCs. It is essential fire departments are involved in their LEPCs not only to ensure they are a part of the system, but because fire departments have important expertise regarding chemical hazards and emergency planning.

The community emergency response plan must include hazardous chemical emergency training for response workers, including firefighters. Federal and state programs are available to train firefighters for dealing with emergencies involving chemical hazards.

In addition to participating in emergency planning and training, fire departments will receive information about hazardous chemicals from facilities within their jurisdiction. This information, in the form of either material safety data sheets (MSDSs) or lists of MSDS chemicals and hazardous chemical inventory forms, will be the same as the data submitted to LEPCs and SERCs.

Having access to this information will help a fire department responding to a chemical emergency know which chemicals, as well as their quantities and locations, to expect at the scene.

The fire department can request additional, more specific information about chemical inventories at a plant, and it can also request an on-site inspection. The plant must provide specific information regarding the location of hazardous chemicals.

In an effort to help fire departments respond to chemical accidents, National Oceanic and Atmospheric Administration (NOAA) worked with the Seattle, Washington, Fire Department to develop the Computer Aided Management of Emergency Operations (CAMEO) System.

EPA has helped NOAA expand this program to meet the information management needs of EPCRA. CAMEO contains response information and recommendations for thousands of commonly transported chemicals; an air dispersion model to assist in evaluating release scenarios and evacuation options; a user-friendly GIS mapping system to graphically display collected information, and several easily adaptable databases and computational programs that address the emergency planning provisions of EPCRA. (See Section 8 for information on the CAMEO Suite of Components).

Public Institutions

Public institutions such as hospitals, schools, and state and local governments are vital to the success of any emergency response plan. Ambulance crews and emergency room personnel must know how to transport and treat victims of exposure to hazardous chemicals.

Schools and public buildings should plan for emergencies and may be called on to serve as emergency shelters for evacuees. Here are some of the other ways public institutions can participate in emergency planning and hazardous chemical risk reduction:

- Representatives of these institutions should be members of the LEPC, or at least learn who represents public institutions on the committee and stay in contact with that person.
- The institutions' officers should inform the LEPC of sensitive facilities within the community (hospitals, schools, and nursing homes) that should be included in the emergency response plan. These officers should know how they will be notified in the event of an accident and be prepared to respond. They should also be familiar with plans for responding to fires and other emergencies involving hazardous chemicals.
- State and local environmental and public health agencies, in addition to participating on SERCs and LEPCs, should take advantage of the new reporting requirements to build an information base about hazardous chemicals in their states and communities. This information can then be used to identify "hot spots," or potential problem areas that warrant further investigation to determine if they represent unacceptable risks to the public health or the environment. The agencies also can use this information to work with industry on voluntary programs to reduce the amounts and risks of hazardous chemicals used or released in the community.

Public institutions may be required to submit reports under the following notification requirements of the Act:

- Emergency Planning: If a public institution has more than a specified amount of an EHS, it must report to the SERC and LEPC.

- Emergency Release Notification: If the institution releases more than a reportable quantity of an EHS, it must immediately report the release to the SERC and LEPC.
- Toxic Chemical Release Reporting: If a public institution operates a manufacturing facility, it could be covered by the toxic chemical release reporting requirements.
- Community Right-to-Know: While chemicals used or stored at a publicly owned facility (State or local) would be exempt under Sections 311 and 312 (OSHA HAZCOMM Standard does not apply to state or local entities), State statutes may still require the facility to report their chemical inventories.

Health Professionals

Doctors, nurses, and other trained medical professionals who serve in government health departments, hospitals, and private practice can be a valuable resource in emergency planning and response. They can also be an important source of information about risks to the public health in their communities. Here are some of the ways these professionals can participate in the EPCRA program:

- They can volunteer to be a health professional representative on the LEPC, or they can offer to assist the LEPC in its work.
- They can participate in programs to train medical personnel to deal with emergencies involving chemical hazards (health professionals should contact their state training officer through their LEPC or SERC for more information on training programs).
- They can screen the information submitted under EPCRA to determine if any acute or chronic health effects may be associated with hazardous substances in their communities.

In a more general sense, health professionals may be approached to provide and interpret information on chemicals available under this law. The law allows health professionals to gain access to chemical identity information, even if it is claimed as trade secret, in three different situations:

- If the chemical identity is needed for the diagnosis and treatment of an exposed person.
- If a medical emergency exists in which the chemical identity is needed to aid in diagnosis or treatment.
- If a health professional who is a local government employee requests a chemical's identity to conduct preventive research studies and to render medical treatment.

Except for medical emergencies, the request for a chemical's identity must be accompanied by a written statement of need and a confidentiality agreement.

Industry and Small Businesses

Hazardous substances are not only found at large chemical plants. They are also used routinely in many small operations--garages, dry cleaners, etc. These chemicals are not necessarily hazardous in normal practice but may be of concern if stored or used improperly, or during an emergency such as a fire.

Most industrial facilities that use chemicals in the United States are probably subject to one or more provisions of EPCRA. Many small businesses are also required to file reports under the law, although several of the provisions either specifically exempt certain small businesses or have reporting thresholds that make them apply only to larger facilities.

A company's initial responsibility under the Act is to determine whether it has reporting and emergency planning obligations, and if so, to meet those obligations. EPA has prepared a number of guidance documents and other materials to help explain the Act's requirements and to assist companies in filing required reports and participating in their communities' planning process.

Industry trade associations also have been active in alerting their member companies to their obligations under EPCRA.

Besides meeting the strict requirements of the law, some chemical manufacturers and other industries have also taken steps to establish a dialogue with citizens and to involve the public as partners in planning for chemical emergencies and managing chemical risks in their communities. Community Awareness and Emergency Response (CAER) implemented by the American Chemistry Council (ACC) is one such program.

EPA encourages all companies affected by EPCRA to consider similar programs. The annual toxic chemical release reporting requirement applies to a smaller universe of facilities than Sections 311 and 312. Therefore, many small businesses will not be subject to this requirement because they do not meet the manufacturing, processing, or use thresholds.

All businesses, however, both manufacturing and non-manufacturing, are required to report under the emergency planning, emergency release notification, and hazardous chemical reporting provisions of the act if they have specified chemicals in amounts greater than the threshold quantities for those chemicals.

Beyond these requirements, some companies--both large and small--have taken steps to improve community safety by reducing their stocks of hazardous substances in heavily populated areas.

Others are attempting to substantially lower the levels of chemicals they release into the environment. In some cases, these "source reduction" or "pollution prevention" programs have as their goal the virtual elimination of hazardous chemical wastes through substitutions, changes in industrial processes, reuse and recycling, and the use of

ED_002941_00002942-00021

new technologies to reduce the quantity and toxicity of hazardous substances before they enter the environment.

To the extent industrial facilities and other businesses pursue these efforts, they will be helping to achieve one of the major objectives of EPCRA: a reduction in the amount of hazardous and toxic chemicals stored in the nation's communities and released into the nation's air, water, and soil.

SECTION 4. Reporting Requirements for Facilities

What Hazardous Materials Are Subject To Regulation

There are five groups of chemicals subject to reporting under EPCRA and RMP under the CAA (112(r)). Some chemicals appear in several of these lists. These lists are:

- Extremely Hazardous Substances (EHSs)
- CERCLA Hazardous Substances
- OSHA Hazardous Chemicals
- Toxic Chemicals
- List of Toxics and Flammables

1. EXTREMELY HAZARDOUS SUBSTANCES (EHSs). This list currently contains 355 chemicals. Because of their extremely toxic properties, these chemicals were chosen to provide an initial focus for chemical emergency planning. The presence of EHSs in quantities above the TPQ or 500 pounds, whichever is greater, requires the submission of a chemical inventory report to the LEPC, local fire department, and SERC. The EHS list, with TPQs and (RQs) are listed in 40 CFR Part 355, Appendices A and B. Because of the hazards they pose, any release of an EHS, greater than the RQ, must be reported immediately to designated federal, state, and local emergency response officials.

2. HAZARDOUS SUBSTANCES. These are listed under the Superfund hazardous waste cleanup Act (Section 103 (a) of CERCLA. The current list contains approximately 720 chemicals (40 CFR Part 302). Release of these chemicals above RQ amounts must be reported immediately to federal, state, and local agencies because they may represent an immediate hazard to the community or environment.

3. HAZARDOUS CHEMICALS. These are not included on a specific list, but are defined by the OSHA Hazard Communication Standard in 29 CFR Section 1910.1200, as chemicals that represent a physical or health hazard. Inventories of these chemicals must be submitted to the SERC, LEPCs, and local fire department if they are present at the facility in quantities of 10,000 pounds or more (higher thresholds for gasoline and diesel fuel) at any one time during the year. These chemicals are reported on March 1 on the Tier II report. MSDSs for these chemicals must also be submitted if requested. EPCRA lists exemptions to inventory reporting for certain foods, household items, products used in routine agricultural operations, and other substances.

4. TOXIC CHEMICALS. There are now more than 700 chemicals or chemical categories identified as toxic chemicals. They were selected by Congress primarily because of their chronic or long-term adverse effects on human health. Estimates of the releases of these chemicals into the environment (air, land, or water) must be reported annually to the SERC and the EPA. The list of toxic chemical is contained in 40 CFR Part 372.

5. RISK MANAGEMENT PLAN LIST OF TOXICS AND FLAMMABLES. There are a total of 140 regulated substances on the list promulgated (77 toxics and 63 flammables). Inventories of these chemicals above established thresholds in a process at a facility trigger the development and submittal of a RMP. The list is found in 40 CFR Part 68.

The EPA has compiled a listing of chemicals subject to reporting entitled Title III List of Lists. This document identifies hazardous substances subject to reporting requirements of EPCRA, CERCLA, and CAA Section 112r. Please note this list does not cover all the hazardous chemicals subject to inventory reporting under federal regulations because OSHA regulates some 70,000 chemicals under its hazard communication standard.

EPCRA: Sections 302, 304, 311, 312

The reports and facility emergency plans required by EPCRA are the cornerstones for much of the planning and work LEPCs undertake. The facility reporting requirements for EPCRA chemical inventories are found generally in Sections 302, 311, and 312 of the statute.

There are different reporting requirements for accidental releases of chemicals, and these are found in Section 304. The latest EPCRA List of Lists, which is available at the EPA EPCRA website, is the most important reference materials for EPCRA. It provides what weights of EHS require the different reporting and/or planning activities,

ED_002941_00002942-00022

notifications, and what amounts trigger the requirements of EPCRA Sections 302, 311, and 312.

Section 302

Any facility that has an EHS present on site in quantity equal to or greater than its TPQ (e.g., refineries, chemical manufacturing facilities, warehouses, Federal facilities, farms) is subject to Section 302 reporting requirements. The definition of "facility" does not apply to transportation under Section 302.

For emergency planning, the Governor or a SERC may designate additional facilities to be subject to EPCRA Section 302 requirements if the designation is made after public notice and opportunity for comment. Through this mechanism, substances that are not EHSs at these facilities may become subject to the emergency planning requirements.

The facility must add together the amount of an EHS present at any one time, regardless of location, number of containers, or method of storage, when comparing the total amount to its TPQ to determine if the facility meets the requirements for emergency planning notification.

Section 304

Under CERCLA 103, any person in charge of a vessel or facility, as soon as he has knowledge of any release of a hazardous substance in a quantity equal to or exceeding the RQ in any 24-hour period, should immediately notify the National Response Center (NRC) at 800-424-8802.

Under Section 304, if a facility has a release of a RQ of any EHS or CERCLA hazardous substance, the owner or operator of the facility shall immediately notify the community emergency coordinator for the LEPC likely to be affected by the release, and the SERC of the state likely to be affected.

The term "immediate" is not defined in EPCRA or CERCLA. However, the legislative history of CERCLA suggests 15 minutes, which applies to both EPCRA and CERCLA.

The legislative history indicates notification "should not exceed 15 minutes after the person in charge has knowledge of the release, and 'immediate notification' requires shorter delays whenever practicable."

If a release of an EPCRA EHS or CERCLA HS occurs during transportation, 911 or the operator must be notified in lieu of the SERC and the community emergency coordinator for the LEPC of any area likely to be affected by the release. The CERCLA release reporting goals and EPCRA release reporting goals differ slightly:

- CERCLA: The release notifications under CERCLA Section 103 help identify releases that warrant a Federal response action.
- EPCRA: In contrast, EPCRA release notification provides state and local governments with information necessary to respond to releases more timely and to inform the community of potential risks. This notification may also provide LEPCs information to modify the emergency plan as required under EPCRA Section 303.

Due to these underlying differences in purpose, release notifications under CERCLA are provided to the NRC, whereas release notifications under EPCRA are provided to the SERC and the community emergency coordinator for the LEPC of any area likely to be affected by the release.

Many of the EHSs are also CERCLA hazardous substances; for these substances, notifications to the NRC and to the SERC (or TERC) and LEPC must be made.

In order for a release of an EPCRA EHS or a release of a CERCLA HS to be reportable, a certain amount must be released within a 24-hour period. This amount, called the "RQ" triggers release notification requirements. Immediate notification is required once the RQ is equaled or exceeded.

The RQ was developed as a quantity that when released, poses potential threat to human health and the environment. The RQs were developed using several primary criteria, including aquatic toxicity, mammalian toxicity, ignitability, reactivity, chronic toxicity, potential carcinogenicity and secondary criteria of biodegradation, hydrolysis and photolysis.

All RQs are listed in pounds, except those for radionuclides, which are in curies (becquerel) — a curie is a unit that measures the rate of radioactive decay.

All releases of the same substance from a single facility in any 24-hour period must be aggregated to determine whether an RQ has been released from a facility into the environment. This applies to both EPCRA and CERCLA.

If after reporting a release, if the same substance or another EHS or CERCLA HS is released or there is a release from another source, the new release must also be reported if the RQ of the substance is equaled or exceeded.

If any chemicals are released and react to form a listed EHS or CERCLA HS, facilities are required to report these releases under Section 304. Although it is straightforward to determine if an RQ is exceeded for the release of pure chemicals, there are special rules that facilities must follow when determining whether releases of mixtures or solutions are reportable.

Releases of mixtures or solutions are subject to the following notification requirements:

- If the quantity of all of the hazardous constituent(s) of the mixture or solution is known, notification is required when an RQ or more of any hazardous constituent is released.
- If the quantity of one or more of the hazardous constituent(s) of the mixture or solution is unknown, notification is required where the total amount of the mixture or solution released equals or exceeds the RQ for the hazardous constituent with the lowest RQ.

ED_002941_00002942-00023

The mixture rule, which was developed under Section 311 of the Clean Water Act (CWA), is applied to releases under EPCRA and CERCLA. Under EPCRA 304, the emergency notification needs to include the following:

- The chemical name.
- An indication of whether it is an EHS.
- 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 or sheltering in place (see Appendix W for a discussion of the merits of evacuation vs. shelter-in-place).
- Name and telephone number of contact person.

A written follow-up notice must be submitted to the SERC and LEPC as soon as practicable after the release. The follow-up notice must update information included in the initial notice and provide information on actual response actions taken and advice regarding medical attention necessary for citizens exposed.

EPA published guidance to define "as soon as practicable" as "30 days." The follow-up must update information included in the initial notice and provide:

- Actions taken to respond and contain the release.
- Advice regarding medical attention necessary for exposed individuals.
- Any known or anticipated acute or chronic health risks associated with the release.

For transportation-related releases, owners and operators are required to make an initial notification by calling 911 or the local operator. Transportation releases do not require written follow-up reports to the SERC and LEPC.

There are exemptions for certain releases under CERCLA and EPCRA that may exempt the release from needing to be reported to the NRC, SERC, and LEPC.

These can include petroleum releases, federally permitted releases, certain radionuclide releases, consumer products, normal applications of pesticides, certain nitrogen oxide and dioxide releases, certain animal wastes, solid particles, and releases to hazardous waste facilities.

Section 311-312

Understanding OSHA Chemicals as Related to EPCRA

Before explaining the requirements of EPCRA Sections 311 and 312, the MSDSs as required by OSHA, must be understood, as well as the role they play in EPCRA. Understanding EPCRA requires understanding the relationship between EPCRA and OSHA because OSHA created the requirements for the development and use of MSDSs.

EPCRA is an unusual approach to law in that it "weds" an environmental law to the OSHA Act, which created OSHA. These OSHA worker protection laws require employers to train and inform workers about chemical hazards present at the work site.

The idea is that, through proper training about chemical hazards at the work site, employers can protect workers. Rather than "reinvent the wheel," EPCRA uses the information in the MSDS to inform responders and planners there are hazardous chemicals at a facility.

EPCRA also "weds" worker health and safety to concerns about chemical safety. If a chemical present at the work site can potentially harm workers, then it stands to reason if large enough quantities of these chemicals or mixtures are somehow released into the environment, there could be harm to those responding, and those nearby, including businesses, communities, and the public.

EPCRA takes the MSDS data presented to workers about chemical hazards at the worksite and uses it as a foundation for the information that will be provided to the public and communities about chemicals present in or adjacent to their neighborhoods.

EPCRA also uses the MSDS data for the foundation of a report that must be prepared and provided in the event of a release of these chemicals. The data about a chemical or mixture of chemicals used at a facility is presented on a MSDS. While there is not a specific format required by OSHA for MSDSs, many follow a common format. OSHA provides guidance for the subjects that must be covered, and having the specific information about EPCRA requirements is not covered at all by OSHA.

There is no single mandatory form for the MSDS, so workers and the public will see different types. What is consistent about MSDSs is the type of information included. An MSDS tells:

- What it is
- The identity of the chemical – what's on its label
- Who makes or sells it.
- Name and address of the company that made the chemical, plus the information and emergency telephone numbers.
- Why it is hazardous.
- Substance's hazardous components, chemical identification number (CAS#), worker exposure limits
- Physical properties: boiling point, melting point, vapor pressure, vapor density, evaporation rate, and solubility in water, specific gravity, normal appearance, and odor.
- How workers can be exposed to the hazard.

ED_002941_00002942-00024

  - Is it absorbed through the skin, is it inhaled, does it have to be ingested (drinking, eating)?
- What are the health hazards?
  - Some effects can show up right away, like skin burns. These are acute effects.
  - Other effects may show up hours after exposure.
  - Chronic exposure can cause effects, like cancer.
  - The MSDS will indicate some of the early warning signs of exposure, symptoms like headache, nausea, rashes, and/or dermatitis.
- What conditions would increase the hazard.
- Keeping incompatible chemicals apart. If they are accidentally combined, they could ignite or explode.
- A combination of temperature and flammability limit at some concentrations, vapors will ignite.
- How to handle the substance safely.
- Special handling precautions – avoid prolonged exposure to vapors, ventilate rooms well.
- What protection to use while working with it.
- Need to wear protective gear?
- Gloves, eye protection, type of respirator.
- Need to wear a mask? What protective gear is needed?
- What to do if a worker is exposed.
- First aid, medical procedures.
- What to do if there is a spill or an emergency.
- Special cleanup procedures, instructions, precautions.

There are certain inherent problems with MSDSs. Not all of the information is presented in the same way on all MSDSs because there is not one specific format. There is often disagreement about the data on the different MSDSs. A review of several different MSDSs for the same chemical can show different information for the same chemical.

THERE ARE OTHER EXCELLENT REFERENCES FOR CHEMICALS YOUR RESPONDERS SHOULD BE AWARE OF AND HAVE IN THEIR POSSESSION.

Under OSHA regulations, employers must maintain an MSDS for any hazardous chemicals stored or used in the work place. Approximately 500,000 products are required to have MSDSs.

Section 311 requires facilities that have MSDSs for chemicals held above certain threshold quantities to submit either copies of their MSDSs or a list of these chemicals to the SERC, LEPC, and local fire department. If the facility owner or operator chooses to submit a list of 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
- Reactive hazard.

Hazard Category Comparison For Reporting Under Sections 311 and 312	
EPA Hazard Categories	• OSHA's Hazard Categories
Fire Hazard	• Flammable / Combustible Liquid / Pyrophoric / Oxidizer
Sudden Release of Pressure	• Explosive / Compressed Gas
Reactive	• Unstable Reactive / Organic Peroxide / Water Reactive
Immediate (Acute) Health Hazard	• Highly Toxic / Toxic / Irritant / Sensitizer / Corrosive Other chemicals with an adverse effect on a target organ generally occurs rapidly as a result of short term exposure and with a short duration
Delayed (Chronic) Health Hazard	• Carcinogens Other hazardous chemicals with an adverse effect on a target organ that generally occurs as a result of long term exposure and with a long duration

If a list is submitted, the facility must submit a copy of the MSDSs for any chemical on the list upon request by the LEPC. Facilities that start using a hazardous chemical or increase the quantity to exceed the thresholds must submit MSDSs or a list of MSDSs chemicals within three months after they become covered.

Facilities must provide a revised MSDS to update the original MSDS or list if significant new information is discovered about the hazardous chemical.

Facilities covered by Section 311 must submit annually an Emergency and Hazardous Chemical Inventory Form to the LEPC, the SERC, and the local fire department as required under Section 312. Facilities provide either a Tier I or Tier II inventory form. The Tier I inventory form includes the following aggregate information for each applicable hazard category:

- An estimate (in ranges) of the maximum amount of hazardous 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 hazardous chemicals in each category.
- The general location of hazardous chemicals in each category. The Tier II inventory form contains basically the same information as the Tier I, but it must list the specific chemicals. Tier II inventory forms provide the following information for each chemical:
  - 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 and the average daily amount.
- A brief description of the manner of storage of the chemical.
- The location of the chemical at the facility.
- An indication of whether the owner elects to withhold location information from disclosure to the public.

Many states now require Tier II inventory form or the state equivalent including electronic reporting under state law. Section 312 information must be submitted on or before March 1 each year for information on chemicals present at the facility in the previous year. The information submitted under Sections 311 and 312 is available to the public from LEPCs and SERCs.

EPCRA Chemicals and Reporting Thresholds			
Chemicals Covered	Section 302 355 Extremely Hazardous Substances	Section 304 >1,000 substances	Sections 311/312 Approximately 500,000 hazardous chemicals
Thresholds	Threshold Planning Quantity 1-10,000 pounds on site at any one time	Reportable quantity, 1-5,000 pounds, released in a 24-hour period	500 pounds or TPQ whichever is less for EHSs; 75,000 gallons for gasoline and 100,000 gallons for diesel in UST at retail station; and 10,000 pounds for all other hazardous chemicals

Reporting Schedules	
Section	
302	One time notification to SERC and LEPC
304	Each time a release above a reportable quantity of an EHS or CERCLA Hazardous Substance occurs to LEPC and SERC
311	One time submission of MSDS or list of hazardous chemicals. An update is required for new chemicals or new information about chemicals already submitted to the SERC, LEPC, and the fire department with jurisdiction over the facility
312	Annually, by March 1 to SERC or TERC, LEPC, and the fire department with jurisdiction over the facility

State Reporting Requirements in Region 6

Within Region 6, each state has established reporting procedures for Sections 304, 311, and 312. A facility or LEPC should refer to each of the state websites to determine the appropriate procedures for reporting within their state.

Arkansas: http://www.adem.arkansas.gov/ADEM/Divisions/Preparedness/HazMatRep/index.aspx.

Arkansas requires submittal of Tier II Submit file via internet or CD.

Louisiana: http://www.lsp.org/rtk.html#rtk.

Louisiana requires submittal of Tier II information with the LA Tier II internet software. Louisiana has repository agreements with many LEPCs, so facilities only have to file with the State for those LEPCs.

New Mexico: http://www.nmdhsem.org/EPCRA.aspx.

New Mexico requires submittal of Tier II Submit file via CD.

Oklahoma: http://www.deq.state.ok.us/LPDnew/saratitleiii/index.htm.

Oklahoma requires submittal of Tier II Submit file via internet. Oklahoma has repository agreements with all LEPCs and fire departments, so facilities only have to file with the State.

Texas: https://www.dshs.state.tx.us/tiertwo/

Texas requires submittal of Tier II Submit file via internet.

Emergency Response Numbers within Region 6	
Arkansas Dept. of Emergency Management	800-322-4012
Louisiana State Police	877-925-6595
New Mexico State Police	505-827-9126
Oklahoma Dept. of Environmental Quality	800-522-0206
Texas Environmental Hotline	800-832-8224
National Response Center	800-424-8802
EPA Region 6	866-372-7745

ED_002941_00002942-00026

The What, Whom, When, Why, and How of Hazardous Materials Reporting Requirements

1. Emergency Preparedness Phase
   a. Identification of Facilities Subject to Special Planning Requirements
      i. What? Facilities must report they are subject to the EPCRA emergency planning requirements if they have certain EHSs listed in 40 CFR 355. Also, facilities subject to special planning must identify who will participate in the planning process as the facility representative and facility emergency coordinator.
      ii. By Whom? Any facility that produces, uses, or stores any of the more than 355 EHSs in quantities greater than the TPQ listed in 40 CFR 355 at any time. Transportation vessels are exempt.
      iii. Why? EPCRA Section 302, 40 CFR 355
      iv. How? Submit an emergency-planning letter (sample provided in Appendix V).
      v. To Whom? The LEPC and the SERC
      vi. By When? Within 60 days after a facility acquires EHSs in a quantity greater than the TPQ.
   b. Annual Chemical Inventory Reporting
      i. What?
         1) EHSs in quantities equal to or greater than the TPQs, or 500 pounds, whichever is less.
         2) Other hazardous chemicals as defined by OSHA in the Hazard Communication Standard (29 CFR 1910.1200) as presenting a physical or health hazard present in quantities of 10,000 pounds or more (higher thresholds apply for certain storage of gasoline and diesel fuel). No specific list of chemicals is cited, but chemicals are covered if the owner/operator must maintain an MSDS on the material under OSHA rules.
      ii. By Whom? Private industry. Certain substances are exempt from reporting. Refer to the Tier II Reporting Instruction.
      iii. Why? Sections 311 & 312 of EPCRA; 40 CFR 370.20
      iv. How? Section 311 - A facility should complete a Tier II form for submission as their EPCRA Section 311 Chemical List Inventory (for first time and update filings). MSDSs for specific substances should only be submitted upon request of the LEPC, the fire department, or SERC. Section 312 - A facility should complete a Tier II form for submission as their EPCRA Section 312 Emergency and Hazardous Chemical Inventory (at the end of the calendar year). Many, if not all states, require a filing fee with this report. Both Section 311 and 312 requirements can be met by filing the Tier II Submit program.
      v. To Whom? They will send the original Tier II report and fee to the SERC with copies to the LEPC and to the local fire department having jurisdiction over the facility.
      vi. By When? According to Section 311, within 90 days of acquiring new hazardous chemicals. Under Section 312, by March 1 of each year for the preceding calendar year. Changes must be submitted within 60 days.
2. Emergency Response Phase
   a. Reportable Spills or Release Reporting by Facilities or Transporters
      i. What? Make notification of any release of an EHS listed in 40 CFR 355 or a hazardous substance listed in 40 CFR 302 which meets or exceeds the threshold reportable quantity (RQ). The owner/operator shall immediately provide the information shown in Figure 1.
      ii. By Whom?
         1) For Fixed Facilities. Applies to any facility that releases a listed hazardous substance that exceeds the RQ for that substance. This applies to the list of 355 EHSs and CERCLA hazardous substances.
         2) For Transportation Accidents. The carrier that releases a listed hazardous substance that exceeds the RQ for that substance. This applies to the list of 355 EHSs and CERCLA hazardous substances.
      iii. Why? Section 304 of EPCRA; 40 CFR 355; CERCLA 40 CFR 302
      iv. To Whom? The facility must report to:
         1) The 24-hour emergency phone number designated by the LEPC
         2) The SERC at its emergency response number
         3) The National Response Center (NRC) at 800-424-8802.

Copies of written follow-up reports must go to the LEPC and the SERC. Note: Keep in mind States in Region 6 may have reporting requirements for releases more stringent than federal requirements.

      v. By When? Facilities must make notifications as soon as they ascertain a spill or release exceeds the RQ for a substance covered by the law. Follow-up notifications must be made as soon as practical after the release (within 15 days) by EPA guidance.)
      vi. How Made? Initial notifications should be made by phone. If the release occurs from a fixed facility, all three agencies listed above must be notified. If the release is transportation related, then a call to 911 or

the telephone operator will suffice for LEPC and SERC notification requirements. The NRC must still be notified by the owner/operator.

3. Specific Release Reporting Requirements for States in Region 6

- Arkansas
- Louisiana: http://www.lsp.org/rtk.html

Refer to "Fixed Site Facility" and "Transportation" Release and Incident Reporting Criteria's

- New Mexico: http://www.nmdhsem.org/EPCRA.aspx
- Oklahoma: http://www.deq.state.ok.us/LPDnew/saratitleiii/spillreporting.htm
- Texas: http://www.tceq.state.tx.us/response/spills.html

SECTION 5. Emergency Management Plan Development

Requirements for the LEPC Emergency Plan

State law

Under the federal EPCRA law, each LEPC was to develop an emergency response plan and review it at least annually thereafter. Section 321 of EPCRA states nothing in EPCRA will preempt any state or local law. Thus, existing State law governs local emergency management planning as long as it meets the requirements of EPCRA.

Prior to the enactment of EPCRA, most State emergency management statutes tasked cities and counties with providing for emergency management planning within their jurisdictions. Local jurisdictions were therefore responsible for integrating the EPCRA planning requirements into existing multi-hazard plans.

Under State guidelines, communities develop emergency management plans to meet the response and recovery needs during emergencies involving natural hazards, national security, and technological and man-made hazards.

Federal Requirements

States in Region 6 have determined planning by local emergency management jurisdictions will meet the requirements of EPCRA if it integrates EPCRA requirements into the existing multi-hazard functional plan.

A basic emergency management plan and the following annexes that meet state planning standards normally will fulfill most of the requirement for local emergency planning under Section 303 of EPCRA:

- Annex __ : Warning
- Annex __ : Shelter and Mass Care
- Annex __ : Evacuation
- Annex __ : Emergency Public Information
- Annex __ : Resource Management
- Annex __ : Hazardous Materials Response

Soon after EPCRA was passed, the NRT published two guidance documents to assist LEPCs and emergency management agencies in developing an emergency response plan for chemical emergencies. NRT-1, "Hazardous Materials Planning Guide," which provided a consensus on planning for hazardous materials in each community, leaning on expertise from several federal agencies with hazardous materials responsibilities.

NRT-1a, "Criteria for Review of Hazardous Materials Emergency Plans," provided a checklist for LEPCs and SERCs to use in their review of the local emergency plan to ensure the plan meets the planning elements spelled out in EPCRA 303. The NRT-1a checklist can be found in Appendix AA.

State / Federal Requirements

The LEPC planning envisioned by EPA and the SERC was intended to complement the existing planning state law already required instead of creating a separate process.

In almost all situations, the LEPC did not develop a separate plan, but assisted local governments in carrying out emergency planning related to hazardous materials. In this capacity, the LEPC is an important ingredient useful to all local responders. LEPCs use facility emergency plans with sufficient quantities of EHSs on-site in promulgating and updating the LEPC regional emergency plan.

LEPCs rely on reporting facilities for the information needed for the Section 303 plan. EPCRA gives LEPCs the power to request reporting facilities to provide relevant information. There is strong language in EPCRA protecting industry trade secrets, as well as language to prevent a facility from trying to avoid its EPCRA reporting obligations with baseless claims of trade secrecy. EPCRA requires each emergency response plan:

(1) Identify facilities and transportation routes of EHSs.
(2) Describe emergency response procedures, on-site and off-site.
(3) Designate a community emergency coordinator and facility coordinator(s) to implement the plan.
(4) Outline emergency notification procedures;
(5) Describe methods for determining the occurrence of a release and the probable affected area and population.

ED_002941_00002942-00028

(6) Describe community and industry emergency equipment, and facilities, and the persons responsible for them.
(7) Outline evacuation plans.
(8) Describe a training program for emergency response personnel (including schedules).
(9) Present methods and schedules for exercising emergency response plans to emergency medical personnel, fire service, and law enforcement agencies.

Identification of facilities and transportation routes of EHS

The LEPC plan will be largely based upon the EHS facilities within its jurisdiction, with attention to the types and quantities of EHS chemicals reported. Facilities with enough EHSs (chlorine, ammonia, sulfuric acid, etc.) on-site to trigger facility emergency plan requirements must coordinate with the LEPC on emergency planning.

The LEPC should compile data from all EHS facilities for use in the emergency plan. The LEPC depends on facility updates to keep abreast of the changes in its jurisdiction. Besides planning for incidents at stationary facilities, the LEPC plan must also take into account where EHSs are being transported.

As an example, a chlorine railcar would be a potential consequence 14 miles on either side of the route by rail of the railcar. It makes sense these EHS chemicals have to arrive at the stationary facilities, and that an incident during transportation is possible. The LEPC must also identify facilities that are contributing to, or subjected to an additional risk due to their proximity to EHS facilities. Facilities with special populations, such as schools, hospitals, or nursing homes, need special planning, due to the challenge of evacuating such a facility.

Response methods procedures

LEPC emergency plans must also include the methods and procedures to be followed by facility owners and operators and by local emergency and medical personnel to respond to any release of such substances.

[NOTE: The term emergency response personnel include the police, and any others who may be asked to assist with an evacuation, shelter-in-place strategy, or notification of the public, including facility personnel.]

LEPCs should consider providing questionnaires to facilities with EHS planning requirements that ask the facility owner/operator to detail the methods, equipment, and procedures that will be used to respond to an incident. The questionnaire (see Section 14 for an example) will also ask about the appropriate training for facility staff.

Local emergency and medical personnel have to make many of their own decisions regarding the response to a specific incident. This must be done with a case-by-case evaluation. An evacuation may be in order, a shelter-in-place strategy, or neither. The release may be confined, or in an area that has no humans at risk. Medical personnel on-scene may conduct a triage and send the injured to a hospital for further treatment, or they may release the injured after treatment at the scene.

Each chemical may have different or delayed effects. An exposure to nitric acid can cause a reaction 24-48 hours later, for example. There may be more than one chemical exposure involved in an incident, and medical personnel may have to seek additional expertise from the Poison Control Center, or other professional advice.

The LEPC plan for emergency and medical personnel to respond to a release has to cover a very broad range of topics and situations and must include considerations for law enforcement personnel and others involved with the incident. If there will be any specificity in a regional emergency plan, it should focus on the chemicals stored in the community as reported in facility plans. It should include consideration for the chemicals shipped or transported through the jurisdiction.

Emergency Coordinators

The LEPC plan must designate a community emergency coordinator as well as facility emergency coordinators, who shall make determinations necessary to implement the plan.

The emergency plan, which includes provisions for opening the EOC, is only implemented for a large-scale incident. Incidents involving the spill or release of chemicals occur often and the potential for harm in most of these incidents is minimal. Someone has to be able to make the decision as to whether there is sufficient threat to implement the LEPC emergency plan. Usually, implementation of the plan is done through the On-scene Incident Commander who, through the ICS, will determine needs for additional resources required to effectively respond to the incident.

Notification Procedures

The LEPC plan must include procedures providing reliable, effective, and timely notification by the facility emergency coordinator and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred.

The immediate and follow-up notifications required under EPCRA Section 304 are also a consideration. CERCLA Section 103, which deals with un-permitted releases to the environment of hazardous substances, is a consideration here because CERCLA Section 103 is closely linked to EPCRA. The EPCRA List of Lists is the reference document for CERCLA 103 and EPCRA 304 notification thresholds (see columns on RQs). There is some overlap, but many of the chemicals listed under CERCLA 103 are not on the EPCRA 304 list.

This can cause confusion and non-compliance with the notification requirements. But in essence, if a facility has a reportable quantity release (RQ) of a CERCLA 103

ED_002941_00002942-00029

hazardous substance or EPCRA 302 EHS, the notification requirements are the same.

Immediate Notification

If there is a release at a facility that exceeds the RQ, the facility owner/operator is required to notify immediately, (by such means as telephone, radio, or in person) the community emergency coordinator for the LEPC for any area likely to be affected by the release and to the State.

The responsible party is responsible for notifying ALL LEPCs that could be impacted by the release. This includes Tribal jurisdictions as well. For all releases to the environment that are at/above the reportable quantity, the NRC MUST be immediately notified. IMMEDIATE is defined as being within 15 minutes, according to the legislative history of EPCRA. The NRC number is 800-424-8802.

The immediate notification must include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results:

a) The chemical name or identity of any substance involved in the release.
b) An indication of whether the substance is on the EHS list.
c) An estimate of the quantity released into the environment.
d) The time and duration of the release.
e) The medium into which the release occurred.
f) Any known or anticipated acute or chronic health risks associated with the emergency and where appropriate, advice regarding medical attention for exposed individuals.
g) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).
h) The name and telephone number of the persons to be contacted for further information.

Follow-Up Notification

As soon as practicable after a release that required the immediate notification, the facility owner or operator must provide a written follow-up emergency notice (or notices, as more information becomes available) setting forth and updating the information required under the immediate notification, and must also include the following additional information:

a) Actions taken to respond to and contain the release.
b) Any known or anticipated acute or chronic health risks associated with the release.
c) Where appropriate, advice regarding medical attention necessary for exposed individuals.

These notification and reporting requirements are not just for fixed or stationary facilities. There is no transportation exemption in this section of law, so a tanker truck of chemicals that leaks or releases to the environment must make these notifications. The difference is the transportation report can be made through any means available (e.g., local telephone operator).

Notification to the Public

Each LEPC must publish annually a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under the requirements of EPCRA. The notice must also state follow-up emergency notices may subsequently be issued.

This published notice shall announce to members of the public interested in the review of emergency response plan, material safety data sheet, toxic release inventory form, or follow-up notice may do so at a designated location at a specific date and time.

See Appendix Q (Sample Public Notice or News Release) for an example of the notice the LEPC should issue in the local newspaper each year.

Methods for Determining the Occurrence of a Release

As noted in the discussion of EPCRA Section 302, a facility owner/operator with enough of an EHS on-site to trigger planning requirements must develop a method of determining a release has occurred. Facility owners and operators are not always aware of this, may not comply with notification requirements even when aware a release has occurred, or an incident involving a release may occur when facility staff are not present. The facility may not be aware enough of an EHS or CERCLA 103 chemical has been released to warrant the proper notifications.

So there must be alternate methods of determining the occurrence of a release. Sometimes, the local fire department will learn of a release when a phone call from a facility's neighbors is received. This could start as a tip regarding strong or strange chemical odors.

Or there might be a cloud that hugs the ground, or a colorful plume emanating from a facility that tips the fire department or the police. LEPCs must think through the responsibility to promulgate an emergency plan and the different ways to determine a release has occurred.

In our changed world since September 11, 2001, we cannot over-emphasize the words "SITUATIONAL AWARENESS." It's truly up to each of us to be aware of what is around us and just how important vigilance is in our everyday lives.

Area of Population Likely to be Affected by a Release

Each stationary facility requiring an emergency plan due to its quantities of Section 302 EHS chemicals, should

include an analysis of the area or population likely to be affected by such a release. This data can be requested by the LEPC.

But the data from the EHS facility should be reviewed to make certain the facility is correct in its calculations. CAMEO and Areal Locations of Hazardous Atmospheres (ALOHA) software are available to the LEPC as well as any interested party and may be used to assist in planning tasks.

Many facilities will have inventories of EHS that even when released or spilled, will not produce off-site consequences. To create, maintain, and update its regional emergency plan, the LEPC must have a good idea of the population potentially at risk from the accidental release of EHS chemicals within their jurisdiction.

Planning for the evacuation or sheltering of 1,000 people is far different from tens, or hundreds of thousands of people. There is also a group of facilities that must report and plan under EPCRA 302, but also have such large quantities of chemicals they fall into the Risk Management Program as dictated and regulated by CAA Section 112r. This should be an important consideration for LEPCs as the off-site consequence of a release may be miles away from the facility.

Determining if Emergency Responders Have the Proper Resources

LEPCs are also tasked with evaluating the need for resources necessary to develop, implement, and exercise the regional emergency plan, and must make recommendations with respect to additional resources that may be required and the means for providing such additional resources. It isn't enough to develop an emergency plan, the LEPC must evaluate whether the resources are available locally to actually respond to a chemical emergency. In the example of the wastewater treatment facility, it wouldn't be sufficient to change the emergency plan to language that has an evacuation and shelter-in-place notification for the 14-mile area of off-site consequence.

The LEPC would have to make a determination responders had the manpower and equipment, as well as training, to handle such an incident.

Responding to an incident from a catastrophic release from a one-ton cylinder of chlorine, with an impact 1.3 miles downwind is very different from responding to an incident from a catastrophic release from a railcar of chlorine, with an impact 14 miles downwind. In this example, once the LEPC determines the resources are available for such a response, then it would exercise the emergency plan.

Of course, staging a full-scale drill would be very expensive and resource intensive. The tabletop drills are a far less costly alternative and can help in thinking out the specifics and particulars of responding to such an incident.

Again, using this example, if the LEPC determines there are not sufficient resources to prepare and respond to an incident involving the railcar of chlorine, the LEPC must make recommendations with respect to additional resources that may be required and the means for providing such additional resources. In other words, shortfalls in equipment, staffing, training, notification systems, and many more resource questions may surface. Finding the additional resources may involve acquiring more equipment from facilities with large amounts of EHS chemicals that must develop facility emergency plans under EPCRA.

Finding the additional resources might involve a political decision, such as having the wastewater facility purchase the additional equipment needed. Use of Department of Homeland Security Grants to meet local/regional needs based on LEPC hazards analysis and risk analysis is certainly within the purview of EPCRA.

Emergency Equipment and Facilities

The LEPC regional emergency plan must include an updated description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

This includes emergency equipment and government operated facilities as well as the emergency equipment at facilities with EHS chemicals. In the event of a large-scale incident, for example, SCBA at both government-operated facilities and at private facilities might be needed for an evacuation and response. Responders must know at the time of the incident how to obtain these resources and who they must contact to get them.

Training Programs for Responders and Medical Personnel

The LEPC emergency plan must include training programs, including schedules for training of local emergency response and medical personnel.

This should also include responders from law enforcement, public works, public health, and anyone that could be "first-on-scene" at a chemical incident.

Methods and Schedules for Exercising the Emergency Plan

The LEPC emergency plan must include methods and schedules for exercising the plan. Realistic scenarios should be practiced, expecting to identify problems or areas of improvement. Identifying such areas documents the need for additional planning and training and will often assist in justifying and obtaining needed resources.

Reviewing and Testing the LEPC Plan

The LEPC Plan must be reviewed at least once a year. Most planners agree that the best way to review a plan is to test, or exercise, it. There is no requirement the plan must be tested each year; however, the LEPC is required to establish a schedule for testing the plan. Obviously, the level of review and testing is dependent on many factors, including cost, personnel required, and other reasons. Each

ED_002941_00002942-00031

LEPC should determine the level of review and exercise to be conducted each year. In testing the Plan, the following areas should be evaluated to represent the minimum requirements for qualification for an exercise. In addition, jurisdictions are encouraged to test areas particular to their part of the plan. Examine the Plan for the Following Items:

1. Does the Plan attempt to reduce the unknowns in a situation?
2. Are the aims of the Plan to evoke appropriate actions?
3. Is the Plan based on what is likely to happen?
4. Are the basic tenets of the Plan based on knowledge of actual problems and solutions or upon myths and misconceptions?
5. Does the Plan operate as a continuous process?
6. Does the Plan focus on principles rather than concrete details?
7. Does the Plan overcome resistance in thinking and established methods of response because of limitations of money, time, and effort?
8. What parts of the Plan are educational activities?

More information on the planning process and the required elements can be found in Appendices I (Planning Principles and Perils), J (Criteria for Review of Hazardous Materials Emergency Plans), and K (Hazardous Materials Planning Standards and Criteria).

Hazards Analysis

As you will notice while reading the criteria for developing a hazardous materials response annex, some of your key tasks will be to identify facilities containing EHSs or to identify transportation routes likely to be used for the transportation of these substances. An analysis will help you identify these and other hazards in your community. Planner should try to answer the following questions:

- What are the major chemical hazards in our community?
- How can we determine the area or population likely to be affected by a release?
- What emergency response resources (personnel and equipment) does our community need?
- What kind of training do local responders need?
- How can we help prevent chemical accidents?

The hazard analysis process can assist local planners in answering these and other important planning questions. See Appendix K for more details on conducting an analysis.

LEPC Tasks for Effective Planning

For the LEPC emergency plan to be effective, a two-phased approach to planning should be considered:

- The LEPC should coordinate its planning with the existing emergency operations plan or emergency action guideline (EOP/EAG), maintained by the local emergency management coordinator. Of the required elements, those common to all sites should be included in the emergency operations plan.
- The LEPC should develop off-site procedures for each facility to address the required elements that are unique to each site and work with the local emergency management coordinator to make sure all the off-site community response plans developed by the LEPC are incorporated into the local jurisdiction's EOP.

1. Develop a good working relationship between the LEPC and the local fire departments. The local fire departments may have similar planning responsibilities under the state right-to-know programs or state HAZWOPER regulations. They have already collected much information about the hazards in the community. Also, fire departments are the first responders to a hazardous material incident and therefore must be involved in emergency response planning.
2. Develop a good working relationship between the LEPC and local emergency management coordinators. Each county and many larger cities and townships have appointed local emergency coordinators. The LEPC should get to know these persons. A list of these coordinators is available through the State Emergency Management programs. The local coordinator is responsible for the development of the local EOP/EAG, the document the LEPC needs to build on in accomplishing its planning responsibilities. As with the fire departments, the local coordinator has already compiled much information about the hazards in the community and its response procedures.
3. Develop a good working relationship with the facility coordinators. Each site for which planning is necessary is required to name a facility coordinator. These persons are obligated to participate in the planning process. They must inform the LEPC of any changes occurring at the facility and provide information the LEPC requests as necessary for developing and implementing the plan.
4. Research community capabilities. The LEPC should become familiar with existing resources and expertise. This should entail gathering information from the emergency coordinator, health department, fire departments, industrial groups, hospitals, and EMS organizations and response teams. The LEPC needs to have a good background on local hazardous material incident response capabilities before the development of procedures can take place. In addition, the LEPC

should be informed on the response procedures of state and federal agencies.

5. Review and update, if necessary, the community resource manual. One of the elements listed in the law requires the LEPC identify resources that can be used during a hazardous material response. The local emergency coordinator is responsible for maintaining a comprehensive list of resources in the community. The LEPC should review this list and make suggestions for revision, as necessary, based on the information it acquired in step 4. Section 303 (b) requires the LEPC evaluate the need for additional resources and recommend a means for providing them. The resource list also should contain sources of other resources which are not necessarily available in the community, but which may be needed during a response. Once the LEPC has reviewed the list, it must decide the best place to list resources. It can simply reference the list itself if it feels it adequately meets the responders' needs. Or, the LEPC may choose to insert a specific list in each site-specific procedure it develops.
6. Review and suggest revisions, if necessary, to the Emergency Operations Plan/Emergency Action Guideline. The local emergency coordinator should have developed a hazardous material incident response section within the community's EOP/EAG. The LEPC should review this Section, suggest revisions as necessary based on the information it has collected in step 4, above, and develop the site-specific procedures based on the general policy found in the EOP/EAG. It is the local emergency management coordinator's responsibility to keep the EOP/EAG up to date.
7. Obtain a copy of the Section 302 list. Section 302 requires facilities with one or more "EHSs" above a certain threshold amount make notification to the SERC. All facilities, farms, private industry, and sites owned by public agencies are subject to this requirement. These are the facilities the LEPC must develop off-site procedures.
8. Compile existing information about facilities. The first thing the LEPC should do when beginning to plan is to acquire information from fire departments. Each department may have already performed a survey of each site in the community at which chemicals are located. The LEPC should look at these surveys and sort out the Section 302 sites from them. They should use this information for preliminary planning. The LEPC will need additional information and it can develop its own survey form to send to facilities in the community, as described in step 9. The Section 302 sites are priority planning sites for which LEPC planning is required.
9. Develop facility questionnaires. Develop a form asking for the additional information needed. The LEPC may choose to develop one form for industrial sites and another for farms. The LEPC has the authority to request any information it feels it needs in accomplishing its duties. This is authorized in EPCRA, Section 303 (d). An example of a facility questionnaire is located in Section 14.
10. Send out questionnaires. Get a list of 302 facilities from your SERC, or identify the facilities using the Tier II forms.
11. Perform community outreach. Use the fire department surveys and other knowledge of the community to identify other facilities that may be subject to the reporting requirements. The LEPC can make direct contact with these facilities. A facility may be unaware of its reporting requirements under Section 302.
12. Perform a vulnerability analysis for each facility. Using the survey and other information, figure the worst case incident scenario that could occur at each of these facilities. Or, instead of using a worst case scenario, the LEPC may want to modify its results based on the "most probable" incident.
13. Rank the facilities. Once a vulnerability analysis has been completed for each facility, the LEPC should study the results and rank the facilities, starting with the one that poses the greatest risk to public health and safety. One facility should be identified as the first facility for which an off-site site-specific procedure will be developed. Ideally, this should be the facility that poses the greatest threat.
14. Call together the relevant parties. At a minimum, the fire chief of the jurisdiction in which the site is located, the facility emergency coordinator, and the local emergency management coordinator should be involved with the LEPC in developing the site-specific procedure. These are the primary response entities. They must have input into developing the plan since they will be the ones who must use it. It is also recommended to call on the chief executive of the jurisdiction to brief this person on the project and gain support.
15. Divide up the work. The LEPC can write the emergency plan, appendices, and SOPs in a number of ways. It can divide into subcommittees and assign a portion of the project to each subcommittee. Or, it can assign one person to write it with review and revision privileges retained by the LEPC. In any case, it must be remembered that the intent of the law is to have all parties who may be involved in the response participate in the writing of the plan.

16. Coordinate with other jurisdictions. The law requires procedures be included for coordinating with other jurisdictions when the vulnerability zone overlaps jurisdictional boundaries. The LEPC may need to hold a joint meeting with another LEPC to work out issues of direction and control, protective action orders, etc.
17. Exercise the plan. It is recommended the LEPC hold an exercise after it has developed a draft of the procedures. Often problems with a plan do not become apparent until its use is attempted. An exercise tests the plan. Any exercise should be coordinated with the local emergency manager. An exercise can be simple or complex.
18. Get the plan signed. Follow your state procedures on having the plan review, accepted, and/or approved at the state level. Normally, the highest official of the county/parish or municipality will be the signatory to the plan. However, several other persons also need to sign off on the plan. This signifies these persons have participated in the plan's development and, more importantly, they agree with the procedures contained within it.
19. Incorporate comments. The LEPC should consider the comments as helpful tools for improving its plan. It can incorporate changes to the plan immediately or wait until the next annual review cycle.
20. Annually review and update the plan. Section 303 (a) of EPCRA requires the LEPC to review its plans annually, or more frequently if changes occur. It is recommended, at a minimum, the LEPC annually review the emergency plan/ EAGs that incorporate the LEPC's off-site community response plan(s). This should be done with the emergency management coordinator, fire chief, and facility emergency coordinator. Suggested changes can then be included in the EOP/EAG and/or the site-specific procedures.
21. Give Public Notice and Hold a Meeting. The LEPC must publish a notice stating the plan is available for review. It must also hold a meeting to discuss the plan. The LEPC should incorporate comments from these sources into the plan.

Guiding Principles for Chemical Accident Prevention, Preparedness and Response

In October 2008, the Organization for Economic Cooperation and Development (OECD)—an intergovernmental organization bringing together 30 countries—published Guidance on Developing Safety Performance Indicators related to Chemical Accident Prevention, Preparedness and Response.

The Guidance is divided into two documents, one directed to industry and the second directed at government agencies ("Public Authorities") and the Public (in particular, communities located near hazardous installations).

This Guidance was designed to allow each of the target groups to analyze their own actions, to determine whether the steps they have taken to support chemical safety are, in fact, achieving their objectives and to help identify where further action is needed. The Guidance is a companion to the OECD Guiding Principles on Chemical Accident Prevention, Preparedness and Response (2nd ed, 2003). The 2008 Guidance contains two primary components:

- a step-by-step approach for developing SPI Programs
- a menu of possible indicators which addresses the range of issues involved with chemical accident prevention, preparedness, and response.

Below is the Golden Principles from the Guiding Principle Documents. More information about OECD and the principles of determining performance indicators is contained In Section 10 of this handbook.

"GOLDEN RULES"

The "Golden Rules" objective is to highlight the roles and responsibilities of the major stakeholders with respect to chemical accident prevention, preparedness and response. It should be recognized that these points represent best practice, i.e., objectives to be achieved over time. They are not one-time actions but rather require ongoing vigilance.

ROLE OF ALL STAKEHOLDERS

- **Make chemical risk reduction and accident prevention, as well as preparedness and response, priorities in order to protect health, the environment and property.** While the risks of accidents are in communities where hazardous installations are located, requiring efforts by stakeholders at the local level, there are also responsibilities for stakeholders at national and international levels.

- **Communicate and co-operate with other stakeholders on all aspects of accident prevention, preparedness and response.** Communication and co-operation should be based on a policy of openness, as well as the shared objective of reducing the likelihood of accidents and mitigating the adverse affects of any accidents that occur. One important aspect is that the potentially affected public should receive information needed to support prevention and preparedness objectives, and should have the opportunity to participate in decision-making related to hazardous installations, as appropriate.

ROLE OF INDUSTRY (including management and labour)

Management

- **Know the hazards and risks at installations where there are hazardous substances.** All enterprises that produce, use, store, or otherwise handle hazardous substances should undertake, in co-operation with other stakeholders, the hazard identification and risk assessment(s) needed for a complete understanding of the risks to employees, the public, the environment and property in the event of an accident. Hazard identification and risk assessments should be undertaken from the earliest stages of design and construction, throughout operation and maintenance, and should address the possibilities of human or technological failures, as well as releases resulting from natural disasters or deliberate acts (such as terrorism, sabotage, vandalism, or theft). Such assessments should be repeated periodically and whenever there are significant modifications to the installation.

- **Promote a "safety culture" that is known and accepted throughout the enterprise.** The safety culture, reflected in an enterprise's Safety Policy, consists of both an attitude that safety is a priority (e.g., accidents are preventable) and an appropriate infrastructure (e.g., policies and procedures). To be effective, a safety culture requires visible top-level commitment to safety, and the support and participation of all employees and their representatives.

- **Establish safety management systems and monitor/review their implementation.** Safety management systems for hazardous installations include using appropriate technology and processes, as well as establishing an effective organizational structure (e.g., operational procedures and practices, effective education and training programs, appropriate levels of well-trained staff, and allocation of necessary resources). These all contribute to the reduction of hazards and risks. In order to ensure the adequacy of safety management systems, it is critical to have appropriate review schemes to monitor the systems (including policies, procedures and practices).

- **Utilize "inherently safer technology" principles in designing and operating hazardous installations.** This should help reduce the likelihood of accidents and minimize the consequences of accidents that occur. For example, installations should take into account the following, to the extent that they would reduce risks: minimizing to the extent practicable the quantity of hazardous substances used; replacing hazardous substances with less hazardous ones; reducing operating pressures and/or temperatures; improving inventory control; and using simpler processes. This could be complemented by the use of back-up systems.

- **Be especially diligent in managing change.** Any significant changes (including changes in process technology, staffing, and procedures), as well as maintenance/repairs, start-up and shut-down operations, increase the risk of an accident. It is therefore particularly important to be aware of this and to take appropriate safety measures when significant changes are planned - before they are implemented.

- **Prepare for any accidents that might occur.** It is important to recognize that it is not possible to totally eliminate the risk of an accident. Therefore, it is critical to have appropriate preparedness planning in order to minimize the likelihood and extent of any adverse effects on health, the environment or property. This includes both on-site preparedness planning and contributing to off-site planning (including provision of information to the potentially affected public).

- **Assist others to carry out their respective roles and responsibilities.** To this end, management should co-operate with all employees and representatives, public authorities, local communities and other members of the public. In addition, management should strive to assist other enterprises (including suppliers and customers) to meet appropriate safety standards. For example, producers of hazardous substances should implement an effective Product Stewardship program.

- **Seek continuous improvement.** Although it is not possible to eliminate all accidents at hazardous installations, the goal should be to find improvements in technology, management systems, and skills in order to move closer toward the objective of zero accidents. In this regard, management should seek to learn from past experiences with accidents and near-misses, both within their own enterprises and at other enterprises.

Labor

- **Act in accordance with the enterprise's safety culture, safety procedures, and training.** In their role, labor should comply with all the procedures and practices relating to accident prevention, preparedness and response, in accordance with the training and instructions given by their employer. All employees should report to their supervisor any situation they believe could present a significant risk.

- **Make every effort to be informed, and to provide information and feedback to management.** It is important for all employees to understand the risks where they work, and to understand how to avoid creating or increasing the risk. Labor should provide

feedback to management concerning safety-related matters. Labor and representatives should work together with management in the development and implementation of safety management systems, including procedures for ensuring adequate education and training/retraining of employees. Labor and representatives should have the opportunity to participate in monitoring and investigations by the employer, or by the competent authority, in connection with measures aimed at preventing, preparing, and responding to chemical accidents.

- **Be proactive in helping to inform and educate your community.** Fully informed and involved employees at a hazardous installation can act as important safety ambassadors within their community.

ROLE OF PUBLIC AUTHORITIES

- **Seek to develop, enforce and continuously improve policies, regulations, and practices.** It is important for public authorities to establish policies, regulations and practices, and have mechanisms in place to ensure their enforcement. Public authorities should also regularly review and update, as appropriate, policies, regulations, and practices. In this regard, public authorities should keep informed of, and take into account, relevant developments. These include changes in technology, business practices, and levels of risks in their communities, as well as experience in implementing existing laws and accident case histories. Public authorities should involve other stakeholders in the review and updating process.

- **Provide leadership to motivate all stakeholders to fulfil their roles and responsibilities.** Within their own sphere of responsibility and influence, all relevant public authorities should seek to motivate other stakeholders to recognize the importance of accident prevention, preparedness and response, and to take the appropriate steps to minimize the risks of accidents and to mitigate the effects of any accidents that occur. In this regard, the authorities should establish and enforce appropriate regulatory regimes, promote voluntary initiatives, and establish mechanisms to facilitate education and information exchange.

- **Monitor the industry to help ensure that risks are properly addressed.** Public authorities should establish mechanisms for monitoring hazardous installations to help ensure that all relevant laws and regulations are being followed, and that the elements of a safety management system are in place and are functioning properly, taking into account the nature of the risks at the installations (including the possibilities of deliberate releases). Public authorities can also take these opportunities to share experience with relevant employees of the installations.

- **Help ensure that there is effective communication and co-operation among stakeholders**. Information is a critical component of safety programs. Public authorities have an important role in ensuring that appropriate information is provided to, and received by, all relevant stakeholders. Public authorities have a special role in facilitating education of the public concerning chemical risks in their community so that members of the public are reassured that safety measures are in place, that they understand what to do in the event of an accident, and that they can effectively participate in relevant decision-making processes. Public authorities are also in a position to facilitate the sharing of experience (within and across borders).

- **Promote inter-agency coordination**. Chemical accident prevention, preparedness and response is, by nature, an inter-disciplinary activity involving authorities in different sectors and at different levels. To help ensure effective prevention, preparedness and response, and efficient use of resources, it is important that all relevant agencies coordinate their activities.

- **Know the risks within your sphere of responsibility, and plan appropriately.** Public authorities are responsible for off-site emergency planning, taking into account the relevant onsite plans. This should be done in co-ordination with other stakeholders. In addition, public authorities should ensure that the resources necessary for response (e.g., expertise, information, equipment, medical facilities, finances) are available.

- **Mitigate the effects of accidents through appropriate response measures.** Public authorities (often at the local level) have primary responsibility for ensuring response to accidents that have off-site consequences, to help reduce deaths and injuries, and to protect the environment and property.

- **Establish appropriate and coherent land-use planning policies and arrangements.** Land-use planning (i.e., establishing and implementing general zoning as well as specific siting of installations) can help to ensure installations are appropriately located, with respect to protection of health, environment and property, in an accident. Land-use planning policies and arrangements can also prevent the inappropriate placing of new developments near hazardous installations (e.g., to avoid the construction of new residential, commercial or public buildings within certain distances of hazardous installations). Land-use planning policies and arrangements should also control inappropriate changes to existing installations (e.g., new facilities or processes within the installation). They

should also allow for the possibility of requiring changes to existing installations and buildings to meet current safety standards.

ROLE OF OTHER STAKEHOLDERS (e.g., communities/public)

- **Be aware of the risks in your community and know what to do in the event of an accident.** Members of communities near hazardous installations, and others that might be affected in the event of an accident, should make sure that they understand the risks they face and what to do in the event of an accident to mitigate possible adverse effects on health, the environment and property (e.g., understand the warning signals, and what actions are appropriate). This involves reading and maintaining information they receive, sharing information with others in their household, and seeking information as appropriate.

- **Participate in decision-making relating to hazardous installations.** The laws in many communities provide opportunities for members of the public to participate in decision-making related to hazardous installations, for example by commenting on proposed regulations or zoning decisions, or providing input for procedures concerning licensing or siting of specific installations. Members of the public should take advantage of these opportunities to present the perspective of the community. They should work towards ensuring that such opportunities exist, whenever appropriate, and that the public has the information necessary for effective participation.

- **Cooperate with local authorities, and industry, in emergency planning and response.** Representatives of the community should take advantage of opportunities to provide input into the emergency planning process, both with respect to on-site and off-site plans. In addition, members of the public should co-operate with any tests or exercises of emergency plans, following directions and providing feedback, as appropriate.

SECTION 6. LEPC Activities

In Section 2: LEPC Responsibilities, it was spelled out the duties each LEPC is required to fulfill under EPCRA. These include development, review, and exercising of a plan, collecting information from facilities on chemicals and their hazards, and establishing procedures for allowing the public to review that information.

To satisfy the letter of the law, LEPCs need only to do what is listed in the Section of this book about duties and responsibilities. But there is much more that needs to be done. There are other activities LEPCs across Region 6, as well as nationally, have undertaken, often at little cost, but all with large benefits.

Often, LEPCs are the only conduit in the county for issues concerning hazardous materials, which are a focal point for county or municipal government, industry, schools, and concerned citizens. Indeed, LEPCs can do much to safeguard the health and welfare of the citizens within their jurisdiction by undertaking projects or activities that enhance the public awareness of, and government's capability to respond to, hazardous materials incidents.

Some of these projects may be eligible for partial or full funding under the Hazardous Materials Emergency Preparedness (HMEP) federal grant program, or eligible for other grants through the emergency management programs or other entity represented on the LEPC, such as schools, hospitals, or law enforcement. The list of activities noted below is not all-inclusive, but does provide examples of useful projects.

Administrative Activities

The LEPC must accomplish the following tasks annually:

- Review and update of county response plan
- Publish location during working hours where information may be reviewed by the public in accordance with the Right-to-Know Act. You can use both broadcast and print media for this
- Update Tier II report file.

Other things that are not required, but should be done annually include:

- Training review: What training was accomplished during the year? What needs to be done next year?
- Outreach review: Was the LEPC activities advertised to the community through events and other avenues?
- Money review: Have all funds been expended that LEPC received through grants, fees, donations, etc.? If not, how do we use the remainder? What do we need for next year or future years?
- Membership review: Are there changes needed in the membership, such as fewer or more members? Does anyone have a conflict that will prevent service for the coming year? Do we need to nominate any new members?

ED_002941_00002942-00037

Federal law has mandated much for the LEPC to do. Many of these tasks require the development of something new and they impose a significant work load until the task is accomplished.

However, once the mandates have been accomplished, the work load is significantly reduced, except for some maintenance, modifications, etc.

So what does the LEPC do on an ongoing basis, after the federal mandates are met? First, federal mandates changes.

One duty the LEPC has on an ongoing basis is to keep abreast of any changes in the federal law and any changes there may be to the mandates. Perhaps the best way to accomplish this is to maintain regular contact with the SERC through your state agency, which administers the EPCRA/LEPC program.

The SERC should also keep the LEPCs appraised of any changes that may occur in the federal law or mandates, but some redundancy here doesn't hurt. There are several other things the LEPC needs to consider on an ongoing basis:

- Regular meetings
  - Why are we meeting?
  - What do we need to accomplish in planning, training, exercising, and outreach?
  - What is the agenda?
  - How often should we hold meetings?
- Funding Sources
  - Donations / Grants / Fees
  - County/Parish/Municipal Funding
- Funding – How to use it wisely! Here a few examples of how LEPCs may use their funding resources.
  - Computers and related equipment.
  - Communications equipment that can be used in emergency response such as cellular phones and pagers.
  - Protective clothing for first responders.
  - Local outreach efforts.
  - Special exercises and training efforts.
  - Reimbursements to LEPC members for administrative expenses incurred in their service.
- Outreach
  - How much are we doing?
  - Are we doing enough?
  - Do we need to do more? If so, how?
  - Are we considering both the public and business and industry?
  - Is there an opportunity in the school system for outreach?
  - Are we reaching everyone in the community, including environmental justice communities?
  - Some examples of basics you could cover include:
    - The purpose of the program – to protect lives, property, and the environment.
    - Facility and emergency planning requirements.
    - Reporting requirements, such as EHS Notification and Tier II reporting.
    - Right-to-Know Act provisions.
    - Spill reporting requirements and contacts.
    - The requirements for those who store EHS to designate a liaison for the facility to coordinate planning with the Local Emergency Manager.
- Compliance
  - Are there any facilities that are not reporting?
  - Have we tried to identify any facilities?
  - If we know of any facilities, have we notified the SERC?
  - How can we better identity facilities liable for reporting?

In addition to these topics, items to consider include:

- Have all the EHS facilities and EHS transportation routes in the county been identified? Are they in the response plan?
- Have planning meetings been scheduled each year to plan the upcoming activities as well as to develop a schedule and agenda for other meetings.
- The EPCRA program and fee system (if applicable) must be presented in the best light to facility owner/operators. The LEPC can play a major role in this ongoing effort. Consider having an EPCRA open house to allow for business people to know committee members and better understand how the program works and what it is designed to accomplish. In addition, consider scheduling a tour of selected business facilities for the LEPC, in order to promote understanding and enhance partnerships.
- Consider publishing a newsletter that would go to all reporting facilities and appropriate public officials to include area schools.
- Each LEPC should review its operation annually, making sure all the basic requirements are covered. If planning meetings are conducted each year to ensure all requirements for the LEPC are reviewed and scheduled for completion.

These suggestions are some things to consider for meeting agenda topics and ongoing LEPC activities. Each LEPC will have different needs and will be at different stages of development. The list is not intended to be all inclusive or complete; rather, it is a point from which to start. Discard topics you don't need, use those you do, and as many as you think appropriate.

Preparedness Activities

- LEPC sponsored exercises: This is a good way to satisfy your state emergency management exercise

requirements while enhancing county or municipal HAZMAT response capability. Does not need to have a complex scenario to be challenging, but should have elements of hazardous materials release with injuries to exercise the alert & warning; fire and HAZMAT Team rescue, law enforcement, emergency medical, county communications, county Emergency Operations Center (EOC) operations, evacuation, sheltering, and Incident Command capabilities.

- Hazards/Vulnerability/Capability Assessments: In its simplest form, a way to find out what/where the HAZMAT threat is, who is vulnerable, and what capability exists to respond to an incident. Can be simple or complicated.
  - Hazard/Threat Assessment: Includes industry required to report under EPCRA, propane facilities, fuel storage facilities, and other fixed facilities. Also, don't forget about the transportation-related threats traveling along roads, railroads, and airports, map them, determine the most hazardous chemical at that location, and what the worst case effects are of a release of that chemical. Then draw a circle around that facility equal to a distance of chemical "plume" or other effect like a blast shock wave would travel.
  - Vulnerability Assessment: Look at census data, or other information available to the county to determine who and what lies within the vulnerability circles noted above. Look for any special cases like schools, nursing homes, shopping malls, as well as neighborhood populations.
  - Capability Assessment: Look at what the jurisdiction has to respond to the threat. Look at not only county or municipal assets like fire departments, HAZMAT teams, law enforcement, emergency medical and other government-owned assets, but also private industry may have response teams or equipment. Plot these on the map. Once plotting is completed, look at the whole picture to find any deficiencies in response. Then make plans to fix them.
- Hazardous Materials Commodity Flow Studies: This is conducted to provide detailed information about the type, quantity, volume, and spatial distribution of hazardous materials traveling through your counties by over-the-road carriers and rail. This information is necessary for detailed emergency planning activities by your county's emergency response agencies. The first step is determining the routes to be studied. This can be a major highway through the county or city, or a heavily traveled road through high population areas. Railroad studies are also useful since they often run through high population areas and city centers. The second is developing a survey schedule that covers different days of the week, different times of day, and over a long enough period of time to ensure peak and off-peak traffic. The third is to determine what methods you will use to collect the information. You can have teams stationed in safe locations along the routes using binoculars for placard surveys. You can also use vehicle and train car manifest surveys. The fourth is conducting the survey and compiling the information showing types of materials, the quantities, frequencies, and locations of where they are transported. A vulnerability study could also be done along your routes to determine populations at risk. Appendix L (Conducting a Transportation Commodity Flow Study) provides much more information on this process.
- Facility Surveys/Visits: A program whereby LEPC members visit facilities to determine here hazardous materials are located at the site, what response capabilities the facility has, access and exit routes, etc. Particularly useful if members of the fire department servicing that facility participate. Also, facility surveys are useful to determine if that facility must report under EPCRA requirements.
- Hazardous Materials Reference Libraries: Acquire and maintain reference materials concerning hazardous materials. Such publications as the NIOSH series of chemical guides handbooks of reactive chemicals, chemical desk references, National Fire Protection Association (NFPA) HAZMAT Response Guidebooks, as well as many others provide an excellent reference source for your fire departments or HazMat team.
- Establish and Maintain a Tier II Data Base: One requirement is LEPCs must be the repository for chemical reports (Tier II forms) provided by facilities. A useful project is to keep an automated database of these reports, which enables quick reference in case of an incident. The CAMEO (Computer-Aided Management of Emergency Operations) software can be downloaded, which you can use to upload the forms for planning and preparedness purposes.
- LEPC Sponsored HazMat Training for Responders: Grant-funded training conducted for fire, EMS, law enforcement, and other response forces. Courses consist of Awareness, Operations, and Technician level training, incident command, chemistry, confined space rescue, and many more. Contact your State emergency management training officer for more information. Nothing provides a quicker HAZMAT payoff than training your response force.

Outreach and Information Activities

Public outreach activities equal preparedness activities in importance. The public also has responsibilities in hazmat response and they need to be reminded of what those responsibilities are, as well as informed of county/municipal hazmat capabilities. EPCRA does not require LEPCs to conduct public awareness programs, but it is desirable LEPCs carry out such programs. The public needs to be

aware of the dangers of hazardous substances and the procedures they need to follow in the event of orders for in-place sheltering or evacuation. Special facilities, such as nursing homes, schools, hospitals, public buildings, senior citizen housing, and others should also be included in emergency planning and awareness programs. If not already in place, the LEPC should develop a program to provide for public education regarding hazardous substances.

An important part of this program is the identification and education of administrators of special needs facilities and with the education of special populations living independently, such as the hearing-impaired, the blind, and the homebound. This program could include web-based presentations, A/V programs, notices, pamphlets, and other materials to insure residents are aware of actions that may be required in the event of a hazardous materials incident.

The LEPC should sponsor speakers for schools, clubs, and other groups, provide web-based, written or audio-visual programs, assist local response organizations with their public information programs, and coordinate other activities to take advantage of ongoing special events in the area. The following are some outreach ideas:

- Brochures, Pamphlets and Videos: About what HAZMAT is, and the public's response to it, evacuation versus sheltering in place, HazMat around the house, including providing information to non-English speaking populations, etc.
- Public Displays: Very useful during fairs and other community events. HAZMAT team demonstrations, equipment demonstrations and displays. Also a good way to distribute pamphlets and brochures.
- Public Service Announcements (PSAs): Newspaper stories, and PSAs about LEPC activities, 'HAZMAT Tip of the Week" radio spots, etc.
- LEPC Web Sites: An excellent tool to inform the web-browsing public. Can post LEPC meeting minutes, by-laws, brochure information, and links to other HAZMAT oriented sites. You could also provide industry with a useful tool by having a portion of the site dedicated to electronic filing of required EPCRA reports.
- HAZMAT Amnesty Day: Where the public can turn in HAZMAT or have it picked up. You might be surprised what the public has in their garages or storage buildings. Pesticides, explosives, and other dangerous substances are not unusual.
- Group Presentations: Presentations to industry, civic organizations, school assemblies, nursing home staff, and many others are an excellent way of communicating the LEPC mission.
- Ideas for Outreach: The following are outreach ideas arranged by potential cost to the LEPC:
  - EXPENSIVE
    - Newspaper ads (other than classified section)
    - Video programs
    - Brochures-multi-page, high quality paper, in color; Public Service Announcements (PSAs) professionally written and taped
    - Posters; Telephone book insert
    - Billboard messages (or on structures such as oil storage tanks)
    - School/day care educational programs (team effort by teachers & outside trainers)
    - Hazardous Materials Amnesty Day
  - LOW COST
    - Pamphlets – two-sided, in black & white
    - Classified newspaper advertisements; Fact sheets / Brochures
    - Utility bill inserts
    - Informational booth at county fair; Supermarket bag inserts
    - Bumper stickers / Peel-off stickers
    - Website
    - Slideshow / Computer diskette/CD
    - Gas pump "toppers" (announcement on the pumps)
  - FREE
    - Newspaper press releases, articles, and special features; newsletter articles in publications of other organizations.
    - School poster contest; Photo display (using donated photos).
    - PSAs on radio or TV (other than by a professional production company).
    - Speeches to other community organizations.
    - Radio, TV interviews, talk programs, community bulletin boards.
    - Slide shows, video tapes, DVDs, or films that are borrowed.
    - Store window displays
    - Anything donated, or distributed free.

SECTION 7. LEPC Lessons Learned

In the past several years, EPA Region 6, in coordination with our five State partners, have conducted emergency response reviews ("hotwashes") after hazardous materials incidents. These reviews provide EPA an opportunity to hear from the local community on lessons learned during the emergency response. Each of the

lessons learned can be used by other LEPCs around the Region in their planning and preparedness process.

1. Over and over again during our reviews of local emergency response efforts, personnel from response agencies have responded professionally, efficiently, and with a sincere desire to protect the citizens within their community. However, many times this had led to responders being exposed to chemicals unnecessarily, either due to lack of proper PPE, appropriate training, or other factors. All local response organizations should review their response protocols based on the following:

   > "Response teams to a scene have a responsibility to first protect themselves and their team members. If you or your team is injured, not only are the number of victims increased, but the response is now delayed, resulting in additional resource utilization. This delay due to your inability to keep yourself and your team protected could cost other victims their lives.

   DISASTER Paradigm: Safety and Security
   Don't be selfish - protect yourself. Scene priorities:
   - Protect yourself and your team members first
   - Protect the public
   - Protect the patient
   - Protect the environment

   Once your team has safely entered the scene, focus on protecting the public ..." A first responder's first duty at any incident is safety. When a responder is injured, they become part of the problem, instead of a solution to the problem. Never should any responder unnecessarily risk their lives. Individuals become emergency responders to help other individuals and their communities, safely and efficiently.

2. An explosion at a waste fuel facility in Oklahoma resulted in one employee being critically injured, including being covered with the burning waste fuel. Air transport was requested to take the victim to a burn center; however, the transport would not load the patient on the helicopter, as he was still contaminated from the waste fuel. This resulted in a delay in delivering the victim to a medical facility. Emergency planners need to coordinate with facilities in the community on decontamination procedures for specific chemicals, as well as review transportation protocols of emergency medical services.

3. During an ammonia release from an open valve in Texas, which resulted in severe skin burns to one responder, the tactics used in the response were too aggressive, given the circumstances of the incident. The responding firefighters were trained to the Operations Level, under HAZWOPER. Under HAZWOPER, those responders trained to Operations Level are trained to take "defensive actions rather than try to stop the release. Their function is to contain a release from a safe distance, keep it from spreading, and prevent exposure..." Agencies should ensure personnel are responding appropriate to the level of training received. Additionally, response personnel should be familiarized with procedures on how to handle PPE after it has been in a contaminated environment. The community plan should address decontamination protocols. Other recommendations:
   - Local response organizations need to expand ongoing discussions with the facilities in the area on what resources they may have to offer during a release off the facility site, as well as specialized training offered at the facility that fire department personnel may be able to attend.
   - Response organizations should ensure consistency and consensus on the level of PPE to be used by entry teams. The Safety Officer, with input from response personnel, should determine the proper level to be used by all entry personnel.

4. A fire and sulfuric acid release in Arkansas led to the evacuation of a neighborhood next to the facility. While the initial evacuation to the municipal airport went well, local officials lost track of the evacuees and their location, causing the evacuees to stay outside in the elements for an extended period of time. If an evacuation is warranted, local officials should have personnel stay with the evacuees to ensure their needs are met. Other recommendations:
   - During a large response, drawing national attention, various agencies may feel the need to provide information to the local a national press. However, it is easy for inconsistent messages to be issued, if the information is not coordinated. When numerous agencies are involved in the public dissemination of information, a joint information center (JIC) should be established so all information is coordinated.
   - The Police Department established a perimeter around the emergency in a timely manner, and did an excellent job of controlling traffic in/out of the area. During the second morning of the response, numerous persons who were not related to the response, were found near or in the hot zone. Security should be provided with more detailed information on who is needed within the protected area, and that non-essential personnel not be allowed to interfere with response operations.
   - During a large response, a command post should be established that is centralized and manned continuously, so that all incoming personnel and other logistical support will have a gathering point. This provides a central area for individuals to receive assignments, report and gather information, eliminates duplication of efforts and reduces confusion at the incident and in the EOC.

5. A fire inside a trailer in far north Texas, carrying a pesticide product, prompted local officials to decide an evacuation of the downwind areas. Following their community plan, response officials contacted the local cable provider to deliver an emergency alert system notice to the community, only to find out the system was inoperative, and had been in that status for several months. Planning officials should ensure the various systems they count on to notify the public (including television, radio, and other outlets) are fully functional at all times, and should be notified if those systems are not operable for any reason. Other recommendation:
   - With a smaller volunteer fire department roster, safety during a large event is highly dependent on the number of people on the ground. Steps should be taken to increase the number of personnel on the fire department staff and that mutual aid agreements be updated and signed with the surrounding jurisdictions.

6. In several of the responses (primarily in smaller jurisdictions), the fire chief is having to serve many functions at once, including Incident Commander, PIO, safety officer, and other logistic/administrative duties. It is recognized resources are at a premium during an emergency, but pre-planning should be done to provide assistance to the IC, so that smaller administrative duties can be handled by other staff. With the expansion of social media, the IC should consider bringing in a PIO or other staff which can deal with all media outlets, including social media.

7. During a sawmill fire in central Texas involving chemically-treated materials, the main highway was shut down by the highway patrol, as the smoke plume was laying down over the roadway. As the constituents of the plume were unknown, and visibility was compromised, this decision was very prudent. However, several residents and other nonresponse individuals were able to circumvent road blocks and drive through the plume. Response personnel must ensure that all non-response personnel are prevented from driving through restricted areas. This not only protects the citizens, but provides better safety for response personnel. Other recommendations:
   - While the safety officer did a good job controlling entry into the hot zone, in a few instances, personnel entering the hot zone did so without the proper PPE. The H&S Officer has the responsibility to ensure that all responders entering the hot zone do so in a safe manner. The H&S Officer should disallow response efforts by anyone (state, federal, or private responders) who do not follow safe protocols during the response.
   - Some of the local responders indicated they felt intimidated by the federal and state officials (concerned officials might take over response and exclude local personnel). When federal or state officials respond to an emergency, all parties should meet immediately to ensure all officials understand their role, including assistance to local officials by federal/state personnel, in ensuring a safe and effective response. Neither State or Federal officials desire "taking over an incident."

8. While there is a responsible party for many of the responses local agencies respond, there are instances where a responsible party is not known, or the responsible party does not have the resources to reimburse the local organization for costs incurred. Local governments that respond to hazardous materials incidents should be aware of the potential for reimbursement under the LGR program (see *SECTION 9. Local Government Reimbursement Program*), operated through EPA. Local communities should avail themselves of the program when appropriate.

9. In South Central Texas, two trains collided, causing a breach of a 90-ton chlorine car and the shelter-in-place of several households. The review resulted in several recommendations from local officials.
   - Various agencies documented different times for response activities during the incident. While in many incidents this may not be a major issue, during a response drawing major media attention and review from several different organizations, consistent times in documentation is vital. All local response organizations should review and adopt a method to synchronize time lines to ensure consistency in documentation during a response.
   - At least one decision made by the Incident Commander in the field was countermanded by officials in the EOC. Any request or decision by the IC not carried out for any reason must be relayed back to the IC immediately.
   - 911 operators were directed to instruct residents to shelter-in-place; however, these operators could not provide specific procedures to the residents on how to shelter-in-place. 911 operators should be trained and provided materials to orally transmit to callers/residents on shelter-in-place procedures.
   - Teams entering the hot zone had difficulties accessing residences to provide assistance due to high fences, locked gates, etc. Entry teams should carry tools to gain forced entry (bolt cutters, etc.).
   - Potentially key information (i.e., alternate entry routes into the area) collected during the initial portion of the response by various entities under Mutual Aid agreements was not readily acted upon, or was disregarded. Responders need to have confidence in each other's abilities and training for these agreements to work. Information collected and disseminated by responders can be valuable. Responding organizations need to

ensure that information passed on is evaluated and acted upon, as appropriate.

- There was confusion concerning the structure and implementation of the initial IC/UC by arriving personnel. As various elements are integrated into the response, UC should ensure those elements are aware of the need for them to function within the UC, and their role within UC.
- During the second day of the response, lime was applied to neutralize the acid formed during the release. This resulted in a large cloud which was perceived by the community as another chemical release, resulting in additional community concern. Local officials should ensure appropriate community notification occurs before any action is initiated which may result in community concerns.
- Fire Department personnel transported an exposed victim to their station for medical care without first decontaminating him. Organizations should ensure transport does not unnecessarily expose personnel, equipment, and transport vehicles to contamination from the victim.

10. A large sulfuric acid release in Oklahoma led to the exposure of 18 employees. Most workers were transported to a local hospital. This number was more than the hospital had planned and exercised for in an emergency, and severely strained the resources of the hospital. The LEPC/emergency management should establish a multi-hospital program where multiple victims can be allocated to additional hospitals. This will ensure that one hospital is not overwhelmed during a response. Other recommendations:
    - Response organizations should ensure adequate coverage during an extended response so that rotations of entry / decontamination teams can occur more often, to reduce fatigue / safety issues.
    - Response organizations should ensure consistency and consensus on the level of PPE to be used by entry teams. The established Safety Officer under Incident Command, with input from response personnel, should determine the proper level to be used by all entry personnel.
    - The response plan should ensure adequate coverage during an extended response so that rotations of entry / decontamination teams can occur more often, to reduce fatigue / safety issues

11. A train derailment in Oklahoma resulted in a chemical spill, which ignited a fire in several of the rail cars. All local response and planning organizations should review and evaluate the relevant State Statutes and regulations to determine the proper authorities and command structures during an emergency response. Other recommendations:
    - The responsible party requested the local volunteer fire department assist in extinguishing the fire caused by the chemical release. However, the fire department admitted later that no one in the department had HAZWOPER training, therefore, the fire department should not have actively fought a chemical fire. While it is each organization's responsibility to ensure the safety of their personnel, anyone responding to a hazardous materials emergency, including the responsible party, should ensure the safety of all responders, particularly local organizations.
    - There was minor confusion during the initial stages of the response in terms of personnel arriving on-site providing information and assistance to the local organizations. It is imperative that each arriving organization check in with the existing command structure (Incident Commander or designee), identify all personnel arriving, and summarize the capabilities of that organization in support of the response.

12. A chemical release occurred at a facility in North Texas, resulting in an explosion, fire, and combining of incompatible chemicals, creating a chemical plume. As a result of communication problems with the hospital receiving the burned victim, treatment of the employee was delayed while decontamination was set up and provided to the victim outside the Emergency Room. Planners within the community should establish/review proper procedures for notifying hospitals which may receive patients from a chemical emergency. This notification is critical to the hospitals to prepare for receiving the patient. Other recommendations:
    - During the response, media gained entry into the command area without escort or proper authorization, and were seen photographing sensitive information (i.e., command cell phone numbers) that should not be disseminated. Media relations plays an important role, and can be used as an asset in disseminating information to the public. However, officials should ensure that media members are only allowed into permissible areas, and that controls be in place to ensure the integrity of the command post or center.
    - During reconnaissance of the building after extinguishing the fire, personnel suited up in Level A in various stages, and not in concert. This led to personnel being exposed to the extreme conditions inside a Level A suit while others were still being suited up. Entry efforts need to be coordinated by one official, to ensure that all personnel (entry, decon, backup) are working in harmony and reduce the stress to all personnel.
    - Early on mutual aid was requested. However, responses were delayed because more than one dispatching center was being used, multiple response agencies requested assistance and it was not clear who was responding and with what

equipment. The City dispatcher was quickly overwhelmed by the magnitude of this incident. There was confusion as to what was happening and what was needed at the incident. A set of standard operating procedures (SOP's) governing dispatch of response agencies to major incidents would enhance responder safety and reduce confusion. Such SOP's would also enhance communications capabilities of responders at the local, state, and federal levels.

13. A fire in a previous landfill in north Texas led to the release of several chemicals, including burning tires and cables. Several volunteer fire departments received requests to respond from the home fire department. One such VFD arrived before all other response organizations, and initiated an evacuation. This led to confusion with planning and response officials, since the officials with authority to call for an evacuation was unaware an evacuation had been initiated. Effective communications and information management are critical aspects of incident management. All organizations responding to an incident should know to notify the local officials of response efforts initiated. Other recommendations:
    - On all responses, organizations should look at the environmental impacts of response actions (i.e, runoff from firefighting), but the first priority should always be the protection of the community and the responders. Recovery of environmental impacts is always easier than recovery of public health.
    - Response Organizations should understand that if a response involves hazardous materials, then an official should not be appointed or take on the role of Incident Commander, unless that official has taken Incident Command training. The use of the incident command system is mandated to be the operating management system for all response personnel. This includes law enforcement, emergency medical, fire, public works and anyone who might be expected to respond. Learning to be the Incident Commander on the spot of an emergency can be dangerous to the people answering to the Incident Commander.
    - Use the LEPC as a forum to ensure all response organizations understand the working agreements between the various response organizations. Mutual-aid agreements need to be written and signed with all neighboring or nearby jurisdictions. At a minimum, mutual-aid agreements should include the following elements or provisions:
        - definitions of key terms used in the agreement;
        - roles and responsibilities of individual parties;
        - procedures for requesting and providing assistance:
        - procedures, authorities, and rules for payment, reimbursement, and allocation cost;
        - notification procedures;
        - protocols for interoperable communications;
        - relationships with other agreements among jurisdictions:
        - workers compensation;
        - treatment of liability and immunity;
        - recognition of qualifications and certifications; sharing agreements, as required.

    Authorized officials from each of the participating jurisdictions will collectively approve all mutual-aid agreements.

14. A release of ammonia from a nurse tank in western Oklahoma required the response of the local fire department personnel to close the valve on the tank, which was effectively accomplished. During the review, it was determined the responsible party had no resources to respond to an ammonia release, which was surprised local officials. Planning officials must review response plans developed by facilities under the RMP. This review will ensure officials are aware of the response capabilities and intentions of the facility during a release. Other recommendations:
    - LEPCs should identify those chemicals within the community which are very prevalent within the community, due to large volumes, or could threaten a large population if released, or first responders arriving on scene. Officials should work with appropriate organizations, associations, and State training officers to obtain response training for these specific chemicals.
    - When limited response equipment is available to local response organizations, the Dewey County LEPC should review with local officials the response procedures to be followed in the event of a catastrophic release of ammonia within the County. This type of release would necessitate a much different response strategy than the minor release that did occur.

15. An explosion and fire at a facility in southern Arkansas led to the evacuation of residents. During the initial response actions, officials attempted to contact the local radio station to broadcast precautionary measures for residents. Due to the day and time, the stations were operating automatically and were not manned. The LEPC should work with the local broadcast outlets to determine procedures for advising citizens of emergency situations 24 hours a day, 7 days a week. This could include override systems maintained at local response organizations and/or better off-hour contact information for the station(s).

16. A train derailment in east Texas resulted in a large release of oil, as well as fire which prompted the

evacuation of approximately 500 persons. The command post initially was placed right next to a very large staging area just outside the Hotzone of the incident. This siting quickly became a problem, and the command post had to be moved away from the incident. The community plan should address various scenarios to determine placement suitability of the ICP. The command post and staging areas should be sufficiently separated so that the personnel in the command post can function efficiently without unwarranted distractions. Other recommendations:

- Local media outlets did not did not disseminate information on evacuation procedures, as provided by local response officials. The incident command team should appoint a public information officer to communicate directly with the media, to help in dissemination of critical information. State response organizations can provide contacts and assist in making notifications. LEPCs should work to have media contacts on their LEPC to pre-plan emergency communications.
- After the response, local community responders requested a meeting with rail officials to pre-plan response actions in the event of a future derailment, not simply rail car response training. Most railroads can schedule this type of meeting, working with the TransCAER program for effectiveness and larger coverage of the training.
- Responders were unprepared for how much area the rail contractors needed for their equipment and operations. Staging areas should be planned with consideration given to the amount of room that contractors will need for their equipment, as well as space for response personnel rehab.

17. Approximately 50 homes were evacuated after a semitrailer containing various hazardous wastes exploded in southwest Arkansas. Media helicopters from the Little Rock area flew over the incident for pictures and information; Unified Command asked for and was granted a restricted fly zone from the FAA as the helicopters were disruptive to the response. LEPCs should encourage membership from local media, improving dissemination of accurate information to the public. The LEPC can also provide media with pertinent information, reducing for the perceived need of the media entering the Hotzone to gather facts. This coordination can assist in pre-planning of emergency communications. Other recommendations:
    - The community evacuation was incomplete; people returned to their homes to gather belongings; response personnel traveled through the hot zone to evacuate people. More personnel were needed to perform the evacuation and to isolate the incident. Local dispatch effectively drew in resources from other area fire departments to provide additional response personnel. Once evacuees have left their homes, they should not be allowed to return until the evacuation order has been lifted. Response personnel must be aware of their own personal safety when evacuating community members. Mutual aid agreements between departments and communities can increase the pool of assistance that a fire department can draw from.
    - Water was initially applied to the fire; this created a concern as chemicals in the trailer were originally unknown and could have been water reactive. The facility could not provide a bill of lading to the responders for approximately 3 hours. LEPCs must encourage participation by those companies storing or transporting hazardous materials through their communities. These facility members can assist in pre-planning, especially on the materials being transported through the community, their hazards, and appropriate response procedures during an incident.

18. A fire at a chemical blending and manufacturing facility located in north Texas resulted in the evacuation of schools, as well as much of the community. At the initial press briefing, questions concerning public health issues were difficult to answer by the members of unified command, as there was no representative from a local public health organization. A local public health official is needed to be the carrier of the public health message related to the response. This official would be the face and provide the official message of the air monitoring and sampling data being generated by state, federal, and responsible party responders. Without this representation in the unified command, there is a public health message vacuum that can cause confusion. Other recommendations:
    - The Agency for Toxic Substances and Disease Registry (ATSDR), which is part of the Centers for Disease Control, in coordination with the EPA OSC, can set up a public health message using the Poison Control Centers Hotline. This information would be provided by the public health officials and would be available 24 hours. This would decrease the burden on local phone resources (City hall, PIO, etc…) and ensure that a consistent and applicable message is available to citizens who have questions or concerns.

19. Over and over again during these reviews, a consistent theme was voiced by local officials. They accepted many of the issues faced during the response may not have happened if an active LEPC had been present in the community. Pre-planning between local planning officials and facilities within the community could have resolved many of the problems.

SECTION 8. CAMEO Software

Placing accurate, timely information in the hands of decision makers is vital to a safe, effective response to a chemical incident.

Designed to assist first responders and emergency planners get to key information quickly, the CAMEO (Computer-Aided Management of Emergency Operations) software suite has four core programs: CAMEOfm, CAMEO Chemicals, ALOHA®, and MARPLOT®.

What is the CAMEO software suite?

The CAMEO software suite is a system of software applications used widely to plan for and respond to chemical emergencies. It is one of the tools developed by EPA and NOAA, to assist front-line chemical emergency planners and responders.

They can use CAMEO to access, store, and evaluate information critical for developing emergency plans. In addition, CAMEO supports regulatory compliance by helping users meet the chemical inventory reporting requirements of EPCRA.

The CAMEO system integrates a chemical database and a method to manage the data, an air dispersion model, and a mapping capability. All modules work interactively to share and display critical information in a timely fashion. The CAMEO system is available in Macintosh and Windows formats.

Why was CAMEO Created?

The CAMEO software suite was developed because NOAA recognized that emergency response personnel were often severely hampered by lack of accurate hazardous substance information. In addition, emergency planners lacked a tool to store and easily use information that is essential for emergency planning.

Since 1988, EPA and NOAA have collaborated to augment CAMEO to assist both emergency responders and planners. CAMEO has been enhanced to provide emergency planners with a tool to enter local information and develop incident scenarios to better prepare for chemical emergencies.

The Bureau of Census and the U.S. Coast Guard have worked with EPA and NOAA to continue to enhance the system.

Who Uses CAMEO?

- Firefighters
- SERCs and TERCs
- LEPCs
- Industry
- Schools
- Environmental Organizations
- Police Departments

What is in CAMEO?

CAMEO is actually a suite of four separate, integrated software applications:

- CAMEOfm
- CAMEO Chemicals
- MARPLOT
- ALOHA

How the CAMEO Software Suite Works

All programs work interactively to display critical information in an easy-to-understand manner. You can use the suite to:

- Manage data for emergency planning and response (including facilities, chemical inventories, contact information, and response resources).
- Access chemical property and response information.
- Find out how chemicals could react if they mixed.
- Estimate threat zones for hazardous chemical releases, including toxic gas clouds, fires, and explosions.
- Map threat zones and other locations of interest.

CAMEOfm - Database and Information Management Tool

CAMEOfm is a database application that includes eight modules (such as Facilities and Contacts) to assist with data management requirements under EPCRA. For example, you can store information about the chemical facilities in your community, including contact information and chemical inventories.

Each year, facilities covered by EPCRA must submit an emergency and hazardous chemical inventory form to their LEPC, SERC, and local fire department. Most facilities submit a Tier II form, which contains basic facility identification information, employee contact information, and information such as storage amounts, storage conditions, and locations for chemicals stored or used at the facility. You can use CAMEOfm to store this information, by entering it manually or by importing a Tier2 Submit file (if the facilities and/or planners in your state use that program).

Once you've entered your data into CAMEOfm, you can use the other suite programs to:

ED_002941_00002942-00046

- Link the records about facilities and other locations to symbols on a MARPLOT map. This will allow you to quickly get to your data from CAMEOfm or MARPLOT.
- Find out more about the chemicals in inventory by looking in CAMEO Chemicals to get response recommendations and physical properties, or use ALOHA to predict the threat zones (if the inventory chemicals were released).

The CAMEOfm modules are especially useful for data management tasks required under EPCRA.

CAMEO Chemicals - Chemical Response Datasheets and Reactivity Prediction Tool

CAMEO Chemicals has an extensive chemical database with critical response information for thousands of chemicals. There are two primary types of datasheets in the database: chemical datasheets and UN/NA datasheets.

- Chemical datasheets provide physical properties, health hazards, information about air and water hazards, and recommendations for firefighting, first aid, and spill response.
- UN/NA datasheets provide response information from the Emergency Response Guidebook and shipping information from the Hazardous Materials Table (49 CFR 172.101).

In addition to the information on the datasheets, you can also add chemicals to the MyChemicals collection to see what hazards might occur if the chemicals in the collection were mixed together.

Note: The CAMEO Chemicals website is available at http://cameochemicals.noaa.gov. Additionally, there is a desktop version of the program that has all of the same features as the online version. However, only the desktop version can share information with other programs in the CAMEO software suite.

MARPLOT - Mapping Applications for Response, Planning, and Local Operational Tasks

With MARPLOT's easy-to-use GIS interface, you can quickly view and modify maps, and you can create your own objects. It allows users to "see" their data (e.g., roads, facilities, schools, response assets), display this information on computer maps, and print the information on area maps.

When you display ALOHA threat zones in MARPLOT, you can get population estimates for the potentially impacted area. You can also check within the threat zone for facilities storing hazardous materials and locations of special concern (such as hospitals and schools).

Important data about these locations (such as emergency contacts, hours of operation, and chemical inventories) can be displayed in the CAMEOfm data modules to help you make decisions about the degree of hazard posed by the incident.

The areas contaminated by potential or actual chemical release scenarios also can be overlaid on the maps to determine potential impacts. The maps are created from the U.S. Bureau of Census TIGER/Line files and can be manipulated quickly to show possible hazard areas.

ALOHA - Areal Locations of Hazardous Atmospheres

ALOHA is an atmospheric dispersion model used for evaluating releases of hazardous chemical vapors.

ALOHA allows the user to estimate the downwind dispersion of a chemical cloud based on the toxicological/physical characteristics of the released chemical, atmospheric conditions, and specific circumstances of the release.

ALOHA can predict the area that could be affected by a toxic cloud, as well as potential threats from chemical fires or explosions. Graphical outputs include threat zone plots, threats at specific locations, and source strength graphs.

A threat zone is an area where a hazard (such as toxicity, flammability, thermal radiation, or damaging overpressure) has exceeded a user-specified Level of Concern.

Threat zones can be displayed in ALOHA or plotted on maps with MARPLOT to display the location of other facilities storing hazardous materials and vulnerable locations, such as hospitals and schools.

Specific information about these locations can be extracted from CAMEOfm information modules to help make decisions about the degree of hazard posed. You can also import threat zones into ArcMap and ArcView using extensions that are available at http://response.restoration.noaa.gov/aloha_arctools.

How do people use the CAMEO suite?

Most people use the CAMEO programs to respond to or plan for accidental chemical releases. However, some users have gone beyond the basic uses, for example:

- Aerial ambulance companies have used MARPLOT to provide the direction and distance to local hospitals to help expedite patient transport.
- First responders make use of the entire CAMEO software suite of programs at the Weapons of Mass Destruction training developed by the Department of Homeland Security.
- After entering chemical inventories and special locations into CAMEOfm, some planners are assessing likely terrorist targets within their area using CAMEOfm.

Hurricanes Katrina and Rita

After Hurricanes Katrina and Rita, emergency responders used the CAMEO suite to complete challenging response tasks such as:

- Estimating the number of affected residences in New Orleans.
- Mapping evacuation routes and collection sites for hazmat containers displaced by the storm.
- Defining exclusion zones around dangerous hazmat containers.
- Selecting safety gear for workers handling hazardous debris.

Think Outside the Box

Communities around Region 6 have found innovative uses of the CAMEO software including:

- Use MARPLOT during search and rescue to map areas covered
- Track maintenance of fire hydrants within a community
- Track tinhorn maintenance schedules within a community
- Use MARPLOT to determine damage track from a tornado, as well as special populations affected

Contacts

For more information on emergency preparedness, planning, and prevention programs, contact the EPA Superfund, TRI, EPCRA, RMP & Oil Information Center, a toll-free service that can answer technical policy questions on federal EPA regulations.

The Call Center can be reached during regular business hours at: Toll-Free: (800) 424-9346

For answers to functional software questions or solutions to installation problems, contact the RMP Reporting Center: (703) 227-7650 (8 am to 4:30 pm M-F) or via e-mail at: RMPRC@epacdx.net

Other Planning/Response Tools

- The Chemical Reactivity Worksheet: A program that allows you to see what reactions might occur when pairs of chemicals are mixed together. You can virtually mix any of the chemicals from the CAMEO chemical database, add reactive groups to the mix, print the resulting hazards in a reactivity report, and store collections of virtually mixed chemicals.
- Tier2 Submit: A program that generates an electronic chemical inventory Tier II facility report, which can be used to automatically update the facility information in CAMEOfm.
- RMP*Comp: A tool to help facilities complete the offsite consequence analysis that is required as part of the Risk Management Plan.

Getting CAMEO

To download any program in the suite free of charge, go to http://www2.epa.gov/cameo. CAMEO suite programs run on both Windows and Macintosh computers.

SECTION 9. EPA Superfund Local Government Reimbursement (LGR) Program

Since its inception in 1986, the LGR program has been helping local governments cover the costs of responses.

For over a decade, EPA has been working closely with hundreds of local governments to make the LGR program an easy and reliable source of funding.

Just ask anyone who has participated in the program. With more than three million dollars awarded by EPA so far, the LGR program has proven to be a valuable financial resource for local governments, including over $ 380,000 coming back to Region 6 to support local communities.

So the next time you have a hazardous substance emergency, remember the LGR program.

Who Responds to Emergency Situations

The NCP -- 40 CFR Part 300.180) states: "Because state and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they are expected to initiate public safety measures that are necessary to protect public health and welfare and that are consistent with containment and cleanup requirements in the NCP, and are responsible for directing evacuations pursuant to existing state or local procedures."

Additionally, 40 CFR Part 300.700 states:

1) Responsible parties shall be liable for all response costs incurred by the U.S. government or a state not inconsistent with the NCP.
2) Responsible parties shall be liable for necessary costs of response actions to releases of hazardous substances incurred by any other person consistent with the NCP.

So What Happens if You Respond and There is a Responsible Party

EPA recommends your first route of cost recovery is with the responsible party.

Once the response is completed, determine what your reasonable costs were and then present such costs to the responsible party.

You can always point out to them CERCLA 107(a), the NCP 40 CFR 300.700, and applicable State statutes require the responsible party to compensate local government authorities for appropriate and reasonable costs related to a hazardous substance release.

So What Happens if You Respond and There is No Responsible Party

Your community responds to a release or threat of release of a hazardous substance, and there is no responsible party (e.g., abandoned drums), or if the responsible party is not capable of reimbursement for expenses (e.g., bankruptcy).

Then the LGR program may be able to provide a "safety net" of up to $25,000 per incident to local governments that do not have funds available to pay for response actions.

Determining Your Eligibility

To be eligible for the LGR program, your local government must meet the following requirements:

- The applicant must be a general purpose unit of local government

Local governments that are eligible to receive reimbursement under the LGR program include any general purpose unit of local government, such as a county, parish, city, town, township, and municipality. Federally-recognized Indian Tribes are also eligible for reimbursement under the LGR program.

- States are not eligible for reimbursement under the LGR program.

States may not request reimbursement on the behalf of a local government or a federally – recognized Indian Tribe within the state.

- The applicant must have legal jurisdiction over the site where the incident occurred.

Only one request for reimbursement will be accepted for each eligible incident.

When more than one local government has participated in such a response, the local government that has legal jurisdiction over the site where the incident occurred must submit the application.

The application can be made on behalf of all participating local governments. If multiple local governments or agencies have jurisdiction over the site, then the respondents must decide which single government or agency will submit the reimbursement request.

- Reimbursement cannot be made to a responsible party.

If the local government applying for reimbursement is also the responsible party, the application will be denied. Responsible parties are liable for response cost regardless of whether or not they are a local government.

- Substances released or threatened to be released must be designated as hazardous under CERCLA.

Incidents involving petroleum products including petroleum, natural gas, crude oil, or any other specified fractions thereof that are not specifically designated as CERCLA hazardous substances do not qualify under this program.

However, the USCG does have a program under which a claim can be made for the cost of responding to an oil spill. Go to the following webpage for information concerning this program: www.uscg.mil/npfc

Some mixed waste may be allowable. Under CERCLA, potentially responsible parties are liable for cleanup costs.

Requirements for Reimbursement

Once a local government has decided to apply for reimbursement, there are a number of basic requirements that must be met to comply with the regulations of the LGR program.

When completing the LGR application, local governments should pay special attention to the following requirements to facilitate the reimbursement process:

- Reimbursement cannot supplant local funds normally provided for a response.

In other words, if a local government budgets for emergency response activities, it must draw from this budget to pay for the cost of a response.

However, if a local government's funds have been depleted, then it may be eligible for reimbursement under EPA's LGR program.

In addition, other items that may not be budgeted for (e.g., overtime pay, unanticipated materials and supplies) may also be reimbursable under the LGR program.

- Cost recovery must be pursued prior to applying for reimbursement.

The applicant must complete the Cost Recovery Summary Table, included in the application, to document the background and current status of cost recovery efforts.

It should be clear that all available sources of cost recovery (i.e., responsible parties and their insurance, the state, and local government insurance) have been pursued.

Although not required, it is recommended a copy of all related correspondence also be included in the application to document the applicant's cost recovery efforts.

Potential cost recovery sources should be given a minimum of 60 days to respond before an LGR application is filed. By signing on the last page of the application, a local government is certifying cost recovery was pursued.

- Detailed cost documentation must be submitted with the application.

The applicant must complete the detailed Cost Breakdown Table, included in the application. All costs for which reimbursement is being requested must be listed and supporting documentation (e.g., invoices, sales receipts, time sheets, or rental agreements) must be attached.

Please note: Costs incurred for long-term remedial measures do not qualify under the LGR program. Reimbursement is made only for temporary emergency measures conducted in response to hazardous substance releases, or threatened releases.

- The application must be signed by the local government's highest ranking official.

Examples of the highest ranking official include: Mayor, City Manager, Board of Commissioners Chair, County Judge, or head of a recognized Tribe.

In instances where the highest ranking local official is unable to sign the application form, a letter of delegation along with the application that authorizes a delegate to sign the application on his or her behalf, must be submitted.

- Applications must be submitted to EPA within one year of the "date of response completion" of the response.

For the LGR program, the date of completion is the date when all field work has been completed and all project deliverables (e.g., lab results, technical reports, or invoices) have been received by the local government. (The date of completion is not determined by cost recovery efforts, which can continue after an application is submitted.) In general, a local government should allow at least 60 days for each potential source of reimbursement to respond to a request for repayment before submitting an application to LGR. EPA will consider late applications on a case-by-case basis.

Reimbursement Application

Please review the Sections on Determining Your Eligibility and Requirements for Reimbursement before starting your application.

The complete Local Governments Reimbursement application package includes the LGR application form and a copy of the LGR regulations (40 CFR part 310). Download the Application Package for Reimbursement to Local Governments (PDF) at:
http://www.epa.gov/oem/content/lgr/lgrapp.htm

Hard copies are available from the LGR HelpLine. You must submit your application to EPA within one year of the "date of response completion."

The date of completion is the date when all field work has been completed and all project deliverables (e.g., lab results, technical expert reports, or invoices) have been received by the local government.

EPA will consider late applications on a case-by-case basis. We highly recommend you send your applications through U.S.P.S. 1st class, unregistered. Any other methods of delivery will delay receipt of your application by EPA. Mail completed applications to:

U.S. Environmental Protection Agency
Local Governments Reimbursement (LGR) Program
Attn: Lisa Boynton, Mail Code 5104-A
1200 Pennsylvania Avenue
Washington, D.C. 20460

You should receive a confirmation postcard within one month of the receipt of your application. If your application is complete, and it is approved, you will receive reimbursement within three to six months. If EPA requires more information to process the application, we will contact you for further details.

This may increase the time it takes for you to receive reimbursement. If you have questions about the status of your application at any point in the process, please call the LGR HelpLine.

Frequently Asked Questions

- **What costs are reimbursable under the Local Governments Reimbursement (LGR) program?**

All costs for which a local government is seeking reimbursement must be consistent with CERCLA, the NCP, and federal cost principles by the Office of Management and Budget. In general, EPA will consider reimbursement for costs of such items as:

- Disposable materials and supplies purchased during a specific response.
- Rental or leasing of equipment used for a specific response.
- Special technical services and laboratory costs.
- Services and supplies purchased for a specific evacuation.
- Payment of unbudgeted wages for employees responding to the specific incident (for example, overtime pay for response personnel).

Reimbursement cannot supplant local government funds normally provided for emergency response. All applications must include appropriate cost documentation such as invoices, sales receipts, leasing agreements, or time sheets.

In addition, it is essential that applications certify their attempts to recover costs from the potentially responsible party, the state, and local government insurance.

- **Who is eligible for reimbursement under the LGR program?**

If you are the governing body of a county, parish, municipality, city, town, township, Federally recognized Indian tribe or general purpose unit of local government, you are eligible for reimbursement. Special purpose units of local government (school district, water utilities district) are not eligible under the LGR program.

- **Can more than one application for reimbursement be submitted to EPA for the same incident?**

No. Under the LGR regulation, reimbursement is limited to one request per incident, even when multiple government entities respond to the incident. The local government with legal jurisdiction over the site of the incident must submit one application on behalf of all local governments that responded to the incident.

In the event two applications are submitted for the same incident, EPA will accept only the application from the local government with legal jurisdiction.

In some cases two local governments with legal jurisdiction (e.g., a city and a county) may attempt to submit an application for reimbursement. In these cases, EPA will either return both applications with an explanation or, if one has already been awarded, the second application will be denied.

This requirement ensures EPA does not reimburse more than $25,000 per response, and does not reimburse local governments more than once. To avoid this situation, EPA strongly encourages local governments, or agencies within the same local government, to coordinate with each other when seeking reimbursement under the LGR program.

This will help local governments obtain the maximum amount of reimbursement funds, particularly in cases where the combined total of reimbursement requests is less than $25,000.

- **Can I include more than one incident on a single application?**

Yes, you can however, then you must submit all associated necessary information and cost documentation for each incident. In addition, the incidents should be closely related by type (i.e., 10 anthrax calls in one day) and in around the same time period. The cap for each application is $25,000 even if you submit more than one incident in an application.

You are only eligible for a total reimbursement of $25, 000. Our suggestion is you submit a separate application for each incident to simplify the review process and maximize your eligible response costs.

- **Is there a cap on the amount of reimbursement?**

The law limits the amount of reimbursement available to local governments to $25,000 per incident. Furthermore, the law limits the total amount of reimbursement funds EPA can award in a given year.

In the event the amount of funds available for reimbursement becomes limited (e.g., due to increased participation in the program), EPA would prioritize reimbursements according to the financial burden an incident places on each local government, as specified in the LGR Federal Regulation (40 CFR part 310).

- **How will reimbursement requests be evaluated?**

After receiving completed applications from local governments, EPA will screen each application for compliance with the basic requirements. Each application will be evaluated on its own merit.

EPA will ensure the costs for which reimbursement is being sought are allowable and documented, do not supplant local funds normally provided for emergency response, and all other possible sources of reimbursement have been exhausted.

During the review cycle, the applicant may be contacted to supply additional information or to clarify information in the application. Based on EPA's evaluation of the application, a request may be reimbursed (in whole or in part), denied, or held over for reconsideration in instances where funding is limited or currently unavailable.

- **How does EPA prioritize reimbursement requests?**

Once EPA reviews an application and determines it is complete and complies with all of the regulatory requirements, EPA calculates the applicant's financial burden.

A local government's financial burden is determined by comparing the eligible response costs to the locality's aggregate income (i.e., the per capita income of the locality multiplied by the locality's population).

The purpose of this requirement is to provide financial relief to local governments that face significant financial burden as a result of responding to a hazardous substance incident.

In the event the amount of funds available for reimbursement becomes limited, the financial burden formula gives priority to those local governments for which the response costs create the greatest financial burden.

Because the funding ceiling for the LGR program has not yet been reached in a given year, EPA has yet to use financial burden to prioritize reimbursements and has reimbursed all eligible applications to date.

If reimbursements for a given year exceed the total amount of funds available for that year, EPA will be required to use the financial burden calculation to prioritize reimbursements. However, EPA may consider other financial information demonstrating a locality's financial hardship (e.g., the impact of responding to numerous hazardous substance emergencies in a short time period, the financial impact of a recent disaster, etc.).

In cases where an application is eligible for reimbursement but cannot be reimbursed due to limited funds, EPA will hold the application for up to one year and will reimburse the local government if funds become available.

- **How can I check the status of my application?**

You can check the status of your application by calling the LGR HelpLine at (800) 431-9209 and identifying your local government, the incident type, and the date on which the response occurred.

Local Government	Award Amount	Award Date	Type of Response
El Paso, TX	$5,589.08	09/1990	Costs related to responding to a chemical fire / explosion
Pasadena, TX	$10,851.14	09/1993	Costs related to a chemical release
Rockwall County, TX	$7,328.57	09/1993	Costs related to abandoned chemical drums
Lafayette, LA	$ 25,000.00	07/1994	Costs related to a chemical fire / explosion
Ouachita Parish, LA	$5,145.95	07/1994	Costs related to responding to a chemical fire / explosion
Baytown, TX	$5,000.00	12/1994	Costs related to a chemical release
Houston, TX	$25,000.00	07/1996	Costs related to chemical warehouse fire
Baytown, TX	$525.00	08/1996	Costs related to a chemical release
Harker Heights, TX	$2,957.57	01/1997	Costs related to a chemical release
Midlothian, TX	$25,000.00	08/1997	Costs related to landfill fire
Lubbock, TX	$25,000.00	08/1997	Costs related to a chemical release
Pecos, TX	$19,035.48	01/1998	Costs related to a chemical release
Harker Heights, TX	$707.47	06/1998	Costs related to a chemical release
Plano, TX	$1,100.00	08/1999	Costs related to a chemical release
Cameron County, TX	$12,604.19	08/1999	Costs related to a chemical release
McLennan County, TX	$1,947.56	12/1999	Costs related to a chemical release
Searcy, AR	$16,626.20	03/02/2000	Costs related to an agricultural supply fire.
Bexar County, TX	$3,082.25	03/02/2000	Costs incurred responding to an abandoned hazardous substance.
Paris, TX	$3,253.20	04/24/2000	Costs related to a clandestine drug lab cleanup.
Garland County, AR	$1,896.41	06/20/2000	Costs related to an illegal dumping.
Collin County, TX	$1,512.65	08/29/2000	Costs related to a clandestine drug lab cleanup.
McKinney, TX	$2,272.09	08/29/2000	Costs related to a clandestine drug lab cleanup.
Little Rock, AR	$400.00	09/19/2000	Costs incurred responding to an abandoned hazardous substance.
Waterloo, LA	$372.88	02/2001	Costs related to methamphetamine lab cleanup.
North Little Rock, AR	$2,970.00	4/1/2001	Costs related to a methamphetamine lab cleanup.
Socorro County, NM	$25,000.00	6/1/2001	Costs related to a tire fire.
Seabrook, TX	$11,999.50	6/1/2001	Costs related to a mercury spill.
Little Rock, AR	$446.10	6/1/2001	Costs incurred responding to leak from a transport vehicle.
Fannin County, TX	$25,000.00	6/1/2001	Costs related to an illegal dumping.
Rogers County, OK	$725.50	7/1/2001	Costs related to an illegal dump site fire.
Wilson County, TX	$3,608.75	7/11/2002	Costs incurred responding to an abandoned HAZMAT release.
Bowie, TX	$854.39	8/26/2002	Costs incurred responding to an abandoned HAZMAT release.
North Little Rock, AR	$400.00	8/26/2002	Costs incurred responding to an abandoned HAZMAT release.
Chitimacha Tribe, LA	$681.79	9/30/2002	Costs incurred responding to an anthrax release.
Little Rock, AR	$1,320.13	8/26/2002	Costs related to a methamphetamine lab cleanup.
Little Rock, AR	$1,176.60	8/26/2002	Costs related to a methamphetamine lab cleanup.
Little Rock, AR	$1,470.71	8/26/2002	Costs related to a methamphetamine lab cleanup.
Little Rock, AR	$1,060.30	8/26/2002	Costs related to a methamphetamine lab cleanup.
Comanche, TX	$25,000.00	7/10/2002	Costs incurred responding to a chemical fire.
Friendswood, TX	$11,403.09	6/19/2003	Costs incurred responding to a hazardous substance release.
San Antonio, TX	$19,602.82	3/12/2004	Costs incurred responding to hazardous substance releases.
Montgomery County, TX	$5,469.56	8/26/2004	Costs incurred responding to an abandoned HAZMAT release.
Guadalupe County, TX	$2,084.31	6/20/2005	Costs related to fire involving hazardous substances.
Guymon, OK	$15,702.50	7/13/2005	Costs related to a fire involving hazardous substances.
El Paso, TX	$3,747.91	6/20/2005	Equipment costs related to a sulfur release.
El Paso, TX	$916.27	12/28/2005	Costs related to a suspected anthrax response.
Little Rock, AR	$531.60	11/9/2006	Costs related to cleanup of drums containing unknown substance.
Maysville, OK	$6,767.10	9/11/2007	Contractor costs related to a methamphetamine lab cleanup.

City of Beaumont, TX	$5,691.00	3/25/2008	Costs related to a methamphetamine lab cleanup.
Lone Grove, OK	$18,912.47	9/24/2008	Costs incurred during response to contamination of water supply.
City of Dyer, AR	$16,143.99	7/22/2009	Costs incurred responding to a chemical fire.
Mansfield, TX	$18,719.97	3/11/2011	Costs incurred responding to an abandoned hazardous substance.
City of Fayetteville, AR	$1,038.50	9/28/2011	Costs related to a methamphetamine lab cleanup.
City of Fayetteville, AR	$964.50	9/28/2011	Costs related to a methamphetamine lab cleanup.
Marked Tree, AR	$2,144.00	9/28/2011	Costs related to a methamphetamine lab cleanup.
City of Springdale, AR	$2,096.50	9/28/2011	Costs related to a methamphetamine lab cleanup.
City of Conway, AR	$1,075.00	9/28/2011	Costs related to a methamphetamine lab cleanup.
City of Morrilton, AR	$1,092.00	9/28/2011	Costs related to a methamphetamine lab cleanup.
City of Sherwood, AR	$2,615.50	9/28/2011	Costs related to a methamphetamine lab cleanup.
Boone County, AR	$2,091.00	9/28/2011	Costs related to a methamphetamine lab cleanup.
City of Vilonia	$940.00	9/28/2011	Costs related to a methamphetamine lab cleanup.
Benton, AR	$17,184.50	07/01/2012	Costs related to a methamphetamine lab cleanup
Fayetteville, AR	$3,567.50	07/01/2012	Costs related to a methamphetamine lab cleanup
Mountain Home, AR	2,399.73	07/01/2012	Costs related to a methamphetamine lab cleanup
Poinsett County, AR	$2,296.00	07/01/2012	Costs related to a methamphetamine lab cleanup
Harrison, AR	$1,548.50	07/01/2012	Costs related to a methamphetamine lab cleanup
Madison County, AR	$1,592.00	07/01/2012	Costs related to a methamphetamine lab cleanup
Beauregard Parish, LA	$1,147.00	07/01/2012	Costs related to a methamphetamine lab cleanup
Lincoln, AR	$1,068.50	09/01/2012	Costs related to a methamphetamine lab cleanup
Faulkner County, AR	$9,790.50	09/01/2012	Costs related to a methamphetamine lab cleanup
Gravette, AR	1,307.50	09/01/2012	Costs related to a methamphetamine lab cleanup
Springdale, AR	$680.50	09/01/2012	Costs related to a methamphetamine lab cleanup
Highfill, AR	1,182.00	09/01/2012	Costs related to a methamphetamine lab cleanup
Beauregard Parish, LA	$3,213.00	06/01/2013	Costs related to a methamphetamine lab cleanup
Saline County, AR	$3,083.86	06/01/2013	Costs related to a methamphetamine lab cleanup
Calcasieu Parish, LA	$8,014.41	06/01/2013	Costs related to a methamphetamine lab cleanup
Calcasieu Parish, LA	$10,783.06	03/01/2014	Costs related to a methamphetamine lab cleanup

SECTION 10. National Association of SARA Title III Program Officials LEPC Guidance Documents

Measuring Progress in Chemical Safety: A Guide for LEPCs and Similar Groups

Introduction

EPCRA called for the establishment of LEPCs. LEPCs have broad-based membership whose primary work is to receive information from local facilities about chemicals in the community, use that information to develop a comprehensive emergency plan for the community, and respond to public inquiries about local chemical hazards and releases. There are more than 3,000 LEPCs and they reflect the diversity of the country. Most LEPCs are organized to serve a county, some are for a single large city; others cover a larger area of the state.

Many LEPCs have expanded their activities beyond the requirements of EPCRA, encouraging accident prevention and risk reduction, and addressing homeland security in their communities. Composed of representatives from all segments of the community interested in emergency planning and preparedness, LEPCs foster a valuable dialogue among members of the public, industry and government. In some communities LEPCs have formally aligned themselves with FEMA's Citizen Corps Program. These and similar groups can also use this guidance.

There is no doubt LEPCs have made valuable contributions in chemical safety. This guide provides information about how LEPCs can measure their progress and determine if the actions they are taking continue to achieve the desired outcomes.

This approach is based on "Guidance on Developing Safety Performance Indicators related to Chemical Accident Prevention, Preparedness and Response for Public Authorities and Communities", which was published by the Organization for Economic Development (OECD) in December 2008.

There is also a Guidance on Developing Safety Performance Indicators for Industry. The full guidance may be found at www.oecd.org/ehs. A website allows LEPCs to select and customize their review program at http://oecdsafetyindicators.org/

Why Measure Progress?

LEPCs have important roles to play with respect to chemical safety. Setting goals and measuring progress allows you to take a step-by-step approach to reducing the likelihood of accidents and improving preparedness and response capabilities. Depending upon local risks, capacities and conditions there several possible goals and metrics that can be applied to the activities of LEPCs. One size does not fit all. The advantage this program for LEPCs is the ability to set goals and measure progress in a way that is specifically relevant to the community the LEPC serves.

Your LEPC may be evaluated by local government entities, the mayor, the city council, or a similar group, in order to determine an appropriate level of funding as well as whether the work of the LEPC deserves the time and attention of the membership. Industry may want to know if the chemical information (and often, the financial support) they provide is being used wisely and efficiently. Individual citizens may wonder if your work is effectively protecting them.

Federal agencies may use indicators of success to support grant funding and other decisions related to LEPCs. And, of course, you, as LEPC members may want to study what you are doing to see if you are satisfied with your work and whether your efforts have led to better protection of the community from chemical risks. All these and other issues can provide the reason to measure the progress of your LEPC.

How to Measure Progress

Many LEPCs expect a checklist of what they should be doing. However, it is better for LEPCs to have their own vision of success based upon the risks, capacities and conditions in the community they serve. That vision should be written, clear and come from a group discussion of the concerns and motivations that caused the participants of the LEPC to join.

It may be none of the LEPC members believe the vision is obtainable given current resources. That does not matter as long as the LEPC understands its mission is to make progress towards the vision. The vision of success is an aspirational goal and should set the long-term objectives for the work done by the LEPC. Some LEPCs have adopted a vision of success along the lines of:

An engaged community with a broad safety and preparedness culture as show by:

- Robust emergency planning and personal preparation
- Effective and safe response
- Accidents are prevented

Obviously, this or any vision of success cannot be achieved in one or two steps. It is, instead, achieved through a progression of activities designed to achieve milestones along the path to success. To define these steps LEPCs should establish both long-term and short-term goals that it believes will lead to achieving the vision of success. These goals should be a product of clear discussion and agreement among the LEPC membership.

Do not get distracted by terminology. For purposes of the SPI program goals are often called "outcomes.,". The key distinction is that "outputs" are the products your LEPC makes (e.g., your emergency plan, your evacuation plan) or things you do (e.g., conduct monthly meetings) but they are not the goals or outcomes that lead to your vision of success. Instead, achieving a goal or outcome requires measuring the results from outputs or activities in a way that is relevant to the goals or outcomes.

For the purposes of SPI these results are called targets or metrics. In other words, when you set a goal it should be paired with what you are going to measure that tells you whether you are making progress towards the goal and when you have achieved the goal. The following examples might help clarify the outcome/output distinction and the role of targets.

1. If your community has recently had a chemical release that led to injuries and deaths, the mayor or LEPC could establish a goal: no more injuries and deaths from a chemical accident in this community. That is a clear goal, perhaps overly ambitious in the eyes of some people, but one that is understandable and sensible in the context of your community's recent history.
   a. There are a variety of possible metrics/targets: no deaths or injuries this year, no accidental releases this year, and/or a 30% reduction in the number of accidental releases this year.
   b. As for "outputs," the products and/or activities the LEPC undertakes to meet the metric/target for the goal, it could be a revised emergency plan, exercises to test the emergency plan, training for local responders, outreach materials for local citizens to ensure they know the appropriate steps to take if there is an accidental release, improved notification systems to ensure citizens are aware of a release, establishing a continuous dialog with industries in your community on risk reduction and accident prevention, and so forth.
   c. The LEPC then looks at the metrics/targets, including trends and changes over time, to determine if the outputs are productive and useful in achieving the goal.

2. You might have as a goal citizens be aware of the chemical hazards present in the community combined with a goal that will involve increased awareness of personal responsibility and appropriate actions in the event of an accident. Your target could be a specific annual increase in the number of people familiar with local chemical hazards. Measuring success could involve some process for interviewing citizens annually

or citizen performance in exercises or other tests of emergency plans. "Activities or outputs" to achieve this goal could be public meetings at which chemical hazard information is shared, printed materials with maps showing the location of specific chemicals, video materials for use on television programs and/or at public meetings.

3. Another possible goal is to have all facilities in your community, which are subject to EPCRA, be in full compliance with the law. Targets could be an annual increase in the number of facilities that have submitted information or a reduction in the number of facilities found to be in noncompliance during inspections. Activities to accomplish these targets, might include an annual campaign focused on a specific industry sector, or a public campaign urging all facilities to submit the required information.

4. A specific preparedness goal might be for all students and teachers in schools to be familiar with actions they should take if there is a release in the community with a possible impact on the school. A possible target could be the number of students/teachers who take appropriate action during an exercise. The LEPC could conduct training on hazard awareness, shelter in place, develop print and audio/visual materials, and/or prepare signs to post at strategic points.

Why Should You Care?

LEPCs face a terrible burden in demonstrating their worth and the worth of the activities they conduct. LEPCs lack a convincing way to demonstrate this worth because of a tendency to "do things" that seem obviously helpful, for example, hold meetings, make TV announcements describing your LEPC, practice implementing an emergency plan, and share information with the public about the dangers of chemicals in their community. But it is not always clear these good activities actually contribute to reaching some vision of success. The various audiences served by LEPCs will have their own vision for the success of what LEPCs do and that vision may not be the same as what the LEPC would craft for itself.

As these examples and the discussion below demonstrates, LEPCs should have a goal oriented reason when they choose their activities and then, be able to demonstrate those activities made progress to achieving their goals in a measurable fashion.

What Are Safety Performance Indicators and How Are They Used?

The OECD guidance uses the term "indicators" to refer to measures that provide insights into a concept (i.e., safety) that is difficult to measure directly. Simply put, the group first identifies some area of concern, then describes the target they want to accomplish in that area. Subsequently, they identify outcome indicators and activities indicators that can help them determine if they are meeting the target they established. (This is probably a bit murky to you. We will provide a detailed example in a bit.)

Outcome indicators help assess whether actions (e.g., policies, procedures) are achieving their desired results. Activities indicators provide you with a means to check regularly whether you are implementing your priority actions in the way you intended.

In this way, the activities indicators provide you an opportunity to understand why you are, or are not, achieving your target in a specific area. As you might be guessing by now, choosing the indicators related to your situation is the key step in this entire process. And the good news is the OECD guidance, often a bit difficult to understand (it was developed for use in many countries with varying safety customs and practices, with different words to describe their safety practices), is actually very helpful when it comes to choosing performance indicators.

In fact, once you have identified an area of concern and an appropriate target, the OECD guidance offers a list of possible outcome indicators and even more activities indicators.

You can choose to adopt the OECD language directly, or you can use the OECD list as a way to get you thinking more about the topic with the result you develop your own indicators. (If you want to use the OECD language, the interactive website mentioned before, http://oecdsafetyindicators.org/, will help you lift the OECD language directly into your local evaluation plan.)

Let's look at an example. Let's say your LEPC wants to focus on communication with the public. You should find pages 59-60 in the OECD guidance for Public Authorities and Communities to be helpful. There is suggested "target" language ("The public understands chemical risk information, takes appropriate actions in the event of an accident and has an effective channel to communicate with relevant public authorities.") Then there are at least eight outcome indicators, for example:

- Extent the public understands and remembers the chemical risk information provided to them by public authorities.
- Extent the public is satisfied with chemical risk information provided to them by public authorities.
- The number and quality of comments provided by the public on the information they have received.

You can see that, if you chose these outcome indicators, you will need to develop a method for gathering data, and then actually gather the data, to know if the outcome indicators are being achieved. Next, still on page 59, you will find a list of potential activities indicators, for example:

ED_002941_00002942-00055

- Is there a specific mechanism to share information between public authorities and the public openly and actively? Has this mechanism been designed in consultation with the public and other stakeholders?
- Is there a mechanism for the public to request information from public authorities and/or industry?

The activities indicators suggest actions and processes that you might want to have in place in order to ensure the outcome indicators (and the underlying "target") are reached. The activities indicators can often be answered with a "yes" or "no," but the real question is: will these activities promote chemical safety?

You can see the options for activities indicators are very wide-ranging. The good news is that, even though the OECD guidance does not provide an exhaustive list of activities indicators, it does provide some very good suggested indicators, which you can start with and adjust to meet your organizations specific needs.

The SPI Process

The following figure outlines the SPI process which is described in detail in Chapter 2 of the OECD guidance (beginning on page 9). We shall provide a detailed example in just a bit, but first let us offer some general comments on the process.

The language used in the diagram below is one of many possible ways to describe the SPI process. We are going to use other language in the description of the SPI process and the example scenario that follows to further explain the purpose of each step and to focus on how they can help organize the development of effective safety performance indicators.

Step 1: Establish the SPI team.

Someone must be responsible for conducting the evaluation for your LEPC. The SPI Team could be the LEPC itself, a subcommittee made up of LEPC members, a committee whose members are totally outside the LEPC membership, or some combination of the latter two options. In fact, there is another possibility: you might have a one-person team.

You will know if there is someone in your community with special talents for this job. Even if you go with the idea of a committee, that "one-person team" could be the ideal chairman.

Whomever you choose as members, be sure they are interested in evaluation, have the time to commit and enjoy the respect of your LEPC and leaders. You do not want the public to criticize the SPI results as the members were not trustworthy.

Step 2: Identify the key issues of concern.

The OECD guidance (page 14) has some good advice for this step. You probably know one or two issues you would like to analyze. Or your SERC might identify an issue it would like every LEPC in the state to address. Some very good advice from the OECD guidance: do not fall into the trap of asking what you can measure instead of what you should measure.

Step 3: What does success look like? & Step 4: Identify activities and establish a "yardstick" (outcomes) to show progress.

See the discussion above under "What are safety performance indicators.

Step 5: Collect the data and report indicator results.

See page 24 of the OECD guidance. Note what they say about using existing data as well as not using too many data points when briefing upper management.

Step 6: Act on findings from Safety Performance Indicators.

See page 26 of the OECD guidance. If there are inconsistencies in the results, it may indicate a problem in your safety program or a problem in the construction of your SPI program. This step involves addressing problems in your program.

Step 7: Evaluate and refine Safety Performance Indicators.

The results in Step 6 should lead you to look at both the safety program and the SPI program. Recall you need a good list of activities indicators, and it might take time to come up with the right ones. The list in the OECD guidance should be helpful, but only your experience (plus some advice from your SERC if they are involved in the SPI process) can tell you if you need to revise the activities indicators. If Step 6 leads you to conclude you have to change your activities indicators, do that and repeat the process as needed. (If you change or revise the activities indicators, you have already gotten to Step 4 for the second time.)

Some Specific Examples

The OECD guidance develops three scenarios (one each for a public agency, the fire department, and a citizen committee) and shows what the SPI team would do at each step of the process.

ED_002941_00002942-00056

As an LEPC, you will relate most closely to the citizen committee scenario, but you can also profit from following the other two scenarios through the process. Begin by reading the scenarios on page 11, and then study what actions are taken at each SPI step for each scenario. You may find one of the scenarios fits your situation; in that case, you might be able to lift a lot of material directly from the OECD guidance. Let's go through one more example in detail so you can see how the SPI process could be applied to a school lab cleanup project.

Scenario: Parents of students from the local high school, who are also members of the LEPC, discover storage of chemicals in the school lab while visiting the school during a parent/teacher conference. Upon researching this further, the parents discovered if these chemicals are not stored and handled properly, they can create a substantial hazard to students and first responders in the event of fire or spill. The parents have approached the school and LEPC to work together to ensure processes are in place for the proper storage and handling of these chemicals and identify a mechanism to evaluate these processes.

The Process of an LEPC / High School Example	
GATHER A TEAM	• Representatives of the LEPC, fire department, and other relevant regulatory agencies, if any, along with the school principal and parents meet to scope the project.
KEY HAZARDOUS MATERIALS ISSUES AND CONCERNS?	• Following discussions among the team members, it was agreed the "vision of success" was to reduce risk to students and faculty from chemical accidents. Key issues of concern included: o Developing procedures for the safe storage and handling of hazardous chemicals in school. o Reducing the risks of a chemical accident by removal of old, unneeded, excess quantities of otherwise hazardous chemicals, and o Education of students and faculty on the hazards of chemicals used in the school labs.
WHAT DOES SUCCESS LOOK LIKE?	• The team determined success of this effort would include: o Safe removal and disposal of unused, outdated, and hazardous chemicals from the school lab. o All teachers and students are properly educated regarding the hazards presented and how to handle those chemicals. o Programs are implemented to prevent re-accumulations of chemicals, and o Procedures are implemented for proper storage and use of hazardous chemicals.
IDENTIFY ACTIVITIES AND OUTCOMES TO SHOW PROGRESS.	• The metrics would include: quantities of chemicals removed, all teachers and students educated on chemical hazards of school chemicals, institution of inventory control programs as measured by whether old or excess quantities are present term-to-term, and development of proper chemical storage procedures as measured by inspectors.
DO THE ACTIVITY. COLLECT THE DATA.	• The team decided they would take an inventory of the amount and location of the hazardous chemicals and remove those that were a risk to the students and community. This is to be reported to the school, LEPC, and public via a public meeting and report.
ACT ON THE FINDINGS.	• The team agreed each term, reports would be submitted to the school superintendent, PTA, student body, and LEPC with the results of the activity indicators on inventory practices and chemical accidents. These reports would be reviewed by the LEPC/fire department and school administration and faculty to determine if changes need to be made in the procedures and/or the training program.
EVALUATE AND REFINE THE PROCESS	• At the end of each school year, the team would meet with the LEPC, and PTA in order to review the project outcome and the activity indicators to determine if they need to be revised or eliminated and whether new indicators need to be developed and implemented based on the results of the previous year and the experience gained in implementing the SPI program.

Additional examples

LEPCs can submit to EPA any additional examples developed and implemented. These lessons learned will be shared on EPA's website, http://www.epa.gov/emergencies/.

Additional information and assistance

The Guidance on Developing Safety Performance Indicators related to Chemical Accident Prevention, Preparedness and Response for Public Authorities and Communities was published by the Organization for Economic Development (OECD) in December 2008.

The full guidance may be found at www.oecd.org/ehs. LEPCs can use the interactive website at http://oecdsafetyindicators.org/ to select and customize their review program. Go to the website, click on "Communities," and then click on "My Targets and Indicators."

After creating an account, you can log in and create pages appropriate to your scenario. You can receive additional assistance by using the "Contact Us" function on the interactive website or by contacting EPA through our website http://www.epa.gov/emergencies/.

ED_002941_00002942-00057

LEPCs in the Modern World July 11, 2010

It is quite true EPCRA contains a requirement for LEPCs to prepare an emergency plan. As was pointed out in the EPCRA history document prepared for the Colorado SERC in March 2010 – forwarded with this document - much has changed since 1986.

Expectations of LEPCs have adapted to incorporate the broader, community-based, all-hazards emergency planning realm.

This can be seen in EPA guidance to LEPCs. The most comprehensive of these comes from Region 6 and it reflects the adaptation of LEPCs to this modern approach. This guidance focuses on the role of LEPCs within the broader community context and does not read EPCRA as requiring LEPCs to prepare a limited hazmat plan.

The initial two Sections from the Region 6 LEPC Handbook are quoted in full below as they are fully illustrative of the modern approach:

General

The role of LEPCs is to form a partnership with local governments and industries as a resource for enhancing hazardous materials preparedness. Local governments are responsible for the integration of hazmat planning and response within their jurisdiction.

This includes ensuring the local hazard analysis adequately addresses hazmat incidents; incorporating planning for hazmat incidents into the local emergency plan and annexes; assessing capabilities and developing hazmat response capability using local resources, mutual aid and contractors; training responders; and exercising the plan.

It's necessary for industry to be a part of that planning process to ensure facility plans are compatible with local emergency plans.

Every regulated facility is responsible for identifying a facility emergency coordinator; reporting hazmat inventories annually to the LEPC, SERC, and local fire department; providing material safety data sheets (MSDS) or a list of hazardous chemicals; allowing local fire departments to conduct on-site inspection of hazmat facilities ; and providing annual report of toxic chemicals released to EPA and the State.

LEPCs are crucial to local hazardous materials planning and community right-to-know programs. The membership comes from the local area and should be familiar with factors that affect public safety, the environment, and the economy of the community. That expertise is essential as the LEPC advises the writers of the local emergency management plan, so the plan is tailored to the needs of the planning district.

In addition to its formal duties, the LEPC can serve as a focal point in the community for information and discussion about hazardous substance emergency planning, and health and environmental risks. Citizens may expect the LEPC to reply to questions about chemical hazards and risk management actions.

Members of the LEPC represent the various organizations, agencies, departments, facilities, and/or other groups within the district. Each member must realize he or she represents their organization on the LEPC and they are responsible for coordinating information and activities from the LEPC to their organization and for providing accurate feedback from their organization back to the LEPC.

The LEPC has many responsibilities, mandates, and deadlines. The membership should organize to handle these various tasks by utilizing individual efforts, sub-committees, or contracted assistance.

Primary LEPC Responsibilities

As mentioned in Section I, the Emergency Planning and Community Right-to-Know Act (EPCRA) establishes the LEPC as a forum at the local level for discussions and a focus for action in matters pertaining to hazardous materials planning.

LEPCs also help to provide local governments and the public with information about possible chemical hazards in their communities. The major legal responsibilities of LEPCs are listed below. The citations are from EPCRA, Public Law 99-499.

Each LEPC:

- Shall review local emergency management plans once a year, or more frequently as circumstances change in the community or as any facility may require (Section 303 (a)).
- Shall make available each MSDS, chemical list described in Section 311(a)(2) or Tier II report, inventory form, and follow-up emergency notice to the general public, consistent with Section 322, during normal working hours at a location designated by the LEPC (Section 324(a)).
- Shall establish procedures for receiving and processing requests from the public for information under Section 324, including Tier II information under Section 312. Such procedures shall include the designation of an official to serve as coordinator for information (Section 301(c)).
- Shall receive from each subject facility the name of a facility representative who will participate in the emergency planning process as a facility emergency coordinator (Section 303(d)).
- Shall be informed by the community emergency coordinator of hazardous chemical releases reported by owners or operators of covered facilities (Section 304(b)(1)(a)).

ED_002941_00002942-00058

- Shall be given follow-up emergency information as soon as practical after a release, which requires the owner/operator to submit a notice (Section 304(c)).
- Shall receive from the owner or operator of any facility a MSDS for each such chemical (upon request of the LEPC or fire department), or a list of such chemicals as described (Section 311(a)).
- Shall, upon request by any person, make available an MSDS to the person in accordance with Section 324 (Section311(a)).
- Shall receive from the owner or operator of each facility an emergency and hazardous chemical inventory form (Section 312(a)).
- Shall respond to a request for Tier II information no later than 45 days after the date of receipt of the request (Section 312(e)).
- May commence a civil action against an owner or operator of a facility for failure to provide information under Section 303(d) or for failure to submit Tier II information under Section 312(e)(1) (Section 32 6(a)(2)(B)).

NASTTPO ADAPTATION OF THESE CONCEPTS TO INCORPORATE OECD SPI

Melding these concepts with EPCRA, NASTTPO has recommended SERCs should expect LEPCs to practice the "Golden Rules" stated at the end of the NASTTPO White Paper and specifically to be able to demonstrate these outcomes:

- LEPCs will be part of a community-wide, all-hazards planning effort producing a community emergency operations plan that includes hazardous materials. This community EOP needs to incorporate the EPCRA planning elements. Depending upon the needs and assets of the community, the LEPC may be the focus of this effort or support it using the information acquisition resources available to LEPCs under EPCRA.

- LEPCs will actively promote or conduct community right-to-know efforts so members of the public are (1) better aware of hazards in the community and (2) better understand their own preparedness obligations and opportunities.

- LEPCs will use programs such as the hazardous materials emergency planning grant program to conduct programs that identify risks, especially from transportation, improve planning, and evaluate planning and training through exercises.

- LEPCs should evaluate other programs to address specific risks in their community such as school chemical cleanup and meth labs.

EPCRA Through Time October 7, 2010

BACKGROUND

EPA provides us with a lovely narrative on the genesis of EPCRA: The Emergency Planning and Community Right-to-Know Act (EPCRA) was enacted by Congress on October 17, 1986, as a stand-alone Act, Title III, within the Superfund Amendments and Reauthorization Act of 1986 (SARA).

It grew out of a grassroots right-to-know movement at the state and local level, with labor unions and citizen activities working together towards a common goal: greater protection of the public from chemical emergencies and dangers through public disclosure by business and industry of the chemicals they store, use, and release. The grassroots right-to-know movement took on new urgency -- and received increased attention from lawmakers -- in December of 1984, when the release of a highly toxic chemical cloud from a U.S.- owned plant in Bhopal, India killed 3,000 people and injured many more. That incident was followed less than a year later by a toxic release from a West Virginia chemical plant.

Enactment of EPCRA, in the wake of those tragedies, represents a significant step where the federal government has taken an important role in areas which had previously been left for control by state and local governments when they say the need.

The dual legislative purposes of EPCRA are reflected in its name: emergency planning and community right-to-know. One part of the law requires businesses to report on emissions of certain toxic chemicals, and that information is then placed into the Toxics Release Inventory, a publicly-accessible data bank.

Another part of the law requires certain businesses to report releases of extremely hazardous chemicals to state and local authorities, and to disclose to those same authorities the quantities and types of toxic chemicals stored on site.

The Act, which affects both the facilities and the states where they are located, provides for emergency planning and notification that enables states and communities to prepare and respond to emergency releases of hazardous substances in Subtitle A; imposes the reporting requirements in Subtitle B; and, along with other provisions, imposes civil, criminal, and administrative penalties for reporting violations.

Enforcement actions may be brought by EPA, the states, concerned citizens, and other emergency planning and response entities. Over the intervening years,

emergency planning has become more sophisticated and institutionalized. Community emergency managers exist where once there may have only been a part-time civil defense director. All-hazards planning is now the norm rather than planning focused on only one type of hazard.

It is also brutally clear that community-based emergency planning must be community-wide. The days of stove-piped planning functions looking only at one suite of technological or natural hazards is over. Shortly after 9/11 the National Response Team (consisting of all federal agencies but lead by EPA, DOT and FEMA) issued guidance (NRT-1) that pushed communities to the all-hazards emergency operations plan (EOP) approach. NRT-1 is currently undergoing amendment to become consistent with newly issued documents such as CPG-101, discussed below, but its fundamental tenants remain unchanged. It provides:

The first responders (e.g., police, fire, emergency medical team) at the scene of an incident are generally the same whatever the hazard. Moreover, many emergency functions (e.g.,direction and control, communications, and evacuation) vary only slightly from hazard to hazard. Procedures to be followed for warning the public of a hazardous materials incident, for example, are not that different from procedures followed in warning the public about other incidents such as a flash flood. It is possible, therefore, to avoid a great deal of unnecessary redundancy and confusion by planning for all hazards at the same time.

A multi hazard EOP avoids developing separate structures, resources, and plans to deal with each type of hazard. In describing LEPCs and how they should participate in community-wide planning NRT-1 noted that: LEPCs formed according to EPCRA develop their own rules....

LEPCs are specifically entitled to any information from facility owners and operators deemed necessary for developing and implementing the emergency plan. The EPA Administrator can order facilities to comply with a local committee's requests for necessary information; LEPCs can bring a civil suit against a facility that refuses to provide requested information.

EPA even pushed LEPCs towards counter-terrorism activities in an early post-9/11 guidance. Many LEPCs are already addressing CT, even if they do not use the word "terrorism." If you have developed a plan for possible accidental releases of chemicals in your community, you can use the same general planning principles for deliberate releases caused by terrorists. You may need to spend some time considering biological agents.

This factsheet includes some suggestions for how you can modify your current activities to include deliberate chemical and biological releases.

As it should be, these post-9/11 developments are a very long way from the early vision of EPCRA where LEPCs would be the focus of the community plan for releases of hazardous chemicals listed by EPA prepared in isolation from other community planning.

The new vision is perfectly consistent with the modern federal programs for community-wide, all-hazards planning. For more of a feel for this modern approach we can look to the new FEMA publication "Community Planning Guide (CPG) 101", which tells us:

CPG 101 is the foundation for State and local planning in the United States.... When threatened by natural-, technological-, or human-caused emergencies or disasters, people expect elected or appointed leaders to take immediate action to deal with the problems. They expect the government to marshal its resources, channel the efforts of voluntary organizations and private enterprises in the community, and solicit assistance from outside the jurisdiction if necessary....

CPG 101 provides general guidelines on developing emergency operations plans. It promotes a common understanding of the fundamentals of planning and decision making to help operations planners examine a hazard or threat and produce integrated, coordinated, and synchronized plans.

This Guide helps emergency and homeland security managers in State, Territorial, Tribal, and Local governments (hereafter, State and Local governments) in their efforts to develop and maintain viable all-hazard, all-threat emergency plans.

Each jurisdiction's plans must reflect what that community will do to protect itself from its unique hazards and threats with the unique resources it has or can obtain.... Planning must involve all partners. Just as coordinated emergency operations depend on teamwork, good planning requires a team effort. The most realistic and complete plans are prepared by a team that includes representatives of the departments and agencies, as well as the private sector and NGOs that can contribute critical perspectives or that will have a role in executing the plan.

This principle is so important the first step of the planning process is forming a planning team. When the plan considers and incorporates the views of the individuals and organizations assigned tasks within it, they are more likely to accept and use the plan. (LEPCs are specifically mentioned as participants and resources.)... Emergency operations planning addresses all hazards and threats. The causes of emergencies can vary greatly, but many of the effects do not. Planners can address common operational functions in the basic plan instead of having unique plans for every type of hazard or threat.

For example, floods, wildfires, hazardous materials releases, and radiological dispersion devices (RDDs) may lead a jurisdiction to issue an evacuation order and open shelters.

Even though each hazard's characteristics (e.g., speed of onset, size of the affected area) are different, the general tasks for conducting an evacuation and shelter operations are the same. While differences in the speed of onset may affect when the order to evacuate or to open and operate shelters is given, the process of determining the need for evacuation or shelters and issuing the order does not

change. All hazards and all-threats planning ensures that, when addressing emergency functions, planners identify common tasks and who is responsible for accomplishing those tasks. In recognition of this changing focus, in 2004 the Colorado SERC issued "advice" to LEPCs. This document made it clear the SERC's attitude at the time was to encourage LEPCs to become part of the community-wide planning effort with special focus on the community right-to-know aspects of EPCRA.

The Colorado SERC recognized LEPCs has specific authorities regarding facilities that could be useful in supporting the community planning effort. In 2007 the National Association of SARA Title III Program Officials (the national group representing SERCs) issued a White Paper on the expected aspects of local community planning and the role of LEPCs.

This document was reviewed by EPA and DOT/PHMSA prior to it being issued and both agencies link to it from their web pages. Again, the emphasis was on LEPCs becoming part of the community-wide, all-hazards planning effort.

CONCLUSION

As a SERC performs its mission to "supervise" LEPCs it should be mindful of what our federal partners expect from community-based planning efforts. The SERC must be enlightened enough to understand the emergency planning aspects of EPCRA are now only one small part of what is expected from the community planning effort that includes LEPCs.

In order to be relevant to their communities, garner support and broaden membership LEPCs must be part of this broader effort. Melding these concepts with EPCRA, the SERC should expect LEPCs to practice the "Golden Rules" stated at the end of the NASTTPO White Paper and specifically to be able to demonstrate these outcomes:

- LEPCs will be part of a community-wide, all-hazards planning effort producing a community emergency operations plan that includes hazardous materials. This community EOP needs to incorporate the EPCRA planning elements. Depending upon the needs and assets of the community, the LEPC may be the focus of this effort or support it using the information acquisition resources available to LEPCs under EPCRA.
- LEPCs will actively promote or conduct community right-to-know efforts so members of the public are (1) better aware of hazards in the community and (2) better understand their own preparedness obligations and opportunities.
- LEPCs will use programs such as the hazardous materials emergency planning grant program to conduct programs that identify risks, especially from transportation, improve planning, and evaluate planning and training through exercises.
- LEPCs should evaluate other programs to address specific risks in their community such as school chemical cleanup and meth labs.

CFATs Emergency Planning for LEPCs January 13, 2008

The Department of Homeland Security has adopted 6 CFR Part 27, a new regulation mandated by Congress, known as Chemical Facility Anti-Terrorism Standards (CFATS). The regulation is intended to fill a security gap in our country's anti-terrorism efforts by identifying and improving the security of chemicals that are potentially at a high level of risk for release, theft, or sabotage.

LEPCs and SERCs should alert EPCRA & RMP reporting facilities about these requirements. No reports are due to the LEPCs and SERCs under these requirements; however, given the potential for security requirements to have an impact on facility access for emergency responders and on emergency plans, it is critical for local planners, responders and facilities to communicate in order for a facility to satisfy the regulatory requirements.

In order to aid LEPCs, SERCs and facilities in understanding these new requirements we have prepared some short-hand aids. Following this cover page is a key issue comparison between EPCRA, RMP and the CFATS regulation. As requirements may change the user is counseled to look for updated information.

The initial requirement for a facility with a chemical at or over the threshold is to submit a Top-Screen. The CSAT Top-Screen is a questionnaire regarding chemicals in possession at a facility regardless of why. Based on the results of the CSAT Top-Screen facilities will be placed in one of four risk based tiers.

DHS will require most facilities to complete a CSAT Security Vulnerability Assessment and develop CSAT Site Security Plan. Some facilities will be allowed to submit an Alternative Security Program. The CSAT Top-Screen questionnaire, Security Vulnerability Assessment tool, and Site Security Plan template are online tools DHS will require all regulated facilities to use.

The Top-Screen must be completed online within 60 calendar days of the effective date of the final Chemicals of Interest list. DHS has finalized the list. That 60 day clock began to run on November 20th. Failure to complete a CSAT Top-Screen within the timeframe provided may result in civil penalties, a Department of Homeland Security audit and inspection, or an order to cease operations.

Facilities should go to www.DHS.gov/chemicalsecurity and follow the registration instructions to access the CSAT.

ED_002941_00002942-00061

Once DHS validates a facility's registration, DHS will notify the facility about how to access the Top-Screen and other CSAT tools. A list of CSAT Top-Screen questions and user instructions are also available online at http://www.dhs.gov/xprevprot/programs/gc_1169501486197.shtm

A full text version of the Chemical Facility Anti-Terrorism Standards Interim Final Rule (6 CFR Part 27) and Appendix A: DHS Chemicals of Interest are available online at http://www.dhs.gov/chemicalsecurity

Facilities Regulated	
DHS	Overview: Facilities are regulated based on their classification as "high risk facilities," which is determined by the presence of threshold quantities of certain chemicals, within the broad categories of: toxics, explosives, flammables, CW/CWP, and sabotage/ contamination, mission critical, and economically critical chemicals. Definition: "Chemical Facility or facility shall mean any establishment that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criteria identified by the Department. As used herein, the term chemical facility or facility shall also refer to the owner or operator of the chemical facility. Where multiple owners and/or operators function within a common infrastructure or within a single fenced area, the Assistant Secretary may determine that such owners and/or operators constitute a single chemical facility or multiple chemical facilities depending on the circumstances." 6 C.F.R. § 27.105 (2007). For exceptions to facilities regulated because of coverage by other laws, see 6 C.F.R. § 27.110 (2006). Designation: The Assistant Secretary has the discretion to designate a facility as "high risk" at any time based on the information available, or may request information through publication in the Federal Register or through direct contact with a facility. See 6 C.F.R. § 27.200 (2007). Note: Any facility that does not respond to a request for information may be presumed a high risk facility. "ACG" – A Commercial Grade "APA" – A Placarded Amount "STQ" – Screening Threshold Quantity
EPCRA	Overview: Generally, the requirements for emergency planning and reporting apply to any facility that has quantities of chemicals on the lists above threshold levels. The requirements for emergency release notification apply to any facility where a hazardous chemical is used, produced or stored, or where there is a release of a hazardous chemical or CERCLA substance. 40 C.F.R. § 355.40 (2007) (noting exceptions). Definition: Facility means all buildings, equipment, structure, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). Facility shall include manmade structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft. 40 C.F.R. § 355.20 (2007).
RMP	Note: The Clean Air Act uses the term "stationary source" rather than facility in its statutory provisions. Thus, these provisions apply to an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process. 40 C.F.R. §68.10 (2007). Definition: Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. Section 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.
Chemical Threshold Quantities	
DHS	See Appendix A (added to Title III List of Lists)
EPCRA	See Title III List of Lists
RMP	See Title III List of Lists
Calculation of Thresholds	
DHS	Two types of calculations will be made: 1) The total onsite quantity and distance of concern; and 2) The quantity in the Area of Highest Quantity and distance of concern The STQ for each chemical is assigned by the security issue associated with the chemical. There are four main security issues: (1) release (including toxic, flammable, and explosive); theft and diversion (including chemical weapons and chemical weapon precursors, weapons of mass effect, and explosives and improvised explosive device precursors); (3) sabotage and contamination; and (4) critical to government mission and national economy. Section 27.105. Chemicals of interest are calculated according to their security issue category. In calculating whether a facility possesses a chemical of interest that meets the STQ for any security issue, the facility need not include any chemical of interest: (1) used as a structural component; (2) used as products for routine janitorial maintenance; (3) contained in food, drugs, cosmetics, or other personal items used by employees; (4) in process water or non-contract cooling water as drawn from environment or municipal sources; (5) in air either as compressed air or as part of combustion; (6) contained in articles, as defined in 40 CFR § 68.3; (7) in solid waste regulated under RCRA; (8) in naturally occurring hydrocarbon mixtures prior to entry of the mixture into a natural gas processing plant or a petroleum refining process unit. Section 27.203(a). A facility must include chemicals with a release-chemical designation toward the STQ found in: (i) a vessel, underground storage facility, or magazine; (ii) transportation containers; (iii) process intermediates, by-products, incidental materials; (iv) natural gas or liquefied natural gas stored in peak shaving facilities; and (v) fuel stored in aboveground tank farms. Section 27.203(b)(1). A facility need not include release-chemicals that a facility manufactures processes or uses in a laboratory unless the use/process is pilot plant scale operations or activities conducted outside the laboratory. Section 27.203(b)(2). A facility also need not include propane in tanks of 10,000 pounds or less. Section 27.203(b)(3). A facility must only include chemicals with a theft/diversion chemical designation toward the STQ found in transportation packaging. Section 27.203(c). A facility meets the STQ for a chemical with a sabotage/ contamination designation if the facility ships the chemical and is required to placard the shipment pursuant to subpart F of 49 CFR Part 172. Section 27.203(d).
EPCRA	Calculation of threshold planning quantities for solids and mixtures: 1) If a container or storage vessel holds a mixture or solution of an EHS, then the concentration of EHS, in weight percent (greater than 1%), shall be multiplied by the mass (in pounds) in the vessel to determine the actual quantity of extremely hazardous substance therein.

	2) (i) EHSs that are solids are subject to either of two TPQs as shown on Appendices A and B (i.e., 500/611,000 pounds). The lower quantity applies only if the solid exists in powdered form and has a particle size less than 100 microns; or is handled in solution or in molten form; or meets the criteria for a NFPA rating of 2, 3 or 4 for reactivity. If the solid does not meet any of these criteria, it is subject to the upper (10,000 pound) TPQ as shown in Appendices A and B. (ii) The 100 micron level may be determined by multiplying the weight percent of solid with a particle size less than 100 microns in a particular container by the quantity of solid in the container. (iii) The amount of solid in solution may be determined by multiplying the weight percent of solid in the solution in a particular container by the quantity of solution in the container. (iv) The amount of solid in molten form must be multiplied by 0.3 to determine whether the lower TPQ is met. See 40 C.F.R. § 355.40 (2007). Solid in solution. Multiply the weight percent of the non-reactive solid in solution in a particular container by the total weight of solution in that container. Then multiply by 0.2. Solid in molten form. Multiply the weight of the non-reactive solid in molten form by 0.3.
RMP	A threshold quantity of a regulated substance listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold. 40 C.F.R. § 68.115 (2007) (noting exceptions).
	Treatment of Mixtures
DHS	See § 27.204 in the DHS Appendix A Final Rule. A facility must count the amount of release-toxic chemicals of interest toward the STQ if the chemical is present at a concentration equal to or greater than 1% by weight of the mixture unless the facility can demonstrate that the partial pressure of the regulated substance is less than 10 mm Hg. A facility must count the entire amount of a mixture containing a release-flammable chemical of interest at a concentration equal to or greater than 1% by weight of a mixture having a NFPA flammability hazard rating of 4. A facility must count the total quantity of all commercial grades of release-explosive chemicals of interest toward the STQ unless a specific minimum concentration is assigned, in which case the facility must count the total quantity of all commercial grades of the chemical at the specified minimum concentration. A facility must count toward the STQ the entire amount of a mixture containing a non-CUM 100g theft/diversion-CWC/CWP chemical of interest present in a mixture at or above the minimum concentration amount listed. A facility must count toward the STQ the entire amount of a mixture containing a theft/diversion-WME chemical of interest present at or above the minimum amount listed. A facility must count the total quantity of all commercial grades of a theft/diversion-EXP/IEDP chemical of interest toward the STQ unless a specific minimum concentration is assigned, in which case the facility must count the total quantity of all commercial grades of the chemical at the specified minimum concentration. A facility must count toward the STQ the total quantity of all commercial grades of a sabotage/contamination chemical of interest.
EPCRA	Mixture is defined as a heterogeneous association of substances where the various individual substances retain their identities and can usually be separated by mechanical means. Includes solutions or compounds but does not include alloys or amalgams. 40 C.F.R. 355.20 (2007). An owner or operator may meet the requirements of EPCRA § 311 or EPCRA § 312 with respect to a hazardous chemical which is a mixture by doing one of the following: a) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary. b) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.
RMP	Mixtures are regulated by the CAA based on guidelines for two categories of hazardous materials: 1) Toxic Substances 2) Flammable Substances For these categories, the following exemptions/calculations apply: • Toxic Substances: To determine whether a mixture that is in a process meets the threshold quantity, the EPA divides toxic substances into two categories. First, the Act, as well as guidance on the Act, lists certain chemicals in solutions or mixtures for which a specific cut-off is stated. Quantities of Hazardous Substances below that amount need not be used in the threshold quantity calculation. Second, any other regulated toxic substances that are part of solutions or mixtures must meet the one-percent de minimis requirement unless the facility can show that the partial pressure of the substance in the solution or mixture is less than 10 mm Hg. In that case, the substance should not be included in the threshold calculation. See List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions under Section 112(r) of the Clean Air Act, 25 available at http://daq.state.nc.us/112r/files/40cfr68(9868)_01141994.pdf. • Flammable Substances: A mixture should only be considered as meeting the threshold if it meets the criteria for an NFPA flammability rating of 4; boiling point and flash point shall be defined and determined in accordance with NFPA 30, Flammable and Combustible Liquids Code, National Fire Protection Association. See 49 C.F.R. 68.115(b)(2).
	Emergency Planning/Reporting
DHS	Each facility must create a "site security plan" that addresses any identified risk factors present. 6 C.F.R. § 27.225. The plan should meet each of the risk based performance standards identified in 6 C.F.R. 27.230 (2007). Additionally, each facility must engage in, and submit records of: training; drills and exercises; incidents and breaches of security; maintenance, calibration and testing of security equipment; security threats; audits; and letters of authorization and approval. Additionally, any Top-Screens, Security Vulnerability assessments, Site Security Plans, and correspondence with the Department for the last six years must be recorded. 6 C.F.R. 27.255 (2007).
EPCRA	Reporting: EPCRA has several different reporting mechanisms within its provisions: (1) Pursuant to § 302, facilities with a regulated chemical in excess of the threshold quantity, a one-time notification to the SERC that the facility is subject to EPCRA. Thereafter, Generally, any facility that has any of the EHS listed chemicals at or above its TPQ must notify the SERC and LEPC within 60 days after they first receive a shipment or produce the substance on site. EPCRA § 302 (2)(c). (2) Pursuant to § 304, a notification each time a release occurs. Releases requiring notification under § 304(b) include substances regulated under CERLCA; substances not regulated by CERCLA if is not a federally permitted release as defined in Section 101(10) of CERCLA, if the release is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and occurs in a manner which would require notification under Section 103(a) of CERCLA; and for some substances that are not regulated by EPCRA § 301, but are regulated by CERCLA § 102-3. Notification should include the following information: The chemical name; an indication of whether the substance is a EHS; 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 or sheltering in-place; and, name and telephone number of contact person. See EPCRA § 304. A written follow-up notice should be sent as soon as possible. EPCRA § 304 (c). Sections 311-12 deal with facilities that are regulated by Occupational Safety and Health Act's ("OSHA") HCS. OSHA requires employers keep MSDSs for approximately 500,000 chemicals. Generally, the minimum threshold levels for reporting hazardous chemical this Section is 10,000 pounds, with a lower threshold for extremely hazardous chemicals. Retail gasoline and diesel fuel stations are exempt. Section 311 requires employers who have MSDS chemicals above certain levels at

	their facilities submit either copies of their MSDS, or a list of their MSDSs to SERC, LEPC, and the local fire department. A list of MSDS chemicals must include: immediate/delayed health hazards, fire hazards, sudden release of pressure hazards, and/or reactive hazards. Facilities covered by § 312 must also submit an annual emergency and hazardous chemical inventory form to the SERC, LEPC, and fire department. This report is given as either a Tier I or Tier II report, depending on which is required by state law. Generally, a Tier I report contains: An estimate (in ranges) of the maximum amount of chemicals present for each category 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 the hazardous chemicals in each category. A Tier II Report contains the same information, but also requires the chemical/common name as required on the MSDS. Although a facility may not otherwise qualify for Tier I/Tier II reporting, an LEPC may request Tier II information regardless of the amount of MSDS chemical present. § 312(e)(3)(c).
RMP	If a facility uses chemicals in a process, and the amount of chemicals used is equal to or higher than the threshold level, a RMP should be prepared. RMP: The owner or operator of a stationary source with processes subject to Program 2 or Program 3 shall develop a management system to oversee the implementation of the RMP elements. 40 C.F.R. § 68.15 Guidance, available at http://yosemite1.epa.gov/oswer/ceppoweb.nsf/vwResourcesByFilename/Chap-05-final.pdf/$File/Chap-05-final.pdf. For guidance on preparing an RMP, see Risk Management Program Guidance, available at http://yosemite1.epa.gov/oswer/ceppoweb.nsf/vwResourcesByFilename/Chap-09-final.pdf/$File/Chap-09-final.pdf. Elements: The RMP shall contain an executive summary which includes: the accidental release prevention and emergency response policies at the stationary source; the stationary source and regulated substances handled; the general accidental release prevention program and chemical-specific prevention steps; the five-year accident history; the emergency response program; and planned changes to improve safety. See 40 C.F.R. § 68.155 (2007). The RMP shall contain a registration document, prepared according to 40 C.F.R. § 68.160 (2007). The RMO shall contain an Offsite Consequence Analysis ("OCA") (also referred to as RMP Comp) for each Program 1 process, and for Program 2 and 3 processes, one OCA to represent all regulated flammable substances held above the threshold quantities. In addition, the RMP should include one alternative release scenario for each toxic substance regulated by Program 2 and 3, and one alternative release scenario for each regulated flammable substance in Program 2 and 3 processes. Each OCA has two parts: the worst case scenario, and an alternative scenario. The following data shall be included in the OCA: chemical name; percentage weight of the chemical in a liquid mixture (toxics only); physical state (toxics only); basis of results (give model name if used); scenario (explosion, fire, toxic gas release, or liquid spill and evaporation); quantity released in pounds; release rate; release duration; wind speed and atmospheric stability class (toxics only); topography (toxics only); distance to endpoint; public and environmental receptors within the distance; passive mitigation considered; and active mitigation considered (alternative releases only). See 40 C.F.R. § 68.165 (2007); RMP Guidance for Offsite Consequence Analysis, available at http://yosemite1.epa.gov/oswer/ceppoweb.nsf/vwResourcesByFilename/ocaall.PDF/$File/oca-all.PDF. • For Program 2 processes, the RMP must also contain a prevention plan pursuant to 40 C.F.R. § 68.170 (2007). • For Program 3 processes, the RMP must also contain a prevention plan pursuant to 40 C.F.R. § 68.175 (2007). • The RMP shall contain a 5 year history of accidents covered in 40 C.F.R. § 68.42(a)-(b) (2007). • The RMP shall contain information about emergency response programs pursuant to 40 C.F.R. § 68.180 (2007). • The RMP shall contain a certification of accuracy pursuant to 40 C.F.R. § 68. 185 (2007).

CFATs Exercise and Planning Compliance for LEPCs May 1, 2008

GUIDANCE FOR LEPCs AND SERCs REGARDING THE DHS CFATS REQUIREMENTS FOR PLANNING AND EXERCISES

The purpose of this guidance to provide assistance to LEPCs and SERCs when they are working with facilities that are regulated by the CFATS program. The facilities are, of course, part of our communities. The safety of the community, the safety of facility employees, the community's preparedness for hazardous chemical releases, and most critically the safety of first responders depends on cooperation between the facility, LEPCs and first responders in planning, training and exercising for possible incidents. The DHS's CFATS contain the following provision at 6 CFR §27.230:

(9) Response. Develop and exercise a plan to respond to security incident internally and with assistance of local law enforcement and first responders.

Of course it's helpful to have some idea of what DHS intended with this provision. The following discussion is found in the explanatory materials in the Federal Register when the regulation was announced. At 72 FR 17724, we find the following:

Developing and exercising a plan to respond to security incidents internally and with law enforcement and responders (i.e., EMTs, fire, police) benefits the facility by preparing it to take quick and decisive action in an attack or security breach. Establishing relationships with law enforcement improves understanding of the layout and of hazards associated with the facility and strengthens relationships with the community.

It's also useful to understand DHS did not intend to preempt existing regulatory programs such as EPCRA which created LEPCs and SERCs in the first place. At 6 CFR §27.405 we find:

(1) Nothing in this part is intended to displace other federal requirements administered by the Environmental Protection Agency, U.S. Department of Justice, U.S. Department of Labor, U.S. Department of Transportation, or other federal agencies.

Again we find the explanatory materials in the Federal Register are helpful. A 72 FR 17714 we find the following:

At this time, we do not intend to displace or otherwise affect any provisions of statutes, including EPCRA, or Section 112r and 114 of the CAA of 1990, as amended, Sections 308 and 402 of the CWA, and Section 104(e)(7) of CERCLA.

In NASTTPO's view this means LEPCs should play their normal role in promoting communication, planning, and exercises with a focus on the sorts of incidents the facility

might experience. This approach is also consistent with NFPA 1600 requirements in Section 4.3 dealing with a facility advisory committee.

The objective of these efforts is clear. Planning and preparedness to protect communities and all their members from the impacts of hazardous chemical releases is a communitywide process. Only through cooperation can we be successful.

It would be horrifying if our efforts to improve security actually created risks and endangered the lives of responders, or interfered with our ability to prevent accidents. It is important to draw a distinction between DHS and law enforcement interactions with facilities on security issues versus chemical release planning.

Quite obviously most discussions between the facility, LEPC and local responders will involve planning or response to an actual or threatened chemical release. In order to achieve community preparedness it will be important for all involved to have a responsible perspective on this balance.

It is inappropriate for a facility to "hide" behind security issues as an excuse to fail to cooperate with LEPCs and first responders. It is equally inappropriate for LEPCs and non-law enforcement first responders to attempt to force access to information that is unnecessary to emergency planning, training and exercises.

Facilities are required by the CFATS regulation to protect "confidential vulnerability information" (CVI). In order to accomplish this protection, facilities must determine when an individual has a "need to know" CVI information. The facility must also determine the individual has completed training on how to handle CVI information. Further information can be found in the regulation at 27 CFR §27.400 and on-line at http://www.dhs.gov/xprevprot/programs/gc_1181835547413.shtm

The training program can also be found at this link.

It is the opinion of NASTTPO planning exercises and response training may require facilities to share limited CVI information with key members of the LEPC or first responder organizations. These key people need to be able to demonstrate completion of the training program to handle CVI information.

The reason for this sharing of information is twofold. First, planning and exercises are vastly more valuable when they are based upon reasonable incident scenarios. Second, hazards to responders created by security improvements – for example automatically locking doors – must be disclosed so planning can adapt. LEPCs and first responders need to understand communication of CVI is not always going to be necessary to accomplish reliable planning, training and exercises.

While this might not be comfortable it is important to allow the facilities to comply the DHS requirements. In order to accomplish the goals of emergency planning, community preparedness and to assist the CFATS regulated facilities with their compliance obligations, LEPCs and first responders should expect facilities to do the following and to the extent CVI is involved, LEPCs and first responders need to respect those requirements:

- Communicate hazardous chemicals are present with information on the name, typical quantity and hazard presented - this should include reports of chemical release scenarios with impacts outside the facility as required under existing EPCRA and CAA §112r regulatory programs.
- Communicate accident prevention, internal response capabilities and planning.
- Review facility operational and access conditions that can impact search and rescue, access and egress, and critical areas responders should attempt to protect in an incident.
- If there are security systems in place that will retard first responder access or egress, or which are so unique hazards are presented to first responders during an incident, then the facility must make an effort to communicate these conditions in order to protect the health and safety of first responders.

LEPCs and responders need to prepare for the following:

- Participate in planning and exercises with regulated facilities.
- Provide advice and counsel on accident prevention efforts.
- Work to fully integrate regulated facilities into community preparedness efforts.
- Protect CVI information.

White Paper: The Practical Evaluation of Local Emergency Planning and Preparedness

The objective of this paper is not to simply restate the requirements of EPCRA. Rather it is intended to make observations on the practical aspects of local emergency planning and preparedness. It is assumed the reader has some background in the provisions of EPCRA and those will not be restated here. LEPCs are the backbone of EPCRA.

They are typically a collection of volunteers made up of local government employees, first response agencies, facility representatives and members of the public.

While EPCRA does contain a list of desired membership background and representation, most LEPCs do not have members in all those categories. Rarely will an LEPC have a staff and even less often will that staff be either paid or applied to LEPC functions on a full-time basis.

The typical LEPC functions without a budget or with only a small amount of money frequently in the form of grants from the SERC. The chair and members often provide support from their own pockets or with discretionary funds from their employer's budgets. LEPCs are frequently organized within the offices of a first response agency or local emergency management.

In such cases it can be difficult to identify where the parent agency's activities end and the LEPC's begin. The functions are obviously complementary and therefore that distinction is frequently misleading or of little importance in the day-to-day planning and preparedness of the community.

Planning

A limited reading of EPCRA gives the impression the LEPCs are supposed to develop emergency response plans for hazardous substances. This can create a conflict if it is routine for such plans to already exist within first response agencies and local emergency management offices.

An LEPC that is housed within one of these agencies will have typically been involved in its planning activities. More independent LEPCs will frequently be active in providing information and input to these agencies in order to help them improve the plans.

In some communities the LEPC has become a broader all-hazards emergency planning agency within the community. This happens when the cooperation and resources available within the LEPC make this the most efficient approach for that community.

While not all SERCs have adopted policies on the coordination between LEPCs and other agencies, most encourage whatever arrangement is productive for the community.

Most LEPCs consider and adopt projects based upon core missions they feel are important in the community. These may involve any variety of matters, but are generally focused on a desire to protect first responders and the public through better information and awareness of risks in the community.

Consideration must be given to the resources available and the interests of the members. Most SERCs will support a vast range of LEPC activities as long as they have some relationship to the intent of EPCRA. The greatest tool available to an LEPC is its very substantial information gathering power.

However, most SERCs encourage LEPCs to do more than just collect boxes of paper. Many LEPCs focus their activities on information requests that bring facilities into closer cooperation with the first responder community.

Examples are fire department approval of contingency plans, exercise organization and public awareness of expected behavior during an emergency. LEPCs also perform a generalized role in community-wide efforts to improve public awareness of risks and preparedness for emergencies.

They will encourage the very basic things such as 72-hour emergency kits, first aid training, and household safety. Often they will work on projects such as household hazardous waste collection, school lab chemical safety and the hazards of methamphetamine labs.

Most SERCs will encourage LEPCs to think expansively as there are a myriad of other activities that may be useful in a community. The late Jim Makris - widely called the "father" of EPCRA - once said it's best to think of LEPCs as local "environmental" protection committees as he saw them working more broadly to improve conditions in their communities.

Organization & Membership

LEPC membership is approved by the SERCs. Once an LEPC is established, SERCs will have some procedure or policy by which the committees are responsible for advising the SERCs of their membership changes and seeking approval.

Whether or not an LEPC has "officers" beyond a chair is a matter of state practice and policy. The chair typically functions as the point of contact for the SERC, the public and for regulated facilities. Broad membership is encouraged.

While there is a list of membership types in EPCRA, SERCs recognize it is not realistic to find all of those types of people in every community. On the other hand, membership should not be limited. Anyone with an interest, a desire to assist with projects, and good manners should be encouraged to join and participate.

By-laws are not required in most states, but they are commonly used. The function of by-laws is primarily to provide some structure to membership decisions and the election of the chair. As a practical matter LEPCs tend to function in a consensus fashion rather than using a formal vote process.

Exceptions would be the rare event when the LEPC intends to pursue legal enforcement of its information requests under EPCRA.

Dealing with Facilities

The power of LEPCs is to obtain information relevant to emergency planning. Both owners and operators of facilities are responsible for providing this information. While some reports, Tier II for example, are automatic under EPCRA and state laws, the real power in LEPC information requests is the ability to focus the request on the specific facility and community involved.

LEPCs should articulate why they are asking for information beyond the routine Tier II form. There are many potential reasons. The point is when asking a facility for additional information it should be clear to that facility the information is important to the community.

LEPCs will often look to provide facilities with the opportunity to demonstrate their good corporate citizenship.

ED_002941_00002942-00066

Many facilities try hard to reduce risks and support first responders. Through exercises, public meetings and other activities it is important for LEPCs to recognize and reward these activities.

Dealing with the Public

As a general rule, all EPCRA-related information in the possession of an LEPC is publically available. Requests for information, such as Tier II date and CAA Sec. 112r Risk Management Plans, can come to an LEPC.

They should have procedures in place to notify the public this information is available and instructions on how it can be obtained. LEPCs should encourage the public to participate with the LEPC.

If members of the public have questions about preparedness or safety, it is appropriate to ask the public to attend a meeting to discuss their concerns. Often an LEPC will refer facility-specific inquiries directly to the facility. While this can be effective in improving facility/public relations, it is equally true the involvement of the LEPC will be useful in creating some context for the discussion.

Accident prevention is primarily the responsibility of facilities. Nonetheless, LEPCs and first responder organizations are just as responsible to the public as the facility when it comes to community preparedness. Assurances of accident prevention programs only address part of the overarching community planning and preparedness equation.

Effective preparedness involves the facility, the community and individuals merging answers to these three key questions:

- What are the accident risks of this facility and how are they being prevented?
- What are the plans and capabilities of the community should an accident happen?
- What do I do to protect myself and those I am responsible for during an emergency?

The Broader Mission

One of the most difficult tasks faced by an LEPC is creating a public awareness of risks and improving community preparedness. LEPCs should look for opportunities through the schools, civic groups, youth programs, churches and any other organization active in the community to accomplish this mission.

This means LEPCs must embrace a broader sense of community responsibility for accident prevention and preparedness. It is not appropriate to be a passive collector of information. With this in mind the following "Golden Rules" are proposed for the broader community.

Preferably it is the LEPCs that should lead the process of addressing the goals stated in the Golden Rules, but that really is not the complete point. Whether or not an LEPC exists, leadership within a community needs to be focused on these issues. Leadership comes from various places depending upon the community, it may be elected leadership, first response agencies or community groups.

Whether or not called an LEPC, the functions must exist or no community will be adequately involved in accident prevention or preparedness. State and federal agencies along with facilities should have an expectation communities will address these issues. They cannot be passive in this regard.

The risk is shared and the responsibility is equally shared. Preparedness cannot be imposed on a community nor can it be provided from outside. All stakeholders have a responsibility to find and encourage appropriate leadership within the community.

The era of passivity in accident prevent and community preparedness is gone. Whether facility, government, first response agency or member of the public, we are all connected and we all have a role. The best examples of local emergency planning and preparedness focused on trying to follow the Golden Rules will have the following attributes:

- A close relationship between emergency planners and first response agencies.
- A close relationship between facilities and these agencies and the public.
- Information sharing on hazards, accident prevention efforts and emergency response.
- Public involvement in developing expectations for public behavior during an emergency.
- Repeated exercises of emergency response plans including public education.
- Generalized all-hazards preparedness efforts developed with public involvement.

We are mindful in the past the regulatory environment has tended to create an adversary relationship between communities and facilities.

From topics as diverse as land use planning and environmental permitting through emergency response, the relationship is often confrontational. LEPCs are not regulatory agencies. They have the capacity to break through this barrier for the greater good of their communities.

Golden Rules for Communities

- While the primary responsibilities lie with the industry, there are important responsibilities for local stakeholders. An important aspect of making the facilities safer to the community in which they exist is the communities' involvement with prevention and preparedness objectives

- Be aware of the risks in your community and know what to do in the event of an accident. Members of communities near hazardous installations, and others

that might be affected in the event of an accident, should make sure they understand the risks they face and what to do in the event of an accident to mitigate possible adverse effects on health, the environment and property (e.g., understand the warning signals, and what actions are appropriate). This involves reading and maintaining any information they receive, sharing this information, and seeking additional information as appropriate.

- Communicate and co-operate with other stakeholders on all aspects of accident prevention, preparedness, and response. The community should not pressure the industry, but instead there should be an open policy between the community and the industry, and a shared objective of reducing the likelihood of accidents. The potentially affected public should receive information needed to support prevention and preparedness objectives, and should participate in decision making related to hazardous installations, as appropriate.

- Participate in decision-making relating to hazardous installations The laws in many communities provide opportunities for members of the public to participate in decision-making related to installations, for example by commenting on proposed regulations or zoning decisions, or providing input for procedures concerning licensing or siting of specific installations. Members of the public should take advantage of these opportunities to present the perspective of the community. They should work towards ensuring such opportunities exist whenever appropriate, and the public has the information necessary for effective participation.

- Know the hazards and risks at installations in your community where there are hazardous substances. The community should undertake, in co-operation with other stakeholders, the hazard identification and risk assessments needed for a complete understanding of the risks to the public, the environment, and property in the event of an accident. Hazard identification and risk assessments should be undertaken from the earliest stages of design and construction, throughout operation and maintenance, and should address the possibilities of human or technological failures, as well as releases resulting from natural disasters or deliberate acts (such as terrorism, sabotage, vandalism, or theft). Such assessments should be repeated periodically and whenever there are significant modifications to the installation.

- Prepare for any accidents that occur. It is important to recognize it is not possible to totally eliminate the risk of an accident. Therefore, it is critical to have appropriate planning in order to minimize the likelihood and extent of any adverse effects on health, the environment or property. The community should conduct, in co-operation with other stakeholders, any off-site planning including provision of information to the potentially affected public.

- Cooperate with local authorities, and industry, in emergency planning and response. Representatives of the community should take advantage of opportunities to provide input into the emergency planning process, both with respect to on-site and off-site plans. In addition, members of the public should co-operate with any tests or exercises of emergency plans, following directions and providing feedback, as appropriate.

- Assist other stakeholders to carry out their respective roles and responsibilities. The community should co-operate with management and employee representatives and public authorities in order to promote communication and involvement from all involved.

The Role of Local Communities in Chemical Accident Prevention and Preparedness

ABSTRACT

Since the adoption of community right-to-know programs in the U.S. there has been an increase in the number of groups known as LEPCs.

These committees have matured in focus over the intervening years since the Bhopal incident and even more so since the events of September 11, 2001.

There is a strong recognition local communities working very closely with chemical handling facilities in their areas can directly and meaningfully reduce the threat of a chemical release incident, regardless of cause.

Likewise, through similar means they can better prepare themselves to respond should an incident occur.

Especially as regards modern concepts of process chemical safety and facility security, local communities can be of great assistance to smaller facilities that do not otherwise necessarily have the resources to accomplish these tasks.

As the vulnerabilities of a facility to accident or intentional act, the impacts of these events and the ability of communities to react are all a function of local conditions, it is clear these local efforts can be more meaningful than large-scale national efforts.

While national legislation is certainly helpful to the process of bringing people together, it is the local relationships that produce results.

MAIN TEXT

In the United States there is little doubt among the public the first responders in their communities, law enforcement and fire agencies primarily, will act and do their best to protect the citizens of the community in the event of a hazardous materials incident.

Certainly this belief existed prior to the incidents of 9/11, but was greatly reinforced by the dedication shown and loss of life suffered by the fire and police agencies of New York.

Colorado is not New York. It is a state of about 5 million people with an average elevation of 2030 meters. High points in the state exceed 4400 meters. The bulk of the population is concentrated in 6 large metropolitan areas. The rest is very rural with little industrialization.

A very large number of the facilities handling hazardous chemicals are in the rural areas. In these communities, projected worst case scenarios from chemical releases - based upon reports filed under the U.S. EPA's RMP regulations - completely overwhelm the community with potentially lethal quantities of chemicals such as ammonia and chlorine.

While most of rural Colorado is served by volunteer fire departments, this does not carry a negative connotation. There is a sense these volunteers are dedicated and determined.

There is also a great deal of community pride in these departments and they frequently form a key component of the social life of the communities. Nonetheless, people of the state feel confident in their emergency response agencies only to a point.

That point is defined by two major gaps between what the public believes about the capabilities of their local agencies and the magnitude of the incidents they may face, especially those involving hazardous materials.

First, the citizens do not necessarily believe the volunteers have all the equipment and training they might need. Second, they do not believe the industrial community is doing all it can to prevent accidents.

Even though EPCRA was adopted 17 years ago, most citizens are not aware it exists and are certainly not aware it provides the individual with access to information about both emergency planning and the chemical hazards present in their communities. In Colorado we routinely discover citizens are unaware both types of information are readily available.

This raises a whole series of questions. Key among them is the question of whether the public simply does not care that data on chemical hazards is available? This question likely has two possible answers.

Some have suggested this situation simply reflects apathy - which is profoundly negative if you are trying to create a system where public participation is crucial to improving community preparedness.

Others suggest the public assumes an adequate emergency response exists. We suspect to a real degree both are true at least prior to the occurrence of a significant incident.

In the United States it is clear the public responds vigorously if they feel personally threatened. In the aftermath of a chemical incident the questioning and recriminations can be intense.

On the other had we become blind to facilities that have been around for years if they have not experienced problems. A new chemical plant will attract a lot of attention. The one that has been in the community for decades tends not to be noticed.

The same response is true for small versus large facilities. The public simply does not appreciate the magnitude of risk presented by the large quantities of chemicals that may be stored and used at facilities with a small number of employees.

We do not believe this phenomenon is present when considering how the public evaluates local emergency response agencies - there is more direct information.

Members of the public observe the emergency response assets of their communities routinely.

They may judge from the newspaper reports and other media coverage the emergency responders appear calm, professional and competent as they go about their business.

They also have a sense at some level there is a body of people, perhaps their elected officials, that pay attention to such matters.

It is the LEPCs that routinely fill this role in our communities. These committees are made up of volunteers.

Typically with representation from the industrial facilities in the community, fire and law agencies, elected officials, media, hospitals, schools, emergency planners and everyday citizens, the LEPCs work towards a goal of effective emergency response and planning at the most local level possible.

The LEPCs set their own specific tasks and objectives. No community is identical to the one next door. Small towns of a few hundred residents will be different than cities with tens of thousands of residents. The industrial facilities will be different.

The hazards presented will be different. The capabilities of the emergency response agencies will be different.

These attitudes and approaches have remained very much intact even after 9/11. Even though DHS and its state analogs are working on national response plans, it is still very clear that initial response to any incident is local.

(A word of explanation is appropriate. Even though DHS is focused on terrorism, the objective of their planning effort is for the response to emergency incidents, regardless of cause, to be conducted through established plans and incident command systems.)

We all recognize the first people on the scene of a hazardous chemical incident will be the victims of that incident regardless of cause.

Local communities are, therefore, responsible to evaluate the risks the risks they face, including the process

ED_002941_00002942-00069

they will use to conduct that evaluation, and structure their response.

To this point this paper has focused on emergency response. While obviously crucial, the reality of any incident is it has the potential to get out of control causing serious harm and personal injury. No community possesses emergency responders that are so good as to immediately contain and resolve every incident they might face.

The bigger and more threatening the incident the more likely it is to overwhelm the local community's resources.

There is always a finite limit to the actions the first response agencies will be able to take to protect the public in the event of an accident. The more limited the resources in a community, the greater the potential for an incident to get out of hand.

This suggests two things must be done in an effort to protect the public from the inevitable disruption, property damage and even injury or death that can come from a chemical accident.

The first is to prepare the public to take action to protect themselves, their families and their neighbors in the event of an overwhelming incident. The second is to prevent it from happening in the first place.

Earlier in this paper LEPCs were described as local and volunteer. In addition they also lack money. Most operate with no budget. As such there is an obvious gap in their ability to accomplish the tasks described earlier.

They struggle to inform the public and to provide information on hazards present and the actions individuals can take to prepare themselves.

Nonetheless, this work does get accomplished primarily through the personal initiative of the people that volunteer to sit on these committees.

They work with other community volunteer groups to distribute information on critical topics such as first aid. In Colorado we also emphasize preparation of emergency kits with things such as first aid supplies, drinking water, flashlights and food.

Judging from some research the public does apparently want information and a roll in local response activities. Recommending and trying to implement specific plans of action for members of the public is always difficult. Turning members of the public into first responders presents daunting practical problems such as finding money for equipment and providing training.

Coordination and incident command issues are extremely difficult. As a result, very few communities have gone to this level.

Instead the LEPCs and first response agencies have focused on elements that involve public action under specific direction from the emergency response agencies. The LEPCs and first response agencies will work on developing evacuation plans and warnings to be used in appropriate circumstances.

Rarely is there much communication of these plans to the public and almost never is there an exercise on these plans so it is difficult to know how well they will work. In Colorado the bulk of our practice on things like evacuation plans comes from wildfire and winter storm events and they do not always go very well.

It seems the public is predictable only to a very limited extent even when presented with guidance and common purpose.

In Colorado we emphasize accident prevention as a key element of the LEPC activities. We recognize chemical accidents will happen and preparedness is crucial. Nonetheless, working with facilities to reduce the potential for accidents is in our view a dramatically more useful endeavor than simply waiting for the emergency phone to ring.

The point of this paper from this point forward is to examine the role of the LEPCs in evaluation of the risks faced in their communities and their activities focused on accident reduction and prevention. In this regard the LEPCs mirror their community's concerns with facilities handling chemicals.

As noted before that will vary substantially from community to community. Nonetheless, success depends upon understanding that ultimately what the public wants is success in preventing accidents and responding promptly to those that occur.

The largest industrial facilities in the United States can be counted upon to have a high level of expertise regarding accident prevention. They will have internal staffs, systems of management and accountability, and a clear understanding of the regulatory environment in which they operate.

This is not true of smaller facilities and is especially not true when one moves from chemical manufacturing facilities to those facilities that use and store chemicals as part of their business.

Even worse will be those facilities that are primarily engaged in agricultural industries where the level of training in handling chemicals is suspect and the regulatory environment is permissive.

Many LEPCs focus on non-manufacturing and agricultural facilities for precisely these reasons. The techniques are numerous, but typically involve finding and providing information and training resources to both the emergency response agencies as well as the facilities themselves.

Sources of this information are diverse but will include publications of government agencies such as the EPA and industry trade associations.

These efforts do not rely on government agency inspectors. In fact, many of the facilities presenting the greatest risks are at a size below that where they get much attention from the agencies.

Instead, it is the local agencies such as fire departments and building departments that may be the only regulatory authority paying any attention to these facilities.

As these agencies do not have specialized skills with chemical hazards it becomes the function of the LEPCs to

try and educate these agencies in the most crucial aspects of accident prevention.

As the LEPCs do not have regulatory authority, which the exception of gathering information about chemicals present, effecting change and accomplishing accident prevention puts a premium on public relations skills.

Fortunately the LEPCs have a built-in advantage. They are part of the community.

They are neighbors to the agencies and the facilities. They know each other. A powerful and successful argument with a facility owner emphasizes the interdependence of these communities.

It can be reduced to a very fundamental statement of fact. If the facility has an accident it will harm their friends and neighbors. If the facility has an accident they will want these same friends and neighbors to respond as volunteer fire departments and provide aid to the facility.

Each has a responsibility to the other and each is dependent on the other to do their part.

Accident prevention opportunities flow from this dependence. LEPCs can and do meet with facilities owners to provide information about accident prevention techniques. The LEPC is not and does not need to be an expert in these matters.

They only need to be able to identify advice from expert sources and work with the facility to encourage them to implement these suggestions. Many of these suggestions will not be complicated. Chief among them are ideas such as inventory reduction and control, appropriate maintenance schedules, employee training on the safe handling of their chemicals, safer storage, spill containment techniques and improved facility security.

More complicated but still quite achievable are ideas dealing with process change and materials substitution.

Achieving these sorts of changes requires attitude more than money. It is a matter of creating an expectation within the entire community that preventing accidents is crucial.

Communities have a way of demanding accountability from all segments of that community. Be it the emergency response agencies, facilities or the LEPCs, each is answerable to the other members of the community for their part of the puzzle. With such an attitude even the most sophisticated process engineering changes can be accomplished.

Communities can help fund changes that require capital investment and in at least one case in Colorado actually paid to relocate the entire facility to an area much farther away from the population of the community.

As these communities are typically lean in resources, attitude is perhaps the only real asset they possess. There is value in the ideas that result from these attitudes and it is the LEPC that needs to lead the way in trying to bring these ideas forward and to completion.

In the 20 years since the terrible accident at Bhopal and the continuing tragedy of its impact, much has changed and much change is yet needed. The international APELL program has brought the techniques and ideas of public involvement to many corners of the world.

In the United States the very similar EPCRA programs and LEPCs have converted the public from passive observers to vital participants in their own safety.

These programs do not yet exist in all places subject to the risk of chemical facility accidents. In many places there is still an adversarial relationship between facilities and the communities in which they are located.

Larger manufacturing facilities do not get credit for all the positive changes they have made while yet being challenged to do more. Smaller facilities are ignored by the regulatory agencies, trade associations and even their own communities.

There is a lack of that sense of community we feel is crucial to success. Money is not the solution to these problems. Personal dedication to a positive attitude is crucial.

Whether these people are volunteers with the LEPC, work with facilities or are connected with emergency response agencies, individual rather than institutional attitudes are the thing that accomplishes change and progress. Perhaps one of the key legacies of Bhopal is a recognition regulatory systems alone do not prevent accidents.

Members of the public are no longer voiceless observers of the chemical facilities in their communities. They have a role and that role is not just to complain and oppose, but to develop positive relationships within the community to improve the safety of all.

NIMS and ICS Compliance for LEPCs

LEPCs are not response agencies. Nonetheless, awareness and training in NIMS and ICS are appropriate. This is true even though it should be expected various members of the LEPC will hold NIMS and ICS training levels consistent with their duties.

It is NASTTPO's view all LEPC members should complete the on-line FEMA IS-700: NIMS, An Introduction and the on-line IS-100: Introduction to ICS course.

The benefit of the IS-100 series of courses is there are some catering to specific community groups. These course are available at http://training.fema.gov/IS/NIMS.asp and are not time consuming. NASTTPO has adopted this view for some very pragmatic reasons:

- First, NIMS and ICS are critical to the modern systems of emergency management. If an LEPC is to be relevant to the first responders in their community it is important they have a background in these systems.

- Second, we agree with the statement of the NIMS Integration Center: "The benefit of NIMS is most evident at the local level, when a community as a whole prepares for and provides an integrated response to an incident." We do not believe this is feasible unless the LEPC embraces NIMS and ICS.
- Third, emergency services will be provided to key community organizations, such as schools, commercial enterprises and regulated facilities using NIMS and ICS. The LEPC needs to be able understand and explain these procedures in order to promote community safety.

Public Access to Information and Handling Information Requests from the Public

Community right-to-know is obviously a core principle in EPCRA and the role of LEPCs, SERCs and TERCs. Nonetheless, this can be a confusing area because of the various ways the information can be received, used and requested.

This guidance document will examine these issues with regard to two types of information that may be in the possession of LEPCs, SERCs and TERCs. An initial caveat is in order – always check your state statutes, tribal and local ordinances, policy documents etc., for specific rules in your area. The first area of consideration is information collected pursuant to EPCRA. The second area will be the other sorts of information that may be possessed by LEPCs, SERCs and TERCs.

Please keep in mind this guidance document does not deal with information requests that come from state, local or federal agencies – those should be accommodated as provided in EPCRA. A copy of EPCRA is attached to this guidance for ease of reference in the following Sections. The kinds of information that may come to LEPCs, SERCs and TERCs as part of EPCRA will primarily include EHS notice letters from facilities, MSDSs and chemical inventory (Tier I or II) forms.

Also included will be any information LEPCs may have requested using their Section 303(d)(3) authority, 311(c) requests of material safety data sheets, or 312(e) tier II information requests including requests using discretionary authority under 312(e)(3)(c), and any facility contact information or notices of facility changes under 303(d)(1)&(2). LEPCs will also receive emergency release reports and follow-up reports under 304. LEPCs and SERCs may do a variety of things with these sources of information, but for the most part use, storage and management of the information is discretionary. EPCRA does not require maintenance or creation of a database or other electronic means of accessing this information. EPCRA does require there be an annual notice of information availability. While the statute does indicate a local newspaper be used the modern approach relies on the internet.

EPCRA does require by October 1988 LEPCs prepare an emergency plan and conduct annual reviews thereafter. At the writing of this guidance most LEPCs now conduct or participate in this planning in conjunction with the all-hazards planning effort in the community. As a result, only rarely will there be an LEPC specific emergency plan prepared by the LEPC and limited to EPCRA. If an LEPC specific emergency plan exists it likely will contain some facility-specific information. The basic provision of EPCRA that relates to public access to information is contained in Section 325. It provides that:

Each emergency response plan, material safety data sheet, list described in Section 11021(a)(2) of this title, inventory form, toxic chemical release form, and follow-up emergency notice shall be made available to the general public, consistent with Section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or LEPC, as appropriate.

Simply put, this Section indicates upon proper request, most facility information in the possession of an LEPC should be available to the public. But note what is not in this list. With the exception of an LEPC prepared emergency response plan, only information originating from facilities is in the list. If the LEPC does not have a plan it developed, then the LEPC has nothing to provide under this Section unless it received reports from the facility.

Of course this is not the end of the discussion. There are specific rules regarding inventory forms that must be followed. Section 312(e)(3) provides as follows:

a. In general. Any person may request a SERC or LEPC for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility. [emphasis added]
b. Automatic provision of information to public. Any tier II information which a SERC or LEPC has in its possession shall be made available to a person making a request under this paragraph in accordance with Section 11044 of this title. If the SERC or LEPC does not have the tier II information in its possession, upon a request for tier II information the SERC or LEPC shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with Section 11044 of this title to the person making the request. [emphasis added]

ED_002941_00002942-00072

c. Discretionary provision of information to public. In the case of tier II information which is not in the possession of a SERC or LEPC and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility during the preceding year, a request from a person must include the general need for the information. The SERC or LEPC may, pursuant to paragraph (1), request the facility for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the SERC or LEPC shall make the information available in accordance with Section 11044 of this title to the person.
d. Response in 45 days. A SERC or LEPC shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

What all of this means is not completely obvious upon first reading. This subpart sits within a broader Section of the statute that deals with access to inventory forms. Remember this statute was written in an era when electronic reporting and e-mail did not exist. Congress apparently viewed the LEPCs as the repository of chemical inventory information and so they created a series of provisions that specified how the entire variety of potential users might access that information by requests to the LEPCs.

Subpart (2) of Section 312(e) makes it clear LEPCs will provide chemical inventory form information to government agencies and other similar "official" users of the information. Subpart (1) makes it clear facilities are required to provide tier II information to an LEPC upon request. Keep in mind when this statute was written the tier II form did not exist. Accordingly an LEPC is not restricted to the form, but rather may ask for the full range of "tier II information" as described in 312(d).

Remember that only tier I information is automatically required under EPCRA. The requirement for a facility to provide tier II information and the Tier II form has always been upon request.

The fact that Tier II is routine is due to action taken by SERCs and LEPCs all over the country to mandate Tier II in their areas shortly after they were created. Upon receiving a written request regarding a specific facility the LEPC needs to determine if they have a Tier II form for that facility.

If they do, then the person making the request must be allowed to review that form within 45 days. (As noted below, the LEPC can charge for copies and the research time necessary to find the form.) If the LEPC does not have information on the facility, the LEPC is required to make a request to the facility.

That request is required to be made at the 10,000 pound, 500 for EHS chemicals, traditional thresholds. Subpart C presents some complications. Many LEPCs use this subpart to make routine requests to facilities for information at thresholds well below 10,000 pounds. When the LEPC or a member of the public wants the LEPC to make a request below 10,000 pounds a statement of general need is required. Unfortunately EPCRA provides no guidance on what that provision means in application.

The typical LEPC simply states the information is important to emergency planning, so it's difficult to argue the public requestor should be held to a higher standard. It does not appear the LEPC is entitled to judge whether the statement of general need is adequate; however, as the action is discretionary there can be a variety of reasons to decline the request.

It also appears the facility is not informed about what the statement of general need says. (Actual procedures in this regard vary substantially across the country, with many LEPCs and SERCs providing this information to the public.)

Nonetheless, the decision on whether to request the information from a facility is discretionary and the LEPC is not required to explain its decision. A member of the public that feels the LEPC has not adequately responded can use the same provisions to request the information through the SERC.

There are practical factors to be considered by LEPCs and SERCs when responding to information requests. EPCRA does not restrict the ability of LEPCs and SERCs to charge fees to produce or copy information. EPCRA only says the information be available during normal working hours and at the location specified by the LEPC or SERC. EPCRA does not require LEPCs or SERCs to conduct research or produce the information in any fashion other than the way they received it from the facility. LEPCs and SERCs may provide information even when not required by EPCRA.

Because LEPCs have 45 days to respond to an information request under 312(e)(3)(D), it appears LEPCs should have a similar period of time to respond to a general information request under 325. There are some things LEPCs should avoid in order to avoid being accused of interfering with a member of the public's right to request information.

While it should be acceptable to ask for identification, it is not acceptable to require that person to detail why they want the information. If the LEPC is concerned with whether the person making the request plans an illegal act, the appropriate course of action is to contact law enforcement. Some specific observations:

- A request for a list of all facilities that handle certain chemicals can be rejected.
- A request to review all available Tier II forms can be handled by allowing the person to sit in a conference room somewhere and review the information.
- LEPCs, SERCs and TERCs are not required to provide a copy of all the Tier II forms.
- A written request for the Tier II form for a specific facility requires the LEPC to either produce the form or request it from the facility.

ED_002941_00002942-00073

All of the proceeding discussion applies to information that comes to the LEPC or SERC under EPCRA. Information that comes to the LEPC under Clean Air Act 112r Risk Management Plans or confidential vulnerability information under the Department of Homeland Security's Chemical Facility Anti-Terrorism Standards, are subject to their own rules. These rules generally restrict public access to information.

In any event, EPCRA disclosure requirements and state public records laws do not apply. LEPCs, SERCs and TERCs should be cognizant of whether other specific open or public records requirements cover information requests they receive. SERCs as state-level organizations will typically be subject to these requirements. LEPCs may well not be subject to these requirements, but that is completely dependent on how LEPCs are created under state statutes. The federal Freedom of Information Act does not apply to SERCs, TERCs or LEPCs.

SECTION 11. Risk Communication Basics for LEPCs

Risk Communication and the Media

EPCRA establishes requirements for Federal, State, and local governments and industry regarding emergency planning and "community right-to-know" reporting on hazardous chemicals. The right-to-know provisions help to increase the public's knowledge and access to information on the presence and releases of hazardous chemicals in their area.

EPCRA established a framework to operate the program at the local level. Planning districts have been established in each state, and within each planning district, a LEPC was formed.

Appreciation is extended to Chuck Wolf and Melanie Miller of Media Consultants for permission to use their material in this guide.

For more assistance on crisis communication or community outreach, contact Media Consultants at 281-980-1400 or mediacon@aol.com

Each LEPC 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. The LEPC must establish rules, publicize its activities, and establish procedures for handling public requests for information. Additionally, the LEPC must designate an emergency coordinator to receive emergency release notifications.

It is implicit in these requirements that the LEPC will provide assistance to the public in understanding information gathered. Many times, this assistance will include communicating risk, either with chemicals stored at a facility, or the aftermath of a release of a hazardous material.

The communication process is not always a simple matter. Conveyance of information between government, industry, and the general public can be hampered by dissimilar interests and backgrounds. It is important that these different groups acquire the skills of communication so that they may effectively transmit the information they have as well as its perception by the public.

A guide cannot provide LEPC members with a comprehensive study of how to communicate all the information collected under EPCRA. The purpose of this guide is simply to provide those persons responsible at the local level for working with the public some suggestions on how to express their ideas more effectively.

The application of these principles may greatly improve the link between industry, government, and the public in understanding and handling hazardous chemicals. This guide was compiled from a multitude of sources developed over the years to assist different organizations in communication skills. A survey of LEPCs assessed the risk communication efforts of LEPCs and gauged their capacity for promoting risk communication in their communities.

1. The majority of LEPCs have put in place the basic mechanisms for communicating 'risk and emergency response information to the public, but few have actively advertised the availability of this information.
2. Most LEPCs have made little effort to involve the public in the Title III planning process, and those that have done so generally have not actively sought input by, for example, holding public forums or sending representatives to address other local organizations.
3. There was no statistical relationship between the number of facilities within an LEPC's jurisdiction and the degree to which the LEPC had been aggressive in its efforts to communicate with the public.
4. The majority of LEPCs had received no requests for information under the Community Right.-to-Know provisions of EPCRA and 88% had received fewer than

ED_002941_00002942-00074

10 requests for such information. More requests came from individual citizens than from any other source, with community and environmental groups providing the second largest number of requests.

5. LEPCs that had attempted to make information public had received more requests, suggesting that the level of public interest in hazardous materials issues can be raised by concerted effort.
6. However, most LEPCs plan to reduce their level of activity once their emergency plans have been accepted by the state, and show few signs of shifting to a more active role in risk communication.
7. Most LEPCs report few contacts with local environmental groups and little cooperation with them. However, there is a positive correlation between the frequency of contact with such groups and the degree to which LEPC members describe these contacts as cooperative and view the environmental groups as representative of the public.
8. Most LEPC members regard their organizations as quite capable of carrying out the technical aspects of response planning, but they express far less confidence in the committee's capacity for communicating with the public, involving citizens in the planning process, or stimulating public debate on hazardous materials issues.
9. The typical LEPC member devotes less than one hour a month to securing public input for the planning process or to educating the public about hazardous materials issues – far less time than is given to more technical tasks such as identifying facilities and studying response techniques.
10. Most LEPC members are dissatisfied with both the amount and the quality of the coverage given to their work by local television, radio, and newspapers.
11. LEPC members generally have a narrow concept of risk communication in nonemergency situations. Rather than encouraging public consideration of ways to reduce or manage risks, they tend to focus exclusively on preparing the community to respond to accidents.
12. Most LEPC members said they would use training materials that were designed to improve their ability to communicate with the public and secure citizen input for the planning process, suggesting that the production and distribution of such materials to LEPCs and SERCs may be beneficial.

Based on the above survey, the following questions and recommendations were developed:

- **Why should a community have a hazardous materials risk communication program?** Such a program can (1) improve the technical sufficiency of the emergency response plan by securing additional information from citizens, (2) heighten citizens' understanding of the plan and thereby increase its effectiveness, (3) increase the credibility and legitimacy of the plan, (4) stimulate public discussions that may lead to risk reduction, and (5) reduce the level of citizen "outrage" following a major accident.

- **What should be the role of the LEPC in a risk communication program**? The LEPC should develop a plan for a risk communication program, but will usually not be responsible for its implementation. The LEPC should act as an advocate for active risk communication efforts and should coordinate the activities of various agencies, but the actual risk communication should be implemented by other organizations with the staff and resources to carry out an effective long-term, community-wide effort.

- **How should a risk communication plan be developed and which elements should it contain?** The plan should be devised by the LEPC in consultation with response organizations, media, and any community organizations that might have a role in its implementation. It should be made a component of the emergency response plan, and the LEPC should seek assistance from communication specialists in developing materials and procedures to be included in the plan. The risk communication plan should provide for:

  1. An on-going program of risk communication and education that can accommodate population turnover, changing conditions, and fading memories.
  2. A series of public forums designed to share risk information with the public in an interactive setting that fosters confidence and promotes efforts to reduce risks.
  3. A system by which emergency response plans and information on specific hazardous materials in the community are made readily available to the public on demand and in a form that is understandable.
  4. Provisions for giving citizens concrete instructions about how to protect themselves in an emergency.
  5. Contact lists of the names and addresses of persons who can be called upon to help disseminate information both prior to and during an emergency.
  6. A "press kit" designed to assist the media in covering both emergency and nonemergency hazardous materials stories effectively.
  7. Formal provisions for the review and updating of the risk communication plan to reflect changing conditions.

- **Who should carry out a hazardous materials risk communication program and how should it relate to other risk communication efforts?** The hazardous materials risk communication plan should be

implemented by a local public or quasi-public agency that has the confidence or the public. SERCs should be encouraged to serve as conduits for information about innovative risk communication programs, training opportunities, and other efforts to improve the risk communication capacities of the LEPCs in their states. The SERCs might also organize programs to assist local committees in developing risk communication components for their local emergency response plans.

Myths of Risk Communication

- **We Do Not Have Enough Time and Resources to Effectively Communicate Risk.** Risk communication does take time and staff. Still, you must devote efforts to interact with the public or you will be dealing with communication disasters.
- **Communicating with the Public about Risk Is More Likely to Alarm People than to Keep Quiet**. Not allowing people to express their concerns is more likely to increase rather than decrease alarm.
- **If We Could Explain Risks Clearly Enough, People Would Accept Them**. Data are not the only factors that influence people's perception of risk. Pay attention to your process for dealing with people as you do explaining the data.
- **We Should Not Go to the Public until We Have Solutions to Environmental Health Problems.** Failing to involve people in decisions that affect their lives may result in opposition. Release management options, not decisions, and invite communities to discuss risk management strategies in which they have a stake.
- **These Issues Are Too Tough for the Public to Understand.** Environmental health issues can be complex, but many people can grasp much of the substance.
- **Technical Decisions Should Be Left in the Hands of Technical People.** Technical staff are generally better versed in the science of environmental health, but problems raised by policy and value issues are beyond the technical realm. Use staff with diverse backgrounds when developing policy.
- **Give the Public an Inch, They Will Take a Mile**. If the meeting is confrontational, this may be true. Listen when they ask for inches, and they are unlikely to demand miles. Involve them early and often.
- **If We Listen to the Public, We Devote Scarce Resources to Issues That Are Not a Great Threat to Public Health**. Closing out the public is likely to cause distrust and further skew the policy debate. Be sensitive to public concerns. Otherwise, you will unknowingly create controversy and contribute to raising the profile of lesser issues.
- **Activist Groups Stir up Unwarranted Concerns**. Activists do not create the concerns; they merely arouse and channel those that already exist. Deal with the groups and their concerns with respect rather than merely fighting them.

Seven Cardinal Rules of Communication

By adhering to these seven cardinal rules of communication, you can help dispel the myths of risk communication. If the media and the public feel that you are interested in their opinions and ideas, then their preconceived "myths" will no longer exist.

- **Accept and Involve the Public as a Legitimate Partner**. A basic principle of risk communication is that people and communities have a right to participate in decisions that affect their lives, property, and things they value. Demonstrate your respect for the public and underscore the sincerity of your efforts by involving the community early, even before important decisions are made. The goal of risk communication should be to produce an informed public that is involved, interested, reasonable, thoughtful, solution-oriented, and collaborative.
- **Plan Carefully and Evaluate Your Efforts**. Begin with clear, explicit communication objectives - providing information to the public, motivating individuals to act, stimulating response to emergencies, or contributing to the resolution to conflict.
- Evaluate the information you have about the risks and know its strengths and weaknesses.
- **Listen to the Public's Specific Concerns.** If you do not listen to people, do not expect them to listen to you. Communication is a two-way activity. Do not make assumptions about what people think, know, or want done about risks. Take the time to find out what people are thinking: Use techniques such as interviews, focus groups, and surveys.
- **Be Honest, Frank, and Open**. In communicating risk, trust and credibility are precious assets. Disclose information as soon as possible. Discuss data uncertainties, strengths, and weaknesses - including the ones identified by other credible sources.
- **Coordinate and collaborate with other credible sources**. Allies can be effective in helping you communicate risk information. Take time to coordinate all inter-organizational and intra-organizational communications. The key word is "credible". Do not get into conflicts with irrational or fringe individuals. You will never win.
- **Meet the Needs of the Media**. The media are a prime transmitter of information on risks; they play a critical role in setting agendas and in determining outcomes.
- **Speak Clearly and with Compassion**. Technical language and jargon are useful as professional shorthand, but they are barriers to successful communication with the public. Acknowledge and respond to emotions that people express: anger, fear, anxiety, outrage, and helplessness.

10 Reasons to Release Information Early

Releasing information early reduces mistrust.

- People are entitled to information that affects their lives.
- Early release of information sets the pace for resolution of the problem.
- If you wait, the story may leak anyway. When it does, you are apt to lose trust and credibility.
- You can better control the accuracy of information if you are the first to present it.
- There is more likely to be time for meaningful public involvement in decision-making if the information is released promptly.
- Prompt release of information about one situation may prevent similar situations elsewhere.
- Less work is required to release information early than to respond to inquiries, attacks, etc. that might result from delayed release.
- You are more apt to earn public trust if you release information promptly.
- If you wait, people may feel angry and resentful about not learning of the data early.
- People are more likely to overestimate the risk if you hold onto information.

Working with the Press

Environmental journalism has never been easy, either in communicating complex issues to a broad public or in dealing internally with editors whose interests can often conflict with those of the reporter.

Therefore, an LEPC member or local official should be prepared to assist the reporter in understanding the role of the LEPC, the requirements of EPCRA, and the limitations of the information collected under EPCRA. The following hints may help in that assistance.

- **Environmental Risk Is Not a Big Story**. The reporter's job is news, not education. The news is the risk that has happened, not the determination of how risky it really is.
- **Politics Is More Newsworthy than Science**. The public needs to know about such abstract concepts like uncertainty of risk assessments, impossibility of zero risk, debatable assumptions underlying dose response curves and animal tests.
- **Reporters Cover Viewpoints, Not Truths**. In the philosophy of Journalism, there is no truth (at least no way to determine truth); there are only conflicting claims to be covered as fairly as possible.
- **The Risk Story Is Usually Simplified to a Dichotomy**. The media will see the event as either safe or hazardous. Most of the journalistic bottom lines are tightly drawn; either the release is legal or illegal, people either evacuate or stay, and the incinerator is either built or not built. If you want to fight this tendency to split the issue, fight it explicitly, asserting the issue is not "risky or not" but "how risky".
- **Reporters Try to Personalize the Risk Story**. Try to answer with both personal views and policy recommendations, then try to explain the difference if there is one. Come to the interviews with colleagues whose personal views are different, thus dramatizing the uncertainty of data.
- **Claims of Risk Are Usually More Newsworthy than Safety**. Media coverage of environmental risk alerts the public to risks of which it was otherwise unaware. This can increase the level of alarm even when coverage is balanced.
- **Reporters Do Their Job with Limited Expertise and Time**. For most media outlets, reporters covering risk are not likely to have any special preparation for the assignment. Their goal is not to find out all there is to know, but just to find out enough to write the story. It may help to train reporters about your field - but it will help a lot more to train yourself about dealing with the media.

Summary: Many times during emergency situations, press calls often go to the boss and the expert instead of the press office, so the boss and the expert should know how to talk to reporters. Though you may never enjoy your contact with reporters, the risks of ducking the media are far greater.

There's not much you can do to change the nature of journalism or the performance of journalists. By improving your own performance as a source, you can bring about a real improvement in media coverage of environmental risk.

Media Relations Rules

The media has the power to sway public opinion. They use these guidelines to determine how fast and how well you responded to them during an emergency. If you don't adhere to them, they will not hesitate to let the public know.

- Credibility is established by how good/bad and how fast/slow you respond to the press and public.
- Public opinion is not always based on what action has been taken, but upon what information they've received.
- The media believes it has a "right to know" and "right to access " to see first hand what's going on to "protect the public."
- The media, not you, decide what is or isn't news, whether or when it will do the story, and what information to use in that story.
- Your only decision is whether or not to be one of the information sources.
- The media isn't trying to decide who is telling the truth, but to present the pro's and con's, and let the public decide.

ED_002941_00002942-00077

- The press and public will seek certainty and absolutes during uncertain times.
- Early notice to the media can minimize public apprehension and prevent misinformation from other sources.
- Remember: you are not talking to a reporter, but to his or hers thousands of viewers, listeners, and readers.

10 Ways to Lose Trust and Credibility

Most communication 'horror stories' are the result of a breakdown between organizations, government, and the public. These rules are guaranteed to help destroy your credibility and ensure that the public will distrust you in future policies issued by your office.

- Do Not Involve People in Decisions That Directly Affect Their Lives. Then act defensive when challenged.
- Hold onto Information until People Are Screaming for It. While they are waiting, do not tell them when they will get this information.
- Ignore People's Feelings. Better yet, say they are irrelevant and crazy.
- Do Not Follow Up. Place returning calls from citizens at the bottom of your to do list and delay sending out the information you promised people at the public meeting.
- If You Make a Mistake, Deny It. Never admit you were wrong.
- If You Do Not Know the Answers, Fake It. Never say, "I don't know", or "I will find out".
- Do Not Speak Plain English. When explaining technical information, use professional jargon or simply leave out important information.
- Present Yourself like a Government Bureaucrat. Wear a three-piece suit to a meeting at the local garage, and sit up on stage with seven colleagues who are dressed similarly.
- Delay Talking to Other Agencies Involved. This way, the message the public gets can be as confusing as possible.
- If One of Your People Hates to Talk to People, Send Him out to Speak to the Public. It is good experience.

Obviously, these hints are facetious, but unfortunately, many public officials follow these tenets very closely. These behaviors will make your tasks more difficult, and destroy and chance you may have of using the public as an ally.

Simple Fears and Concerns Toward the Media

- Not knowing what to say, or saying too much to reporter
- Being misquoted; out of context
- Being embarrassed, or look bad on TV
- Media will sensationalize event
- Fear of negative press, or bad news
- Lack of control of self and story
- Too many media
- Don't understand media technology, or media needs/wants
- Possible security breaches
- Takes time away from crisis

Communicating with the media is not easy. You feel as if you are "on-the-spot." In order to have a more natural relationship with the reporter, you need to relax and answer the questions to the best of your knowledge.

Simple Fears from the Media

The main goal of the reporter is to get news out to the public. They have deadlines they must meet. Sometimes, if they are not able to get the whole story, they have to work with what they have. Reporters have problems and fears that they must deal with.

- They will be locked out, in, or kicked out
- You'll lie, deny, or cover up
- You'll say "no comment", or play favorites
- You'll be dull, too technical
- You'll embarrass them
- You'll miss their deadlines
- You can't deliver what you promise
- You'll be too slick & polished

If you deny the media coverage by not allowing them in or by saying "no comment," they will draw upon the conclusion that you are hiding something that the public needs to know. This will make the media and the public suspicious about what you don't want them to find out.

Top 10 Rules of the Media Game

The media will sometimes use tricks to back you into a corner. They use silence (he/she who speaks first loses) and rephrasing questions as a way to make you nervous and blurt out an answer.

- **The Media Always Has the Home Court Advantage**. They even offer free tickets to their own arena.
- **The Media Plays to Win**. They don't necessarily play to outscore or beat you.
- **The Fans Are the Referees**. The public decides what's fair, and who to penalize.
- **You Have to Play Offense to Score Any Points**. If you only play defense, the best you can win is a tie.
- **You Can't Score Any Points until You Control the Ball**. The ball is the message(s) you carry to key audiences.
- **Your Skills Become Proficient with Practice**. Continuous cycle: assess , plan, train, and drill.

- **You Win or Lose this Game by Your Choice of Words**. Not canned presentation, but planned presentation.
- **This Game Lasts until Either Side Quits**. Or the fans stop coming, or a bigger game begins.
- **Your Only Decision Is Whether to Suit up and Play**. If you don't play, the media plays a substitute team.
- **In this Game, It's Easy to Make Mistakes**. Your training and techniques are not on trial. You are!

Handling Media Inquiries

One way to be well-prepare d for an interview is to think of every possible question the interviewer could ask you. This way, you aren't caught off-guard. Your answers will be more clear.

- **Reporter Requests Information, Interview, or Both**. Listen, listen, listen! Take notes or record it.
- **Be Cordial and Express Interest in Helping Reporter**. "I'll be glad to help you ... as best as I can."
- **Always Offer Information Before You Ask**. "My name is ... my phone is ... your name is?"
- **Define Your Time Frame and Limitations First**. "I have about ten minutes available now ..."
- **Ask for General Areas Before Asking for Specifics**. "In general, what is the subject? the issues?"
- **Ask for Copy of Background Material Reporter Has**. "So I'll be familiar with it before we talk."
- **Find out Exactly What Reporter Needs and Wants**. "Do you need an interview? Live/taped? who?"
- **Find out Their Media Deadline and Air / Publication**. "What is your deadline to produce this story?"
- **If Inquiry Involves a Neighbor / Agency Complaint**: Ask for name , talk directly, investigate ASAP.
- Obtain Background Information and Formulate a Response.

Some Do's and Do Not's of Listening

In a crisis situation, you will be faced with several different audiences requiring your attention and ability to really "listen to" what they are saying.

These are some suggestions for improving your listening skills, but mastery of these skills requires repeated practice. REMEMBER: Hearing is not listening !!!

- **Become Aware of Your Own Listening Habits**. A better awareness of your listening habits is the first stage in changing them.
- **Share Responsibility for the Communication**. Remember that it takes two to communicate - one to talk and one to listen - with each person alternating as the listener. If you are unclear about what is said, it is your duty to let the speaker know this, either by asking for clarification or reflecting what you heard and asking to be corrected.
- **Be Physically Attentive**. It is important to face the speaker and maintain eye contact. Also, be sure to sit or stand at a distance which puts you and the speaker at ease.
- **Concentrate on What the Speaker Is Saying**. Being physically and verbally responsive will help you concentrate on what is being said.
- **Listen for the Total Meaning, Including Feelings as Well as Information**. Remember that people communicate their attitudes and feelings "coded" in socially acceptable ways. Listen for feelings as well as content.
- **Observe the Speaker's Non-verbal Signals**. Watch the speaker's expressions and how much he gazes and makes eye contact with you. Does the speaker's body language reinforce or contradict spoken words.
- **Adopt an Accepting Attitude Toward the Speaker**. The more speakers feel accepted, the more they can let down their guard and express what they really want to say. Any negative attitude on the listener's part tends to make a speaker defensive, insecure, and more guarded in communication.
- **Express Emphatic Understanding**. Use active, reflective, listening skills to discover how other people feel, and what they are really trying to say in terms of their own frame of reference.
- **Listen to Yourself**. When you recognize the feelings stimulated in you by another's message, and can express those feelings, this clears the air and helps you to listen better.
- **Close the Loop of Listening by Taking Appropriate Action**. People often speak with the purpose of getting something tangible done - obtain information, change your opinion, get you to do something. In listening, actions speak louder than words.

Do's and Don'ts for Spokespersons

Before you agree to an interview, you should always review the following:

- **Do Ask Who Will Be Asking the Questions**. Do not tell the news organization which reporter you prefer to work with.
- **Do Ask Which Topics They Want to Cover**. Do not ask for specific questions in advance.
- **Do Caution Them That You Are Not the Right Person to Interview If There Are Topics You Cannot Discuss**. Do not insist that they promise not to ask about certain subjects.
- **Do Ask How Long the Interview Will Be and What the Format Will Be**. Do not demand that remarks not be edited.

ED_002941_00002942-00079

- **Do Ask Who Else Will Be Interviewed**. Do not insist a reporter not interview a foe.

[Prior to interview/news conference]:

- **Do Obtain Accurate Information and Be Completely Honest**. Do not try to fool a reporter or the public.
- **Do Decide What You Want to Say, and Check to Make Sure You Have the Appropriate Data**. Do not believe you know it all!

[During the questions and answers]:

- **Do Be Honest and Accurate**. Your credibility depends on it. Do not lie.
- **Do Stick to Your Key Points**. Do not improvise.
- **Do Lead**. Take charge. Do not react passively, but do not be overly aggressive or rude either.
- **Do Raise Your Key Messages**. Do not dwell on negative allegations.
- **Do Offer to Find out Information You Do Not Have If a Question Is Raised about It**. Do not guess , because if you are wrong, your credibility goes.
- **Do Explain the Subject**. Do not use jargon.
- **Do Stress the Facts**. Do not discuss hypothetical questions.
- **Do Explain the Context**. Do not assume the facts speak for themselves.
- **Do Be Forthcoming to the Extent You Have Decided upon Beforehand**. Do not decide to reveal something that is confidential without considering its implications.
- **Do Give a Reason If You Can Not Talk about the Subject**. Do not dismiss a question with "no comment".
- **Do State Your Points Emphatically**. Do not ask reporters for their opinions.
- **Do Correct Big Mistakes by Stating That You Did Not Give an Adequate Answer and You Would like the Chance to Clear up the Confusion**. Do not demand that a bad answer not be used.
- **Do Remember the Media Are Interested in What, Where, Why and How**? Do not be afraid to say you do not have the answers to these questions at the present time.
- **Do Stress Any Heroic Efforts by Individual Responders or Workers**. Do not stress any individual errors or negligence.
- **Do Emphasize What Is Being Done to Correct the Problem**. Do not estimate monetary damages, costs, or level of interference with organizational activities.
- **Do State Your Conclusions First, Get Your Main Points Across, Then Back Them up with Facts**. Do not get your message lost in details.
- **Do Have Available Information Relating to Company Processes, Raw Materials, and Chemical Intermediates**. Do not hesitate to refuse to give proprietary information.
- **Do Try to Be as Open with the Media as Possible**. Do not give one reporter exclusive coverage.
- If On-site, You Pick the Place of Interview.
- **Do it Early**. Best times: 10 a.m. - 2 p.m. or at least 3 hours before deadline.

[After the questions and answers]:

- **Do Remember, What You Say Is Still on the Record**. Do not assume the interview is over.
- **Do Remember, it Is All on the Record**. Do not insist that some comment will now be put "off the record".
- **Do Be Careful Around Microphones and Recorders**. Do not assume that a microphone is ever off.
- **Do Correct Any Mistakes You Make in the Questions and Answers**. Do not let sleeping dogs lie.
- **Do Volunteer to Get Additional Information Needed.** Do not refuse to talk any further with reporters.
- **Do Tell Reporters to Telephone If They Have Questions about What Was Said**. Do not ask "How did I do"?
- **Do Volunteer to Be Available If a Reporter Wants to Go over Something with You**. Do not ask for a copy of the story in advance of publication or broadcast so you can correct it.
- **Do Call Reporters If Stories Appear That Are Inaccurate, and Politely Point out What Is Wrong**. Do not call the reporter's boss to com plain without first speaking with the reporter.

Specific Questions LEPCs May be Asked

- **Is your LEPC appropriately representative of the community overall?** Are key government, business, health, and citizen interests adequately represented? Has the Committee met? How often? How is it organized? Into subcommittees?
- Is the Committee effectively organized and managed to meet its responsibilities to provide the public access to needed information?
- **Has the Committee designed an adequate emergency response plan defining responsibilities of key community representatives**? How have particular risk activities, such as a waste disposal operation or a nuclear power plant, been accounted for? Is the role of off-site emergency personnel spelled-out? Has the plan been reviewed by the SERC?
- Has the Committee conducted a "community hazard analysis" as outlined by federal guidance documents?
- **Do neighboring communities' emergency response plans function cooperatively**? Are there conflicts which could increase rather than reduce risks during an emergency?
- **Has the Committee surveyed local facilities through a questionnaire**? If so, what did lit find? Has it conducted on-site inspections of any facilities?

- **How openly has the Committee conducted its business**? Are its meetings open to the public and well publicized in advance? Did it hold public meetings on its draft plans? Has it sought to develop adequate financial support to meet its own needs?
- **Has the Committee tested its own emergency response plan through full-scale drills**? Does it plan to do so regularly? What did it learn from those test-runs?
- Do local emergency response teams have adequate equipment, adequately maintained, to respond to a potential emergency? ·

Risk Communication Do's and Don't's	Do ...	Don't ...
Jargon	define all technical terms and acronyms (i.e., EPCRA)	use language that may not be understood by your audience
Humor	if used, direct it at yourself	use it in relation to safety, health, or environmental issues
Negative Allegations	refute allegations	repeat or refer to them
Words & Phrases	use positive or neutral terms	minimize or trivialize the risk
Reliance on Words	use visuals to emphasize key points	rely entirely on words
Temper	remain calm; use a question or allegation to stay positive	let your feelings interfere in communicating positively
Clarity	ask whether you have made yourself clear	assume you have been
Understood Abstractions	use examples, anecdotes, and analogies to establish a common understanding	talk in the abstract or use hypothetical situations
Non-verbal Messages	be sensitive to non-verbal messages you are communicating; make them consistent with what you are saying	allow your body language, your position in the room, or your dress to be inconsistent with your message
Attacks	attack the issues	attack the person or organization
Promises	promise only what you can deliver; set and follow strict orders	make promises you cannot keep or fail to follow up
Guarantees	emphasize achievements made and ongoing efforts	say there are no guarantees
Speculations	provide information on what is being done	speculate about worst cases
Money	refer to importance you attach to health, safety, and environmental issues	refer to the amount of money spent as if it proved your concern
Organizational I.D.	use personal pronouns (i.e., I, we)	take on the identity of a large organization
Blame	take responsibility for your share of the problem	try to shift blame or responsibility to others
"Off the Record"	assume anything you say and do is part of the public record	make side comments or "confidential" remarks
Risk Comparisons	use them to help put risks in perspective	compare unrelated risks
Technical Details and Debates	base your remarks on empathy, competence, honesty, and dedication	provide too much detail or take part in protracted technical debates or sound condescending
Length of Presentations	limit presentations to 15 minutes to allow for question & answer periods	ramble or fail to plan the time well

ED_002941_00002942-00081

SECTION 12. Facility Hazard Analysis

This section was developed for EPA by Bob Campbell, President, Alliance Solution Groups, who specializes in hazardous materials response exercises, and conducting facility hazards analyses.

Each year, we witness several high-profile chemical incidents, such as at the West Fertilizer Plant, TX (Apr 17, 2013), Geismar, LA (Jun 13, 2013), and a Blue Rhino Plant in Lake County, FL (Jul 29, 2013).

Each of these incidents involved fire and/or subsequent explosion of the hazardous materials stored on site. In 2012, 12,073 hazardous material releases from fixed facilities and storage tanks were reported to the National Response Center nationwide (3,373 releases from facilities in Region 6).

These and other scenarios, highlight the need for all-hazards planning and evaluation of the fate and transport of the hazardous materials. Despite regulatory gaps, LEPCs, Fire Departments and Emergency Managers need to recognize and anticipate the potential hazards associated with facilities in their communities in order to adequately prepare for, respond to and recover from these incidents.

This section will highlight a community's approach to conducting all-hazards planning which results in an informative, risk-based, actionable plan.

The community should use the same basic risk assessment process outlined by the Federal Emergency Management Agency, to collect quantitative data to more accurately assess the risk and prevent bias. The overall process involves:

- Identifying the hazards,
- Assessing the risks,
- Risk Management, and
- Developing Emergency Response Procedures.

Identify the Hazards:

There are several types and sources of hazards that could impact a community. The two main sources are mobile and stationary sources. Mobile sources include transportation of hazardous materials over roads, rail, waterways, air and pipelines. Stationary sources include fixed plants, facilities, or storage tanks. Each of these hazards may be identified using the following approach:

Mobile Sources: The first step is to determine hazardous material transportation routes that cross through the community including road, rail and shipping routes.

Highway: The U.S. Department of Transportation Federal Motor Carrier Safety Administration has a list of the current designated, preferred and restricted routes on the following website: http://www.fmcsa.dot.gov/safety-security/hazmat/national-hazmat-route.aspx. Review the PHMSA transportation statistics and commodity information at (http://www.phmsa.dot.gov/hazmat/library/data-stats). This site includes national statistics, statewide statistics and local commodity flow studies, where available.

Railroads: Determine which railroads transit the community and contact the railroad hazardous material manager to obtain the commodity flow.

Waterways: We have had success in working with port authorities in collecting both quantitative and general qualitative data about specific commodities transiting ports.

Airports: Air safety has significantly improved over the years and likelihood of an incident resulting in a release of hazardous materials is extremely low but worth investigating with the airport authority or port operations.

Pipelines: Communities that have pipelines typically transport petroleum, natural gas, and/or ammonia. Pipeline owners may be able to provide maps of their pipelines to planners.

Stationary Sources:

Chemical Hazards: Stationary sources comprise approximately 70% (NRC statistics, 2012) of hazardous material releases throughout the US. Typically, LEPCs collect Tier II reports from reporting facilities to identify hazardous materials. Unfortunately, Tier II reports alone are inadequate in providing a comprehensive picture of hazards in the community due to the high reportable quantity of 10,000 lbs unless it is deemed extremely hazardous.

So, what can planners do to identify all of the hazards in their community? A community should address this by widening the search window beyond EPCRA-required Tier II reports. Emergency Managers can also download EPCRA Toxic Release Inventory data from the EPA Envirofacts website http://www.epa.gov/enviro/facts/tri/search.html.

Using the Form Rs coupled with the Tier II reports, a community will gain some additional insight into hazardous materials stored at facilities and occasionally discover discrepancies/omissions of Tier II reports.

Additionally, a community should search other EPA repositories such as for information pertaining to the Clean Air Act Risk Management Program (RMP), Clean Water Act discharge permits, hazardous waste permits, etc.

Research like this was conducted for a TX community and identified 868 facilities where as Tier II reports yielded only 50 facilities. Imagine a fire fighter reporting to a strip mall for a fire and encountering a dry cleaner, vehicle maintenance garage and home improvement store. Wouldn't they like to know what hazards are present at these facilities?

Radiological Hazards: In additional to chemical hazards, a community should identify radiological hazards

such as radioactive materials, nuclear power plants, and reactors. The U.S. Nuclear Regulatory Commission (NRC) provides resources for finding nuclear facilities near the community through the facility locator section of its website, http://www.nrc.gov/info-finder.html.

Second, Emergency Managers can obtain a copy of radioactive material licenses from federal and state regulators. While most radioactive materials stored within a community consist of sealed or medical sources with a relatively low activity, the potential for exposure from building fires exist; therefore, first responders should be aware of the existence of this hazard.

Assessing the Risks: There are many ways to define risk, but the overall objective is to prioritize those hazards with the highest relative risk. So, as long as a consistent method that captures the contributing factors is utilized, the outcome will provide the intended result.

Before conducting a risk assessment, it is important to determine how the output will be utilized so that Emergency Managers can select the most applicable and useful approach. To avoid bias, a community should use a quantitative risk method. For the purposes of this discussion, we are calculating the risk of a release occurring which impacts the surrounding population. Since risk controls vary greatly and are difficult to measure quantitatively, a community should determine risk based on the probability and severity of a release scenario.

Severity: A community should determine the impact of a release through dispersion or plume modeling for materials in sufficient quantity to pose a toxic inhalation hazard. Second, conduct explosive overpressure modeling for materials that have the potential for explosion as a result of a fire or of other means.

This identifies the blast pressure zone around explosive/combustible materials. Also to be identified are critical facilities in the hazard zones such as schools, emergency responders and medical facilities. The severity should be measured numerically by determining the population at risk within the different intensities of the plume using GIS.

Probability: Hazardous materials releases can be accidental, intentional or triggered by another incident such as natural disaster. Assessing causal probability requires multiple assumptions in order to utilize widely-accepted hazard data sets. This enables a quantitative approach which results in a relative probability for each hazard enabling Emergency Managers to prioritize resources for further analysis, planning, training, exercises, personnel, etc. and compare technological and natural threats.

This approach is extremely helpful, despite the assumptions made throughout the process, to Emergency Managers in supporting allocation and prioritization of scarce resources. This method factors in the following causal events when determining probability by using historical/statistical data found at government websites:

- Floods, http://www.floodsmart.gov/floodsmart/
- Earthquakes, http://earthquake.usgs.gov/hazards/
- Tornados, http://www.ncdc.noaa.gov/stormevents/
- Forest fires, typically found on state-specific repositories
- Hurricanes, http://www.e-transit.org/hurricane/welcome.html
- Accidental spills/uncontrolled releases (historical/statistical analysis).

The probability of an accidental spill or release is estimated using the incidence rate reported at the National Response Center (http://www.nrc.uscg.mil/incident_type_2000up.html) considering the number of chemical storage facilities (http://www.bls.gov/data) in the US.

Finally, when analyzing specific populations at risk, we need to account for the probability of wind direction and wind speed. This can be obtained by a representative windrose for each community.

Risk Calculation: Relative risk can be calculated by the product of the severity (population exposure) and the probability of a release impacting the particular downwind population. Prioritizing these risks enables the Emergency Manager to further address high-risk facilities and prioritize mitigation and preparedness resources accordingly.

Risk Management: Risk management is the process of identifying and implementing control measures to mitigate, prevent, prepare for, respond to and recover from the risks identified during the risk assessment. With a prioritized list Emergency Managers can assess their communities' capability to address the technological risks.

First, risks are best controlled at their source. LEPCs can play an active role in developing a working relationship with facility operators to become familiar with their hazards and risk control measures.

Some facility risk control measures include: automated early warning leak detection devices, shut off valves, secondary spill containment, availability of trained on-site hazardous material response teams, personal protective equipment, and effective spill control plans.

Second, risks can be prepared for through local planning, training, analysis, and exercises. Given a list of high risk facilities and hazards, the Emergency Manager should account for these risks in their preparedness program by developing resources adequate to respond to and recover from these types of incidents.

This may involve developing mutual aid agreements and identifying canned requests for assistance from surrounding communities and state resources.

Local planning may also culminate with fire departments developing pre-fire plans for each of the facilities in their district. This may result in further tailoring of resources such as detectors, personal protective equipment

and specialized training. With scarce resources, community responders can prioritize allocation of resources based on the risk assessment.

Developing Emergency Response Procedures: Since many hazardous materials response plans are annexes or appendices to the EOP and EPCRA requires these plans to address emergency response procedures, it is important to ensure interoperability and solid cross-references to these procedures in the hazardous material response plan. There are several critical items to address:

Administrative Information: Contact information for emergency management, first responders, critical infrastructure, vulnerable facilities/population centers, and hazardous material facilities (local contacts) must be included and current. Phone numbers should be checked annually to ensure accuracy.

Notification Procedures: Timely notification of a release is critical to ensure the effectiveness of subsequent protective action implementation. Due to the myriad of regulations impacting these facilities, there are numerous filings required in case of a spill.

Public Protective Actions: Upon size up of an incident, the incident commander will determine if any public protective action such as evacuation or shelter-in-place, are needed to protect the population at risk. Shelter-in-place is generally implemented when the release or spill has occurred and the concentration of the hazard is dissipating with time.

Evacuation is generally implemented when the release of the hazard is on-going and the risk of exposure in buildings is greater than the risk of exposure during evacuation. Several factors should be considered such as the toxicity of the substance, duration of evacuation/exposure, and the availability of accessible evacuation routes. Because there are so many factors to account for when considering evacuation, we assist communities in employing a DHS-validated, online tool called Real-time Evacuation Planning Model (RtePM) - http://rtepm.vmasc.odu.edu.

This sophisticated transportation analysis tool enable planners to estimate the time it will take to evacuate areas of the community based on a number of assumptions through a GIS interface. We find that this tool is valuable in planning evacuation routes to optimize evacuation time and can be used during an incident to further refine the conditions and assumptions to continuously optimize evacuation.

Mass Notification: After deciding on public protective actions, it's critical that the population at risk receive an effective and actionable message in a timely manner. Communities use several means of notification: reverse 911, opt-in notification systems, social media, radio, television, and sirens. These should be tested periodically to measure their effectiveness and ensure the citizens are aware of how they will be notified and what actions to take when they are notified.

Recovery: Recovery planning is often overlooked, but needs to be thoroughly addressed in plans by determining and detailing some of the time-sensitive tasks that may be necessary upon transition from response to recovery.

The community should be prepared to call in experts in spill response, clean up and restoration. These contractors should be listed in the plan as a starting point.

Best Practice: Some communities establish a blanket purchase agreement with these firms so that in case their services are needed, the contracting mechanism is already established and ready to execute.

The potential release of hazardous materials could have a tremendous impact on a community. Comprehensive risk-based planning not only prepares communities for all-hazard threats but, it also meets regulatory requirements and guidance from DHS and EPA for hazardous material response plans. Following the process outlined in this Section provides a foundation for success.

SECTION 13. Energize Your LEPC – Developed by EPA Region 7

Acknowledgements: The content of this document was written by Fatimatou Ndiaye, M.P.A., U.S. EPA, Region 7, with contributions from J.J. Deckert, Grant County, Kan., LEPC; Addie Homburg, Ellis County, Kan., LEPC; Swapa K. Saha, Ph.D., Kansas Division of Emergency Management; and Patricia Reitz and Kim Olson, U.S. EPA, Region 7.

I. INTRODUCTION

EPCRA was enacted by Congress to help local communities prepare for and respond to chemical emergencies. EPCRA requires facilities to report chemical storage and release information and instructs communities to develop emergency response plans. Each state governor must appoint a SERC. The SERCs are to design and appoint emergency planning districts and LEPCs, which have a vital role in coordinating information on chemical storage, emergency planning, and chemical spill response. In addition, the Clean Air Act of 1990 under Section 112(r), or the RMP, was created to prevent chemical accidents at facilities using extremely hazardous substances.

While LEPCs play a critical role, they often have difficulty maintaining member participation. Many

communities are more reactive than proactive on emergency matters. For example, immediately after the 9-11 terrorist attack in 2001, LEPC members were very involved because of public interest in emergency planning. However, the momentum slowly declined two years after the major event.

Hurricane Katrina, which devastated the Gulf Coast area in 2005, is an example of an event that generated significant interest in emergency planning. Better planning and preparedness may have improved the response, which could have minimized loss of life. Competent and energized LEPCs are more likely to have a proactive approach and respond effectively to their community emergency needs. It takes conscientious effort to maintain the participation of LEPC members through innovative ideas, practical exercises, constant motivations and incentives.

The bottom line is that effective planning saves human lives and reduces property losses and environmental impacts during emergencies. A group of planners met at the 2007 Region 7 LEPC and TERC Conference. They felt it was time to build a focus group and address the issue of energizing LEPC member participation. The practical tools collected at that event are included in this document.

II. LEPC ENERGIZING TECHNIQUES

The following recommendations were identified and chosen as essential factors in energizing and maintaining effective participation at the local level:

- Continuing Education
- Focus on Effective
- Leadership
- Team Building
- Empower to Complete
- Meaningful Tasks
- Recognize Contributions
- Stay Positive
- Remove Hindrances

Continuing Education

We live in a changing world, and LEPC members need to be proactive in emergency response by being up-to-date with new legal requirements and technological standards. There are readily available courses and informational resources with no or low fees for the continuous educational growth of LEPCs. New technical resources and guidance to assist local emergency planners have been developed in recent years. Governments at all levels (local, state, and federal) schedule regular conferences, workshops and seminars to develop professional competence and credibility and share new information with planners and responders.

Roles and Responsibilities

The fundamental step of building effective LEPCs starts with members understanding their roles and responsibilities. Expertise requirements for membership are found in EPCRA and other regulations. Members who understand their personal and legal responsibilities to the community are more likely to regularly participate in LEPC training activities. The EPA and state agencies can provide compliance and outreach assistance, and they have a wealth of information on various emergency subjects available to the public.

Bylaws

Both verbal and written instruction about their committees' bylaws (if any) should be included in the members' education. For visual learners, having a hard copy of the bylaws is a useful tool. Revising bylaws can be productive when performed as a collective exercise.

Safety Training

Continuous training on the subject of safety is also crucial in maintaining volunteers' interest. Regular safety classes can be taught in formal and informal settings.

Examples of formal classes are OSHA HAZWOPER and First Aid & CPR trainings, which have periodical renewal requirements. Informal safety classes can be site visits at plants or facility tours where LEPC members gain practical experiences with different protective equipment. Routine scheduled trainings allow LEPC members to stay motivated by building their confidence and credentials.

LEPC Meetings

An educational component must be an integral part of the LEPC meeting agendas. Examples include a slide presentation or video viewing of a recent emergency response event. Discussing response events generates creative ideas which renew the motivation in the LEPC as a team. Participants visualize their roles in these events and simulate new assignments at the local level. State emergency agencies routinely schedule exercises for LEPC members. At the local level, tabletop drills are also practical ways to evaluate success and challenge their committees.

Professional Development

LEPC members can increase their knowledge by joining interest groups such as the National Association of SARA Title III Program Officials (NASTTPO), trade associations and state emergency planning organizations, which provide opportunities for LEPCs to work together to prepare for emergencies involving hazardous materials.

Focus on Effective Leadership

Effective leadership and good management at the local level play a significant role in sustaining interest. Leaders in LEPCs should be elected officials or be from local government or industry. Emergency managers are often most familiar with local resources, including people, equipment and funding. These leaders should inspire positive teamwork in the committees. An LEPC leader can be any member of the LEPC - the chairperson, emergency manager, or simply any volunteer on the committee who has

an effective influence on the group or team. LEPC leaders foster an environment where members become high performers and frequent participants.

These leaders clarify their purpose and goals, build commitment and self-confidence, broaden collective skills, remove externally imposed obstacles and create opportunities for others. Leaders believe in their purpose and people and often exercise the following six principles:

- Keep purpose, goals, and approach relevant and meaningful.
- Build commitment and confidence.
- Diversify the mix and level of skills.
- Manage relationships with outsiders, including removing obstacles.
- Create opportunities for others.
- Do real work.

Team Building

Instilling trust in a group of people can be a rewarding goal. There are many ways to achieve this goal. For example, social activities are fun and effective for engaging LEPCs and their families. These occasions build cooperation and provide networking opportunities. Picnics and outreach at community events are excellent ways to create unified involvement. Fundraising activities can be good incentives to perk group interest. Hazmat emergency exercises serve a dual purpose of being educational and providing a group bonding experience. Other ideas to build a successful team are:

- Clearly defined purpose, goals and roles
- Clear and effective communication
- Supportive member behaviors (balance of creativity and conformity)
- Well-defined decision procedures
- Balanced participation
- Established ground rules and norms
- Understanding of effective group process
- Effective problem solving methods

Besides the building of the group, the maintenance and management should be based on solid pillars of high performance teams:

- Establishing urgency and direction
- Selecting members based on skills and skill potential, not personalities
- Paying particular attention to meetings agenda and action items
- Setting some clear rules of behaviors
- Setting and seizing upon immediate performance-oriented tasks and goals
- Challenging the group regularly with fresh facts and information
- Spending lots of time together
- Exploiting the power of positive feedback, recognition, and rewards

Following these suggestions will increase membership and motivation. Getting and keeping members involved is crucial to your LEPC's success.

Empower to Complete Meaningful Tasks

A Chinese proverb says: "Tell me and I'll forget; show me and I may remember; involve me and I'll understand." Empowering volunteers to complete meaningful tasks, solicit new ideas and create new initiatives are ways to keep people interested. One example of a collaborative meaningful task is the Schools Chemical Cleanout Campaign (SC3), a national program aimed at reducing risks of chemical exposures in schools. LEPCs can provide technical assistance to their communities about proper chemical management in K-12 schools.

Another way LEPCs can participate in their communities is by giving outreach and educational materials about topics such as Shelter-In-Place to their local schools and nursing facilities. These activities can be performed in collaboration with community groups with comparable interest in emergency preparedness, such as:

- Citizen Corps Councils work to ensure the security and safety of people.
- CERTs train citizens to be first responders in basic disaster medical operations, and light search-and-rescue operations.
- Fire Corps advocate enhancement of fire resources.
- Medical Reserve Corps (MRC) assess the capacity of the practicing and retired medical population, including physicians, nurses and supporting health professionals.
- Neighborhood Watch Programs monitor community criminal activities and are now joining forces with the CERTs.
- Volunteers in Police Services (VIPS) are emerging groups supporting local police forces with law enforcement activities.

Recognize Contributions

Publicly recognizing specific individual contributions is also important. The morale of a team and its members will grow when they feel valued and when their efforts are noticed. A sense of belonging is important in any organization or team. For example, when members miss a meeting, someone may volunteer to call or e-mail the absent members to let them know they were missed. Keeping members involved is a must in maintaining interest.

Recognition causes people to strive for greater achievements. Recognized members can become more productive or competitive. A common way to recognize people is to give or nominate them for an award. There are

many different types of awards given by communities, private entities, and state and federal governments.

For example, award nominations can be sent to EPA for the annual Chemical Emergency Preparedness and Prevention (CEPP) and biennial regional LEPC conferences.

Also, please remember the importance of recognizing volunteers who have demonstrated good performances. Another outcome for giving awards is the visibility it gives to local facilities, businesses and their leaders. Industries are most likely to allow time and give support to their employees when these employees are publicly known to support the common cause of community safety and wellness.

Stay Positive

"Attitude is everything!" Keeping a positive attitude is a must when working with LEPCs. In many organizations, most of the significant work is done by a small fraction of group. Research has demonstrated that in any organization, 20 percent of members do 80 percent of the work.

Know and keep track of core members. Look for exemplary examples to share with the group and send positive and uplifting messages frequently.

Remove Hindrances

LEPC leaders should pay attention to indicators that change the course in membership participation. The indicators below are warning signs for emergency leaders to address these issues.

If not addressed in a timely and effective manner, these symptoms can impair members' interest and performances. Indicators are noticeable at both individual and collective levels. At a personal level, the following indicators to watch for among LEPC committee members are:

- Loss of energy or enthusiasm ("What a waste of time.")
- Sense of helplessness ("There's nothing anyone can do.")
- Lack of purpose or identity ("We have no clue as to what this is all about.")
- Disengagement, or unconstructive and one-sided discussions without candor ("Nobody wants to talk about what's really going on.")
- Meetings in which the agenda is more important than the outcome ("It's all show-and-tell for the boss.")
- Cynicism and mistrust ("I knew this teamwork stuff was worthless.")
- Interpersonal attacks made behind others' backs, to outsiders ("Dave has never pulled his own weight and never will.")
- Finger-pointing at top management and the rest of the organization ("If this effort is so important, why don't they give us more resources?")

At a group level, an issue of concern is diversity in the composition of the LEPC. The regulations recommend that "the LEPC membership must include, at a minimum, local officials including police, fire, civil defense, public health, transportation, and environmental professionals, as well as representatives of facilities subject to the emergency planning requirements, community groups, and the media."

Another critical factor in the composition of the LEPC is the socio-cultural representation of the community in which the committee is located.

There are additional concerns that can impact the mission of LEPC. Transparency is the best tool when faced with these threats. Knowing and managing threats can be accomplished by having an open discussion about:

- Lack of resources (funds, time, technology and competent people)
- Political climate (internal and external) - whether community social priorities are aligned with the LEPC's goals
- Leadership - finding committed community leaders to champion the committees' activities
- Bias - misinformation, inaccurate data, and false notions about a community can create public resentment, lawsuits, or an unexpected and undesirable outcome that can undermine the committee

III. CONCLUSION

The ideas and tools presented in this document are intended to help develop and maintain members' participation in LEPCs. Local emergency leaders, not just emergency managers, are key personnel who can prepare their communities for emergency events.

Preparing a community for emergencies requires community involvement of well-trained and enthusiastic volunteer residents. Managing and leading volunteer participation is seldom addressed in LEPC committee functions. Like any critical resource, the human resource element is sustained with strategic planning and positive action. Maintaining an effective LEPC requires constant a supply of energy through activities, innovative ideas and education. LEPC members are much better prepared to respond to emergencies when they are well connected in their community and can rely on each other's competence.

Keeping LEPCs active and energized is essential for saving lives and minimizing damage to property and the environment.

ED_002941_00002942-00087

SECTION 14. Facility Questionnaire

As mentioned in Section 6: Emergency Management Plan Development, LEPCs around the country, when focusing on planning for facilities that store or handle EHSs, have developed questions to submit to those facilities to support the planning process.

Below is a sample questionnaire an LEPC may want to ask facilities in their community to complete.

LEPCs have the authority under Section 303 of EPCRA [Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.] to request this information be supplied.

While this provision of the statute is normally interpreted to apply to those facilities with EHSs above the TPQ, LEPCs can also use this information for other facilities may pose a hazard to the community or responders during an incident. Therefore, LEPCs should encourage other facilities to complete this questionnaire to assist the LEPC in their planning process.

LOCAL EMERGENCY PLANNING COMMITTEE FACILITY QUESTIONNAIRE

INTRODUCTION

Each facility that has reported an EHS in an amount which exceeds its TPQ as outlined in Section 302 of EPCRA, or significant amounts of hazardous chemicals on their Tier II form, is being asked to complete this document. The questionnaire should benefit your internal emergency planning and will be the first step in a cooperative planning process involving your facility, the local fire department and the LEPC.

Additionally, those facilities which store or handle other hazardous chemicals which may be dangerous to the community or responders during an incident are requested to complete this document. Please complete this document (please use N/A in fields normally left blank) and return to: _____ at _____

I. FACILITY IDENTIFICATION					
A. Facility Name:					
B. Dept./Division where hazardous materials are kept:					
C. Street Address:					
D. Between Cross Streets:			and		
E. City:			Zip Code:		
F. Township:		Section #	Range:		
G. Facility Owner/Manager:			Office Phone:		
H. Facility Emergency Coordinator, Alternate, and Phone Numbers					
1. Coordinator Name:					
Home Phone:		Office:	24 Hour Phone:		
2. Alternate Name:					
Home Phone:		Office:	24 Hour Phone:		
I. Nature of Business:	Manufacturing	Storage	Retail Sales	Agriculture	Other
II. CHEMICAL INFORMATION					
A. CHEMICAL INVENTORY - Extremely Hazardous Substances					
1. CAS #		Chemical Name			
Storage Location	Method of Storage				
Average Amount	Maximum Amount		Frequency/ Method of Shipment		
2. CAS #		Chemical Name			
Storage Location	Method of Storage				
Average Amount	Maximum Amount		Frequency/ Method of Shipment		
3. CAS #		Chemical Name			
Storage Location	Method of Storage				
Average Amount	Maximum Amount		Frequency/ Method of Shipment		
B. CHEMICAL INVENTORY - Other Chemicals of Concern					
1. CAS #		Chemical Name			
Storage Location	Method of Storage				
Average Amount	Maximum Amount		Frequency/ Method of Shipment		

ED_002941_00002942-00088

2. CAS # Chemical Name

Storage Location Method of Storage

Average Amount Maximum Amount Frequency/ Method of Shipment

3. CAS # Chemical Name

Storage Location Method of Storage

Average Amount Maximum Amount Frequency/ Method of Shipment

C. Chemical Location Map: Include a facility map(s) illustrating buildings and chemical locations within the buildings.

III. CHEMICAL RELEASE DETECTION AND PROCEDURES

Describe facility methods for detecting a release and the procedures followed once a release has been detected

A. Include equipment (automatic sensors, etc.) that has been installed, or describe the method used to detect releases, e.g., sight and smell by employees or security

B. Include personnel that have this as one of their duties (security, etc.). Describe the training they have had, their capabilities, 24 hour operations, the procedures they follow, etc

C. Describe the steps that take place at the facility once a release is detected. Who is notified? What does this person do?

IV. OTHER FACILITIES THAT MAY CONTRIBUTE ADDITIONAL RISK

List other facilities nearby which store or manufacture hazardous substances that may be affected by a release causing the situation to escalate.

A. Name of Facility:

B. Address:

C. Telephone Number:

D. Facility Emergency Coordinator:

E. Distance from primary facility:

F. Conditions that may cause additional risk (fire, runoff, and incompatible substances):

V. OTHER AREAS OF CONCERN

List other areas, structures, etc., such as water intakes, drains, sensitive areas, rivers, etc., which could contribute additional risk or be subject to risk due to an incident at this site.

A. Utilities

1. Gas Lines
2. Electric
3. Water Lines
4. Sanitary Sewers
5. Storm Sewers
6. Water Supply Reservoirs

B. Natural Amenities

1. Lakes or Streams
2. Parks
3. Other (schools, daycare, adult care, nursing homes)

C. Artificial Amenities

1. Shopping Malls
2. Hotels
3. Highways or Public Transportation
4. Railroads
5. Airports
6. Other Industries
7. Other

VI. RESPONSE PROCEDURES

Describe briefly the procedures the facility will implement in the event of a release.

VII. NOTIFICATION

A. Describe employee alert and warning procedures..

B. Describe any public alert and warning equipment and procedures available.

C. Describe any ongoing public/employee education process.

ED_002941_00002942-00089

VIII. FACILITY EMERGENCY RESOURCES/EQUIPMENT

A. Chemical Emergency Monitoring Equipment
Quantity

1. weather instrument
2. radiation detector
3. pH meters (indicate fixed or portable)
4. chlorine kits (A.B.C.)
5. combustible gas indicator
6. oxygen concentration meter
7. colorimetric indicator tubes (i.e., Draeger tubes)
8. other monitoring equipment

B. Personal Protective Equipment

1. positive pressure respirators
2. full protective turnout gear
3. SCBA
4. SCBA tanks (duration)
5. boots and gloves
6. helmets with eye protection
7. mobile cascade
8. cascade with compressor
9. fully encapsulated suits (indicate type)
10. other

C. Trained Emergency Response Personnel

1. First Responder Awareness
2. First Responder Operations
3. Specialist/Technician
4. Emergency Medical Employees
5. Other Expertise (chemists, engineers, etc.)

D. Equipment/Supplies

1. foam (indicate type)
2. sand
3. off-road vehicles
4. communications vehicles
5. multi-purpose vehicles
6. portable radios
7. rescue squad
8. EMT
9. Paramedic
10. fire brigade:
    a) Pumper
    b) Ladder truck
    c) Tanker
11. Other equipment / supplies:

E. Is the facility willing to share the above equipment/supplies for an emergency not involving their facility? Equipment and supplies available will be listed in County's Resource Manual.

Within your community Yes No Within (county name) Yes No

If yes: which equipment/supplies:

Does facility expect compensation? (attach any conditions for compensation) Yes No

F. Does the facility have training resources/programs?

1. Staff Yes No
2. Public use Yes No
3. Describe:

G. Identify additional professional/technical resources that may be called upon by the facility to support regular staff in the event of an accident:

Name	Organization	Telephone Home	Telephone Work	Specialty

H. Identify emergency equipment/supplies facility has made available to community or County. Information can be integrated into the County Resource Manual

I. Mutual aid agreements the facility has with either private or public emergency response personnel:

Company Name	Contact Person	Telephone Number

J. Hazardous Materials Standard Operating Procedures (SOP):

1. HazMat Emergency Response SOP
2. HazMat Decontamination SOP
3. HazMat Medical Surveillance SOP
4. Other emergency response plans which deal with HazMat

K. Contractor clean-up companies the facility has identified:

Company Name	Contact Person	Telephone Number

ED_002941_00002942-00091

Region 6 LEPC Handbook

APPENDICES

ED_002941_00002942-00092

APPENDIX A. Crosswalk of Statute / CFR Regulations / USC Citation

Statute	Description	Code of Federal Regulations (CFR)	U.S.C. Citation
	Subtitle A		
Section 301	Establishment of SERCs, Planning Districts, and LEPCs		§ 11001
Section 302	Substances and Facilities Covered and Notification	§ 355.10	§ 11002
Section 303	Comprehensive Emergency Response Plans		§ 11003
Section 304	Emergency Release Notification	§ 355.30	§ 11004
Section 305	Emergency Training and Review of Training Systems		§ 11005
	Subtitle B		
Section 311	Material Safety Data Sheets (MSDSs) or (SDSs)	§ 370	§ 11021
Section 312	Emergency and Hazardous Chemical Inventory Forms	§ 370	§ 11022
Section 313	Toxics Release Inventory (TRI)	§ 372	§ 11023
	Subtitle C		
Section 321	Relationship to other Laws		§ 11041
Section 322	Trade Secrets	§ 350	§ 11042
Section 323	Provision of Information to Health Professionals, Doctors, and Nurses	§ 350	§ 11043
Section 324	Public Availability of Plans, Data Sheets, Forms, and Follow-up Notices		§ 11044
Section 325	Enforcement		§ 11045
Section 326	Civil Actions		§ 11046
Section 327	Exemption		§ 11047
Section 328	Regulations		§ 11048
Section 329	Definitions		§ 11049

ED_002941_00002942-00093

APPENDIX B. The Emergency Planning and Community Right-to-Know Act (EPCRA) Text

SUBCHAPTER I--EMERGENCY PLANNING AND NOTIFICATION

Sec. 11001. Establishment of State commissions, planning districts, and local committees

Establishment of SERCs

Not later than six months after October 17, 1986, the Governor of each State shall appoint a SERC. The Governor may designate as the SERC one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the SERC who have technical expertise in the emergency response field. The SERC shall appoint LEPCs under subsection (c) of this section and shall supervise and coordinate the activities of such committees. The SERC shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a SERC within such period, the Governor shall operate as the SERC until the Governor makes such designation.

a) Establishment of emergency planning districts

Not later than nine months after October 17, 1986, the SERC shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multijurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the SERCs of all potentially affected States may designate emergency planning districts and LEPCs by agreement. In making such designation, the SERC shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.

b) Establishment of LEPCs

Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the SERC shall appoint members of a LEPC for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; 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 the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The LEPC shall establish procedures for receiving and processing requests from the public for information under section 11044 of this title, including tier II information under section 11022 of this title. Such procedures shall include the designation of an official to serve as coordinator for information.

c) Revisions

A SERC may revise its designations and appointments under subsections (b) and (c) of this section as it deems appropriate. Interested persons may petition the SERC to modify the membership of a LEPC.

Sec. 11002. Substances and facilities covered and notification

a) Substances covered

1) In general

A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).

2) List of EHSs

Within 30 days after October 17, 1986, the Administrator shall publish a list of EHSs. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the ``CEPP Interim Guidance".

3) Thresholds

A. At the time the list referred to in paragraph (2) is published the Administrator shall—

i. publish an interim final regulation establishing a TPQ for each substance on the list, taking into account the criteria described in paragraph (4), and

ii. initiate a rulemaking in order to publish final regulations establishing a TPQ for each substance on the list.

B. The TPQ may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

C. If the Administrator fails to publish an interim final regulation establishing a TPQ for a substance within 30 days after October 17, 1986, the TPQ or the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.

ED_002941_00002942-00094

4) Revisions
The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance. For purposes of the preceding sentence, the term ``toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.

b) Facilities covered
1) Except as provided in section 11004 of this title, a facility is subject to the requirements of this subchapter if a substance on the list referred to in subsection (a) of this section is present at the facility in an amount in excess of the TPQ established for such substance.
2) For purposes of emergency planning, a Governor or a SERC may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public notice and opportunity for comment. The Governor or SERC shall notify the facility of any facility designation under this paragraph.

c) Emergency planning notification
Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) of this section shall notify the SERC for the State in which such facility is located that such facility is subject to the requirements of this subchapter. Thereafter, if a substance on the list of EHSs referred to in subsection (a) of this section first becomes present at such facility in excess of the TPQ established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the TPQ established for such substance, the owner or operator of the facility shall notify the SERC and the LEPC within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.

d) Notification of Administrator
The SERC shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of--
1) each notification received from a facility under subsection (c) of this section, and
2) each facility designated by the Governor or SERC under subsection (b)(2) of this section.

Sec. 11003. Comprehensive emergency response plans

a) Plan required
Each LEPC shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

b) Resources
Each LEPC shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.

c) Plan provisions
Each emergency plan shall include (but is not limited to) each of the following:
1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of EHSs referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.
2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.
3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.
4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).
5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.
6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.
7) Evacuation plans, including provisions for a precautionary evacuation and alternative routes.
8) Training programs, including schedules for training of local response and medical personnel.
9) Methods and schedules for exercising the emergency plan.

d) Providing of information
For each facility subject to the requirements of this subchapter:
1) Within 30 days after establishment of a LEPC for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner

or operator of the facility shall notify the LEPC (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.

2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.

3) Upon request from the LEPC, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.

e) Review by SERC

After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the LEPC shall submit a copy of the plan to the SERC of each State in which such district is located. The SERC shall review the plan and make recommendations to the LEPC on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other districts. To the maximum extent practicable, such review shall not delay implementation of such plan.

f) Guidance documents

The NRT, as established pursuant to the NCP as established under section 9605 of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.

g) Review of plans by RRTs

The RRTs, as established pursuant to the NCP as established under section 9605 of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a LEPC. Such review shall not delay implementation of the plan.

Sec. 11004. Emergency notification

a) Types of releases

1) 11002(a) substance which requires CERCLA notice

If a release of an EHS referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of CERCLA (hereafter in this section referred to as ``CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section.

2) Other 11002(a) substance

If a release of an EHS referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section, but only if the release—

A. is not a federally permitted release as defined in section 101(10) of CERCLA [42 U.S.C. 9601(10)],

B. is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and

C. occurs in a manner which would require notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

Unless and until superseded by regulations establishing a quantity for an EHS described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b) of this section.

3) Non-11002(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 11002(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator shall provide notice as follows:

A. If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)], the owner or operator shall provide notice as described in subsection (b) of this section.

B. If the substance is one for which a RQ has not been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)]—

i. Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the emergency coordinator for the LEPC, at the same time and in the same form, as notice is provided to the NRC under section 103(a) of CERCLA.

ii. On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b) of this section.

4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

b) Notification

1) Recipients of notice

Notice required under subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to

the community emergency coordinator for the LEPCs, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the SERC of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 telephone number, calling the operator.

2) Contents
Notice required under subsection (a) of this section shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):
   A. The chemical name or identity of any substance involved in the release.
   B. An indication of whether the substance is on the list referred to in section 11002(a) of this title.
   C. An estimate of the quantity of any such substance that was released into the environment.
   D. The time and duration of the release.
   E. The medium or media into which the release occurred.
   F. Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
   G. Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).
   H. The name and telephone number of the person or persons to be contacted for further information.

c) Follow-up emergency notice
As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to—
   1) actions taken to respond to and contain the release,
   2) any known or anticipated acute or chronic health risks associated with the release, and
   3) where appropriate, advice regarding medical attention necessary for exposed individuals.

d) Transportation exemption not applicable
The exemption provided in section 11047 of this title (relating to transportation) does not apply to this section.

Sec. 11005. Emergency training and review of emergency systems

a) Emergency training
   1) Programs
   Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long- term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.
   2) State and local program support
   There is authorized to be appropriated to FEMA for each of the fiscal years 1987, 1988, 1989, and 1990, $5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.
   3) Other programs
   Nothing in this section shall affect the availability of appropriations to the FEMA for any programs carried out by such agency other than the programs referred to in paragraph (2).

b) Review of emergency systems
   1) Review
   The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of EHSs at representative domestic facilities that produce, use, or store EHSs. The Administrator may select representative EHSs from the substances on the list referred to in section 11002(a) of this title for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and recommendations to the Congress not later than 18 months after October 17, 1986. Such report

shall be prepared in consultation with the States and appropriate Federal agencies.

2) Report
The report required by this subsection shall include the Administrator's findings regarding each of the following:
A. The status of current technological capabilities to
i. monitor, detect, and prevent, in a timely manner, significant releases of EHSs,
ii. determine the magnitude and direction of the hazard posed by each release,
iii. identify specific substances,
iv. provide data on the specific chemical composition of such releases, and
v. determine the relative concentrations of the constituent substances.
B. The status of public alert devices or systems for providing timely and effective public warning of an accidental release of EHSs into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such EHSs.
C. The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such EHSs into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

3) Recommendations
The report required by this subsection shall also include the Administrator's recommendations for—
A. initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of EHSs, and
B. improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such EHSs.

SUBCHAPTER II--REPORTING REQUIREMENTS

Sec. 11021. Material safety data sheets

a) Basic requirement
1) Submission of MSDS or list
The owner or operator of any facility which is required to prepare or have available a MSDS for a hazardous chemical under the OSHAct of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act shall submit a MSDS for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:
A. The appropriate LEPC.
B. The SERC.
C. The fire department with jurisdiction over the facility.

2) Contents of list
A. The list of chemicals referred to in paragraph (1) shall include each of the following:
i. A list of the hazardous chemicals for which a MSDS is required under the OSHAct of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).
ii. The chemical name or the common name of each such chemical as provided on the MSDS.
iii. Any hazardous component of each such chemical as provided on the material safety data sheet.
B. For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the OSHAct of 1970 and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.

3) Treatment of mixtures
An owner or operator may meet the requirements of this section with respect to a chemical which is a mixture by doing one of the following:
A. Submitting a MSDS for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.
B. Submitting a MSDS for, or identifying on a list, the mixture itself.

b) Thresholds
The Administrator may establish threshold quantities for chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

c) Availability of MSDS on request
1) To LEPC
If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section,

the owner or operator, upon request by the LEPC, shall submit the MSDS for any chemical on the list to such committee.

2) To public
A LEPC, upon request by any person, shall make available a MSDS to the person in accordance with section 11044 of this title. If the LEPC does not have the requested MSDS, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 11044 of this title.

d) Initial submission and updating
1) The initial MSDS or list required under this section with respect to a hazardous chemical shall be provided before the later of—
A. 12 months after October 17, 1986, or
B. 3 months after the owner or operator of a facility is required to prepare or have available a MSDS for the chemical under the OSHAct of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act.
2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a MSDS which was previously submitted to the LEPC under subsection (a) of this section, a revised sheet shall be provided to such person.

e) "Hazardous chemical" defined
For purposes of this section, the term ``hazardous chemical'' has the meaning given such term by section 1910.1200(c) of title 29 of the CFR, except that such term does not include the following:
1) Any food, food additive, color additive, drug, or cosmetic regulated by the FDA.
2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public
4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.
5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Sec. 11022. Emergency and hazardous chemical inventory forms

a) Basic requirement
1) The owner or operator of any facility which is required to prepare or have available a MSDS for a hazardous chemical under the OSHAct of 1970 and regulations promulgated under that Act shall prepare and submit a hazardous chemical inventory form (hereafter in this chapter referred to as an "inventory form") to each of the following:
A. The appropriate LEPC.
B. The SERC.
C. The fire department with jurisdiction over the facility.
2) The inventory form containing tier I information (as described in subsection (d)(1) of this section) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2) of this section) to the recipients described in paragraph (1).
3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:
A. Providing information on the inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.
B. Providing information on the inventory form on the mixture itself.

b) Thresholds
The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.

c) Hazardous chemicals covered
A chemical subject to the requirements of this section is any hazardous chemical for which a MSDS or a listing is required under section 11021 of this title.

d) Contents of form
1) Tier I information
A. Aggregate information by category
An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the OSHAct of 1970 and regulations promulgated under that Act.
B. Required information
The information referred to in subparagraph (A) is the following:

ED_002941_00002942-00099

i. An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.
ii. An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.
iii. The general location of hazardous chemicals in each category.

C. Modifications
For purposes of reporting information under this paragraph, the Administrator may
i. modify the categories of health and physical hazards as set forth under the OSHAct of 1970 [29 U.S.C. 651 et seq.] and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or
ii. require reporting on individual hazardous chemicals of special concern to emergency response personnel.

2) Tier II information
An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e) of this section:
A. The chemical name or the common name of the chemical as provided on the material safety data sheet.
B. An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.
C. An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.
D. A brief description of the manner of storage of the hazardous chemical.
E. The location at the facility of the hazardous chemical.
F. An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 11044 of this title.

e) Availability of tier II information
1) Availability to SERC, LEPCs, and fire departments
Upon request by a SERC, a LEPC, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d) of this section, to the person making the request. Any such request shall be with respect to a specific facility.
2) Availability to other State and local officials
A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the SERC or the LEPC. Upon receipt of a request for tier II information, the SERC or LEPC shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.
3) Availability to public
A. In general
Any person may request a SERC or LEPC for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.
B. Automatic provision of information to public
Any tier II information which a SERC or LEPC has in its possession shall be made available to a person making a request under this paragraph in accordance with section 11044 of this title. If the SERC or LEPC does not have the tier II information in its possession, upon a request for tier II information the SERC or LEPC shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 11044 of this title to the person making the request.
C. Discretionary provision of information to public
In the case of tier II information which is not in the possession of a SERC or LEPC and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The SERC or LEPC may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the SERC or LEPC shall make the information available in accordance with section 11044 of this title to the person.
D. Response in 45 days
A SERC or LEPC shall respond to a request for tier II information under this paragraph no

later than 45 days after the date of receipt of the request.

f) Fire department access
Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

g) Format of forms
The Administrator shall publish a uniform format for inventory forms within three months after October 17, 1986. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

SUBCHAPTER III--GENERAL PROVISIONS

Sec. 11041. Relationship to other law

a) In general
Nothing in this chapter shall--
1) preempt any State or local law,
2) except as provided in subsection (b) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or
3) affect or modify in any way the obligations or liabilities of any person under other Federal law.

b) Effect on MSDS requirements
Any State or local law enacted after August 1, 1985, which requires the submission of a MSDS from facility owners or operators shall require that the MSDS be identical in content and format to the MSDS required under subsection (a) of section 11021 of this title. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the MSDS or such other means as the State or locality considers appropriate.

Sec. 11042. Trade secrets

a) Authority to withhold information
1) General authority
A. With regard to a hazardous chemical, or an EHS, any person required under section 11003(d)(2), 11003(d)(3), 11021, 11022, or 11023 of this title to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c) of this section, if the person complies with paragraph (2).
B. Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).
2) Requirements
A. A person is entitled to withhold information under paragraph (1) if such person--
i. claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b) of this section,
ii. includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b) of this section, including a specific description of why such factors apply, and
iii. submits to the Administrator a copy of such submittal, and the information withheld from such submittal.
B. In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may-
i. designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and
ii. submit such designated information separately from other information submitted under this subsection.
3) Limitation
The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c) of this section, is not a trade secret.

b) Trade secret factors
No person required to provide information under this chapter may claim that the information is entitled to protection as a trade secret under subsection (a) of this section unless such person shows each of the following:
1) Such person has not disclosed the information to any other person, other than a member of a LEPC, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a

confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.

2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.
3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.
4) The chemical identity is not readily discoverable through reverse engineering.

c) Trade secret regulations

As soon as practicable after October 17, 1986, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4) of this section, such regulations shall be equivalent to comparable provisions in the OSHA HCS (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter.

d) Petition for review

1) In general

Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, or an EHS, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.

2) Initial review

Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) of this section and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.

3) Finding of sufficient assertions

A. If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.

B. If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.

C. If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), the assertions in the explanation are not true and the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimaint may seek judicial review of the determination.

4) Finding of insufficient assertions

A. If the Administrator determines pursuant to paragraph (2) the explanation presents insufficient assertions to support a finding the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

B. If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.

C. If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.

e) Exception for information provided to health professionals

Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section 11043 of this title.

f) Providing information to Administrator; availability to public

Any information submitted to the Administrator under subsection (a)(2) of this section or subsection (d)(3) of this section (except a specific chemical identity) shall

be available to the public, except upon a showing satisfactory to the Administrator by any person the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section 1905 of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter.

g) Information provided to State
Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) of this section and subsection (d)(3) of this section.

h) Information on adverse effects
1) In any case in which the identity of a hazardous chemical or an EHS is claimed as a trade secret, the Governor or SERC established under section 11001 of this title shall identify the adverse health effects associated with the hazardous chemical or EHS and shall assure that such information is provided to any person requesting information about such hazardous chemical or EHS.
2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section 11023(j) of this title and is provided to any person requesting information about such toxic chemical.

i) Information provided to Congress
Notwithstanding any limitation contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

Sec. 11043. Provision of information to health professionals, doctors, and nurses

a) Diagnosis or treatment by health professional
An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, EHS, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that--
1) the information is needed for purposes of diagnosis or treatment of an individual,
2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and
3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

b) Medical emergency
An owner or operator of a facility which is subject to the requirements of section 11021, 11022, or 11023 of this title shall provide a copy of a MSDS, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, EHS, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that--
1) a medical emergency exists,
2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and
3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a MSDS, an inventory form, or a toxic chemical release form under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) of this section and a statement setting forth the items listed in paragraphs (1) through (3) as soon as circumstances permit.

c) Preventive measures by local health professionals
1) Provision of information
An owner or operator of a facility subject to the requirements of section 11021, 11022, or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist)--

A. who is a local government employee or a person under contract with the local government, and
B. who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section 11042 of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

2) Written statement of need
The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:
A. To assess exposure of persons living in a local community to the hazards of the chemical concerned.
B. To conduct or assess sampling to determine exposure levels of various population groups.
C. To conduct periodic medical surveillance of exposed population groups.
D. To provide medical treatment to exposed individuals or population groups.
E. To conduct studies to determine the health effects of exposure.
F. To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

c) Confidentiality agreement
Any person obtaining information under subsection (a) or (c) of this section shall, in accordance with such subsection (a) or (c) of this section, be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

d) Regulations
As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection (a) and (c) of this section and the confidentiality agreement under subsection (d) of this section.

Sec. 11044. Public availability of plans, data sheets, forms, and followup notices

a) Availability to public
Each emergency response plan, MSDS, list described in section 11021(a)(2) of this title, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, SERC, or LEPC, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 11022 of this title, the SERC and the appropriate LEPC shall withhold from disclosure under this section the location of any specific chemical required by section 11022(d)(2) of this title to be contained in an inventory form as tier II information.

b) Notice of public availability
Each LEPC shall annually publish a notice in local newspapers that the emergency response plan, MSDSs, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a) of this section.

Sec. 11045. Enforcement

a) Civil penalties for emergency planning
The Administrator may order a facility owner or operator (except an owner or operator of a facility designated under section 11002(b)(2) of this title) to comply with section 11002(c) of this title and section 11003(d) of this title. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than $25,000 for each day in which such violation occurs or such failure to comply continues.

b) Civil, administrative, and criminal penalties for emergency notification
1) Class I administrative penalty
A. A civil penalty of not more than $25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title.
B. No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.
C. In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to

the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.

2) Class II administrative penalty
A civil penalty of not more than $25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation the amount of such penalty may be not more than $75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 2615 of title 15. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.

3) Judicial assessment
The Administrator may bring an action in the United States District court for the appropriate district to assess and collect a penalty of not more than $25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section 11004 of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than $75,000 for each day during which the violation continues.

4) Criminal penalties
Any person who knowingly and willfully fails to provide notice in accordance with section 11004 of this title shall, upon conviction, be fined not more than $25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than $50,000 or imprisoned for not more than five years, or both).

c) Civil and administrative penalties for reporting requirements

1) Any person (other than a governmental entity) who violates any requirement of section 11022 or 11023 of this title shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation.

2) Any person (other than a governmental entity) who violates any requirement of section 11021 or 11043(b) of this title, and any person who fails to furnish to the Administrator information required under section 11042(a)(2) of this title shall be liable to the U.S. for a civil penalty in an amount not to exceed $10,000 for each such violation.

3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.

4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the U.S. district court for the district in which the person from whom the penalty is sought resides or in which such person's place of business is located.

d) Civil, administrative, and criminal penalties with respect to trade secrets

1) Civil and administrative penalty for frivolous claims
If the Administrator determines--

A. (i) under section 11042(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and

B. the trade secret claim is frivolous, the trade secret claimant is liable for a penalty of $25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the district court of the U.S. to assess and collect the penalty.

2) Criminal penalty for disclosure of trade secret information
Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than $20,000 or to imprisonment not to exceed one year, or both.

e) Special enforcement provisions for section 11043
Whenever any facility owner or operator required to provide information under section 11043 of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section 11043 of this title.

f) Procedures for administrative penalties

1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30 days after the date of such order

and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Sec. 11046. Civil actions

a) Authority to bring civil actions

1) Citizen suits

Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

A. An owner or operator of a facility for failure to do any of the following:

i. Submit a followup emergency notice under section 11004(c) of this title.

ii. Submit a MSDS or a list under section 11021(a) of this title.

iii. Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section 11022(d)(1) of this title unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

iv. Complete and submit a toxic chemical release form under section 11023(a) of this title.

B. The Administrator for failure to do any of the following:

i. Publish inventory forms under section 11022(g) of this title.

ii. Respond to a petition to add or delete a chemical under section 11023(e)(1) of this title within 180 days after receipt of the petition.

iii. Publish a toxic chemical release form under 11023(g) of this title.

iv. Establish a computer database in accordance with section 11023(j) of this title.

v. Promulgate trade secret regulations under section 11042(c) of this title.

vi. Render a decision in response to a petition under section 11042(d) of this title within 9 months after receipt of the petition.

C. The Administrator, a State Governor, or a SERC, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.

D. A State Governor or a SERC for failure to respond to a request for tier II information under section 11022(e)(3) of this title within 120 days after the date of receipt of the request.

2) State or local suits

A. Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:

i. Provide notification to the SERC in the State under section 11002(c) of this title.

ii. Submit a MSDS or a list under section 11021(a) of this title.

iii. Make available information requested under section 11021(c) of this title.

iv. Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section 11022(a)(2) of this title.

B. Any SERC or LEPC may commence a civil action against an owner or operator of a facility for failure to provide information under section 11003(d) of this title or for failure to submit tier II information under section 11022(e)(1) of this title.

C. Any State may commence a civil action against the Administrator for failure to provide

information to the State under section 11042(g) of this title.

b) Venue
   1) Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.
   2) Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.

c) Relief
The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

d) Notice
   1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.
   2) No action may be commenced under subsection (a)(1)(B) or (a)(1)(C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or SERC (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.

e) Limitation
No action may be commenced under subsection (a) of this section against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.

f) Costs
The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

g) Other rights
Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).

h) Intervention
   1) By the United States
   In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.
   2) By persons
   In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

Sec. 11047. Exemption
Except as provided in section 11004 of this title, this chapter does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

Sec. 11048. Regulations
The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

Sec. 11049. Definitions
For purposes of this chapter--
   1) Administrator: The term ``Administrator'' means the Administrator of the Environmental Protection Agency.
   2) Environment: The term ``environment'' includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.
   3) Extremely hazardous substance: The term ``extremely hazardous substance'' means a substance on the list described in section 11002(a)(2) of this title.
   4) Facility: The term ``facility'' means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section 11004 of this title, the term includes motor vehicles, rolling stock, and aircraft.

5) Hazardous chemical: The term ``hazardous chemical'' has the meaning given such term by section 11021(e) of this title.
6) Material safety data sheet: The term ``material safety data sheet'' means the sheet required to be developed under section 1910.1200(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.
7) Person: The term ``person'' means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.
8) Release: The term ``release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.
9) State: The term ``State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.
10) Toxic chemical: The term ``toxic chemical'' means a substance on the list described in section 11023(c) of this title.

Sec. 11050. Authorization of appropriations

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter.

APPENDIX C. EPCRA Regulations (40 CFR)

Title 40: Protection of Environment
PART 355—EMERGENCY PLANNING AND NOTIFICATION

Subpart A—General Information

§355.1 What is the purpose of this part?

a) This part (40 CFR part 355) establishes requirements for a facility to provide information necessary for developing and implementing State and local chemical emergency response plans, and requirements for emergency notification of chemical releases. This part also lists EHSs and TPQs in Appendices A and B, which are used in determining if you are subject to these requirements.
b) This part is written in a special format to make it easier to understand the regulatory requirements. Like other EPA regulations, this part establishes enforceable legal requirements. Information considered non-binding guidance under EPCRA is indicated in this regulation by the word "note" and a smaller typeface. Such notes are provided for information purposes only and are not considered legally binding under this part.

§355.2 Who do "you," "I," and "your" refer to in this part?

Throughout this part, "you," "I," and "your" refer to the owner or operator of a facility.

§355.3 Which section contains the definitions of the key words used in this part?

The definitions of key words used in this part are in §355.61. It is important to read the definitions for these key words because the definition explains the word's specific meaning associated with the regulations in this part.

Subpart B—Emergency Planning

Who Must Comply

§355.10 Must my facility comply with the emergency planning requirements of this subpart?

You must comply with the emergency planning requirements in this subpart if your facility meets either of the following two conditions:

a) Any EHS is present at your facility in an amount equal to or greater than its TPQ, or
b) Your facility has been designated for emergency planning purposes, after public notice and opportunity for comment, by one of the following three entities:
    1) The SERC.
    2) The Governor of the State in which your facility is located.
    3) The Chief Executive Officer of the Tribe for the Indian Tribe under whose jurisdiction your facility is located.

§355.11 To what substances do the emergency planning requirements of this subpart apply?

The emergency planning requirements of this subpart apply to any EHS listed in Appendices A and B of this part. Additionally, if a facility is designated for emergency planning purposes, as provided in §355.10(b), substances that are not EHSs at this facility may become subject to the emergency planning requirements.

§355.12 What quantities of extremely hazardous substances trigger emergency planning requirements?

Any EHS present at your facility in an amount equal to or greater than its TPQ triggers the emergency planning requirements of this subpart. The TPQs are listed in Appendices A and B of this part in the column labeled "TPQ."

§355.13 How do I calculate the quantity of an extremely hazardous substance present in mixtures?

If an EHS is present in a mixture in a particular container, determine the quantity (in pounds) of the EHS in that container by multiplying the concentration of the EHS (in weight percent) by the weight (in pounds) of the mixture in the container. If the concentration of an EHS is less than or equal to one percent in the mixture, you do not have to count that EHS. Here is an example calculation:

Example: You have 150 pounds of a mixture that contains 20 weight percent of a certain EHS. The quantity of EHS present in the mixture is:

EHS (in pounds) = (weight percent of EHS) × (weight of mixture)
= (20 percent) × (150 pound mixture)
= (0.20) × (150)
EHS (in pounds) = 30 pounds

§355.14 Do I have to aggregate extremely hazardous substances to determine the total quantity present?

You must aggregate (i.e., add together) the amounts of each EHS at your facility to determine if a TPQ is present. This means that, for a particular EHS, you must determine the total amount present at any one time at your facility by adding together the quantity of pure EHS and the quantity contained in all mixtures, regardless of location, number of containers, or method of storage. You do not have to count an EHS in a mixture if the concentration of that EHS is less than or equal to one percent.

§355.15 Which threshold planning quantity do I use for an extremely hazardous substance present at my facility in solid form?

EHSs that are in solid form are subject to one of two different TPQs (for example, TPQs may be listed as 500/10,000 pounds), both of which are listed in Appendices A and B of this part. Here is how to determine which of the two listed TPQs you must use for an EHS present at your facility in solid form:

a) Use the lower TPQ from Appendices A and B of this part if the solid:
   1) Is in powdered form and has a particle size less than 100 microns;
   2) Is in solution;
   3) Is in molten form; or
   4) Meets the criteria for a NFPA rating of 2, 3 or 4 for reactivity.

   Note to paragraph (a): Use the instructions in §355.16 to calculate the quantity present for the categories of solids listed in paragraphs (a)(1), (2) and (3) of this section.

b) If the solid does not meet one of the criteria in paragraph (a) of this section, then the TPQ is 10,000 pounds.

§355.16 How do I determine the quantity of extremely hazardous substances present for certain forms of solids?

For the three forms of solids that are listed in §355.15(a)(1) through (3), use these instructions to determine the quantity of extremely hazardous substance present:

a) Solid in powdered form with a particle size less than 100 microns. Multiply the weight percent of solid with a particle size less than 100 microns in a particular container by the total weight of solid in the container.

b) Solid in solution. Multiply the weight percent of the non-reactive solid in solution in a particular container by the total weight of solution in that container. Then multiply by 0.2.

   Note to paragraph (b): This reduction in quantity must not be used to determine the amount present at one-time at a facility for reporting under 40 CFR 370.10.

c) Solid in molten form. Multiply the weight of the non-reactive solid in molten form by 0.3.

   Note to paragraph (c): This reduction in quantity must not be used to determine the amount present at one-time at a facility for reporting under 40 CFR 370.

§355.20 If this subpart applies to my facility, what information must I provide, who must I submit it to, and when is it due?

Use this table to determine the information you must provide, who to provide it to, and when:

What types of emergency planning notification are required?	What information must I provide?	To whom must I provide the information?	When must I provide the information?
(a) Emergency planning notification	You must provide notice that your facility is subject to the emergency planning requirements of this subpart	To the SERC and the LEPC	Within 60 days after your facility first becomes subject to the requirements of this subpart. If no LEPC exists for your facility at the time you are required to provide emergency planning notification, then you should report to the LEPC within 30 days after an LEPC is established for the emergency planning district in which your facility is located.
(b) Facility emergency coordinator	You must designate a facility representative who will participate in the local emergency planning process as a facility emergency response coordinator. You must provide notice of this facility representative	To the LEPC (or the SERC if there is no LEPC, or the Governor if there is no SERC)	Within 60 days after your facility first becomes subject to the requirements of this subpart. If no LEPC exists when you first report, then provide an additional report to the LEPC within 30 days after such LEPC is established for the emergency planning district in which your facility is located.
(c) Changes relevant to emergency planning	You must provide notice of any changes occurring at your facility that may be relevant to emergency planning	To the LEPC	Within 30 days after the changes have occurred.
(d) Requested information	You must provide any information necessary for developing or implementing the local emergency plan if the LEPC requests it	To the LEPC	Promptly. Note: The LEPC may specify a time frame for this information.

§355.21 In what format should the information be submitted?

EPA does not require any specific format. EPA recommends that you submit the information described in §355.20 in writing in order to insure appropriate documentation. The SERC or LEPC may request that this information be submitted in a specific format.

Subpart C—Emergency Release Notification

Who Must Comply

§355.30 What facilities must comply with the emergency release notification requirements of this subpart?

You must comply with the emergency release notification requirements in this subpart if both of these two conditions are met:

a) You produce, use, or store a hazardous chemical at your facility; and
b) You release a RQ of any EHS or of a hazardous substance as defined by CERCLA Hazardous Substance at your facility. Certain releases are exempted from these requirements. Exempted releases are listed in §355.31.

Note to paragraph (b): In addition to the emergency release notification requirements of this subpart, releases of CERCLA hazardous substances are subject to the notification requirements under CERCLA. This is explained further in subpart D of this part.

§355.31 What types of releases are exempt from the emergency release notification requirements of this subpart?

You do not have to provide emergency release notification under this subpart for any of the following six types of releases of EHSs or CERCLA hazardous substances that occur at your facility:

a) Any release that results in exposure to persons solely within the boundaries of your facility.
b) Any release that is a federally permitted release as defined in section 101(10) of CERCLA.
c) Any release of a pesticide product that is exempt from reporting under section 103(e) of CERCLA.
d) Any release that does not meet the definition of release under section 101(22) of CERCLA and is therefore exempt from CERCLA section 103(a) reporting.
e) Any radionuclide release that occurs:
    1) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land.
    2) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: Land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw (not beneficiated or processed) materials; and replacing in mined-out areas coal ash, earthen materials from farming or construction, or overburden or other raw materials generated from the exempted mining activities.
    3) From the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.
    4) From piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.
f) Any release less than 1,000 pounds per 24 hours of nitrogen oxide or nitrogen dioxide to the air which is the result of combustion and combustion related activities.
g) Any release to the air of a hazardous substance from animal waste at farms that stable or confine fewer than the numbers of animal specified in any of the following categories.
    1) 700 mature dairy cows, whether milked or dry.
    2) 1,000 veal calves.
    3) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.
    4) 2,500 swine each weighing 55 pounds or more.
    5) 10,000 swine each weighing less than 55 pounds.
    6) 500 horses.
    7) 10,000 sheep or lambs.
    8) 55,000 turkeys.
    9) 30,000 laying hens or broilers, if the farm uses a liquid manure handling system.
    10) 125,000 chickens (other than laying hens), if the farm uses other than liquid manure handling system.
    11) 82,000 laying hens, if the farm uses other than a liquid manure handling system.
    12) 30,000 ducks (if the farm uses other than a liquid manure handling system).
    13) 5,000 ducks (if the farm uses a liquid manure handling system).
h) Any release to the air of a hazardous substance from animal waste at farms from animals that are not stabled or otherwise confined.

§355.32 Which emergency release notification requirements apply to continuous releases?

If the release of an EHS or CERCLA hazardous substance is continuous and stable in quantity and rate at your facility as defined in 40 CFR 302.8(b), then the release qualifies for reduced reporting requirements

under this subpart. Under these reduced reporting requirements, you do not need to provide the notifications required under §355.40. However, in addition to the notifications required under 40 CFR 302.8, you must make all of the following notifications to the community emergency coordinator for the LEPC for any area likely to be affected by the release and to the SERC of any State likely to be affected by the release:

a) Initial notifications as specified in 40 CFR 302.8 (d) and (e).
b) Notification of a "statistically significant increase," defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range.
c) Notification of a "new release" as specified in 40 CFR 302.8(g)(1).
d) Notification of a change in the normal range of the release as specified under 40 CFR 302.8(g)(2).

§355.33 What release quantities of EHSs and CERCLA hazardous substances trigger the emergency release notification requirements of this subpart?

The release of a reportable quantity (RQ) of an EHS or CERCLA hazardous substance within any 24-hour period triggers the emergency release notification requirements. RQs for EHSs are listed in Appendices A and B of this part in the column labeled "reportable quantity." RQs for CERCLA hazardous substances are listed in Table 302.4 of 40 CFR 302.4 in the column labeled "final RQ."

How To Comply

§355.40 What information must I provide?

You must make two separate notifications to comply with the emergency release notification requirements of this subpart: an immediate notification, and as soon as practicable thereafter a written follow-up emergency notification (or notifications, as more information becomes available).

a) Immediate notification. The notice required under this section shall include as much of the following information known at the time. However, the retrieval of this information should not cause a delay in the notification on the emergency response.
   1) The chemical name or identity of any substance involved in the release.
   2) Indicate whether the substance is an EHS.
   3) Provide an estimate of the quantity of any such substance that was released into the environment.
   4) State the time and duration of the release.
   5) The medium or media into which the release occurred.
   6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
   7) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).
   8) The name and telephone number of the individual (or individuals) to be contacted for further information.
b) Written follow-up emergency notification. Except for releases that occur during transportation or from storage incident to transportation, you must provide a written follow-up emergency notice (or notices, as more information becomes available), as soon as practicable after the release. In the written follow-up emergency notice, you must provide and update the information required in the immediate notification and include additional information with respect to all of the following:
   1) Actions taken to respond and contain the release.
   2) Any known or anticipated acute or chronic health risks associated with the release.
   3) Where appropriate, advice regarding medical attention necessary for exposed individuals.
c) You are not required to submit a written follow-up notification for a release that occurred during transportation or from storage incident to transportation. See §355.42(b) for requirements for reporting such releases.

§355.41 In what format should the information be submitted?

The immediate notification, described in §355.40(a), should be oral. The follow-up emergency notification, described in §355.40(b), shall be in writing. EPA does not specify a particular format for the written follow-up emergency notification.

Note: The LEPC may request a specific format for this information.

§355.42 To whom must I submit the information?

a) You must provide the immediate emergency release notification information and the written follow-up notification to:
   1) The community emergency coordinator for the LEPC of any area likely to be affected by the release (if there is no LEPC, notify the relevant local emergency response personnel); and
   2) The SERC of any State likely to be affected by the release.
b) For a release that occurs during transportation or from storage incident to transportation, you may

meet the requirements of this subpart by notifying the 911 operator (or in the absence of a 911 emergency telephone number, the operator) of the immediate notification information listed in §355.40(a). You are not required under this subpart to submit a written follow-up notification, as described in §355.40(b), for such a release.

§355.43 When must I submit the information?

a) You must provide the required emergency release notification information described under §355.40(a), immediately.
b) You must provide the written follow-up emergency notice (or notices, as more information becomes available) described under §355.40(b), as soon as practicable after the release.

Subpart D—Additional Provisions

§355.60 What is the relationship between the emergency release notification requirements of this part and the release notification requirements of CERCLA?

The emergency release notification requirements of this part are in addition to the release notification requirements of CERCLA. If you have a release of a CERCLA hazardous substance, you must comply with the emergency release notification requirements of this part and the release notification requirements of CERCLA section 103, codified at 40 CFR part 302. Use this table to determine which emergency release notification requirements apply to your release:

If a reportable quantity of a substance is released within a 24-hour period	And if the release is reportable under EPCRA Section 304, you must	And if the release is reportable under CERCLA Section 103, you must
(a) And the substance is on BOTH the list of EHSs (Appendices A and B of this part) AND the list of CERCLA Hazardous Substances (40 CFR 302.4)	Notify the LEPC and the SERC in accordance with §§355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see §355.42(b))	Comply with the release notification requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the NRC.
(b) And the substance is on the list of CERCLA Hazardous Substances (40 CFR 302.4) and not on the list of EHSs (Appendices A and B of this part)	Notify the LEPC and the SERC, in accordance with §§355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see in §355.42(b))	Comply with the release notification requirements of CERCLA section 103 and its implementing regulations (40 CFR part 302). Call the NRC.
(c) And the substance is on the list of EHSs (Appendices A and B of this part) and not the list of CERCLA Hazardous Substances (40 CFR 302.4)	Notify the LEPC and the SERC in accordance with §§355.40 through 355.43 of this part (except for a release during transportation or from storage incident to transportation; see §355.42(b))	

Note: This table only applies to reportable releases, not to exempt releases.

§355.61 How are key words in this part defined?

Animal waste means manure (feces, urine, and other excrement produced by livestock), digestive emissions, and urea. The definition includes animal waste when mixed or commingled with bedding, compost, feed, soil and other typical materials found with animal waste.

- CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.
- CERCLA hazardous substance means a substance defined in section 101(14) of CERCLA and listed in Table 302.4 of 40 CFR 302.4.
- Chief Executive Officer of the Tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.
- Environment includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.
- EPCRA means the Emergency Planning and Community Right-To-Know Act of 1986.
- Extremely hazardous substance (EHS) means a substance listed in Appendices A and B of this part.
- Facility means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person). Facility includes manmade structures, as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of emergency release notification, the term includes motor vehicles, rolling stock, and aircraft.
- Farm means a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, $1,000 or more of agricultural products during a year.
- Hazardous chemical means any hazardous chemical as defined under 29 CFR 1910.1200(c), except that this term does not include:
  1) Any food, food additive, color additive, drug, or cosmetic regulated by the FDA.
  2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
  3) Any substance to the extent it is used:
     i. For personal, family, or household purposes, or is present in the same form and

concentration as a product packaged for distribution and use by the general public. Present in the same form and concentration as a product packaged for distribution and use by the general public means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;

ii. In a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual; or

iii. In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

- Indian Country means Indian country defined in 18 U.S.C. 1151 as:
  1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

- Indian Tribe or Tribe means those Tribes federally recognized by the Secretary of the Interior.
- LEPC means the Local Emergency Planning Committee appointed by the SERC.
- Medium or media means the environment (i.e., air, water, land).
- Mixture means, for the purposes of 40 CFR part 355, a heterogeneous association of substances where the various individual substances retain their identities and can usually be separated by mechanical means. This definition includes, for the purposes of 40 CFR part 355, solutions but does not include alloys or amalgams.
- Non-reactive solid means any substance listed in Appendix A or B of this part with two threshold planning quantity values, the higher TPQ being 10,000 pounds.
- Person means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.
- Reactive solid means any extremely hazardous substance denoted with "a" in the "Notes" column in Appendix A or B of this part.
- Release means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, EHS, or CERCLA hazardous substance.
- Reportable quantity means, for any CERCLA hazardous substance, the quantity established in Table 302.4 of 40 CFR 302.4, for such substance. For any EHS, RQ means the quantity established in Appendices A and B of this part for such substance. Unless and until superseded by regulations establishing a RQ for newly listed EHSs or CERCLA hazardous substances, a weight of 1 pound shall be the RQ.
- SERC means the State Emergency Response Commission for the State in which the facility is located except where the facility is located in Indian Country, in which case, SERC means the Emergency Response Commission for the Tribe under whose jurisdiction the facility is located. In the absence of a SERC for a State or Indian Tribe, the Governor or the chief executive officer of the tribe, respectively, shall be the SERC. Where there is a cooperative agreement between a State and a Tribe, the SERC shall be the entity identified in the agreement.
- Solution means any aqueous, viscous or organic solutions, slurries, suspensions, emulsions, or pastes.
- State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdiction and Indian Country.
- Threshold planning quantity means, for a substance listed in Appendices A and B of this part, the quantity listed in the column "TPQ" for that substance.

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

Subpart A—General Information

§370.1 What is the purpose of this part?

a) This part (40 CFR part 370) establishes reporting requirements for providing the public with important information on the hazardous chemicals in their communities. Reporting raises community awareness of chemical hazards and aids in the development of State and local emergency response plans. The reporting requirements established under this part consist of MSDS reporting and inventory reporting.

b) This part is written in a special format to make it easier to understand the regulatory requirements. Like other EPA regulations, this part establishes enforceable legal requirements. Information considered non-binding guidance under EPCRA is indicated in this regulation by the word "note" and a smaller typeface. Such notes are provided for

information purposes only and are not considered legally binding under this part.

§370.2 Who do "you," "I," and "your" refer to in this part?

Throughout this part, "you," "I," and "your" refer to the owner or operator of a facility.

§370.3 Which section contains the definitions of the key words used in this part?

The definitions of key words used in this part are in §370.66. It is important to read the definitions for key words because the definition explains the word's specific meaning in the regulations in this part.

Subpart B—Who Must Comply

§370.10 Who must comply with the hazardous chemical reporting requirements of this part?

a) You must comply with the reporting requirements of this part if the OSHA HCS require your facility to prepare or have available a MSDS for a hazardous chemical and if either of the following conditions is met:
   1) A hazardous chemical that is an EHS is present at your facility at any one time in an amount equal to or greater than 500 pounds (227 kg—approximately 55 gallons) or the TPQ, whichever is lower. EHSs and their TPQs are listed in Appendices A and B of 40 CFR part 355.
   2) A hazardous chemical that is not an EHS is present at your facility at any one time in an amount equal to or greater than the threshold level for that hazardous chemical. Threshold levels for such hazardous chemicals are:
      i. For any hazardous chemical that does not meet the criteria in paragraph (a)(2)(ii) or (iii) of this section, the threshold level is 10,000 pounds (or 4,540 kg).
      ii. For gasoline at a retail gas station (For purposes of this part, retail gas station means a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.), the threshold level is 75,000 gallons (approximately 283,900 liters) (all grades combined). This threshold is only applicable for gasoline that was in tank(s) entirely underground and was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements at 40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281.
      iii. For diesel fuel at a retail gas station (For purposes of this part, retail gas station means a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.), the threshold level is 100,000 gallons (approximately 378,500 liters) (all grades combined). This threshold is only applicable for diesel fuel that was in tank(s) entirely underground and was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements at 40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281.

b) The threshold level for responding to the following requests is zero.
   1) If your LEPC requests that you submit an MSDS for a hazardous chemical for which you have not submitted an MSDS to your LEPC; or
   2) If your LEPC, SERC, or the fire department with jurisdiction over your facility requests that you submit Tier II information.

§370.12 What hazardous chemicals must I report under this part?

a) You must report any hazardous chemical for which you are required to prepare or have available an MSDS under OSHA HCS that is present at your facility equal to or above the applicable threshold specified in §370.10. (Specific exemptions from reporting are in §370.13.)
b) The EPA has not issued a list of hazardous chemicals subject to reporting under this part. A substance is a hazardous chemical if it is required to have an MSDS and meets the definition of hazardous chemical under the OSHA regulations found at 29 CFR 1910.1200(c).

§370.13 What substances are exempt from these reporting requirements?

You do not have to report substances for which you are not required to have an MSDS under the OSHA regulations, or that are excluded from the definition of hazardous chemical under EPCRA section 311(e). Each of the following substances are excluded under EPCRA section 311(e):

a) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.
b) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.

c) Any substance to the extent it is used:
   1) For personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. Present in the same form and concentration as a product packaged for distribution and use by the general public means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;
   2) In a research laboratory or hospital or other medical facility under the direct supervision of a technically qualified individual; or
   3) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

§370.14 How do I report mixtures containing hazardous chemicals?

a) For a mixture containing a hazardous chemical, use the following table to determine if a reporting threshold is equaled or exceeded, and to determine how to report:

If your mixture contains a hazardous chemical	To determine if the threshold level for that hazardous chemical is equaled or exceeded you must	If the threshold level for that hazardous chemical is exceeded then you must
(1) That is an EHS	Determine the total quantity of the EHS present throughout your facility at any one time, by adding together the quantity present as a component in all mixtures and all other quantities of the EHS (you must include the quantity present in a mixture even if you are also counting the quantity of that particular mixture toward the threshold level for that mixture).	Report the EHS component—submit an MSDS for the EHS (or include the EHS on the list of chemicals submitted in lieu of the MSDSs), as provided under §370.30, and submit Tier I (or Tier II) information for the EHS, as provided under §370.40 or report the mixture itself—submit an MSDS for the mixture (or include the mixture on the list of chemicals submitted in lieu of the MSDSs), as provided under §370.30, and submit Tier I (or Tier II) information for the mixture, as provided under §370.40.
		If you report the mixture itself, then provide the total quantity of that mixture
(2) That is not an EHS	Determine either: The total quantity of the hazardous chemical present throughout your facility at any one time by adding together the quantity present as a component in all mixtures and all other quantities of the hazardous chemical (you must include the quantity present in a mixture even if you are also applying that particular mixture as a whole toward the threshold level for that mixture) or the total quantity of that mixture present throughout your facility at any one time.	Report the non-EHS hazardous chemical component—submit an MSDS for the non-EHS hazardous chemical (or include the non-EHS on the list of chemicals submitted in lieu of the MSDSs), as provided under §370.30, and submit Tier I (or Tier II) information for the non-EHS hazardous chemical as provided under §370.40 or report the mixture itself—submit an MSDS for the mixture (or include the mixture on the list of chemicals submitted in lieu of MSDSs), as provided under §370.30, and submit Tier I (or Tier II) information for the mixture, as provided under §370.40.
		If you report the mixture itself, then provide the total quantity of that mixture

b) For each specific mixture, the reporting option used must be consistent for both MSDS and inventory reporting, unless it is not possible to do so. This means that if you report on a specific mixture as a whole for MSDS reporting, you must report on that mixture as a whole for inventory reporting too (unless it is not possible). MSDS reporting and inventory reporting are discussed in detail in subpart C of this part.

c) To determine the quantity of an EHS or a non-EHS hazardous chemical component present in a mixture, multiply the concentration of the hazardous chemical component (in weight percent) by the weight of the mixture (in pounds). You do not have to count a hazardous chemical present in a mixture if the concentration is less than or equal to 1%, or less than or equal to 0.1% for a carcinogenic chemical.

Subpart C—Reporting Requirements

§370.20 What are the reporting requirements of this part?

The reporting requirements of this part consist of MSDS reporting and inventory reporting. If you are the owner or operator of a facility subject to the reporting requirements of this part then you must comply with both types of reporting requirements. MSDS reporting requirements are addressed in §§370.30 through 370.33. Inventory reporting requirements are addressed in §§370.40 through 370.45.

How to Comply With MSDS Reporting

§370.30 What information must I provide and what format must I use?

a) You must report the hazardous chemicals present at your facility that meet or exceed the applicable threshold levels (threshold levels are in §1A370.10) by either:
   1) Submitting an MSDS for each hazardous chemical present at your facility that meet or exceed its applicable threshold level; or
   2) Submitting a list of all hazardous chemicals present at your facility at or above the applicable threshold levels. The hazardous chemicals on your list must be grouped by Hazard Category as defined under §370.66. The list must contain the chemical or common name of each hazardous chemical as provided on the MSDS.
b) Within 30 days of a request by the LEPC (as provided in §370.10(b)), you must also submit an MSDS for any hazardous chemical present at your facility for which you have not submitted an MSDS.

§370.31 Do I have to update the information?

MSDS reporting stated in §370.30 is a one-time requirement. However, you must update the information in all of the following ways:

a) Submit a revised MSDS after you discover significant new information concerning a hazardous chemical for which an MSDS was submitted.
b) Submit an MSDS, or a list as described in §370.30(a), for any new hazardous chemical for which you become subject to these reporting requirements.
c) Submit, as requested by the LEPC, an MSDS for any hazardous chemical present at your facility which you have not already submitted, as provided in §370.30(b).

§370.32 To whom must I submit the information?

a) You must submit an MSDS or list, as provided in §370.30(a), to the LEPC, the SERC, and the fire department with jurisdiction over your facility.
b) You must submit an MSDS requested by the LEPC, as provided in §370.30(b), to the LEPC.

§370.33 When must I submit the information?

a) You must submit an MSDS or a list, as provided in §370.30(a), for a hazardous chemical subject to the reporting requirements of this part by October 17, 1987, or within 3 months after you first become subject to the reporting requirements of this part (as provided in §§370.30 and 370.31(b)).
b) You must submit a revised MSDS, as provided in §370.31(a), within 3 months after discovering significant new information about a hazardous chemical for which an MSDS was submitted.
c) You must submit an MSDS requested by the LEPC, as provided in §§370.30(b) and 370.31(c), within 30 days of receiving the request.

How to Comply With Inventory Reporting

§370.40 What information must I provide and what format must I use?

a) If you are required to comply with the hazardous chemical reporting requirements of this part, then by March 1 every year you must submit inventory information regarding any hazardous chemical present at your facility at any time during the previous calendar year in an amount equal to or in excess of its threshold level. Threshold levels are provided in §370.10.
b) Tier I information is the minimum information that you must report to be in compliance with the inventory reporting requirements of this part as described in §370.41. You may choose to report the Tier II information described in §370.42 for any hazardous chemical at your facility. You must submit Tier II information to the SERC, LEPC, or fire department having jurisdiction over your facility if they request it. EPA publishes Tier I and Tier II Inventory Forms that provide uniform formats for reporting the Tier I and Tier II information. You may use a State or local format for reporting inventory information if the State or local format contains at least the Tier I information described in §370.41. EPA's Tier I and Tier II forms are available at http://www.epa.gov/emergencies.

Note to paragraph (b): Some States require Tier II information annually under State law.

c) You should contact the SERC to determine that State's requirements for inventory reporting formats, procedures, and to obtain inventory forms.

§370.41 What is Tier I inventory information?

Tier I information provides State and local officials and the public with information on the general types and locations of hazardous chemicals present at your facility during the previous calendar year. The Tier I information is the minimum information that you must provide to be in compliance with the inventory reporting requirements of this part. If you are reporting Tier I information, you must report aggregate information on hazardous chemicals by hazard categories. There are two health hazard categories and three physical hazard categories for purposes of reporting under this part. These five hazard categories are defined in 40 CFR 370.66. Tier I inventory form includes the following data elements:

a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier I submission is true, accurate, and complete as follows: "I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete." This certification shall be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

Note to paragraph (a): Some states require electronic reporting (on-line or via diskettes) and electronic certification. Contact your state for the specific requirements in that state.

b) The calendar year for the reporting period.
c) An indication whether the information being reported on page one of the form is identical to that submitted last year.
d) The complete name and address of the location of your facility (include the full street address or state road, city, county, State and zip code), latitude and longitude.
e) An indication if the location of your facility is manned or unmanned.
f) An estimate of the maximum number of occupants present at any one time. If the location of your facility is unmanned, check the box marked N/A, not applicable.
g) The phone number of your facility (optional).
h) The North American Industry Classification System (NAICS) code for your facility.
i) The Dun & Bradstreet number of your facility.
j) Facility identification numbers assigned under the Toxic Release Inventory (TRI) and Risk Management Program. If your facility has not been assigned an identification number under these programs or if your facility is not subject to reporting under these programs, check the box marked N/A, not applicable.
k) An indication whether your facility is subject to the emergency planning notification requirement under EPCRA section 302, codified in 40 CFR part 355.
l) An indication whether your facility is subject to the chemical accident prevention requirements under Section 112(r) of the CAA, codified in 40 CFR part 68, also known as the RMP.
m) The name, mailing address, phone number and email address of the owner or operator of the facility.
n) The name, mailing address, phone number, Dun & Bradstreet number and email address of the facility's parent company. These are optional data elements.
o) The name, title, phone number, 24-hour phone number, and email address of the facility emergency coordinator, if applicable.
Note to paragraph (o): EPCRA Section 303(d)(1) requires facilities subject to the emergency planning notification requirement under EPCRA section 302 (including additional facilities designated by the Governor or the SERC under EPCRA section 302(b)(2)) to designate a facility representative who will participate in the local emergency planning process as a facility emergency coordinator. EPA encourages facilities not subject to the emergency planning notification requirement also to provide this information, if available, for effective emergency planning in your community.
p) The name, title, phone number, and email address of the person to contact for the information contained in the Tier I form.
q) The name, title, phone number and email address of at least one local individual that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must also provide an emergency phone number which will be available 24 hours a day, every day.
r) An indication whether the information being reported on page two of the form is identical to that submitted last year.
s) An estimate (in ranges) of the maximum amount of hazardous chemicals in each hazard category present at your facility at any time during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are provided in §370.43.
t) An estimate (in ranges) of the average daily amount of hazardous chemicals in each hazard category present at your facility during the preceding calendar year. You must use codes that correspond to different ranges. The range codes are provided in §370.43.
u) The maximum number of days that any single hazardous chemical within each hazard category was present at your facility during the reporting period.
v) The general location of hazardous chemicals in each hazard category within your facility. General locations should include the names or identification of buildings, tank fields, lots, sheds or other such areas. You may also attach one or more of the following with your Tier I inventory form:

1) A site plan with site indicated for buildings, lots, areas, etc. throughout your facility.
2) A list of site coordinate abbreviations that correspond to buildings, lots, areas, etc., throughout your facility.
3) A description of dikes and other safeguard measures for storage locations throughout your facility.

w) An indication whether you are including any attachments (optional).

§370.42 What is Tier II inventory information?

Tier II information provides State and local officials and the public with specific information on the amounts and locations of hazardous chemicals present at your facility during the previous calendar year. Some states may require you to use a state reporting format including electronic reporting and certification for submitting your hazardous chemical inventory. Contact your state for the specific requirements in that state. Tier II inventory form includes the following data elements:

a) Certification. The owner or operator or the officially designated representative of the owner or operator must certify that all information included in the Tier II submission is true, accurate, and complete as follows: "I certify under penalty of law that I have personally examined and am familiar with the information and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete." This certification must be accompanied by your full name, official title, signature, date signed, and total number of pages in the submission including all Confidential and Non-Confidential Information Sheets and all attachments. All other pages must also contain your signature or signature stamp, the date you signed the certification, and the total number of pages in the submission.

Note to paragraph (a): Some states require electronic reporting (on-line or via diskettes) and electronic certification. Contact your state for the specific requirements in that state.

b) The calendar year of the reporting period.
c) An indication whether the information being reported on page one of the form is identical to that submitted last year.
d) The complete name and address of the location of your facility (include the full street address or state road, city, county, State and zip code), latitude and longitude.
e) An indication if the location of your facility is manned or unmanned.
f) An estimate of the maximum number of occupants present at any one time. If the location of your facility is unmanned, check the box marked N/A, not applicable.
g) The phone number of your facility (optional).
h) The North American Industry Classification System (NAICS) code for your facility.
i) The Dun & Bradstreet number of your facility.
j) Facility identification numbers assigned under the TRI and RMP. If your facility has not been assigned an identification number under these programs or if your facility is not subject to reporting under these programs, check the box marked N/A, not applicable.
k) An indication if your facility is subject to the emergency planning notification requirement under section 302 of EPCRA, codified in 40 CFR part 355.
l) An indication whether your facility is subject to the chemical accident prevention requirements under section 112(r) of the CAA, codified in 40 CFR part 68, Chemical Accident Prevention Provisions, also known as the RMP.
m) The name, mailing address, phone number and email address of the owner or operator of the facility.
n) The name, mailing address, phone number, Dun & Bradstreet number and email address of the facility's parent company. These are optional data elements.
o) The name, title, phone number, 24-hour phone number and email address of the facility emergency coordinator, if applicable.

Note to paragraph (o): Section 303(d)(1) of EPCRA requires facilities subject to the emergency planning notification requirement (including additional facilities designated by the Governor or the SERC under EPCRA section 302(b)(2)) to designate a facility representative who will participate in the local emergency planning process as a facility emergency coordinator. EPA encourages facilities not subject to the emergency planning notification requirement also to provide this information, if available, for effective emergency planning in your community.

p) The name, title, phone number and email address of the person to contact regarding information contained in the Tier II form.
q) The name, title, phone number and email address of at least one local individual that can act as a referral if emergency responders need assistance in responding to a chemical accident at your facility. You must also provide an emergency phone number which will be available 24 hours a day, every day.
r) An indication whether the information being reported on page two of the form is identical to that submitted last year.
s) For each hazardous chemical that you are required to report, you must:

1) Pure Chemical: Provide the chemical name (or the common name of the chemical) as provided on the MSDS and provide the Chemical Abstract Service (CAS) registry number of the chemical provided on the MSDS.

Note to paragraph (s)(1): If you are withholding the name in accordance with trade secret criteria, you must provide the generic class or category that is structurally descriptive of the chemical and indicate that the name is withheld because of trade secrecy. Trade secret criteria are addressed in §370.64(a).

2) Indicate whether the chemical is a solid, liquid, or gas; and whether the chemical is an EHS.
3) Mixture: If you are reporting a mixture, enter the mixture name, product name or trade name as provided on the MSDS and provide the Chemical Abstract Service (CAS) registry number of the mixture provided on the MSDS. If there is no CAS number provided or it is not known, check the box "Not Available."
4) If the mixture you are reporting contains EHS(s), provide the name(s) of each EHS in the mixture. As provided in §370.14(a), you also have an option to report the non-EHS hazardous components in the mixture.
5) Pure Chemical or Mixture: Indicate which hazard categories apply to the chemical or the mixture. The five hazard categories are defined in §370.66.
6) Provide an estimate (in ranges) of the maximum amount of the hazardous chemical present at your facility on any single day during the preceding calendar year. If you are reporting a mixture, provide an estimate of the total amount of the mixture present at your facility on any single day during the preceding calendar year. If the mixture contains any EHS, provide the total amount of each EHS in that mixture. You must use the codes that correspond to different ranges. The amounts and associated range codes are in §370.43.
7) Provide an estimate (in ranges) of the average daily amount of the hazardous chemical present at your facility during the preceding calendar year. If you are reporting a mixture, provide an estimate of the average daily amount of the mixture. You must use the codes that correspond to different ranges. The amounts and associated range codes are in §370.43.
8) Provide the maximum number of days that the hazardous chemical or mixture was present at your facility during the preceding calendar year.
9) Provide the type of storage for the hazardous chemical or the mixture containing the hazardous chemical at your facility. Examples for types of storage: Above-ground tank, non-metallic drum, steel drum, cylinder, rail car, etc.
10) Provide the storage conditions for the hazardous chemical or the mixture containing the hazardous chemical at your facility. Examples for types of storage conditions: Ambient pressure, ambient temperature, less than ambient temperature/pressure, cryogenic, etc.

Note to paragraphs (s)(9) and (10): Your SERC or LEPC may have specific instructions for reporting types of storage and/or storage conditions.

11) Provide a brief description of the precise location(s) of the hazardous chemical(s) or the mixture(s) at your facility. You may also attach one of the following with your Tier II inventory form:
    i. A site plan with site coordinates indicated for buildings, lots, areas, etc. throughout your facility.
    ii. A list of site coordinate abbreviations that correspond to buildings, lots, areas, etc., throughout your facility.
    iii. A description of dikes and other safeguard measures for storage locations at your facility.
12) Under EPCRA section 324, you may choose to withhold from disclosure to the public the location information for a specific chemical. If you choose to withhold the location information from disclosure to the public, you must clearly indicate that the information is "confidential." You must provide the confidential location information on a separate sheet from the other Tier II information (which will be disclosed to the public), and attach the Confidential Location Information Sheet to the other Tier II information. Indicate any attachments you are including.
13) You may provide additional reporting. For example, if your State or local agencies require you to provide information on additional chemicals or if you wish to report any hazardous chemical below the reporting thresholds, check the appropriate box.
14) An indication whether you are including any attachments (optional).

<u>§370.43 What codes are used to report Tier I and Tier II inventory information?</u>

a) Weight range codes. Except as provided in paragraph (b) of this section, you must use the

following codes to report the maximum amount and average daily amount when reporting Tier I or Tier II inventory information:

	Weight range in pounds			Weight range in pounds			Weight range in pounds	
Range codes	From	To	Range codes	From	To	Range codes	From	To
01	0	99	06	10,000	24,999	10	100,000	499,999
02	100	499	07	25,000	49,999	11	500,000	999,999
03	500	999	08	50,000	74,999	12	1,000,000	9,999,999
04	1,000	4,999	09	75,000	99,999	13	10,000,000	> 10,000,000
05	5,000	9,999						

Note to paragraph (a): To convert gas or liquid volume to weight in pounds, multiply by an appropriate density factor.

b) Your SERC or LEPC may provide other range codes for reporting maximum amount and average daily amount, or may require reporting of specific amounts. You may use your SERC's or LEPC's range codes (or specific amounts) provided the ranges are not broader than the ranges in paragraph (a) of this section.

§370.44 To whom must I submit the inventory information?

You must submit the required inventory information to your SERC, LEPC, and fire department with jurisdiction over your facility.

§370.45 When must I submit the inventory information?

a) You must submit the required inventory information on or before March 1 (beginning in 1988 or beginning after your facility first becomes subject to this part), and on or before by March 1 of each year afterwards. Your submission must contain the required inventory information on hazardous chemicals present at your facility during the preceding calendar year at or above the threshold levels. Threshold levels are in §370.10. The minimum required inventory information under EPCRA section 312 is Tier I information. Tier I information requirements are described in §370.41.
b) You must submit Tier II information within 30 days of the receipt of a request from the SERC, LEPC, or the fire department having jurisdiction over your facility, as provided in §370.10(b). Tier II information requirements are described in §370.42.

Subpart D—Community Access to Information

§370.60 How does a person obtain MSDS information about a specific facility?

Any person may obtain an MSDS for a specific facility by writing to the LEPC and asking for it.

a) If the LEPC has the MSDS, it must provide it to the person making the request.
b) If the LEPC does not have the MSDS, it must request the MSDS from the facility's owner or operator.

§370.61 How does a person obtain inventory information about a specific facility?

a) Any person may request Tier II information for a specific facility by writing to the SERC or the LEPC and asking for such information.
   1) If the SERC or LEPC has the Tier II information, the SERC or LEPC must provide it to the person making the request.
   2) If the SERC or LEPC does not have the Tier II information, it must request it from the facility owner or operator in either of the following cases:
      i. The person making the request is a State or local official acting in his or her official capacity.
      ii. The request is for hazardous chemicals in amounts greater than 10,000 pounds stored at the facility at any time during the previous calendar year.
   3) If the SERC or LEPC does not have the Tier II information, it may request it from the facility owner or operator when neither condition in paragraph (a)(2) of this section is met, but the person's request includes a general statement of need.
b) A SERC or LEPC must respond to a request for Tier II information under this section within 45 days of receiving such a request.

§370.62 What information may a State or local official request from a facility?

The LEPC may ask a facility owner or operator to submit an MSDS for a hazardous chemical present at the facility. The SERC, LEPC, or fire department having jurisdiction over a facility may ask a facility owner or operator to submit Tier II information. The owner or

operator must provide the MSDS (unless the owner or operator has already submitted an MSDS to the LEPC for that hazardous chemical) or Tier II information within 30 days of receipt of such request.

§370.63 What responsibilities do the SERC and the LEPC have to make request information available?

Under this subpart, the SERC or LEPC must make the following information (except for confidential location information discussed in §370.64(b)) available if a person requests it:

a) All information obtained from an owner or operator in response to a request under this subpart.
b) Any requested Tier II information or MSDS otherwise in possession of the SERC or the LEPC.

§370.64 What information can I claim as trade secret or confidential?

a) Trade secrets. You may be able to withhold the name of a specific chemical when submitting MSDS reporting or inventory reporting information if that chemical name is claimed as a trade secret. The requirements for withholding trade secret information are set forth in EPCRA section 322 and implemented in 40 CFR part 350. If you are withholding the name of a specific chemical as a trade secret in accordance with trade secrecy requirements, you must report the generic class or category that is structurally descriptive of the chemical along with all other required information. You must also submit the withheld information to EPA and must adequately substantiate your claim. A Form for substantiating trade secret claims is available at the Agency Web site at http://www.epa.gov/emergencies.
b) Confidential location information. You may request that the SERC or the LEPC not disclose to the public the location of any specific chemical required to be submitted in Tier II information. If you make such a request, the SERC or LEPC must not disclose the location of the specific chemical. If you use the Tier II Form to report your inventory information, you can choose to report confidential location information for a specific chemical on the Confidential Location Information Sheet, which must be attached to the other Tier II information you are reporting. Although you may request that location information with respect to a specific chemical be withheld from the public, you may not withhold this information from the SERC, the LEPC, or the local fire department. The Confidential Location Information Sheet is available on the Agency Web site at http://www.epa.gov/emergencies.

§370.65 Must I allow the local fire department to inspect my facility and must I provide specific location information about hazardous chemicals at my facility?

If you are the owner or operator of a facility that has submitted inventory information under this part, you must comply with the following two requirements upon request by the fire department with jurisdiction over your facility:

a) You must allow the fire department to conduct an on-site inspection of your facility; and
b) You must provide the fire department with information about the specific locations of hazardous chemicals at your facility.

§370.66 How are key words in this part defined?

- Chief Executive Officer of the Tribe means the person who is recognized by the Bureau of Indian Affairs as the chief elected administrative officer of the Tribe.
- Environment includes water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.
- EPCRA means the Emergency Planning and Community Right-To-Know Act of 1986.
- Extremely hazardous substance (EHS) means a substance listed in appendices A and B of 40 CFR part 355.
- Facility means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (or by any person that controls, is controlled by, or under common control with, such person).
- Facility includes manmade structures, as well as all natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use.
- Hazard category means any of the following:
  1) Immediate (acute) health hazard, including highly toxic, toxic, irritant, sensitizer, corrosive, (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of short-term exposure and is of short duration;
  2) Delayed (chronic) health hazard, including carcinogens (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long-term exposure and is of long duration;
  3) Fire hazard, including flammable, combustible liquid, pyrophoric, and oxidizer (as defined under 29 CFR 1910.1200);
  4) Sudden release of pressure, including explosive and compressed gas (as defined under 29 CFR 1910.1200); and

5) Reactive, including unstable reactive, organic peroxide, and water reactive (as defined under 29 CFR 1910.1200).

- Hazardous chemical means any hazardous chemical as defined under 29 CFR 1910.1200(c), except that such term does not include:
  1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.
  2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
  3) Any substance to the extent it is used:
     i. For personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. Present in the same form and concentration as a product packaged for distribution and use by the general public means a substance packaged in a similar manner and present in the same concentration as the substance when packaged for use by the general public, whether or not it is intended for distribution to the general public or used for the same purpose as when it is packaged for use by the general public;
     ii. In a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; or
     iii. In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.
- Indian Country means Indian country as defined in 18 U.S.C. 1151 as:
  1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;
  2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and
  3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
- Indian Tribe or Tribe means those Tribes federally recognized by the Secretary of the Interior.
- Inventory form means the uniform Tier I and Tier II emergency and hazardous chemical inventory forms published by EPA. These forms can be used for reporting inventory information, as described in 40 CFR 370.40 through 370.45.
- LEPC means the Local Emergency Planning Committee appointed by the SERC.
- Material Safety Data Sheet or MSDS means the sheet required to be developed under 29 CFR 1910.1200(g).
- Mixture means mixture as defined under the Occupational Safety and Health Administration's Hazard Communication Standard in 29 CFR 1910.1200(c).
- OSHA means the U.S. Occupational Safety and Health Administration.
- Person means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.
- SERC means the SERC for the State in which the facility is located except when the facility is located in Indian Country, in which case, SERC means the Emergency Response Commission for the Tribe under whose jurisdiction the facility is located. In the absence of a SERC for a State or an Indian Tribe, the Governor or the chief executive officer of the tribe, respectively, shall be the SERC. Where there is a cooperative agreement between a State and a Tribe, the SERC shall be the entity identified in the agreement.
- State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, any other territory or possession over which the United States has jurisdiction and Indian Country.
- Threshold planning quantity (TPQ) means, for a substance listed in Appendices A and B of 40 CFR part 355, the quantity listed in the column "threshold planning quantity" for that substance.

ED_002941_00002942-00123

APPENDIX D. List of Extremely Hazardous Substance and Chemicals Subject to CAA 112(r) Risk Management Programs

NAME	CAS Sort Value	Section 302 (EHS) TPQ	Section 304 EHS RQ	CAA 112(r) TQ
1,1-Dichloroethylene	75354			10,000
1,1-Dimethyl hydrazine	57147	1,000	10	15,000
1,2-Ethanediamine	107153	10,000	5,000	20,000
1,2-Propadiene	463490			10,000
1,3-Butadiene	106990			10,000
1,3-Butadiene, 2-methyl-	78795			10,000
1,3-Pentadiene	504609			10,000
1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1.alpha.,4.alpha.,4a.beta.,5.alpha.,8.alpha.,8a.beta.)-	309002	500/10,000	1	
1-Buten-3-yne	689974			10,000
1-Butene	106989			10,000
1-Butyne	107006			10,000
1-Chloropropylene	590216			10,000
1-Pentene	109671			10,000
1-Propene	115071			10,000
1-Propene, 1-chloro-	590216			10,000
1-Propene, 2-chloro-	557982			10,000
1-Propene, 2-methyl-	115117			10,000
1-Propyne	74997			10,000
2,2'-Bioxirane	1464535	500	10	
2,2-Dimethylpropane	463821			10,000
2,4-Dithiobiuret	541537	100/10,000	100	
2-Butenal	4170303	1,000	100	20,000
2-Butenal, (e)-	123739	1,000	100	20,000
2-Butene	107017			10,000
2-Butene, (E)	624646			10,000
2-Butene-cis	590181			10,000
2-Butene-trans	624646			10,000
2-Chloro-N-(2-chloroethyl)-N-methylethanamine	51752	10	10	
2-Chloropropylene	557982			10,000
2-Methyl-1-butene	563462			10,000
2-Methyllactonitrile	75865	1,000	10	
2-Methylpropene	115117			10,000
2-Pentene, (E)-	646048			10,000
2-Pentene, (Z)-	627203			10,000
2-Propanamine	75310			10,000
2-Propen-1-amine	107119	500	500	10,000
2-Propen-1-ol	107186	1,000	100	15,000
2-Propenal	107028	500	1	5,000
2-Propenenitrile	107131	10,000	100	20,000
2-Propenenitrile, 2-methyl-	126987	500	1,000	10,000
2-Propenoyl chloride	814686	100	100	5,000
3-Chloropropionitrile	542767	1,000	1,000	
3-Methyl-1-butene	563451			10,000
4,6-Dinitro-o-cresol	534521	10/10,000	10	
4,7-Methanoindan, 1,2,3,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57749	1,000	1	
4-Aminopyridine	504245	500/10,000	1,000	
5-(Aminomethyl)-3-isoxazolol	2763964	500/10,000	1,000	
5-Fluorouracil	51218	500/10,000	500	
Acetaldehyde	75070			10,000
Acetic acid ethenyl ester	108054	1,000	5,000	15,000
Acetone cyanohydrin	75865	1,000	10	
Acetone thiosemicarbazide	1752303	1,000/10,000	1,000	
Acetylene	74862			10,000
Acrolein	107028	500	1	5,000
Acrylamide	79061	1,000/10,000	5,000	

Acrylonitrile	107131	10,000	100	20,000
Acrylyl chloride	814686	100	100	5,000
Adiponitrile	111693	1,000	1,000	
Aldicarb	116063	100/10,000	1	
Aldrin	309002	500/10,000	1	
Allyl alcohol	107186	1,000	100	15,000
Allylamine	107119	500	500	10,000
Aluminum phosphide	20859738	500	100	
Aminopterin	54626	500/10,000	500	
Amiton	78535	500	500	
Amiton oxalate	3734972	100/10,000	100	
Ammonia	7664417	500	100	
Ammonia (anhydrous)	7664417	500	100	10,000
Ammonia (conc 20% or greater)	7664417			20,000
Amphetamine	300629	1,000	1,000	
Aniline	62533	1,000	5,000	
Aniline, 2,4,6-trimethyl-	88051	500	500	
Antimony pentafluoride	7783702	500	500	
Antimycin A	1397940	1,000/10,000	1,000	
ANTU	86884	500/10,000	100	
Arsenic pentoxide	1303282	100/10,000	1	
Arsenic trioxide	1327533	100/10,000	1	
Arsenous oxide	1327533	100/10,000	1	
Arsenous trichloride	7784341	500	1	15,000
Arsine	7784421	100	100	1,000
Azinphos-ethyl	2642719	100/10,000	100	
Azinphos-methyl	86500	10/10,000	1	
Aziridine	151564	500	1	10,000
Aziridine, 2-methyl	75558	10,000	1	10,000
Benzal chloride	98873	500	5,000	
Benzenamine, 3-(trifluoromethyl)-	98168	500	500	
Benzene, 1-(chloromethyl)-4-nitro-	100141	500/10,000	500	
Benzene, 1,3-diisocyanato-2-methyl-	91087	100	100	10,000
Benzene, 1,3-diisocyanatomethyl-	26471625			10,000
Benzene, 2,4-diisocyanato-1-methyl-	584849	500	100	10,000
Benzenearsonic acid	98055	10/10,000	10	
Benzenethiol	108985	500	100	
Benzimidazole, 4,5-dichloro-2-(trifluoromethyl)-	3615212	500/10,000	500	
Benzoic trichloride	98077	100	10	
Benzotrichloride	98077	100	10	
Benzyl chloride	100447	500	100	
Benzyl cyanide	140294	500	500	
beta-Propiolactone	57578	500	10	
Bicyclo[2.2.1]heptane-2-carbonitrile, 5-chloro-6-((((methylamino)carbonyl)oxy)imino)-,(1-alpha,2-beta,4-alpha,5-alpha,6E))-	15271417	500/10,000	500	
Bis(2-chloroethyl) ether	111444	10,000	10	
Bis(chloromethyl) ether	542881	100	10	1,000
Bis(chloromethyl) ketone	534076	10/10,000	10	
Bitoscanate	4044659	500/10,000	500	
Borane, trichloro-	10294345	500	500	5,000
Borane, trifluoro-	7637072	500	500	5,000
Boron trichloride	10294345	500	500	5,000
Boron trifluoride	7637072	500	500	5,000
Boron trifluoride compound with methyl ether (1:1)	353424	1,000	1,000	15,000
Boron, trifluoro[oxybis[methane]]-, (T-4)-	353424	1,000	1,000	15,000
Bromadiolone	28772567	100/10,000	100	
Bromine	7726956	500	500	10,000
Bromomethane	74839	1,000	1,000	
Bromotrifluoroethylene	598732			10,000
Butane	106978			10,000
Butane, 2-methyl-	78784			10,000
Butene	25167673			10,000
Cadmium oxide	1306190	100/10,000	100	

Cadmium stearate	2223930	1,000/10,000	1,000	
Calcium arsenate	7778441	500/10,000	1	
Camphechlor	8001352	500/10,000	1	
Camphene, octachloro-	8001352	500/10,000	1	
Cantharidin	56257	100/10,000	100	
Carbachol chloride	51832	500/10,000	500	
Carbamic acid, methyl-, O-(((2,4-dimethyl-1,3-dithiolan-2-yl)methylene)amino)-	26419738	100/10,000	100	
Carbofuran	1563662	10/10,000	10	
Carbon disulfide	75150	10,000	100	20,000
Carbon oxide sulfide (COS)	463581			10,000
Carbonic dichloride	75445	10	10	500
Carbonochloridic acid, 1-methylethyl ester	108236	1,000	1,000	15,000
Carbonochloridic acid, methylester	79221	500	1,000	5,000
Carbonochloridic acid, propylester	109615	500	500	15,000
Carbonyl sulfide	463581			10,000
Carbophenothion	786196	500	500	
Chlordane	57749	1,000	1	
Chlorfenvinfos	470906	500	500	
Chlorine	7782505	100	10	2,500
Chlorine dioxide	10049044			1,000
Chlorine oxide	7791211			10,000
Chlorine oxide (ClO2)	10049044			1,000
Chlormephos	24934916	500	500	
Chlormequat chloride	999815	100/10,000	100	
Chloroacetic acid	79118	100/10,000	100	
Chloroethane	75003			10,000
Chloroethanol	107073	500	500	
Chloroethyl chloroformate	627112	1,000	1,000	
Chloroform	67663	10,000	10	20,000
Chloroform				
Chloromethane	74873			10,000
Chloromethyl ether	542881	100	10	1,000
Chloromethyl methyl ether	107302	100	10	5,000
Chlorophacinone	3691358	100/10,000	100	
Chloroxuron	1982474	500/10,000	500	
Chlorthiophos	21923239	500	500	
Chromic chloride	10025737	1/10,000	1	
Cobalt carbonyl	10210681	10/10,000	10	
Cobalt, ((2,2'-(1,2-ethanediylbis(nitrilomethylidyne))bis(6-fluorophenylato))(2-)-N,N',O,O')-	62207765	100/10,000	100	
Colchicine	64868	10/10,000	10	
Coumaphos	56724	100/10,000	10	
Coumatetralyl	5836293	500/10,000	500	
Crimidine	535897	100/10,000	100	
Crotonaldehyde	4170303	1,000	100	20,000
Crotonaldehyde, (E)-	123739	1,000	100	20,000
Cupric acetoarsenite	12002038	500/10,000	1	
Cyanogen	460195			10,000
Cyanogen bromide	506683	500/10,000	1,000	
Cyanogen chloride	506774			10,000
Cyanogen iodide	506785	1,000/10,000	1,000	
Cyanophos	2636262	1,000	1,000	
Cyanuric fluoride	675149	100	100	
Cycloate	1134232			
Cyclohexanamine	108918	10,000	10,000	15,000
Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1.alpha.,2.alpha.,3.beta.,4.alpha.,5.alpha.,6.beta.)-	58899	1,000/10,000	1	
Cycloheximide	66819	100/10,000	100	
Cyclohexylamine	108918	10,000	10,000	15,000
Cyclopropane	75194			10,000
Decaborane(14)	17702419	500/10,000	500	
Demeton	8065483	500	500	
Demeton-S-methyl	919868	500	500	
Dialifor	10311849	100/10,000	100	
Diborane	19287457	100	100	2,500

Diborane(6)	19287457	100	100	2,500
Dichloroethyl ether	111444	10,000	10	
Dichloromethyl ether	542881	100	10	1,000
Dichloromethylphenylsilane	149746	1,000	1,000	
Dichlorophenylarsine	696286	500	1	
Dichlorosilane	4109960			10,000
Dichlorvos	62737	1,000	10	
Dicrotophos	141662	100	100	
Diepoxybutane	1464535	500	10	
Diethyl chlorophosphate	814493	500	500	
Difluoroethane	75376			10,000
Digitoxin	71636	100/10,000	100	
Diglycidyl ether	2238075	1,000	1,000	
Digoxin	20830755	10/10,000	10	
Diisopropylfluorophosphate	55914	100	100	
Dimefox	115264	500	500	
Dimethoate	60515	500/10,000	10	
Dimethyl chlorothiophosphate	2524030	500	500	
Dimethyl phosphorochloridothioate	2524030	500	500	
Dimethyl sulfate	77781	500	100	
Dimethylamine	124403			10,000
Dimethyldichlorosilane	75785	500	500	5,000
Dimethylhydrazine	57147	1,000	10	15,000
Dimethyl-p-phenylenediamine	99989	10/10,000	10	
Dimetilan	644644	500/10,000	1	
Dinitrobutyl phenol	88857	100/10,000	1,000	
Dinitrocresol	534521	10/10,000	10	
Dinoseb	88857	100/10,000	1,000	
Dinoterb	1420071	500/10,000	500	
Dioxathion	78342	500	500	
Diphacinone	82666	10/10,000	10	
Diphosphoramide, octamethyl-	152169	100	100	
Disulfoton	298044	500	1	
Dithiazanine iodide	514738	500/10,000	500	
Dithiobiuret	541537	100/10,000	100	
Emetine, dihydrochloride	316427	1/10,000	1	
Endosulfan	115297	10/10,000	1	
Endothion	2778043	500/10,000	500	
Endrin	72208	500/10,000	1	
Epichlorohydrin	106898	1,000	100	20,000
EPN	2104645	100/10,000	100	
Ergocalciferol	50146	1,000/10,000	1,000	
Ergotamine tartrate	379793	500/10,000	500	
Ethanamine	75047			10,000
Ethane	74840			10,000
Ethane, 1,1-difluoro-	75376			10,000
Ethane, 1,1'-oxybis-	60297			10,000
Ethane, 1,1'-thiobis[2-chloro-	505602	500	500	
Ethane, chloro-	75003			10,000
Ethanedinitrile	460195			10,000
Ethaneperoxoic acid	79210	500	500	10,000
Ethanesulfonyl chloride, 2-chloro-	1622328	500	500	
Ethanethiol	75081			10,000
Ethanimidothioic acid, N-[[methylamino)carbonyl]	16752775	500/10,000	100	
Ethanol, 1,2-dichloro-, acetate	10140871	1,000	1,000	
Ethene	74851			10,000
Ethene, 1,1-dichloro-	75354			10,000
Ethene, 1,1-difluoro-	75387			10,000
Ethene, bromotrifluoro-	598732			10,000
Ethene, chloro-	75014			10,000
Ethene, chlorotrifluoro-	79389			10,000
Ethene, ethoxy-	109922			10,000
Ethene, fluoro-	75025			10,000

Ethene, methoxy-	107255			10,000
Ethene, tetrafluoro-	116143			10,000
Ethion	563122	1,000	10	
Ethoprop	13194484	1,000	1,000	
Ethoprophos	13194484	1,000	1,000	
Ethyl acetylene	107006			10,000
Ethyl chloride	75003			10,000
Ethyl cyanide	107120	500	10	10,000
Ethyl ether	60297			10,000
Ethyl mercaptan	75081			10,000
Ethyl nitrite	109955			10,000
Ethylbis(2-chloroethyl)amine	538078	500	500	
Ethylene	74851			10,000
Ethylene fluorohydrin	371620	10	10	
Ethylene oxide	75218	1,000	10	10,000
Ethylenediamine	107153	10,000	5,000	20,000
Ethyleneimine	151564	500	1	10,000
Ethylthiocyanate	542905	10,000	10,000	
Ethyne	74862			10,000
Fenamiphos	22224926	10/10,000	10	
Fensulfothion	115902	500	500	
Fluenetil	4301502	100/10,000	100	
Fluorine	7782414	500	10	1,000
Fluoroacetamide	640197	100/10,000	100	
Fluoroacetic acid	144490	10/10,000	10	
Fluoroacetic acid, sodium salt	62748	10/10,000	10	
Fluoroacetyl chloride	359068	10	10	
Fluorouracil	51218	500/10,000	500	
Fonofos	944229	500	500	
Formaldehyde	50000	500	100	15,000
Formaldehyde (solution)	50000	500	100	15,000
Formaldehyde cyanohydrin	107164	1,000	1,000	
Formetanate hydrochloride	23422539	500/10,000	100	
Formic acid, methyl ester	107313			10,000
Formothion	2540821	100	100	
Formparanate	17702577	100/10,000	100	
Fosthietan	21548323	500	500	
Fuberidazole	3878191	100/10,000	100	
Furan	110009	500	100	5,000
Gallium trichloride	13450903	500/10,000	500	
Guthion	86500	10/10,000	1	
Hexachlorocyclohexane (gamma isomer)	58899	1,000/10,000	1	
Hexachlorocyclopentadiene	77474	100	10	
Hexamethylenediamine, N,N'-dibutyl-	4835114	500	500	
Hydrazine	302012	1,000	1	15,000
Hydrazine, 1,1-dimethyl-	57147	1,000	10	15,000
Hydrazine, methyl-	60344	500	10	15,000
Hydrochloric acid (conc 37% or greater)	7647010			15,000
Hydrocyanic acid	74908	100	10	2,500
Hydrofluoric acid	7664393	100	100	
Hydrofluoric acid (conc. 50% or greater)	7664393	100	100	1,000
Hydrogen	1333740			10,000
Hydrogen chloride (anhydrous)	7647010	500	5,000	5,000
Hydrogen chloride (gas only)	7647010	500	5,000	5,000
Hydrogen cyanide	74908	100	10	2,500
Hydrogen fluoride	7664393	100	100	
Hydrogen fluoride (anhydrous)	7664393	100	100	1,000
Hydrogen peroxide (Conc.> 52%)	7722841	1,000	1,000	
Hydrogen selenide	7783075	10	10	500
Hydrogen sulfide	7783064	500	100	10,000
Hydroquinone	123319	500/10,000	100	
Iron carbonyl (Fe(CO)5), (TB-5-11)-	13463406	100	100	2,500
Iron, pentacarbonyl-	13463406	100	100	2,500

Isobenzan	297789	100/10,000	100	
Isobutane	75285			10,000
Isobutyronitrile	78820	1,000	1,000	20,000
Isocyanic acid, 3,4-dichlorophenyl ester	102363	500/10,000	500	
Isodrin	465736	100/10,000	1	
Isofluorphate	55914	100	100	
Isopentane	78784			10,000
Isophorone diisocyanate	4098719	500	500	
Isoprene	78795			10,000
Isopropyl chloride	75296			10,000
Isopropyl chloroformate	108236	1,000	1,000	15,000
Isopropylamine	75310			10,000
Isopropylmethylpyrazolyl dimethylcarbamate	119380	500	100	
Isothiocyanatomethane	556616	500	500	
Lactonitrile	78977	1,000	1,000	
Leptophos	21609905	500/10,000	500	
Lewisite	541253	10	10	
Lindane	58899	1,000/10,000	1	
Lithium hydride	7580678	100	100	
Malononitrile	109773	500/10,000	1,000	
Manganese, tricarbonyl methylcyclopentadienyl	12108133	100	100	
Mechlorethamine	51752	10	10	
Mephosfolan	950107	500	500	
Mercaptodimethur	2032657	500/10,000	10	
Mercuric acetate	1600277	500/10,000	500	
Mercuric chloride	7487947	500/10,000	500	
Mercuric oxide	21908532	500/10,000	500	
Methacrolein diacetate	10476956	1,000	1,000	
Methacrylic anhydride	760930	500	500	
Methacrylonitrile	126987	500	1,000	10,000
Methacryloyl chloride	920467	100	100	
Methacryloyloxyethyl isocyanate	30674807	100	100	
Methamidophos	10265926	100/10,000	100	
Methanamine	74895			10,000
Methanamine, N,N-dimethyl-	75503			10,000
Methanamine, N-methyl-	124403			10,000
Methanamine, N-methyl-N-nitroso-	62759	1,000	10	
Methane	74828			10,000
Methane, chloro-	74873			10,000
Methane, chloromethoxy-	107302	100	10	5,000
Methane, isocyanato-	624839	500	10	10,000
Methane, oxybis-	115106			10,000
Methane, oxybis[chloro-	542881	100	10	1,000
Methane, tetranitro-	509148	500	10	10,000
Methane, trichloro-	67663	10,000	10	20,000
Methanesulfenyl chloride, trichloro-	594423	500	100	10,000
Methanesulfonyl fluoride	558258	1,000	1,000	
Methanethiol	74931	500	100	10,000
Methidathion	950378	500/10,000	500	
Methiocarb	2032657	500/10,000	10	
Methomyl	16752775	500/10,000	100	
Methoxyethylmercuric acetate	151382	500/10,000	500	
Methyl 2-chloroacrylate	80637	500	500	
Methyl bromide	74839	1,000	1,000	
Methyl chloride	74873			10,000
Methyl chlorocarbonate	79221	500	1,000	5,000
Methyl chloroformate	79221	500	1,000	5,000
Methyl ether	115106			10,000
Methyl formate	107313			10,000
Methyl hydrazine	60344	500	10	15,000
Methyl isocyanate	624839	500	10	10,000
Methyl isothiocyanate	556616	500	500	
Methyl mercaptan	74931	500	100	10,000

Methyl parathion	298000	100/10,000	100	
Methyl phenkapton	3735237	500	500	
Methyl phosphonic dichloride	676971	100	100	
Methyl thiocyanate	556649	10,000	10,000	20,000
Methyl vinyl ketone	78944	10	10	
Methylmercuric dicyanamide	502396	500/10,000	500	
Methyltrichlorosilane	75796	500	500	5,000
Metolcarb	1129415	100/10,000	1,000	
Mevinphos	7786347	500	10	
Mexacarbate	315184	500/10,000	1,000	
Mitomycin C	50077	500/10,000	10	
Monocrotophos	6923224	10/10,000	10	
Monoethylamine	75047			10,000
Monomethylamine	74895			10,000
Muscimol	2763964	500/10,000	1,000	
Mustard gas	505602	500	500	
Nickel carbonyl	13463393	1	10	1,000
Nicotine	54115	100	100	
Nicotine sulfate	65305	100/10,000	100	
Nitric acid	7697372	1,000	1,000	
Nitric acid (conc 80% or greater)	7697372	1,000	1,000	15,000
Nitric oxide	10102439	100	10	10,000
Nitrobenzene	98953	10,000	1,000	
Nitrocyclohexane	1122607	500	500	
Nitrogen dioxide	10102440	100	10	
Nitrogen mustard	51752	10	10	
Nitrogen oxide (NO)	10102439	100	10	10,000
Nitrosodimethylamine	62759	1,000	10	
Nitrous acid, ethyl ester	109955			10,000
N-Nitrosodimethylamine	62759	1,000	10	
Norbormide	991424	100/10,000	100	
O,O-Diethyl O-pyrazinyl phosphorothioate	297972	500	100	
o-Cresol	95487	1,000/10,000	100	
Oleum (fuming sulfuric acid)	8014957			10,000
Organorhodium Complex (PMN-82-147)	2	10/10,000	10	
Ouabain	630604	100/10,000	100	
Oxamyl	23135220	100/10,000	100	
Oxetane, 3,3-bis(chloromethyl)-	78717	500	500	
Oxirane	75218	1,000	10	10,000
Oxirane, (chloromethyl)-	106898	1,000	100	20,000
Oxirane, methyl-	75569	10,000	100	10,000
Oxydisulfoton	2497076	500	500	
Ozone	10028156	100	100	
Paraquat dichloride	1910425	10/10,000	10	
Paraquat methosulfate	2074502	10/10,000	10	
Parathion	56382	100	10	
Parathion-methyl	298000	100/10,000	100	
Paris green	12002038	500/10,000	1	
Pentaborane	19624227	500	500	
Pentadecylamine	2570265	100/10,000	100	
Pentane	109660			10,000
Peracetic acid	79210	500	500	10,000
Perchloromethyl mercaptan	594423	500	100	10,000
Phenol	108952	500/10,000	1,000	
Phenol, 2,2'-thiobis[4-chloro-6-methyl-	4418660	100/10,000	100	
Phenol, 3-(1-methylethyl)-, methylcarbamate	64006	500/10,000	10	
Phenoxarsine, 10,10'-oxydi-	58366	500/10,000	500	
Phenyl dichloroarsine	696286	500	1	
Phenylhydrazine hydrochloride	59881	1,000/10,000	1,000	
Phenylmercuric acetate	62384	500/10,000	100	
Phenylmercury acetate	62384	500/10,000	100	
Phenylsilatrane	2097190	100/10,000	100	
Phenylthiourea	103855	100/10,000	100	

Phorate	298022	10	10	
Phosacetim	4104147	100/10,000	100	
Phosfolan	947024	100/10,000	100	
Phosgene	75445	10	10	500
Phosphamidon	13171216	100	100	
Phosphine	7803512	500	100	5,000
Phosphonothioic acid, methyl-, O-(4-nitrophenyl) O-phenyl ester	2665307	500	500	
Phosphonothioic acid, methyl-, O-ethyl O-(4-(methylthio)phenyl) ester	2703131	500	500	
Phosphonothioic acid, methyl-, S-(2-(bis(1-methylethyl)amino)ethyl) O-ethyl ester	50782699	100	100	
Phosphoric acid, 2-dichloroethenyl dimethyl ester	62737	1,000	10	
Phosphoric acid, dimethyl 4-(methylthio) phenyl ester	3254635	500	500	
Phosphorodithioic acid O-ethyl S,S-dipropyl ester	13194484	1,000	1,000	
Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester	56382	100	10	
Phosphorothioic acid, O,O-dimethyl-5-(2-(methylthio)ethyl)ester	2587908	500	500	
Phosphorous trichloride	7719122	1,000	1,000	15,000
Phosphorus	7723140	100	1	
Phosphorus (yellow or white)	7723140	100	1	
Phosphorus oxychloride	10025873	500	1,000	5,000
Phosphorus pentachloride	10026138	500	500	
Phosphorus trichloride	7719122	1,000	1,000	15,000
Phosphoryl chloride	10025873	500	1,000	5,000
Physostigmine	57476	100/10,000	100	
Physostigmine, salicylate (1:1)	57647	100/10,000	100	
Picrotoxin	124878	500/10,000	500	
Piperidine	110894	1,000	1,000	15,000
Pirimifos-ethyl	23505411	1,000	1,000	
Plumbane, tetramethyl-	75741	100	100	10,000
Potassium arsenite	10124502	500/10,000	1	
Potassium cyanide	151508	100	10	
Potassium silver cyanide	506616	500	1	
Promecarb	2631370	500/10,000	1,000	
Propadiene	463490			10,000
Propane	74986			10,000
Propane, 2,2-dimethyl-	463821			10,000
Propane, 2-chloro-	75296			10,000
Propane, 2-methyl	75285			10,000
Propanenitrile	107120	500	10	10,000
Propanenitrile, 2-methyl-	78820	1,000	1,000	20,000
Propargyl bromide	106967	10	10	
Propene	115071			10,000
Propionitrile	107120	500	10	10,000
Propionitrile, 3-chloro-	542767	1,000	1,000	
Propiophenone, 4'-amino	70699	100/10,000	100	
Propyl chloroformate	109615	500	500	15,000
Propylene	115071			10,000
Propylene oxide	75569	10,000	100	10,000
Propyleneimine	75558	10,000	1	10,000
Propyne	74997			10,000
Prothoate	2275185	100/10,000	100	
Pyrene	129000	1,000/10,000	5,000	
Pyridine, 2-methyl-5-vinyl-	140761	500	500	
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-,(S)-	54115	100	100	
Pyridine, 4-amino-	504245	500/10,000	1,000	
Pyridine, 4-nitro-, 1-oxide	1124330	500/10,000	500	
Pyriminil	53558251	100/10,000	100	
Salcomine	14167181	500/10,000	500	
Sarin	107448	10	10	
Selenious acid	7783008	1,000/10,000	10	
Selenium oxychloride	7791233	500	500	
Semicarbazide hydrochloride	563417	1,000/10,000	1,000	
Silane	7803625			10,000
Silane, (4-aminobutyl)diethoxymethyl-	3037727	1,000	1,000	
Silane, chlorotrimethyl-	75774	1,000	1,000	10,000

Silane, dichloro-	4109960			10,000
Silane, dichlorodimethyl-	75785	500	500	5,000
Silane, tetramethyl-	75763			10,000
Silane, trichloro-	10025782			10,000
Silane, trichloromethyl-	75796	500	500	5,000
Sodium arsenate	7631892	1,000/10,000	1	
Sodium arsenite	7784465	500/10,000	1	
Sodium azide (Na(N3))	26628228	500	1,000	
Sodium cacodylate	124652	100/10,000	100	
Sodium cyanide (Na(CN))	143339	100	10	
Sodium fluoroacetate	62748	10/10,000	10	
Sodium selenate	13410010	100/10,000	100	
Sodium tellurite	10102202	500/10,000	500	
Stannane, acetoxytriphenyl-	900958	500/10,000	500	
Strychnine	57249	100/10,000	10	
Strychnine, sulfate	60413	100/10,000	10	
Sulfotep	3689245	500	100	
Sulfoxide, 3-chloropropyl octyl	3569571	500	500	
Sulfur dioxide	7446095	500	500	
Sulfur dioxide (anhydrous)	7446095	500	500	5,000
Sulfur fluoride (SF4), (T-4)-	7783600	100	100	2,500
Sulfur tetrafluoride	7783600	100	100	2,500
Sulfur trioxide	7446119	100	100	10,000
Sulfuric acid	7664939	1,000	1,000	
Sulfuric acid (aerosol forms only)	7664939	1,000	1,000	
Sulfuric acid (fuming)	8014957			10,000
Sulfuric acid, mixture with sulfur trioxide	8014957			10,000
Tabun	77816	10	10	
Tellurium hexafluoride	7783804	100	100	
TEPP	107493	100	10	
Terbufos	13071799	100	100	
Tetraethyl lead	78002	100	10	
Tetraethyl pyrophosphate	107493	100	10	
Tetraethyldithiopyrophosphate	3689245	500	100	
Tetraethyltin	597648	100	100	
Tetrafluoroethylene	116143			10,000
Tetramethyllead	75741	100	100	10,000
Tetramethylsilane	75763			10,000
Tetranitromethane	509148	500	10	10,000
Thallium chloride TlCl	7791120	100/10,000	100	
Thallium sulfate	10031591	100/10,000	100	
Thallium(I) carbonate	6533739	100/10,000	100	
Thallium(I) sulfate	7446186	100/10,000	100	
Thallous carbonate	6533739	100/10,000	100	
Thallous chloride	7791120	100/10,000	100	
Thallous malonate	2757188	100/10,000	100	
Thallous sulfate	7446186	100/10,000	100	
Thiocarbazide	2231574	1,000/10,000	1,000	
Thiocyanic acid, methyl ester	556649	10,000	10,000	20,000
Thiofanox	39196184	100/10,000	100	
Thiomethanol	74931	500	100	10,000
Thionazin	297972	500	100	
Thiophenol	108985	500	100	
Thiosemicarbazide	79196	100/10,000	100	
Thiourea, (2-chlorophenyl)-	5344821	100/10,000	100	
Thiourea, (2-methylphenyl)-	614788	500/10,000	500	
Thiourea, 1-naphthalenyl-	86884	500/10,000	100	
Titanium chloride (TiCl4) (T-4)-	7550450	100	1,000	2,500
Titanium tetrachloride	7550450	100	1,000	2,500
Toluene diisocyanate (unspecified isomer)	26471625			10,000
Toluene-2,4-diisocyanate	584849	500	100	10,000
Toluene-2,6-diisocyanate	91087	100	100	10,000
Toluenediisocyanate (mixed isomers)	26471625			10,000

Toxaphene	8001352	500/10,000	1	
trans-1,4-Dichloro-2-butene	110576	500	500	
trans-1,4-Dichlorobutene	110576	500	500	
Triamiphos	1031476	500/10,000	500	
Triazofos	24017478	500	500	
Trichloro(chloromethyl)silane	1558254	100	100	
Trichloro(dichlorophenyl)silane	27137855	500	500	
Trichloroacetyl chloride	76028	500	500	
Trichloroethylsilane	115219	500	500	
Trichloromethanesulfenyl chloride	594423	500	100	10,000
Trichloronate	327980	500	500	
Trichlorophenylsilane	98135	500	500	
Trichlorosilane	10025782			10,000
Triethoxysilane	998301	500	500	
Trifluorochloroethylene	79389			10,000
Trimethylamine	75503			10,000
Trimethylchlorosilane	75774	1,000	1,000	10,000
Trimethylolpropane phosphite	824113	100/10,000	100	
Trimethyltin chloride	1066451	500/10,000	500	
Triphenyltin chloride	639587	500/10,000	500	
Tris(2-chloroethyl)amine	555771	100	100	
Valinomycin	2001958	1,000/10,000	1,000	
Vanadium pentoxide	1314621	100/10,000	1,000	
Vinyl acetate	108054	1,000	5,000	15,000
Vinyl acetate monomer	108054	1,000	5,000	15,000
Vinyl acetylene	689974			10,000
Vinyl chloride	75014			10,000
Vinyl ethyl ether	109922			10,000
Vinyl fluoride	75025			10,000
Vinyl methyl ether	107255			10,000
Vinylidene chloride	75354			10,000
Vinylidene fluoride	75387			10,000
Warfarin	81812	500/10,000	100	
Warfarin sodium	129066	100/10,000	100	
Xylylene dichloride	28347139	100/10,000	100	
Zinc phosphide	1314847	500	100	
Zinc phosphide (conc. <= 10%)	1314847	500	100	
Zinc phosphide (conc. > 10%)	1314847	500	100	
Zinc, dichloro(4,4-dimethyl-5((((methylamino)carbonyl)oxy)imino)pentanenitrile)-, (T-4)-	58270089	100/10,000	100	

APPENDIX E. NIMS Compliance Requirements for Local Emergency Planning Committees (LEPCs)

Since October 1, 2005, all States were required to meet NIMS implementation requirements to be eligible to receive federal preparedness assistance in the form of grants, cooperative agreements, and direct contracts. LEPCs participate in the communities within the States by assisting in the preparation of response plans to prepare for and respond to chemical emergencies.

What is an LEPC?

LEPCs established under EPCRA are non-profit community organizations that must include in their membership, at a minimum, local officials including police, fire, civil defense, public health, transportation, and environmental professionals, as well as representatives of facilities community groups, and the media. LEPCs must assist in the development of plans, conduct annual reviews, and provide information about chemicals to citizens.

What are the required elements of a community emergency response plan that is developed by an LEPC?

- Identify facilities and transportation routes.
- Describe response procedures, on- and off site.
- Designate a community coordinator and facility coordinator(s) to implement the plan.
- Outline emergency notification procedures.
- Describe how to determine the probable affected area and population by releases.
- Describe local emergency equipment and facilities and the persons responsible for them.
- Outline evacuation plans.
- Provide a training program for emergency responders.
- Provide methods and schedules for exercising response plans.

What actions must LEPCs take to comply with National Incident Management compliance requirements?

LEPC Response Plans: The Governor of each State has designated a SERC to implement EPCRA. The SERCs, in turn, have appointed about 3,500 districts and appointed an LEPC for each district. The SERC supervises and coordinates the activities of the LEPC and reviews the local plans.

LEPC developed response plans are local operations plans. Incorporation of NIMS into ALL EOPs within the State is a requirement for States to be NIMS compliant. Therefore, LEPC response plans must be NIMS compliant.

For more information on plan development, LEPCs should reference the NIMS Guide; Local and Tribal NIMS Integration: Integrating the NIMS into Local and Tribal Emergency Operations Plans and SOPs, Version 1.0. This guide can be downloaded at:
http://www.fema.gov/pdf/emergency/nims/eop-sop_local_online.pdf

What courses must LEPC members complete to comply with National Incident Management compliance requirements?

Train on NIMS National Standard Curriculum: State and local personnel with a direct role in emergency response or incident management must complete training in ICS 100, ICS 200, IS 700 and IS 800. Many members of the LEPC who have jobs that deal with incident management or response will be required to take these courses.

Members who do not perform specific response or incident management functions are not required to take these courses. However, the NIMS Integration Center (NIC) encourages members to familiarize themselves with NIMS.

LEPCs receive grant funds under the DOT HMEP Program. Will the LEPC lose those funds if all of the members have not taken ICS training? No. DHS does not require LEPC members who do not function as emergency responders or incident managers to take ICS courses in order for the LEPC to receive grant funds. However, some States may impose stricter requirements for local recipients of Federal preparedness grant funds. LEPCs should check with their respective SERCs for guidance.

How can DHS make rules for grant programs that are managed by other federal agencies?

The NIC was established under the Homeland Security Presidential Directive – 5 (HSPD-5) Management of Disasters. HSPD-5 established and designated the NIC to lead in Federal coordination of NIMS implementation. HSPD-5 also specifies all recipients of Federal preparedness awards implement the NIMS.

The NIC has established a Federal Partners Workgroup to ensure NIMS is implemented across federal agencies in a similar manner. One of the program goals is to have federal agencies with emergency preparedness grant programs provide information on NIMS compliance to their grantees.

All federal agencies with emergency preparedness grant programs are members of this workgroup. It is the responsibility of all Federal agencies that administer preparedness grants and awards to monitor NIMS implementation in their respective programs.

Are LEPCs going to be subject to grant monitoring by DHS?

No. LEPCs would never be directly monitored by DHS. DHS monitors the States' implementation of NIMS through the State Homeland Security Grant Program. States monitor local recipients of State Homeland Security Grants within their respective State.

ED_002941_00002942-00134

APPENDIX F. Sample LEPC By-Laws

_____ COUNTY / PARISH LEPC BY-LAWS Adopted: _____ Last Revision: _____

ARTICLE I -- NAME AND PURPOSE

SECTION 1. NAME The name of this committee shall be the _____ County/Parish LEPC, and shall be referred to in this document as LEPC.

SECTION 2. PURPOSE The purpose of the LEPC shall be to:

A. Carry out for the _____ County/Parish area those responsibilities required of the LEPC pursuant to Executive Order 88-08, EPCRA of 1986 and related regulations including, but not limited to:
   1. Development, training and testing of a hazardous substances response plan for the _____ County/Parish area.
   2. Development of procedures for regulated facilities to provide notification to the LEPC in accordance with SARA Title III.
   3. Development of procedures for receiving and processing requests from the public under the community right-to-know provision of EPCRA.
   4. Provision for public notification of committee activities.

B. Implement such other and further related activities as may hereafter be legally required by the Federal Government or the _____ SERC.

ARTICLE II -- MEMBERSHIP

SECTION 1. QUALIFICATIONS The LEPC shall consist of those persons who are approved under EPCRA by the SERC, and shall represent the various professional and community groups as designated by EPCRA.

Members of the LEPC shall be residents of or conduct business within the LEPC boundaries or any other interested parties.

SECTION 2. DEFINITION OF A MEMBER An Active Member is one who has attended at least two meetings in the last 12 months. Those new to the LEPC will be considered a member upon attendance of their second meeting within the 12 month period.

SECTION 3. POWERS AND DUTIES The LEPC shall participate in the planning for hazardous materials emergency response and public information as directed by law. It shall assist with the planning mandated by EPCRA.

SECTION 4. MEETINGS there shall be a minimum of _____ (___) Regular Meetings per year, which will be scheduled as per the _____ (State) Public Meetings Act. Special meetings of the LEPC may be called by the Chair at such time and place, as the Chair may determine. Subcommittees shall meet as needed.

SECTION 5. QUORUM The presence of _____ active members, as defined in Article II Section 2, of the LEPC at the opening of a Regular Meeting shall constitute a quorum for the transaction of business. For the purpose of subcommittee meetings, the presence of _____ (__) committee members shall constitute a quorum for the transaction of business.

ARTICLE III -- OFFICERS, DUTIES, ELECTIONS, AND TERMS

SECTION 1. ENUMERATION OF OFFICERS The officers of the LEPC shall be a Chair, Vice-Chair, Secretary, Emergency Management Director, Information Coordinator, and the Treasurer, all of which shall be members of the LEPC.

SECTION 2. NOMINATION AND ELECTION OF OFFICERS Prior to the expiration of the terms of service, nominations shall be taken for the position of Chair and Vice-Chair. Election shall be by majority vote of the quorum Membership present during the December Meeting.

Appointment of other officers shall be by the Chair, Vice-Chair and the County Emergency Management Director, with the consensus of the Membership.

SECTION 3. TERM OF OFFICE Term of Office shall expire on December 31 of each year. All officers may hold consecutive terms.

SECTION 4. CHAIR The Chair shall preside at all meetings of the LEPC and shall perform such duties and acts as necessary to accomplish the goals of the LEPC. The Chair shall be empowered to create such other ad hoc committees as necessary to accomplish the goals of the LEPC.

SECTION 5 • VICE-CHAIR The Vice Chair shall, in case of an absence in the office of the Chair, perform all of the duties of the Chair. When acting in the place of the Chair the Vice-Chair shall have all the powers pertaining to that office.

The Vice-Chair shall be an ex-officio member of all subcommittees created by the LEPC, and may meet and deliberate at their meetings, but may not vote or make

ED_002941_00002942-00135

motions while acting as ex-officio member. The Vice-Chair shall perform such other duties as may be assigned by the Chair.

SECTION 6. SECRETARY The Secretary shall be responsible for recording and publishing the official minutes of all LEPC meetings and responsible for the recording, publishing and distribution of official correspondence.

SECTION 7. COUNTY EMERGENCY MANAGEMENT DIRECTOR The County Emergency Management Director shall have the following duties:

A. Authority and responsibility for the implementation of the LEPC Emergency Response Plan as outlined under SARA Title III, Section 301(c).
B. Chair the meetings of the LEPC in the absence of both the Chair and Vice-Chair.
C. Those responsibilities as requested by the LEPC.

SECTION 8. TREASURER The Treasurer shall manage the LEPCs funds and maintain a proper accounting system, submit a Treasurer's Report at each Regular Meeting, and prepare records for an annual audit in October of each year.

SECTION 9. INFORMATION COORDINATOR The Information Coordinator shall respond to public requests for information under SARA Title III, and annually publish in the local news emergency response plans, MSDSs, and Tier 2 Inventory Forms are available for viewing.

SECTION 10. VACANCIES Any vacancy occurring in the LEPC by reason of the resignation, death, or disqualification of an Officer or Executive Committee member will be filled in accordance with Article III, Section 2. Suggestions for candidates to fill vacant positions will be made by the Chair of the LEPC, for approval by the committee.

ARTICLE IV -- COMMITIEES

SECTION 1. EXECUTIVE COMMITTEE The Executive Committee shall consist of the following positions:

A. Chair
B. Vice-Chair
C. Secretary
D. County Emergency Management Director
E. Treasurer
F. Information Coordinator

The duties of the Executive Committee shall be to coordinate activities of the Standing and Ad Hoc committees, and may act on behalf of the LEPC in conducting administrative matters of these Committees.

Matters of policy must be approved at a Regular Meeting of the members, with a majority vote by a quorum. (Article II, Section 5). The Executive Committee shall perform other appropriate functions, as the Chair may deem necessary for the purposes of the LEPC.

All members of the Executive Committee shall be active members of the LEPC as described in Article II, Section 2.

Any member of the Executive Committee who is unable to attend a Regular, Special, or Executive Committee meeting of the LEPC shall notify the Chair, Vice-Chair, or Secretary.

Any member of the Executive Committee is subject to removal for cause, with notice, by a vote of the Executive Committee.

SECTION 2. STANDING COMMITTEE The following Standing Committee shall be established:

Education Committee: Responsible for the development of training programs for members of the LEPC. The Chair of the LEPC shall appoint the Chair of each Standing Committee. All Standing Committees shall have a minimum of three (3) members and a maximum number as determined by the committee Chair.

SECTION 3. AD HOC COMMITTEES The Chair may create Ad Hoc Committees as necessary to perform functions of the LEPC.

SECTION 4. MEETINGS Meetings of the Executive, Standing or Ad Hoc Committees may be called by the Chair, or the Chair of those committees as deemed necessary. All Regular Meetings shall be held in accordance with the _____ Open Meeting Act.

ARTICLE V -- MISCELLANEOUS PROVISIONS

SECTION 1. FISCAL YEAR The fiscal year shall be from January 1 to December 31.

SECTION 2. INDEBTEDNESS All indebtedness over $ _____ must be approved during regularly scheduled LEPC meetings by a majority vote of Committee members in attendance.

A quorum, as described in Article II, Section 5 of these By-Laws, must exist in order for the Committee to engage in the transaction of any business.

Following approval, the indebtedness will be signed by the Chair or Vice Chair and the Treasurer prior to payment.

When possible, all indebtedness under $ _____ will also be approved and signed as stated above.

However, when a request is received, and must be approved or disapproved prior to the next regularly scheduled meeting, the Chair or Vice Chair and the Treasurer may approve and sign for indebtedness under $ _____.

Any indebtedness approved between regularly scheduled meetings will be added to the next meeting agenda to ensure all members are aware of any indebtedness authorized by the committee.

ED_002941_00002942-00136

SECTION 3. FINANCIAL AUDIT An annual financial audit will be conducted by the LEPC Chair and Vice Chair no later than December of each year.

The Treasure will provide copies of all financial records, above and beyond the monthly financial reports, as requested.

SECTION 4. APPROVAL. AMENDMENT OF BY-LAWS The By-Laws shall become effective at a Regular Meeting, with a majority vote by a quorum.

These By-Laws may thereafter be amended at a Regular Meeting with a majority vote by a quorum (Article II, Section 5).

Meetings to adopt or amend LEPC By-Laws shall conform to the State Public Meetings Act.

ARTICLE VI -- PARLIAMENTARY AUTHORITY

SECTION 1. PARLIAMENTARY AUTHORITY The rules contained in "Robert's Rules of Order, Newly Revised" shall serve as a guideline for the LEPC in all cases where they do not conflict with these By-Laws.

MODEL BY-LAWS OF THE _____ COUNTY/PARISH OR DISTRICT LEPC

Article I

This organization shall be known as the _____ (Regional, County, Tribal) LEPC

Article II

The purpose of the LEPC are those set out in EPCRA and any other lawful purposes which are assigned to it or permitted by the County, and/or the SERC. In keeping with the intent of EPCRA, all activities of the LEPC will be conducted in a manner encouraging input and participation from all segments of the community. The LEPC will develop a chemical emergency response and preparedness plan for the planning district and establish procedures for conducting its public information and education responsibilities. The plan shall be reviewed and updated as necessary on a regular annual basis, in accordance with Section 303 EPCRA. The LEPC shall, in addition:

- Receive and process public requests for information;
- Notify the public of all LEPC meetings or activities;
- With the information and reports from facilities operating within the jurisdiction of the LEPC, and analysis of the district's transportation risks, the LEPC will perform a hazard analysis;
- Establish and maintain a data base of hazardous chemical locations and quantities in the district;
- Establish and maintain a system of data management;
- Maintain information on ALL facilities which manufacture, or store, EHSs, and include this information within the response and plan.

The LEPC will establish, and notify the public, all meetings, including sub-committee meetings, open to the public. The LEPC will implement such other and related activities as may hereafter be legally required by the federal government, the State, or the County Judge/Parish President. The LEPC will make assessments of resources necessary to implement the emergency response and preparedness plan, and make recommendations to appropriate people, agencies, and organizations regarding additional resources needed to implement the plan.

The LEPC shall be instrumental in fulfilling the purpose of EPCRA to increase community protection from exposure to chemicals produced, used, stored and/or transported within the District. Transportation analysis will include those risks to the district from commercial transportation by rail, highway, aircraft, and waters of commerce.

Article III

Membership will at all times include, at a minimum, representatives of the groups listed in Section 301 of EPCRA. This includes equal representation of elected state and local officials; law enforcement, emergency management, fire-fighting personnel, first aid/EMS personnel; health personnel, local environmental personnel; hospital personnel, transportation personnel, broadcast and print media personnel; community groups and owners or operators of local facilities.

The members will be nominated by County / Parish officials and will be approved by the SERC. Members shall be residents or conduct business in the jurisdictional area of the LEPC. The membership of the LEPC shall consist of OFFICERS and a Staff. The officers shall consist of a Chair, a Vice-Chair, an Information Coordinator, and a Secretary-Treasurer. The LEPC staff members may be either salaried or volunteer personnel. Most LEPC's does not have a pay salaried for the staff.

- Terms of Membership

The County/Parish officials may request the SERC appoint members for specific terms of office, or the membership of the LEPC may select their officers by ballot or voice vote at a preselected vote event.

- Terms of Office

Membership of an LEPC may select the terms of office to be either one or two years. Existing officers may be reelected to their existing offices if they so indicate a willingness to continue.

- The Chair

The Chair shall preside at all meetings of the LEPC unless they cannot be present at an announced meeting. An alternate representative can be named to fulfil the obligation by the existing Chair. The Chair shall serve as an ex-officio member of all committees, and shall perform such duties and acts as necessary to accomplish the goals of the LEPC. The Chair shall be empowered to create such other ad hoc committees as necessary to accomplish the goals of the LEPC.

- The Vice-Chair

Upon resignation, or death, or advice of the Chair, the Vice-Chair shall perform the duties of the Chair. The Vice-Chair shall perform other duties assigned by the Chair.

- The Secretary-Treasurer

The Secretary-Treasurer in cooperation with the Information Coordinator shall be the custodian of all books, papers, documents, and other property of the LEPC.

The Secretary-Treasurer shall attend to the business needs of the LEPC and shall maintain an accurate record of all monies received and expended for the use of the LEPC.

- The Information Coordinator

The LEPC will appoint an Information Coordinator. This person will process requests from the public for information under Section 324, including Tier Two information under Section 312.

The Coordinator will assist the Secretary-Treasurer in records management and financial matters. The Information Coordinator will be a non-voting member of LEPC committees.

- Inactive Members

Appointed members shall be considered inactive when they have missed more than _____ consecutive Committee meetings without notification to the Chair of significant reasons why they were unable to attend the meetings.

An annual report listing members declared inactive will be provided to the SERC.

- Removal of Members

The LEPC may ask the SERC remove a member.

- Vacancies

Any vacancy occurring in the LEPC by reason of resignation, death, or disqualification will be filled by appointment of the Chair, or by identification of a qualified replacement and nominated, by vote of the membership to fill the position in which such a vacancy exists.

The LEPC Secretary shall submit that person's name, with the recommendation the person serve the balance of the unexpired term, to the County (Tribal) Commissioners requesting they nominate this person to the SERC for appointment to the LEPC.

Article IV

Section 1. Executive Committee.

The Executive Committee will consist of Chair, Vice-Chair, Secretary-Treasurer, and Chairs of the four Standing Committees described in Section 2. The Information Coordinator shall serve as a non-voting member of this Committee. The duties of the Executive Committee shall be to coordinate activities of the Standing and Ad Hoc Committees.

Section 2. Standing Committees.

The following Standing Committees shall be established:

a) Right-To-Know Committee.

This Committee shall be responsible for the formulation of procedures concerning the public's Right-To-Know program; the formulation of release reporting procedures; the establishment of trade secret protection procedures, and the formulation of record keeping and information dissemination procedures for the LEPC.

b) Public Education and Information Committee.

This Committee shall be responsible for reviewing the public alert and notification program; public relations with affected communities and the public at large; all publicity of the LEPC; development of public education and information program.

c) Hazardous Materials Facilities Liaison Committee.

This Committee shall be responsible for procedures for identification and communication with affected facilities. This Committee shall work with the Emergency Response and Resources Committee and with affected facilities to review and help the local emergency management office(s) test a hazardous substance emergency response plan for the planning district as required by law.

d) Emergency Response and Resources Committee.

This committee will work with the Hazardous Facilities Liaison Committee and with exist emergency response organizations in jurisdictions with the planning district to review and help local emergency management offices(s) test a hazardous substance emergency response plan for the planning district as required by law. This Committee shall review existing federal, state, and local plans for the purpose of coordination with the LEPC planning process.

Section 3. Ad Hoc Committees.

The Chair may create Ad Hoc Committees as necessary to perform the functions of the LEPC. Chairs of Ad Hoc Committees shall be appointed by the Chair of the LEPC.

Section 4. Chair of the Standing Committees.

The Chair of the Standing Committees shall be nominated and elected by their respective committees. The election shall be by ballot, except when there is only one nomination for each office, election may be by voice vote.

Section 5. Membership in Standing Committees.

All members must volunteer to serve on at least one Standing Committee and shall not serve on more than two Standing Committees. Final membership of the Committees shall be determined by the Chair after consultation with the Executive Committee to ensure all Committees have sufficient manpower to carry out their assigned tasks.

Section 6. Meetings.

Meetings of the Standing and Ad Hoc Committees may be called by the Chair of the LEPC or the Chair of the Committee as deemed necessary. All meetings are open to the public.

LEPC meetings in large areas are held monthly. Some states with low population areas have opted to hold meetings based upon population of their counties or districts.

a) Regular meetings.
The committee shall meet at least quarterly.
b) Special meetings.
The Chair may call such special meetings as may be deemed necessary to carry out the duties of the Committee. Upon the written request of at least 3 members, the Chair shall call a meeting with ten (10) days.
c) Hearings.
The LEPC shall hold such public hearings or forums as it may deem necessary, at such time and places as may be determined by a Committee majority vote.
At least one such public hearing, or forum, shall be held each year for the purpose of discussing the Committee 's emergency plan with the public, receive and respond to the public comments of the presented plan.

Section 7. Quorum.

A quorum shall consist of a majority of Committee members, excluding those members declared to be inactive. A quorum shall be required to transact business.

Designated representatives must be identified by the primary committee member to the information coordinator or any other board member prior to the meeting.

An individual may not be the designated representative for more than one primary board member at a time.

Section 8. Agenda.

Any member may request the Chair place an item on the meeting agenda. If the Chair should decline to do so, a member may have such item placed on the agenda by submitting it in writing to the Chair with support signatures of 3 of the membership.

Section 9. Rules of Order.

The deliberations of all meetings of the LEPC and subcommittees shall be governed by Robert's Rules of Order.

Section 10. Notice of Meetings.

Notice of time, date, place of meeting, and agenda items to be considered at each meeting shall be given in writing to all members at least two weeks prior to each meeting by the staff or Chair; and to the Clerk of _____ County/Parish Board.

An annual notice of the regular meeting schedule of the LEPC shall be published in a newspaper with regular circulation in _____ County/Parish in accordance with EPCRA. This notice shall specify the meeting designated specifically for receipt of public comments on the emergency plan.

Section 11. Voting

Each committee member, or designated representative, including the Chair, shall be entitled one vote. No member shall vote by proxy.

Members may register their abstention on any vote. The abstention shall be reflected in the minutes. Members are required to abstain on matters which pose a conflict of interest for them.

All final actions, committee positions, or policy recommendations shall require the favorable vote of a majority of those committee members or designated representatives present at a duly called meeting.

Article V – MISCELLANEOUS PROVISIONS

Section 1. Fiscal year.

The fiscal year shall from October 1 to September 30.

Section 2. Indebtedness.

All indebtedness incurred by the LEPC shall be approved by the Chair before payment by the Secretary-Treasurer.

Section 3. Approval of Bylaws.

These bylaws shall become effective upon approval by a majority by those in attendance at the meeting.

Section 4. Disqualification.

Any member who is unable to attend a meeting may notify the Secretary-Treasurer or Information Coordinator. Any member with five or more absences is subject to disqualification at the request to the SERC.

Article VI – AMENDMENTS

Section 1. Amendments.

These bylaws may be amended by a two-thirds vote of members present and voting at any meeting of the LEPC provided any proposed amendments to these bylaws be submitted to the members in writing at least one week in advance of the meeting. Any member of the LEPC shall have the right to comment on or suggest revisions to the bylaws.

Article VII – RULES

EPCRA requires the LEPC "shall establish rule by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan."

Section 1. Adoption of Rule; Publication of Proposals.

The LEPC may, as necessary and proper, adopt rules of general application governing the execution of responsibilities under EPCRA and related applicable regulations. Any such rules must first be published in proposed form not less than 10 days prior to final adoption by the LEPC.

Section 2. Method of Initiating Proposed Rule-Making.

Any member of the LEPC may recommend the initiation of proposed rule-making. Any proposed rules shall be initially considered by the Executive Committee, unless otherwise decided by the LEPC.

If the Executive Committee, by majority vote approves the proposed rule, it shall thereafter proceed to publication as provided in the preceding Section.

Section 3. Method of Adopting Final Rules.

Following the expiration of the 10 day comment period, the Executive Committee shall review all public comments and prepare a statement which responds to comments raised and discusses the basis for any changes to the proposal.

The Committee shall present such statement to the LEPC. The LEPC shall vote on the adoption of the proposed rule. If the vote is favorable, the rule shall take effect upon the time and date the notice of adoption is first published.

Section 4. Notice of Adoption.

Upon adoption of any rule by the LEPC, the Information Coordinator also shall publish the LEPC's response to comments received and any changes to the proposal made in response to such comments. Publication of the final rule shall be in the same manner as that for the proposed rule.

Section 5. Emergency Rules.

In emergency circumstances, the LEPC may adopt rules without prior public notice and comment, provided no such rule will remain in effect for more than 90 days.

FINAL RULES

Public Access to Information

In accordance with Section 324 of EPCRA, all information obtained from an owner or operator pursuant with EPCRA and any requested Tier Two forms or the MSDS otherwise in possession of the Committee shall be made available to any person submitting a request under this Section.

If the owner should request the location of a specified chemical not be identified, the LEPC shall withhold that information.

All information request to the photocopied by a member of the public, shall be provided at the sole expense of the requestor(s).

The cost of such reproductions shall be set by the Information Coordinator, with the approval of the Executive Committee, at a level which will enable the LEPC to recover all reasonable expenses associated with the processing of the request.

Requests for MSDSs and Other Non-Confidential Information.

Any person may obtain an MSDS with respect to a specific facility by submitting a written request to the Committees Information Coordinator.

The facility shall provide the MSDS copy with _____ days of the written request. Any person may request any other non-confidential information concerning a facility which may be held by the Committee by submitting a written request to the Committee's Information Coordinator.

Requests for Tier Two Information.

Any person may request Tier Two information with respect to a specific facility by submitting a written request to the committee in accordance with the following requirements:

a. If the Committee does not have in its possession the Tier Two information as requested, it shall request a submission of the particular Tier Two form from the owner or operator of the facility subject to the request, provided the request is from a state or local official acting in his or her official capacity or the request is limited to hazardous chemicals stored at the facility in an amount in excess of the threshold planning quantity.
b. If the request does not meet the requirements, the Committee may request submission of the Tier Two form from the owner or operator of the facility subject to the request if the request includes a general statement of need.

This Document, the Constitution and By-laws of _____ (County, Regional) LEPC, Adopted at the Regular Meeting of the LEPC on this ____ Day of _____, _____ Year).

LEPC Chair
Date Signed

- -

APPENDIX G. Sample Response Reimbursement Letter for Responsible Party

(Your LEPC or Department Letterhead)
(Date)
[LEPC Chair Name]
[LEPC Address]
[Responsible Party]
[Responsible Address]

Re: Invoice for Hazardous Materials Response Date of Incident:

Please consider this letter an invoice for reimbursement in response to the above referenced hazardous materials incident. The National Contingency Plan (40 CFR Part 300.700 – Activities by Other Persons) makes it clear that...

1. Responsible parties shall be liable for all response costs incurred by the United States government or a state or an Indian tribe not inconsistent with the NCP.... and
2. Responsible parties shall be liable for necessary costs of response actions to releases of hazardous substances incurred by any other person consistent with the NCP....

The costs relating to the incident are as follows:

1. Personnel Overtime Costs . . . . . $
2. Medical Monitoring / Treatment . . . . . $
3. Vehicles and Apparatus . . . . . $
4. Disposal Material / Supplies . . . . . $
5. Decon / Disposal . . . . . $
6. Miscellaneous / Technical / Lab Costs . . . . . $

Total: . . . . . $

I hereby certify all the costs represented above were incurred as a result of response to this incident, and the response was carried out consistent with the National Contingency Plan, and were necessary to help protect public health or the environment.

I certify the personnel costs are for overtime pay and recalled personnel. These costs would not have been incurred had the incident not occurred.

Sincerely,

_____ _____

LEPC Chair or Agency Representative Highest Ranking Elected Official

ED_002941_00002942-00141

APPENDIX H. Planning Principles and Perils: A Guide to Effective Planning

1. Minimum Requirements for the Plan

Under the federal law each LEPC is required to develop an emergency response plan and review this plan at least annually thereafter.

In developing this plan, the local committee should evaluate the available resources for preparing for and responding to a potential chemical accident, or an act of nature which involves the spillage of chemical materials into the environment. The plan should:

- Identify facilities and transportation routes of EHSs and other chemicals;
- Identify additional facilities which could be subjected to additional risk due to their proximity to facilities subject to the requirements mentioned above, such as hospitals, nursing homes, schools, prisons, or others;
- Describe emergency response procedures for handling chemical releases at a facility, both on-site and off-site.

These procedures should be followed by facility owners and operators, local emergency responders and medical personnel responding to the incident:

- Designate a community emergency coordinator and facility coordinator(s) to implement the plan;
- Develop reliable, effective, and timely notification procedures for facility emergency coordinators to convey information to community emergency coordinators and to the public, a release has occurred;
- Describe methods for determining the occurrence of a release and the probable affected area and population.
- Describe community and industry equipment available for response operations, and identify the persons responsible for the equipment.
- Define training programs for emergency response personnel, and the schedules of training for emergency response and medical personnel.
- Present methods and schedules for exercising emergency response plans to emergency responders, emergency medical personnel, fire service, and law enforcement agencies.
- The plan thus developed shall be reviewed at least once a year, or more often as circumstances within the community or facilities changes.

2. Reviewing and Testing the LEPC Plan

The LEPC Plan is required to be reviewed at least once a year. Most planners agree the best way to review a plan is to test, or exercise, it. There is no requirement the plan must be tested each year; however, the LEPC is required to establish a schedule for testing the plan.

Obviously, the level of review and testing is dependent on many factors, including cost, personnel required, and other reasons.

Each LEPC, in conjunction with the Emergency Management Office, should determine the level of review and exercise to be conducted each year. In testing the Plan, the following areas should be evaluated to represent the minimum requirements for qualification as an exercise.

In addition, jurisdictions are encouraged to test areas particular to their part of the plan. Reviewers of the Plan should examine the Plan for the following items:

- Does the Plan attempt to reduce the unknown in a situation.
- Are the aims of the Plan to evoke appropriate actions.
- Is the Plan based on what is likely to happen.
- Are the basic tenets of the Plan based on knowledge of actual problems and solutions or upon myths and misconceptions.
- Does the plan operate as a continuous process.
- Does the plan focus on principles rather than concrete details.
- Does the plan overcome resistance in thinking and established methods of response because of limitations of money, time and effort.
- What parts of the Plan are an educational activity.

3. Characteristics of a Good Plan

A good plan should have the following characteristics:

- It should be simple.
- It should provide for accomplishing the mission.
- It should be flexible.
- It is based on facts and solid assumptions.
- It provides for continuity.
- It provides for the use of existing resources.
- It delegates authority while maintaining necessary control.
- It provides for the necessary organization.
- It coordinates all elements of the response.
- It establishes relationships and responsibilities.

4. Common Pitfalls in the Planning Process

- Lack of integration of emergency planning into the facility's total management system.
- Lack of understanding about the different dimensions of emergency planning.
- Managers not involved.
- Top management inflexibility.

ED_002941_00002942-00142

- Top management expects immediate results from the planning process.
- Confusing financial projects.
- Planning responsibility wrongly placed in a separate department rather than coordinated through several departments.
- Too much is attempted too soon.
- Failure to operate by the planning process action plan.
- Lack of broad input into the planning process.
- Failure to see the big picture.

5. The Top Ten Common Weaknesses of Disaster Planning

- No systematic collection of information.
- No systematic dissemination of information.
- No provision for establishing on-scene command or management.
- Not able to achieve inter-organizational coordination.
- Specific responsibilities are not described
- Incomplete hazard assessment and analysis.
- The Plan is not exercised.
- No provision for updating or revising the Plan.
- No concern for the users of the Plan.
- Plan is not distributed to agencies involved.

6. Warning Signs of Insufficient Preparedness

- A lack of urgency or priority about emergency planning among management and employees.
- Confusion about roles and commitment to emergency planning.
- Confusion about community roles and responsibilities regarding disaster planning.
- Lack of a viable disaster plan that is part of the daily facility process.

7. LEPC Tasks for Emergency Planning

- Develop a good working relationship between the LEPC and the local fire departments, police departments, emergency medical services, and public works departments.
- Develop a good working relationship between the LEPC and the Local Emergency Management Agency Directors.
- Develop a good working relationship with the Facility Emergency Coordinators.
- Research community capabilities.
- Review, and update, the Resource Management Annex of the local plan.
- Review and suggest revisions to the Communities' Emergency Operations Plan.
- Identify all facilities in the district with chemicals of concern.
- Compile information about transportation routes and facilities within the district.
- Identify facility information necessary for planning.
- Perform community outreach.
- Perform a hazards analysis (see Appendix K) for chemicals of concern at each facility.
- Call together the relevant parties.
- Become familiar with LEPC plan review standards.
- Divide up the work
- Coordinate with other jurisdictions.
- Exercise the plan.
- Get plan signed.
- Submit the plan to the SERC.
- Annually review and update the plan.
- Give Public Notice and hold a meeting.

APPENDIX I. Hazardous Materials Planning Standards and Criteria

The following information is provided as a reference for developing your Emergency Plan Annex for Hazardous Materials Response and Recovery. Sample plans and annexes are available through your State Office of Emergency Management.

Planning Standards Checklist for the Hazardous Materials Response & Recovery Annex

Jurisdiction: _____

Description of Responsibility	Section / Paragraph
I. Authority & References	
Identifies those local, state, and federal legal authorities which provide a basis for carrying out actions detailed in this annex and pertinent references.	
II. Purpose	
Includes a mission or purpose statement that describes the reason for development of the annex.	
III. Explanation of Terms	
Includes a list of acronyms used in the annex and definitions of essential terms.	
IV. Situation & Assumptions	
A. Includes a situation statement describing potential hazards and factors affecting emergency planning and response.	
B. Provides summary of the local capability to response to hazmat incidents.	
C. Includes a list of assumptions used in planning.	
D. Identifies local regulated facilities and primary hazard(s) at such facilities.	
E. Identifies local transportation routes for hazardous materials, including any approved hazardous cargo routes.	
F. Identifies facilities (special facilities, population support facilities, and population concentrations) that may be vulnerable during a hazmat incident due to their proximity to regulated facilities or a hazmat transportation route.	
G. Includes a map showing the location of regulated facilities, hazmat transportation routes, and vulnerable facilities.	
H. Identifies evacuation routes from risk areas surrounding regulated facilities.	
I. Includes a format for receiving and disseminating essential information regarding a hazmat incident.	
V. Concept of Operations	
A. Describes the actions taken to mitigate a hazmat incident.	
B. Includes a hazmat incident classification scheme.	
C. Describes procedures for receiving timely reports of hazmat incidents.	
D. Describes methods for disseminating incident notification to local emergency response elements.	
E. Describes methods for determining the area of population affected by a hazmat release.	
F. Describes methods to determine appropriate protective actions for the public in the event of a hazmat incident.	
G. Describes procedures for warning the public of a hazmat incident and communicating appropriate protective actions.	
H. Describes obligations of the responsible party and of local government in the recovery from a significant hazmat incident.	
VI. Organization & Assignment of Responsibilities	
A. Designates and describes responsibilities of the community emergency coordinator required by the EPCRA.	
B. Outlines hazmat response actions to be carried out by local officials, departments, and agencies.	
C. Outlines response actions expected of regulated facilities and hazmat transporters.	
D. Outlines responsibilities of other hazmat incident responders.	

VII. Direction and Control	
A. Identifies by position the individual responsible for overall management of emergency planning and response activities.	
B. Identifies by position the individual(s) responsible for providing direction and control for the emergency response to hazmat incident.	
C. Describes the interface between the Incident Commander and the EOC.	
D. Identifies by position the individual(s) authorized to recommend large-scale evacuation.	
VIII. Increased Readiness Actions	
Describes actions for increased readiness.	
IX. Continuity of Operations	
Identifies lines of succession for each department head.	
X. Administration & Support	
A. Describes procedures for requesting assistance from the State.	
B. Describes local methods of communications during a hazmat incident.	
C. Identifies local hazmat response resources.	
D. Describes mutual aid, industry, and contractor resources which may be available for use during the response to a hazmat incident and who, by position, can activate or request those resources.	
E. Describes who is responsible for ensuring emergency responders receive specialized hazmat training and are equipped with personal protective equipment appropriate to their responsibilities in a hazmat incident.	
F. Describes methods and schedules for exercising the annex.	
XI. Annex Development and Maintenance	
A. Identifies by title the person responsible for maintaining and revising this annex.	
B. Provides for a periodic review of this annex.	
Review Date: Annex Date:	
Completed By:	
Reviewed By	

APPENDIX J. Suggested Profile of the LEPC

Introduction

The LEPC was created to address many of the public safety concerns of industry and the community regarding hazardous materials.

The passage of EPCRA mandates facilities that produce, utilize, and/or store certain hazardous materials must report these chemicals to state environmental authorities.

This act has also intensified local governmental authorities' and the community's concern and interest about these facilities.

It encourages these facilities to initiate community awareness about the chemicals they use and to work with local governments, emergency response organizations, and neighborhood groups in developing emergency plans in the event of a hazardous materials incidents at these facilities.

Mission Statement

The mission of the LEPC is to protect and serve all citizens by promoting hazardous materials safety in all of the community. This includes providing an advisory, educational, and technical resource for the development and implementation of safety programs.

Purpose and Function

The LEPC shall exist to promote and facilitate the safety of all persons with respect to their potential exposure to hazardous materials that could be released into the environment.

The functions and duties of the LEPC are those authorized by the LEPC, in accordance with State rules and policies, as well as applicable local rules, and in accordance with, but not necessarily limited to the provisions of EPCRA.

More specifically the LEPC shall engage in at least the following activities:

- Conduct regular meetings to address all pertinent issues
- Develop and maintain an inventory of known hazardous materials
- Develop and update a hazard/risk analysis
- Develop and periodically update emergency response procedures for off-site emergency response personnel
- Identify private/public sector resources available to deal with hazardous materials emergencies
- Review, process, and respond to requests from the public for pertinent information
- Review, maintain, and process all appropriate reports and records as required by law
- Develop and periodically update emergency warning procedures and evacuation plans
- Coordinate training programs on hazardous materials safety and emergency response procedures
- Coordinate emergency response exercises
- Provide expertise, and assistance to industries and businesses upon request
- Provide community "out-reach" services on HAZMAT safety
- Receive, maintain and disseminate emerging legislation relating to hazardous materials
- It is not and never has been the intent the LEPC be a local regulatory, enforcement, permitting, or policy making body or agency.

Further, the LEPC shall not be placed in a position to interfere with the state permitting process.

Suggested Standing Subcommittees for each LEPC -- Purpose / Mission

Legislative and Scientific

To monitor the status and progress of both existing and proposed legislation/regulations pertaining to hazardous materials safety at the federal, state, and local levels; and to report all developments, changes, or concerns to the LEPC.

Also to monitor, review, and collect scientific research efforts findings and reports on hazardous materials risk and safety; and to provide such information to the LEPC and the outreach subcommittees.

Funding

To identify sources of both public and private funding which the LEPC may solicit to further its efforts and then to attempt to obtain such funds.

Industrial Outreach

To identify businesses, industries, and companies who could benefit from the LEPC's efforts and to offer miscellaneous programs and general assistance to them so they may be in compliance with all applicable legislation/ regulations.

Community Outreach

To identify the overall HAZMAT safety needs of the public at large and to offer training programs, presentations, materials, and general assistance to the citizens.

Also to compile, organize, and maintain specific information on hazardous materials' incidents, releases, and potential problems -- and to disseminate such information upon request from the public.

Training and Exercise

To identify training needs for emergency responders and make provisions to satisfy those needs; and to plan, coordinate and conduct training exercises.

Planning

To review, revise, update and maintain the community's hazardous materials' response plan. Also to review hazardous materials safety/response plans from individual businesses or industries upon request.

Budget Review

To review and oversee all requests for expenditures in excess of (some pre-determined number) as well as all capital items; to make recommendations for approval or denial to the LEPC.

APPENDIX K. Description of Hazard Analysis

General

As an LEPC prepares to develop a hazardous materials response annex, some of the tasks will be to identify facilities containing EHSs, or to identify transportation routes likely to be used for the transportation of these substances.

A hazard analysis will help the LEPC identify these and other hazards in the community. Planners should answer the following questions:

- What are major chemical hazards in our community?
- What are areas or populations likely to be affected by a release?
- What emergency response resources (personnel and equipment) does the community have/need?
- What kind of training do local responders need?
- How can we help prevent chemical accidents?
- The hazards analysis process described below can assist local planners in answering these and other important planning questions.

Purpose & Method

Hazard analysis is a way of identifying the threats hazardous substances such as ammonia, chlorine, and other chemicals pose in the community. Under EPCRA, communities conduct a hazard analysis to develop and revise emergency plans.

These plans focus on facilities where EHSs are present in amounts exceeding the TPQ. The plans also address other facilities, transportation routes, or hazardous substances the LEPC identifies as a worthy focus of planning efforts.

The following three steps to a community-level hazard analysis provide a blueprint to communities on how to complete this project.

- Hazards Identification: identifies the location, quantity, storage conditions, and the specific hazards posed by the hazardous chemicals transported, manufactured, stored, processed, and used in the community.
- Vulnerability Analysis: locates geographical areas and the people, property, services, and natural areas that may be affected by a release.
- Risk Analysis: is a judgment regarding risk to the community for specific release scenarios (i.e., X pounds of chemical Y released from facility Z under certain conditions) based on the likelihood and severity of the release.

An alternate approach describes four steps within the hazards analysis process. The extra step, consequence analysis, is simply an elaboration of the risk-analysis step discussed above.

To be successful, hazard analysis must be an ongoing process – the three steps should be repeated to address changes in the hazards and other circumstances in the community that affect emergency planning and response.

Coordination among facilities and local emergency planners and responders during the process will ensure a thorough evaluation of the community's hazards and allow planners to focus their efforts on the greatest potential threats to the community.

Phased Approach to Hazard Analysis

Local emergency planners should consider conducting the hazards analysis process in phases.

This "phased" approach will allow planners to reduce the initial expenditure of valuable resources on analyzing less significant hazards and instead focus their efforts on the most important hazards in the community. There are three phases, as follows:

- Screening phase: Using readily available information and worst-case assumptions, determine which facilities and hazards in the community should be the subject of a more detailed analysis. LEPCs can use the Technical Guidance for Hazard Analysis, developed by EPA to complete this phase rather quickly.
- Planning phase: Refining the initial (worst-case) assumptions and get up-to-date information from the priority facilities identified in the screening phase and begin to develop emergency plan.
- Scenario phase: For priority facilities and transportation routes develop a range of specific release scenarios that could pose the highest risk to the community. These more detailed scenarios can be used to develop site-specific emergency response plans.

Major Steps in Hazard Analysis

a) Hazards Identification

Identifying the hazardous chemicals that pose a serious threat to the community is the first stage of hazard analysis. Communities of all sizes can develop simple programs, which meet their needs and match their resources, to locate these chemicals and to identify specific information on hazardous situations and the risks they pose.

1. Fixed Facilities. Using information submitted to LEPCs, planners should first identify the facilities that use, produce, process, or store hazardous chemicals. Under EPCRA, facilities that have EHSs in amounts exceeding a TPQ are required

to notify the LEPC and designate a facility emergency coordinator to serve as the contact between the facility and the LEPC. The Tier II reports sent to LEPCs describe the type of chemicals present at local facilities.

2. Transportation. Although EPCRA does not require reporting on hazardous substances in transit, information about types of hazardous substances moving on local transportation routes can be obtained from several different sources.

- For substances transported by rail, the State Emergency Management can assist the LEPC in receiving information of HAZMAT shipments by rail for each county where such shipments have occurred. This report lists hazmat shipments by US DOT hazard class rather than by specific chemical.
- To determine what HAZMAT are being transported in pipelines, planners should contact local pipeline companies or the State Environmental Agency.
- There is no easy way to determine what types of HAZMAT are being transported on local highways, except by conducting a local commodity flow study (see Appendix L). Grants may be available for LEPCs to conduct this type of study. Additionally, some information may be obtained by reviewing local accident statistics.

Planners may also consider identifying other hazardous chemicals that may pose significant hazards to the community.

These include flammable, reactive, and explosive substances; pesticides in rural areas; other chemicals present in substantial quantities; and other hazardous chemicals subject to Tier II reporting because of quantity.

b) Know the potential effects: Vulnerability Analysis

After identifying the chemical hazards in the community, but before making an assessment of the overall risk they pose, local planners should conduct a vulnerability analysis to estimate who is at risk from a potential chemical incident. Using specific assumptions, vulnerability analysis estimates the geographical area that may be affected as a result of a spill or release.

Specifically, the vulnerability analysis identifies people (numbers, density, and types -- facility employees, local residents, and special populations) within the vulnerable zone; private and public property and essential support systems (water, food, power, and communication sources, as well as facilities such as hospitals, fire, and police stations) that could be damaged; and sensitive natural areas and endangered species that could be affected.

During an actual incident, the area potentially affected by a release is simply the area downwind. But because the wind direction at the time of the release cannot be predicted, planners must consider all possible wind directions and subsequent toxic plume paths. Consequently, for fixed facilities, vulnerable zones are circles with the release site located at the center.

Estimating vulnerable zones for toxic hazards may be done by hand, or with the assistance of a computer-modeling program. If the task is to be completed by hand, the Technical Guidance for Hazards Analysis provides complete step-by-step instructions, including the mathematical formulas and tables for calculating the radius of the zone.

If you need assistance, call upon those facilities that create the hazard about which you are concerned. Remember a facility representative is likely a member of the LEPC.

Planners will also need to gather maps in the surrounding area and information (i.e., MSDS and Tier II reports) on the hazardous chemicals involved. Always keep in mind the vulnerability analysis results are only as good as the assumptions that were made in the process. The results are estimates, best used for planning and training, and not to be relied on during an actual response.

If resources are available, a computer modeling system will reduce the time spent calculating vulnerability zones. Plume modeling software packages are often included as part of a more complete emergency planning system designed to address many elements of the emergency planning process.

CAMEO is a computer program the federal government has designed and made available to assist local emergency planners in preparing for and responding to an airborne release of a hazardous chemical. Several other systems are also available.

Many large industrial facilities have their own software to model accidental releases and determine affected areas. If asked, they may be willing to assist in vulnerability analysis.

c) Know the odds: Risk Analysis

Once the chemical hazards in the community and the potential areas of impact for their release have been identified, the third stage in a hazard analysis, risk analysis, can be conducted. Risk analysis is a judgment made by the LEPC based on an estimate of:

1. Likelihood of accidental release, based on various factors such as the history of releases at fixed facilities and in transport, current conditions and controls at facilities, unusual environmental conditions, and the possibility of simultaneous emergency incidents (such as flooding or fire) resulting in the release of hazardous chemicals, and
2. Severity of consequences – the people, places, and things located within the vulnerable zone. Risk analysis does not require extensive mathematical analysis (although probabilistic risk analysis can

provide valuable information to community planners), but instead relies on the knowledge, experience, and common sense of local planners and responders using data gained from hazards identification and vulnerability analysis.

3. CAMEO Chemicals is an excellent source of chemical, physical, toxicological, thermodynamic, and response information for thousands of chemicals. It provides very specific information about cargos, such as, boiling points, density, or exposure levels.

In Wyandotte County, Kansas, the LEPC ranked facilities based on the ratio between the total amount of the hazardous chemical on site and the quantity of concern (a measure of a substance's acute toxicity). The ranking was thus a measure of the relative health threat a release might pose to the surrounding community.

Facilities that had at least 1,000 times the quantity of concern for a chemical were given first priority in the planning process; a second tier of facilities with a smaller multiple of the quantity of concern were addressed in a second phase of the process.

d) Using the Results of Hazards Analysis

Once the LEPC has finished evaluating the hazard in the community, the hazard analysis information can be used to support other local chemical emergency preparedness and chemical accident prevention efforts.

The realistic release scenarios for the priority hazards in the community, refined from initial to worst-case assumptions, can be communicated to the community to help improve awareness of chemical hazards. The local response plan can then be designed to address specific incidents described in these scenarios.

Remember, certain facilities will be submitting vulnerable zones under the provisions of the Risk Management Program (CAA 112). LEPCs can use that information to validate their work.

Generic standards and criteria for a hazardous materials response annex are listed in Appendices J and K .

These planning guidelines incorporate requirements from two key federal publications. They are considered as primary guides for hazardous materials planning:

- Hazardous Materials Emergency Planning Guide, National Response Team, NRT-1
- Criteria for Review of Hazardous Materials Emergency Plans, National Response Team, NRT-1A

APPENDIX L. Conducting a Transportation Commodity Flow Study

The following eight-step guide on how to conduct a hazardous materials transportation study may prove helpful for LEPCs wanting to conduct such a study for their county or a specific area within the county.

This guide was developed by TRANSCAER, which is an outreach program that was developed to assist communities that do not host a major chemical facility but have major transportation routes within their jurisdictions. TRANSCAER is sponsored by the chemical manufacturing, distribution and transportation industries. This guide can be used for grant funded studies as well as those funded from other sources.

1. Write a statement of purpose.
   The statement of purpose should include the goals of the flow study, what data will be collected, from whom, who will analyze the data, and the methods that will be used to complete the remaining seven steps in the process.

2. Review local maps and analyze transportation patterns.
   Use local road and rail maps, coupled with existing knowledge of the transportation modes used within the area, to determine the routes used to ship hazardous materials through, into, out of, and within the area. Highway, rail, pipeline, and air freight routes, as well as routes to and from facilities should be considered.

3. Identify the hazardous materials moved through or within the community.
   Using information from Tier II reports and chemical users and shippers, identify the type and amount of hazardous materials transported thorough, into, out of or within the community.

4. Conduct highway flow surveys.
   Traffic flow, especially on key routes, should be determined.

5. Review major accident and incident history for the community.
   Review any incident data that is available from local and state police files, state transportation agencies and federal agencies.

6. List vulnerable facilities.
   Identify and rank vulnerable facilities, such as hospitals, schools, and nursing homes to help emergency planners and responders if an incident occurs, especially if evacuation is necessary. The type and level of emergency planning that should be done for each transportation mode should be based on this evaluation.

7. Identify potential accident areas and develop accident scenarios.
   Using the information gained in the previous steps, identify possible accident locations and scenarios.

8. Use the data to assist in emergency planning.
   Beginning with a basic map of the area, develop overlay maps on transparency sheets. A separate sheet should be used for fixed facilities and each transportation mode. Separate colors should be used for each route. The set of maps will give the big picture of how hazardous materials are transported within the community, and should help with emergency planning.

- -

The Transportation Research Board, one of six major divisions of the National Research Council, issued the "Guidebook for Conducting Local Hazardous Materials Commodity Flow Studies," to assist LEPCs in conducting a transportation flow study.

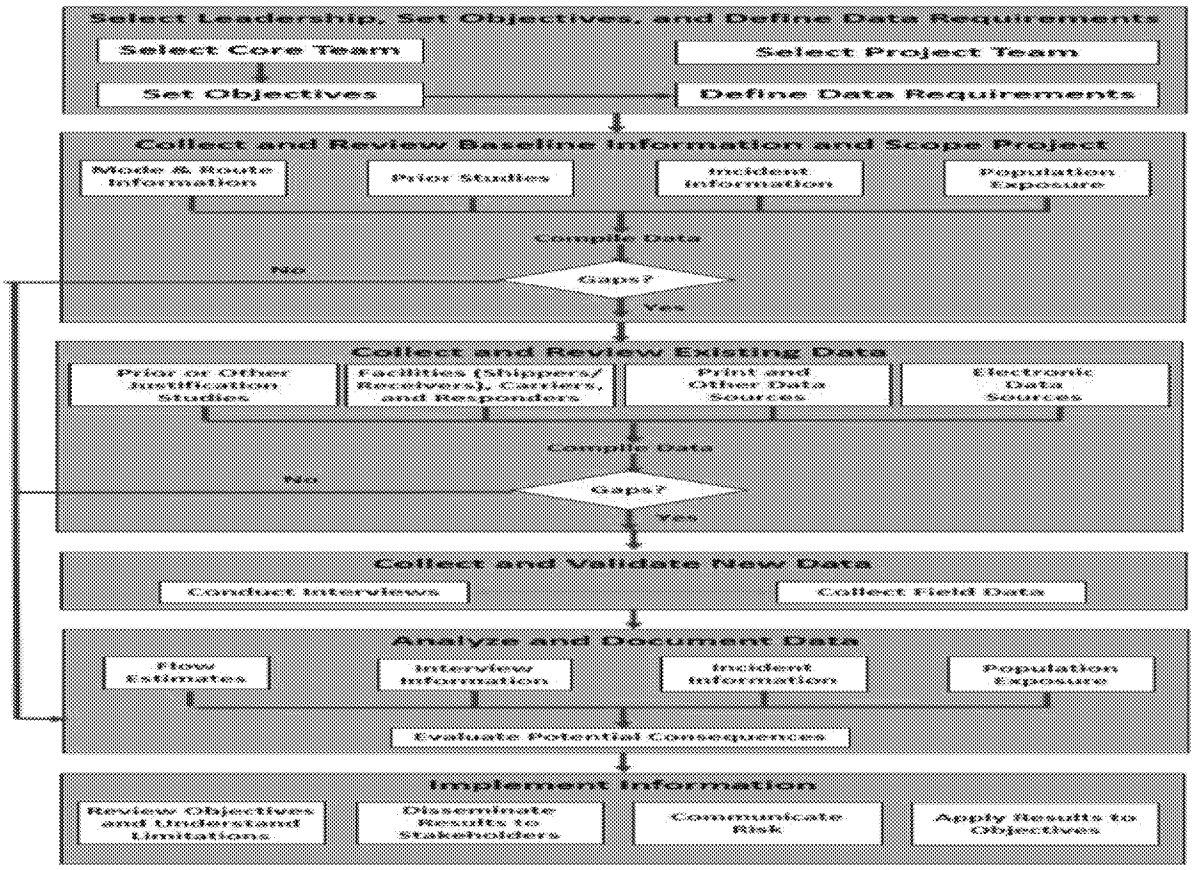
In this report, the authors provide a comprehensive process for conducting a study, which includes the following six major steps. The full report can be obtained at: http://onlinepubs.trb.org/onlinepubs/hmcrp/hmcrp_rpt_003.pdf

The Hazardous Materials Commodity Flow Study (HMCFS) process includes the following six major steps:

1. Select HMCFS leadership, set objectives, and define data requirements—LEPCs and other local entities select the HMCFS leadership. This includes core team members who provide oversight of the project, set project objectives, and implement project results. These objectives include hazmat awareness, scenarios definition, emergency and community planning, identification of equipment needs, resource scheduling, hazmat route designation, and legal takings. LEPC leadership also includes project team members who will coordinate and manage the project. HMCFS data requirements are determined by the project team based on the project's objectives.

2. Collect and review baseline information and scope HMCFS project —The project team collects and reviews readily available local information about hazmat transportation, including previous studies, transport modes and routes, incidents and accidents, and population locations. The project team scopes the HMCFS project by identifying the extent of additional

ED_002941_00002942-00151



information required for the HMCFS and the resources needed to obtain this information.

3. Collect and review existing HMCFS data — The project team collects and reviews existing data. They search prior HMCFS documents; local, state, and federal agency data; electronic databases and reports; trade, environmental, social advocacy, and academic sources; and other print sources of information about hazmat transport. The project team confirms that any new HMCFS data collection is based on gaps in existing data.

4. Collect and validate new HMCFS data — The project team collects and validates new HMCFS data. This step may be conducted concurrently with existing data collection. The team gathers information from key stakeholders and collects field data, as needed. Field data may include vehicle, placard, or shipping manifest surveys along various transportation routes and route segments.

5. Analyze and document HMCFS data — The project team analyzes existing and/or new HMCFS data to estimate hazmat flows. Spatial and/or temporal analysis may be conducted. The most important outcome of this step is an evaluation report that documents the results of the project.

6. Implement HMCFS information — The core team uses the HMCFS project evaluation report to understand the limitations of the results, disseminate and communicate information, apply results toward objectives, and plan for future activities.

==========

Hazardous Materials Commodity Flow Survey
W. F. Spurgeon, United States Department of Energy

The US Department of Energy, Office of Packaging and Transportation, has conducted a number of highway Commodity Flow Surveys along the major shipping corridors it uses for shipment of hazardous (radioactive and chemical) materials, in response to requests from its transportation stakeholders.

The objective of a Commodity Flow Survey is to collect data which can be analyzed to provide clear images, over time, of the types and amounts of hazardous materials shipments moving past a point along a transportation corridor. The information produced by such a survey can be an indispensible tool in helping emergency planners understand and identify the planning, training, and resource requirements needed to effectively respond to a transportation incident involving hazardous materials.

This paper discusses requisites for conducting a useful Commodity Flow Survey and presents lessons learned on how results are developed and how insights on hazardous materials movements are gained through use of a survey.

A key issue in the process is the care that must be exercised in planning and executing the survey, such that high data quality is achieved, with the result that the survey findings are clear and useful to transportation emergency planners.

Among the activities described and discussed are: establishing survey location and objectives cooperatively with local emergency planners; establishing and training an effective survey team; survey data interpretation and analysis; and presentation of results as clear and persuasive images.

In the United States, hazardous (radioactive and chemical) materials are generally distributed by highway or shipped in bulk by rail. Detailed information on rail shipments is maintained by the railways and is available to qualified emergency managers.

This paper focuses on highway transport of hazardous materials and illustrates the processes involved in collecting information beneficial to emergency response planners along the highways.

Hazardous materials are shipped along preferred highways, i.e., highways determined by federal and state transportation officials to present minimum risk. For long haul operations, this generally results in the use of the United States Interstate and Defense Highway System, to the maximum extent practical.

To date, the United States Department of Energy has conducted seven 24-Hour Commodity Flow Surveys along Interstate Highways and surveyed over 55,000 commercial vehicles, of which 2,900 were carrying hazardous material loads totaling over 50 million pounds (22.7 million kilograms).

The Planning Process

Planning for a Commodity Flow Survey (CFS) begins with an expression of interest from state or local emergency planners in having a better understanding of the types and quantities of hazardous materials (Hazmat) moving through a particular locale.

The first planning challenge is to find a time and place suitable for conducting a highway survey, while maximizing the safety of survey personnel and the vehicles being surveyed and minimizing the impact of the survey on the flow of traffic.

For limited access or Interstate highways, selection of a highway rest area or inspection station is the usual result. Accordingly, the cooperation of the authorities (commercial vehicle enforcement) who operate and maintain these facilities is essential, and these parties become key partners in planning and conducting a successful CFS.

The second challenge is planning for and staffing the survey. This includes reaching agreement among all participants on the times and dates of the survey, the roles and responsibilities of the participating organizations, the development of estimated manpower resources including an integrated shift schedule for the participating organizations, and agreement that each person participating in the survey has the training and tools required to safely and successfully conduct the survey.

The first step in the planning process is the development of a survey plan. The plan may be brief but, at a minimum, should contain information relating to:

1. the survey location;
2. dates, times, and duration of the survey;
3. human resources needed to conduct the survey;
4. a description of the place where, within the facilities chosen, survey data can be safely collected and the rules of site safety effectively applied;
5. a description of how data is to be collected for accuracy and efficiency.

Safety and logistical considerations should be thoroughly developed in the planning process to assure that the survey is organized such that it can be executed harmoniously while being able to respond to unforeseen developments during the survey. Needs of the survey personnel should not be overlooked.

Provisions should be made for shelter from inclement weather and sun protection, water and snack foods, and restroom facilities.

For the evening hours of the survey, consideration should be given for survey area lighting, the use of reflective clothing by the survey team, and illuminated highway signage that clearly indicates that all Hazmat vehicles must enter the facilities for the survey.

Training is essential to conduct of the survey. When the survey team has been identified and the roster (shift schedule) developed, a team meeting should be scheduled

ED_002941_00002942-00153

about a week before the survey to instruct the team members on the techniques and rules of the survey.

This training should include: the objectives of the survey; the rules of safety; how to identify motor vehicle and trailer types; how to quickly find key information from the shipping papers (e.g., the UN number, the specific name of the load and its weight or volume, the origin and destination of the shipment); and how to enter data clearly and correctly on the survey forms provided.

Execution of the Survey (Lessons Learned)

The survey should begin on the appointed date only after all logistical details have been resolved and training for the survey has been conducted.

We have enjoyed excellent cooperation from the facility operators in identifying and directing Hazmat traffic to the safe area where the data is being collected. Typically, only about 5% of the commercial vehicles passing through the facilities need be diverted to the survey area.

As a usual practice, surveys are usually begun at 9:00am on a mid-week day and continue for a 24-hour period. The data taking process begins when the first vehicle of the day stops at survey point. The survey team should consist of two or more persons on each side of the highway, depending on the time of day and expected traffic flow.

It is desirable to have additional personnel who can relieve the survey team or provide a second survey team capability during periods of peak traffic activity.

Normally, one team member is responsible for querying the vehicle driver for information and clearly transmitting it to the second team member who records the information on the survey data sheet. For vehicles carrying a single commodity, this transaction usually requires less than half a minute. For mixed loads with multiple commodities, discretion must be exercised by the survey team in recording only significant quantities of materials in order to avoid unnecessary delay of shipments.

An example data sheet from a survey logbook is included as Attachment 1. For this example, there are six data fields to be logged, they are: vehicle sequence; time of data entry; type of commercial vehicle; Hazmat placard number; hazardous material number (UN Number); origin and destination of the shipment; and proper name of the material along with its weight or volume. For mixed load shipments, more than one line on the data sheet may be utilized to record all the significant hazmat data. As data sheets are completed, they are entered into logbooks and, at the conclusion of the survey, the remaining forms are entered the logbooks and a count of all commercial vehicles passing through the facilities (obtained from the station commander) during the 24-hour period is recorded.

The Commodity Flow Survey Report

The purpose of the CFS Report is to document the information collected during the survey and to present conclusions drawn from analysis of the data, supported by a clear presentation of the data as graphical images and summary tables.

At a minimum, the CFS Report should consist of an executive summary, the survey data table, supporting tables and charts, and conclusions and findings.

Parameters Examined in the CFS Survey Report

For the CFS Studies we have prepared, the following parameters have been examined:

A. Data Table

Data from the survey forms is entered into a spreadsheet and displayed in a table.

B. Vehicle Count by Hour of the Day

The first Chart would illustrate the flow of hazardous material traffic as a function of the time of day, and is useful to emergency planners in showing the ebb and flow of traffic during the day.

Additional charts for each direction as a function of time are also useful. Periods of peak activity at that point along the highway can be identified. These periods are an indicator of increased probability of risk as a function of the time of day.

C. Placard ID Count

The second Chart would illustrate the numbers of shipments for each hazard class (or division) identified during the 24-hour period of the survey.

The hazard classification system established by the United States Department of Transportation employs placard identification which can be used by emergency responders to quickly gain an understanding of the types of materials and the threats they present.

This example shows the relative distribution of the threats which can be expected to be encountered along this particular stretch of highway.

D. Commercial Vehicle Types

The third Chart would illustrate a count the types of commercial vehicles most commonly encountered on this particular highway.

Knowledge of equipment types is useful to emergency response teams in securing the necessary training to cope with incidents related to equipment failure (e.g. leaking valves on tankers, pressure relief systems, load securement, etc.) for a particular type of vehicle.

An identification chart for common road trailers is given in the Emergency Response Guidebook1 at page 19. Many other types of custom trailers are used for specific Hazmat

loads. They are identified using expert knowledge or from the identification tag bolted to the trailer frame.

E. Freight Weight by Commercial Vehicle Type

The fourth Chart would illustrate the total weight of cargo by truck type on a particular highway. As can be seen in this example, tanker trucks generally represent the truck types carrying the heaviest loads. Typically, tankers carry full loads of over 50,000 pounds whereas the average van has been found to carry less than 20,000 pounds.

The information in this example shows that about 80% of the freight weight carried on this highway is carried in tank trucks. Incidents resulting from these vehicles could result in major releases of hazardous materials.

F. Top Commodities by Count

The fifth Chart would illustrate the 25 most commonly encountered hazardous materials and the numbers of shipments of each that were counted during the survey.

This information addresses the probabilities of emergency responders encountering an incident involving one of these materials. These are the materials most likely to be involved in an incident on this highway; however, the consequences of the incident are the product of the probability and quantity of material involved. The next chart provides the quantity at this point along the highway.

G. Top Commodities by Weight

The sixth Chart would address the 25 hazardous materials being shipped in the greatest total quantity along the highway during the survey. This chart, when taken with the previous chart which addresses probability, can give emergency planners an improved perspective on risks which could lead to serious consequences. This knowledge may be invaluable in planning for a transportation emergency.

H. Origin and Destination of Commercial Vehicles

The seventh Chart would illustrate the origin and destination of each commercial vehicle. This information can be used to determine the distribution of local, regional, and national traffic. In this example regional traffic dominates.

It may also be useful to summarize this information in pie charts showing local, regional and national contributions to traffic flow. This information is also useful for planning future highway improvements.

I. Emergency Response Guide

The eighth Chart would illustrate how each shipment relates to the Emergency Response Guidebook1 and the appropriate response for an incident related to that particular hazardous material. As an example, for the radioactive shipments shown in this chart, the Response Guide Numbers 162 and 165 are given for Radioactive Materials (Low to Moderate Level Radiation) and Radioactive Materials (Fissile/Low to High Level Radiation), respectively.

The materials were shown of the manifest as LSA II and Nuclear Fuel Rods, respectively. This information may be useful in identifying gaps that may exist in response training and for prioritizing emergency response training needs.

Conclusion

This paper provides useful planning information that can be developed from the data taken during a Commodity Flow Survey. It may answer some questions for local emergency planners on what, how much, and at when certain hazardous materials are moving along a highway.

Charts are provided to answer some of these questions. However, the heart of the survey is the entirety of the data contained on the spreadsheet and displayed as the data table. The information in the data table can be manipulated in many ways to examine particular questions that arise from the survey. For example, in one survey it was found that petroleum products constituted more than half of the hazardous materials being shipped.

This was addressed by preparing separate charts for petroleum products and for other hazardous materials. For another survey involving intersecting highways, surveys were conducted concurrently on both highways.

Analysis of that data provided insight on the traffic flow interaction between the two highways, i.e. percent of hazardous material traffic exiting to the other highway versus percent of traffic remaining on the highway.

Although the survey data is quantitative, all conclusions drawn are qualitative. This is due to the limitation of survey duration. A 24-hour survey provides only a picture in time of one particular day. Other follow-up surveys could provide a clearer understanding of how distribution patterns for each hazardous material may change seasonally, e.g. greater volume of home heating oil in the winter.

Nevertheless, it is believed that the information provided by the survey remains an invaluable emergency planning tool.

APPENDIX M. Holding an Effective LEPC Meeting

Regular Meetings

Meetings are not usually very high on anyone's like-to-list. Unfortunately, they seem to be an ever increasing part of our lives. This Section of the LEPC Handbook will offer some suggestions on how to conduct more productive meetings. The LEPC has many tasks it must perform, the members are volunteers, their time is valuable and to be successful the LEPC must operate in a businesslike manner. In order to keep members motivated, regular scheduling of meetings is essential.

Regular meetings offer members the opportunity to continue plan review and revision. Regular meetings also offer the LEPC to broaden its role in the community to meet the capabilities and the commitment of its members, as well address local issues and work toward progress on key concerns. The frequency of LEPC meetings is not mandated. Circumstances change frequently, along with key phone numbers and contacts. Regular meetings also offer the opportunity for the LEPC participants to become familiar with each other and their roles in the community.

Some LEPC's have their meetings on the same day each month so schedules can be planned in advance. Some have their meetings during the lunch hour and the involved agencies and industry take turns providing lunch during the meeting. LEPC meetings are normally open to the State's Open Meetings Act. They should follow an organized format such as Robert's Rules or some other guidelines to assist in meeting the rules. A well thought out agenda is an important tool for conducting effective meetings.

The agenda should identify specific issues to be discussed at the meeting. If time constraints are a factor, each agenda item may be assigned a time limit.

Each committee member should be sent a copy of the agenda one to two weeks before the meeting. With this you can also send any pertinent information to allow the participants to prepare for the meeting.

Public Meetings

Public meetings offer a clear and immediate benefit; however, public meetings should be used sparingly. LEPCs should hold public meetings to present or review emergency plans. A large public meeting could be useful after an accident when many people have questions.

If a current emergency plan has become controversial, a meeting could offer the community a chance at wider participation in revising it. Again, the LEPC Chairs should determine how requirements under State Meeting rules apply to LEPC meetings. Posting of meeting dates, times and locations, public comments, and recording of meeting minutes may all be subject to State Rules.

LEPC's are encouraged to seek topics, speakers, invitations from facilities and response organizations and other opportunities to expand knowledge from a wide variety of sources. Each meeting should have a record keeper that will produce minutes, and a record of all actions.

A copy of these minutes should be provided to all the members of the LEPC, and the State Office of Emergency Management. Although LEPC's should attempt to have regularly scheduled meetings, it may be beneficial to move meetings to different locations within the county. This will allow participants that may not be able to attend at one place and time the opportunity to attend at another.

How to PITCH a Better Meeting

PITCH is the acronym for this process for conducting better meetings:

- Plan
- Inform
- Target
- Contain
- Hasten

PLAN the meeting being clear about:

- The purpose of the meeting
- Agenda items.
- The desired outcome.
- What arrangements need to be made.
- How long the meeting will last.

INFORM meeting participants of:

- The purpose of the meeting
- Agenda items.
- The desired outcome.
- Date, time and location
- Any previous assignments.

TARGET productive discussion by:

- Stating and clarifying the purpose of the meeting
- Getting agreement on desired outcomes.
- Allowing for modification of the agenda (including adding deleting items, changing the order, or adjusting the time allocated).

CONTAIN discussion to the agreed upon agenda by:

- Having someone in charge and someone to act as recorder.
- Adhering to the agenda unless the group explicitly agrees to alter it.
- Confronting behavior that diverts group from attaining its outcomes.
- Encouraging each LEPC member attending to participate fully.
- Getting agreement on action steps, responsibilities and target dates.

HASTEN the completion of agreed-upon desired outcomes by:

- Summarize the meeting.
- Recording the decisions that were made.
- Recording the names of persons responsible for implementing action steps and the target dates.
- Agreeing on a date for the next meeting.
- Evaluating every meeting and agreeing on ways to improve.
- Editing and distributing minutes.
- Putting unfinished business on the agenda for the next meeting.
- Following up and encouraging task completion.
- Monitoring and evaluating the results achieved by the group.

Role of the Chairman or Meeting Facilitator

- Summarize the last meeting.
- Appoint a recorder.
- Remind members of any commitments or agreements they make for this meeting.
- Review and clarify the agenda if necessary.
- Prioritize tasks if the agenda hasn't already done so.
- Establish specific outcomes desired for this meeting.
- Establish time frames for each task.
- Keep the meeting moving.

Keeping a Meeting Going

The chairman or meeting leader should:

- Keep the members on task.
- Check for agreement or disagreement
- Track progress on the agenda.
- Provide feedback to group-summarize, paraphrase, restate frequently.
- Protect against domination by a few individuals.
- Call on silent members to participate.
- Protect individuals from personal attack.
- Suggest alternatives or options.
- Bring conflicts to the surface.
- Call for breaks.

The Roll of the Recorder

The recorder is not the LEPC secretary. In fact, the secretary cannot perform both the duties of the secretary and recorder at the same time. The recorder keeps track of what is actually occurring during any given project or discussion period of the meeting.

This information is recorded on flip charts and posted on the walls so the members can keep track of where they are and what still needs to be done.

Preparation:

- Ensure a supply of flip charts, markers and tape.
- Use two flip chart easels so you can move from a completed page to a fresh one without interruption.
- Tear off small pieces of masking tape and attach them to the edge of the flip chart easel before the meeting to speed the posting of completed flip chart pages.

Execution:

- Tell the members you will record the substance of member contributions as you hear them and you expect them to review what you've recorded for accuracy.
- Ask for a volunteer to help you post completed pages.
- Record the speaker's words, not your own.
- Do not record names.
- Write legibly but quickly so as not to dampen the group's energy. Don't print unless you print faster than you write.
- If ideas come too fast, ask for help.
- You may express ideas the same as any other member, but remain unobtrusive as the recorder.
- Use different colored markers, numbers, stars, etc. to organize data and for different headings, emphasis, etc.
- Use only commonly understood abbreviations.
- When you summarize a long idea in key phrases, ask the speaker if you have accurately recorded the idea.

Completion:

- Number each page to help keep completed sheets in order.
- At the end of the meeting, compile and label the completed flip chart pages, and make sure they are safely stored and made available for the next meeting, if the project carries over into the next meeting.
- Make sure the members agree on what will be done with the record once the project is complete. You may want to save it or you may want to discard it or make some other use of it.

The following guidelines for conducting a meeting are presented for your review and consideration:

Before the Meeting

- Have a specific purpose/objective for each meeting
- Identify topics and material to be covered.
- Invite key people, guest speakers / presenters
- Establish an appropriate time frame, and neutral place for meeting.
- Prepare an Agenda
- Notify members hip of meeting times and distribute the agenda (early)
- Make logistical arrangements–space, seating, audio/video, etc.
- Define scope, goals, and objectives of LEPC

At the Beginning of the Meeting

- Start on time
- Clarify the purpose/objective of the meeting
- Introduce guests or new personnel
- Clarify ground rules, i.e. one topic/speakers at a time, etc.
- Establish time objective
- Appoint a recorder

During the Meeting

- Make an opening statement, review the minutes of the last meeting
- Focus on one agenda item at a time, keep the meeting on track
- Prioritize tasks if the agenda has not already done so
- Collect and clarify relevant information
- Maintain control over time and discussions
- Record ideas and action items
- Summarize information discussed
- Reach agreement on specified decisions and actions
- Keep the meeting moving – do not get distracted or digress off topics

At the End of the Meeting

- Review action items and responsibilities (who will do what, when)
- Summarize and set follow-up date(s)
- After the Meeting
- Prepare minutes and/or follow-up correspondence if necessary
- Follow-up on action items
- Ask yourself, "What went well?" "What could be improved?"

Guidelines for Individual LEPC Member in Becoming a Better Participant at Meetings

In accordance with Section 301 of EPCRA, the LEPC is composed of individuals that represent various types of agencies, departments, organizations, groups or occupations within the planning district, whether the district is a County, a zonal district, a zone within a County, or a Tribal region (i.e., Law Enforcement, Fire, EMS, Health, ARC, Elected Officials, Emergency Management, Media, local environmental, hospital, transportation personnel, and community groups).

These members must represent their constituents in ALL LEPC activities and must provide a channel of information and coordination.

Persons selected as LEPC members must realize their responsibilities and to be successful must actively represent their constituents in all LEPC activities and provide them timely information about the LEPC and in turn share their concerns, needs, etc., with the LEPC.

The following guidelines outline action each individual member should consider in order to become a better informed and more productive participant in the activities of the committee.

Before the Meeting

- Review the agenda items, clarify the purpose of the meeting
- Consider your input in regards to agenda items
- Gather/prepare any materials/information you may need
- Talk to people you represent about agenda items, get their comments.
- Arrange material to present in a clear and concise manner
- Take writing materials with you to the meeting

During the Meeting

- Arrive on time, be seated and ready to go at the announced start time.
- Participate in discussions and activities.
- Listen to what is being said and consider your comments if needed.
- Stay on the subject being presented.
- Be prepared to present your information and ideas clearly/concisely.
- Avoid side conversations, pay attention and be polite.
- Take your own notes, don't rely strictly on the minutes.

At the End of the Meeting

- Get the date of the next meeting.
- Clarify and items you need to follow-up on before the next meeting.
- Ask yourself, "How did I represent my constituents?."
- Remember all LEPC members are equal and have a responsibility to represent their peers.

APPENDIX N. "Report Card" for Your Local Emergency Planning Committee

Compiled by Paul Orum, Working Group on Community Right-to-Know and Stuart Greenberg, Environmental Health Watch

In 1986, Congress passed EPCRA, which established several thousand LEPCS across the United States.

These LEPCs were intended to identify chemical hazards, plan for emergencies, convey public information, and include all citizens.

But are the LEPCs working?

Many community activists believe the volunteer LEPCs are not able to fulfill the vision of EPCRA.

Below are some criteria for evaluating your LEPC.

Check each item completed by your LEPC. Items completed:

51 to 60 - Outstanding
31 to 40 - Progressing
11 to 20 - Inadequate
41 to 50 - Good
21 to 30 - Mediocre
0 to 10 - Non-functional

Has your LEPC...	
1. Goals	
Established measurable outcome goals for --	
a. reducing accidents?	
b. reducing vulnerability zones and accident potentials?	
c. improving emergency response and mitigation?	
d. established goals for public access to chemical hazards information?	
e. set process objectives (for funding, participation, communication, etc.) and annually evaluated progress toward achieving goals?	
2. Structure and Process	
a. achieved genuinely broad-based and balanced membership?	
b. secured adequate funding sources and professional staffing (through legislation, budgets, donations, etc.)?	
c. adopted a mission statement and by-laws?	
d. held regular, well-attended meetings (at least quarterly)?	
e. held formal meetings (advance agenda, written minutes)?	
f. organized active subcommittees and established clear member roles?	
g. maintained policy independence from the host agency?	
h. produced an annual report (covering trends in accidents, drills, site-specific risk reduction, etc.)?	
i. utilized external resources such as other LEPCs and government agencies (e.g., to obtain training materials)?	
3. Community Hazards Analysis (for facilities with extremely hazardous substances, EHS)	
a. developed easily understood maps showing EHS facilities, vulnerability zones, and transportation routes?	
b. obtained needed EHS facility data through questionnaires, site visits, and document requests (using EPCRA 303(d)(3) authority)?	
c. obtained EHS facility process hazard analyses (prepared under OSHA's Process Safety Management)?	
d. asked transportation carriers to identify chemicals and volumes moving through the community?	
e. prepared or obtained "worst-case" and lesser release scenarios at each EHS facility and for transportation?	
f. identified critical facilities, vulnerable environments, and potentially exposed populations (e.g., schools, nursing homes, residential areas, workers on-site)?	
g. reviewed hazard analyses with EHS facility managers and worker representatives (including shelter-in-place and evacuation needs)?	
h. established computerized hazards analysis capabilities?	
i. prioritized hazards (e.g., by vulnerability zone)?	
4. Emergency Response Planning	
a. submitted a site-specific emergency plan to the SERC?	
b. exercised the emergency plan and corrected identified weaknesses?	
c. ensured coordination between EHS facilities and fire departments, as well as other emergency response organizations (police, hospitals, etc.)?	
d. sponsored training for fire, medical, police, hazmat teams, and other response personnel?	
e. ensured hazard analyses are incorporated into fire department pre-plans?	

ED_002941_00002942-00159

	f. established alert and warning systems (and coordinated systems among facilities)?	
	g. established means to determine the severity of a release, and the area and population likely to be affected?	
	h. planned shelters and evacuation routes?	
	i. designated community and facility emergency response coordinators?	
	j. maintained an inventory of emergency response resources (equipment, facilities, and expertise)?	
	k. provided public education on protective actions (evacuation and shelter-in-place)?	
	l. evaluated the protective capacity of shelter-in-place structures?	
	m. acknowledged the limits of response capabilities for protecting people, property, and the environment?	
5.	Accident Prevention	
	a. promoted exploration of inherently safer technologies (involving safer chemicals, lower pressures or temperatures, less storage, fewer shipments, etc.)?	
	b. promoted other facility safety improvements (e.g., secondary containment, shutoffs, alarms, etc.)?	
	c. provided the community hazard analysis to planning commissions, zoning boards, public works departments, citizen advisory councils, and other local entities?	
	d. acquainted facilities with hazard reduction resources (e.g., financing, expertise)?	
	e. held seminars for facility personnel, union health and safety committees, etc.?	
	f. analyzed spill reports for response and prevention lessons?	
	g. publicized lessons learned and best practices?	
	h. given public recognition for major hazard reduction efforts (e.g., annual awards)?	
6.	Community Right-to-Know	
	a. publicized availability of right-to-know information?	
	b. computerized data for ease of access and analysis?	
	c. established a convenient information request process?	
	d. provided Tier II chemical storage information as required?	
	e. publicized community hazard maps with vulnerability zones through libraries and news media?	
	f. publicized options for reducing vulnerability zones (e.g., through safer technologies)?	
	g. ensured that meetings are accessible and well-publicized (time, place, publicity)?	
	h. worked with communities concerned about specific sites (e.g., through good neighbor agreements)?	
7.	Enforcement	
	a. publicized reporting requirements to covered facilities and transportation carriers?	
	b. provided compliance assistance to facilities and carriers?	
	c. uncovered and prosecuted non-reporting firms?	
	d. pursued beneficial expenditures in settling citizen suits against non-reporting firms?	
8.	Risk Management Planning	
	a. evaluated its own capacity to review hazards and communicate RMP information to the public?	
	b. offered compliance assistance to covered facilities?	
	c. supported an effective on-line Federal database of complete risk management plans?	
	d. prepared to incorporate options for reducing vulnerability zones into public communications?	

APPENDIX O. LEPC Self-Evaluation Check

The following checklist has been developed for the sole purpose of conducting a self-assessment of your LEPC. Below are criteria used for evaluating a LEPC. Place a check mark next to each item completed by the LEPC. Total the number of check marks in the "YES" column to evaluate your LEPC. These tools are for internal LEPC use only.

SCORING: TOTAL NUMBER IN "YES" COLUMN

72-63	Outstanding	62-53	Good
52-42	Progressing	41-31	Mediocre
21-11	Inadequate	10-0	Non-Functioning

LEPC STRUCTURE AND ORGANIZATION		Y/N
1)	Achieved genuinely broad-based and balanced membership	
2)	Adopted by-laws	
3)	Hold regular, well-attended, announced meetings (at least quarterly)	
4)	Ensured LEPC meetings are accessible and well-publicized (time, place, publicity)	
5)	Provide LEPC members advance agendas and written minutes	
6)	Submits annual membership list to the SERC	
7)	Organized active subcommittees and established clear membership roles	
8)	Produced annual report (covering trends in accidents, hazards, enforcement, drills, site-specific risk reduction, etc.)	
9)	Focused on all-hazards	
10)	Worked toward reducing vulnerability zones and accident potentials	
11)	Maintained own identity independent from the host agency	
12)	Improved emergency response and mitigation	
13)	Set progress objectives (funding, participation, communication, etc.) and annually evaluate progress toward achieving those goals	
14)	Secured adequate funding sources (through agency budgets, grants, donations, etc.)	
IDENTIFICATION OF HAZARDS		
15)	Identified facilities with EHSs.	
16)	Identified facilities with hazardous chemicals	
17)	Identified major transportation routes for EHSS and hazardous chemicals.	
18)	Identified facilities contributing to or subject to risk in close proximity to facilities with EHSs or hazardous chemicals	
LEPC EMERGENCY RESPONSE PLANNING		
19)	Submitted a Local EOP to the SERC or State Office of Emergency Management	
20)	Annually review and update as necessary the local EOP	
21)	Coordination exists between EHS facilities and fire departments, and other organizations (police, hospitals, etc.)	
22)	Included emergency response methods and procedures of first responders into our local EOP	
23)	Established a means to determine the severity of a chemical release	
24)	Identified potential shelters and evacuation routes	
25)	Included Emergency Response information on those facilities identified in our Local Emergency Plan	
26)	Identified the facility emergency response coordinators for regulated facilities within jurisdiction	
27)	Maintain an inventory of emergency response resources (equipment, facilities, and expertise)	
28)	Established plans for shelter-in-place or evacuation	
29)	Established early warning systems and has identified emergency shelters	
30)	Provided education on protective actions (evacuation/shelter-in-place) to the public and first responders	
31)	Evaluated the protective capacity of shelter-in-place structures	
32)	Acknowledged the limits of emergency response capabilities for protecting people, property, and the environment	
33)	Conducted a hazard analysis	
34)	Ensured hazard analyses are incorporated into plans	
35)	Ensured procedures are in place by which facility emergency response coordinators will notify first responders in the event of a hazardous chemical emergency.	
36)	Included emergency response measures used by medical personnel in our Local EOP	
IMPLEMENTING THE LEPC EMERGENCY RESPONSE PLAN		
37)	Established notification procedures by which facility coordinators, identified in 27, will notify first responders in the event of an EHS or hazardous chemical emergency	
38)	Describes the incident command system to be used in responding to hazardous chemical emergencies	

39)	Established alert and warning systems to notify the public	
COMMUNITY HAZARD ANALYSIS		
40)	Developed easily understood community maps showing EHS facilities, vulnerability zones, transportation, etc.	
41)	Conducted commodity flow study to identify chemicals and volumes moving through community	
42)	Identified potential hazards from natural events such as flood, tornado, earthquake, drought, winter storm, etc.	
43)	Identified critical facilities, vulnerable environments, and potentially exposed populations (e.g. schools, nursing homes, residential areas, workers on site)	
44)	Prepared or obtained worst-case and lesser release scenarios at each EHS facility and those in transportation	
45)	Assessed potential risks and developed a prioritized list	
46)	Established process to determine whether EHSs or hazardous chemicals have been involved in past accidents	
47)	Established a process to determine the level of risk if EHSs or hazardous chemicals are involved in an accident	
48)	Established a process to determine the areas and populations that will be affected in the event EHSs or hazardous chemicals are released	
LEPC TRAINING AND EXERCISES		
49)	Developed emergency response drills and exercises to evaluate the effectiveness of the local EOP	
50)	Established a schedule to regularly conduct drills and emergency response exercises	
51)	Sponsored training for fire, medical, police, hazmat teams, hospitals, and other response personnel	
52)	Held seminars for the public on the hazards within their community and how they can protect life and property	
53)	Participated in drills and exercises with regulated facilities within the jurisdiction	
COMMUNITY RIGHT-TO-KNOW		
54)	Publicized availability of right-to-know information	
55)	Computerized data for ease of access and analysis	
56)	Established a convenient information request process	
57)	Provided Tier II chemical storage information as required	
58)	Publicized community hazard maps with vulnerability zones through printed or electronic media	
59)	Discussed or publicized options for reducing vulnerable zones (e.g. safer technologies)	
60)	Regularly contacted each reporting facility to promote better understanding of EPCRA requirements by the facility owner or operator	
61)	Provided information on EPCRA to new businesses	
62)	Ensured all required facilities are annually submitting their Tier II forms	
63)	Actively sought to increase number of facilities community annually reporting EHSs or hazardous chemicals	
ACCIDENT PREVENTION		
64)	Promoted exploration of inherently safer technologies (safer chemicals, lower pressure or temperatures, less storage, fewer shipments)?	
65)	Promoted other facility safety improvements (e.g. secondary containment, automatic shutoffs, alarms, etc.)?	
66)	Provided the hazard analysis to planning commissions, zoning boards, public works, citizen advisory councils, and other local entities?	
67)	Analyzed spill reports for response and prevention lessons?	
68)	Given recognition for hazard reduction efforts (e.g. annual awards)?	
69)	PUBLIC AWARENESS	
70)	Maintains a LEPC website for the public to access?	
71)	Prints an annual EPCRA notice for local news releases or displays the EPCRA public notice on our website?	
72)	Provides public service announcements concerning all-hazard preparedness to local radio and television stations?	
73)	Conducts activities in the community to heighten the public's awareness of hazards in the community?	
	TOTALS	

APPENDIX P. LEPC MEMBERSHIP UPDATE FORM

Local Emergency Planning Committee (LEPC) Membership Update Form

INSTRUCTIONS: When submitting this form to the SERC always completes BOX A. Complete BOX 1 if you are submitting a change for the LEPC Chairperson or BOX 2 if you are submitting a change for the Vice Chairperson, if you have one. Complete BOX A & the next page(s) to add a new member or members or to update information for an existing member or members of your LEPC. Completed forms should be returned to the SERC.

UPDATE FORM			
County:		Date:	
Area (if applicable):		Is this your entire LEPC membership listing? YES / NO	
Presiding Officer (County Judge/Parish President) (print name):			
Presiding Officer Approval(County Judge/Parish President) (signature):			
LEPC Membership Categories Note: A single person may represent more than one category and more than one member may represent a category			
State/Local Official Law Enforcement Fire-fighting	Emergency Medical Services Health / Hospital Broadcast media / Print media	Transportation Personnel Local Environmental Group Community Group	Facility Owner / Operator Other Emergency Management
** ADVISORY TO ALL LEPC MEMBERS ** This information may be made available to the public under the State Open Records Act. DO NOT include home address, home telephone, or personal cell phone information.			
CHAIRPERSON UPDATE			
Name: Employer: Title: Address: City, ST, Zip:		Membership Category: Phone: Cell Phone: Email address:	
VICE CHAIRPERSON UPDATE (if appropriate)			
Name: Employer: Title: Address: City, ST, Zip:		Membership Category: Phone: Cell Phone: Email address:	
Is this person a NEW MEMBER of your LEPC? YES / NO		Did this person replace a previous member? If so, who?	
GENERAL MEMBERSHOP UPDATES			
Name: Employer: Title: Address: City, ST, Zip:		Membership Category: Phone: Cell Phone: Email address:	
Is this person a NEW MEMBER of your LEPC? YES / NO		Did this person replace a previous member? If so, who?	
Name: Employer: Title: Address: City, ST, Zip:		Membership Category: Phone: Cell Phone: Email address:	
Is this person a NEW MEMBER of your LEPC? YES / NO		Did this person replace a previous member? If so, who?	
Name: Employer: Title: Address: City, ST, Zip:		Membership Category: Phone: Cell Phone: Email address:	
Is this person a NEW MEMBER of your LEPC? YES / NO		Did this person replace a previous member? If so, who?	

ED_002941_00002942-00163

APPENDIX Q. Sample Public Notice or News Release

FOR IMMEDIATE NEWS RELEASE

Public Law 99-499 Title III, of the Emergency Planning and Community Right-to Know Act of 1986 (EPCRA), Section 324, requires public notice at least once annually informing the public of the means to access information about chemicals stored, manufactured, and used within the community.

Under Sections 303, 311, 312 and 324 of EPCRA, the following documents are on file and available for public viewing:

- The local community emergency operations plan
- Chemical inventory forms, filed by covered facilities within the community
- Material Safety Data Sheets, filed by covered facilities within the community
- Follow-up emergency release notification reports, filed by covered facilities within the community
- Information concerning LEPC meetings, including notices, agendas, and minutes

The location for viewing of these documents is the _____ (agency or organization) office at _____ (street/city) between the normal working hours of _____ (i.e., 8:00 AM to 4:30 PM Monday through Friday).

The Contact for the _____ County/Parish LEPC is _____ and may be reached at _____ (phone) or _____ (email address) for further information pertaining to the request for viewing these documents.

(This format may also be used as a PUBLIC NOTICE)

APPENDIX R. Examples of LEPC Membership

State/Local Official	Commissioner, Sheriff, County Clerk, Attorney, Mayor, State Representative, State Emergency Management or Environmental Agency official
Law Enforcement	Police Officers, Police Chief, Sheriff, Deputies
Firefighting	Fire Chief, Firefighters
Emergency Management	Emergency Preparedness Coordinator, Emergency Coordinators for Businesses
Health	County Health Dept, Doctors, Mental Health Hospital, Hospital Administrator/Director, Poison Control Center
Broadcast / Communications Media	Newspaper, Website Developer, Public Information, RACES, Ham Radio Club, local weather reporters
Print Media	Daily or Weekly Newspaper Editor, Reporter, Trade Journal Editor/Reporter
Emergency Medical Services	Director of County Ambulance, EMS Technicians
Transportation	Highway Dept, School Bus Director, Airport Authority, trucking company, transit
Local Environmental Group	County Extension Office, Sierra Club, Conservation Groups, Audubon Society, School Environmental program Director
Community Group	Red Cross, Salvation Army, Special Needs groups, Humane Society, Ministerial Alliance, Chamber of Commerce, Garden Club, Rotary Club, Kiwanis, Lion's Club
Facility Owners/Operators	Any representative from a facility using/storing hazardous materials within your county
Other	Residents, Homeowners Association, Ministers, School Administrator, Science Teachers

ED_002941_00002942-00165

APPENDIX S. Sample Invitation Letter to Request Participation on LEPC

[County Letterhead] or LEPC Logo

[Date]

[Name]

[Address]

Re: Local Emergency Planning Committee

Dear [Enter Name]:

As you may be aware, _____County / Parish is required under the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to have an active and functioning Local Emergency Planning Committee (LEPC).

The activities of this committee include maintenance of an Emergency Operations Plan for natural disasters and chemical accidents, receiving chemical reports from subject facilities, and making that information available to the public.

Representation on the LEPC from the following groups are required by statute: State/Local Officials, Law Enforcement, Firefighting, Emergency Management, Health, Broadcast/Communications Media, Print Media, Emergency Medical Services, Transportation, Local Environmental Group, Community Group, and Facility Owners/Operators subject to the provisions of EPCRA.

For us to have a successful LEPC, which is vital in protecting the citizens in our community from a potential chemical accident, our LEPC is soliciting individuals for participation.

Since your facility is subject to the reporting provisions of EPCRA and plays a vital role in the emergency planning process, it would be valuable to have an individual from your facility become an active member on the LEPC.

I would like to extend an invitation for your facility to participate.

Please notify me as soon as possible with your response, as such expertise and knowledge would be of great value to the LEPC.

The LEPC meets [Number] times per [Month, Quarter, Year] at [Time] on the [Number] day of the month.

The meetings begin promptly and last no more than [Number] hours unless there is a special presentation or a special situation that needs to be addressed.

My mailing address is [Address] or you can contact me by email at [Email Address] or reach me by phone at [Phone Number].

Sincerely,

LEPC Chairperson

ED_002941_00002942-00166

APPENDIX T. Planning Standards Checklist for EPCRA Compliance

Section 303(a) of EPCRA requires each LEPC to prepare response plans. The LEPC is required to review the plan at least once a year.

LEPCs must evaluate the need for resources necessary to develop, implement, and exercise the plan, and to make recommendations with respect to additional resources that may be required and the means for providing these additional resources.

The plan shall include (but is not limited to) each of the following items below.

These requirements are incorporated into the State templates for the local all-hazard emergency operations plan.

- In Arkansas, Annex ESF-10 or Annex L of the local EOP addresses EPCRA planning requirements
- In Louisiana, Annex ESF-10 of the local EOP addresses EPCRA planning requirements.
- In New Mexico, Annex ESF-10 or Annex D of the local EOP addresses EPCRA planning requirements
- In Oklahoma, Annex Q of the local EOP addresses EPCRA planning requirements.
- In Texas, Annex Q of the local EOP addresses EPCRA planning requirements.

1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of EHSs referred to in Section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subtitle, such as hospitals or natural gas facilities.
2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.
3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.
4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of Section 304).
5) Methods for determining the occurrence of a release, and the area or population likely to be affected.
6) A description of emergency equipment and facilities in the community and at each facility, and an identification of the persons responsible for such equipment and facilities.
7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.
8) Training programs, including schedules for training of local emergency response and medical personnel.
9) Methods and schedules for exercising the emergency plan.

GUIDELINES FOR SARA TITLE III PLANNING

Below is a set of guidelines for each SARA Item. Each set of guidelines provides:

- The EPCRA planning Item stated in full.
- The intent of the Item.
- Specification of information required.
- Recommendations are sometimes provided.

(1a) Identification of facilities subject to the requirements of SARA Title III, Section 302 within the LEPC.

Intent

The intent of this item is to identify for public safety information and planning purposes any high risk facilities within the jurisdiction that use or store on site large amounts of especially hazardous substances.

Required

Include a current list of covered EPCRA facilities within the jurisdiction, providing current name of each facility, street address of the facility and an emergency contact telephone number for the facility.

(1b) Identification of routes likely to be used for the transportation of substances on the list of EHSs referred to in Section 302 (a).

Intent

The intent of this item is to identify the location of the covered facilities that may be transporting EHSs and to identify the primary and secondary routes used within the jurisdiction for such transportation.

Required

1. Identify the location of covered 302 facilities within the jurisdiction.
2. Identify the primary and secondary routes used for transportation of EHSs to and from the covered facilities.

Recommended

Maps are the preferred method of doing this item and are recommended; however, maps are not required and the information can be provided in writing.

(1c) Identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of SARA Title III, Section 302, such as hospitals or natural gas facilities.

Intent

The intent of this item is to identify non-302 facilities with hazardous materials that add risk due to their proximity to Section 302 facilities if a release occurs at either facility within the jurisdiction, such as hospitals, daycare centers, schools, fire stations, local government offices, etc.

Required

1. Name and address of 302 facility.
2. Name and address of nearby non-302 facilities contributing additional risk.
3. Name and address of nearby facilities at additional risk because of nearness to 302 facility.
4. Primary/Secondary Contact names at those nearby at risk facilities, including title and 24 hour telephone

Recommended

1. A list of relevant hazardous materials at nearby non-302 facilities is desirable but not required.
2. Maps are the preferred method and are recommended; however, maps are not required and the information can be provided in writing.
3. A description of occupancy is desirable but not required.

Guidance for Planning Element (1)

It will be necessary to identify by name and location each EHS facility and to specifically identify transportation routes within the district and local routes between the facilities and the transportation routes over which EHSs are likely to pass. You do not have to identify every road which these substances might travel.

A map identifying facilities and transportation routes is recommended but does not have to be included in the plan.

To identify facilities with EHSs in your community the following suggestions are made:

i. legal ads in local newspapers
ii. other media releases
iii. certified letters• to local businesses and industries reminding them of the requirements of EPCRA
iv. research data bases maintained by the State or EPA on various permitted facilities (RCRA, Air, Water, etc.)
v. inquiries to the local Chamber of Commerce
vi. check the Manufacturing Directory from the State DoL or State DoCommerce, for industries listed in the NAICS as manufacturers
vii. locate water and sewage treatment plants using chlorine
viii. locate large refrigeration systems using ammonia

EHS facilities should be asked to provide the LEPC with a vulnerability analyses. The vulnerability analysis identifies the part of the community which could be affected were an accident to occur at the facility.

The vulnerability analysis should be based upon the "worst case" accident scenario for each EHS. Many facilities will be capable of providing you with an accurate, worst case vulnerability analysis, utilizing plume dispersion models.

Pre-modeling is the best way to determine the necessary size of your planning zone for a given facility. In the event a facility is unable to provide a vulnerability analysis, the LEPC may be able to conduct their own modeling using free software available (i.e., ALOHA, RMP*Comp).

LEPCs may also use the Table of Isolation/Evacuation Distances within the 2012 DOT ERG. Many of these facilities may also be covered by the RMP regulations, and already have developed worst and reasonable-case releases for those substances (many of which are also EHSs).

Planning Element number one (1) also requires local plans to identify additional facilities contributing or subjected to additional risk due to their proximity to facilities (handling EHSs) such as hospitals or natural gas facilities.

Unless a vulnerability analysis is done for each facility, it will be difficult to determine which of these other kinds of facilities should be considered in "proximity" to facilities handling EHSs. Identification of these other facilities is a very important element of a good emergency plan.

It should be noted EPCRA does not require a scientifically based vulnerability analysis for facilities handling extremely hazardous substances.

In other words, it is permissible to identify the vulnerable zone, and facilities such as hospitals located inside that zone, using judgment alone instead of computer models or other technical aids, such as the EPA guidance document.

In fact the NRT-1, the orange covered planning guide, acknowledges that this approach may have to be used in some instances. However, local planners are urged to develop their emergency plans based upon pre-modeling of vulnerable zones to the greatest extent possible.

(2a) Methods and procedures to be followed by facilities to respond to any release of such substance.

Intent

The intent of this item is to set forth minimal emergency response actions to be followed by covered facilities and to assure immediate notification of designated public safety authorities to facilitate a timely and appropriate governmental response, if necessary.

Required

1. Covered facilities in the jurisdiction must maintain current plans describing methods and procedures to be followed by facility personnel if there is an accidental release of a hazardous substance (such plans may incorporate requirements of various federal or state agencies and counties or municipalities).
2. At a minimum, facility plans must meet the emergency notification requirements of EPCRA,

Section 304. Accordingly, covered facilities must immediately notify:

- Local authorities by dialing 9-1-1, or other number established by the LEPC
- State authorities by calling the State accidental release hotline:
  - ADEM 800-322-4012
  - LSP 877-925-6595
  - NMSP 505-827-9126
  - OEM 800-522-0206
  - TX Hotline 800-832-8224
- The NRC at 1-800-424-8802

(2b) Methods and procedures to be followed by local emergency and medical personnel to respond to a release.

Intent

The intent of this item is to provide a safe, organized response to hazardous materials incidents at designated EPCRA 302 facilities and elsewhere in the jurisdiction.

Required

1. A statement the ICS described in the NIMS will be used as the general response plan for hazardous material incidents, and the officers of the response agencies have been trained in NIMS-ICS operations.
2. Identify the primary response agencies, the role of each agency and level of response training.
3. Identify secondary responders (emergency management, public works, etc.), the role of each and their level of response training.
4. Identify mutual aid response agencies, the role of each agency and level of response training.
5. Identify special response agencies (regional Hazmat Teams, Emergency Management, etc.) and the role of each agency.
6. Identify the location of each primary and secondary response agency's Operating Procedures and the title of the individual within each agency responsible for the development of such procedures.

Guidance for Planning Element (2)

This planning element does not require the inclusion of tactical fire-fighting or "pre-fire" plans in the local emergency plan that will be submitted to the State.

Nor does it require strictly internal, company level emergency procedures be included. The "procedures to be followed by facility owners and operators" spoken of in this planning element are facility procedures which require coordination, communication or interfacing with off-site authorities. Examples could include dispatching a public information officer or liaison to the local government operations center or a command post, making recommendations to local officials regarding protective actions (shelter, evacuation) and the areas in which to implement protective actions.

The local emergency and medical procedures required by planning element (2) could include procedures for:

i. making decisions regarding protective actions
ii. notification to the appropriate State agencies for environmental and emergency response
iii. requesting mutual aid support from other communities and the State
iv. restricting access to threatened areas
v. activation of the local EOC if required
vi. establishment of an on-scene command post if required
vii. a clear description of the local chain of command
viii. emergency medical procedures including procedures to mobilize outside assistance to handle a mass casualty incident
ix. providing timely and accurate releases to the media on conditions at the site, operations and effects of the incident upon persons, property and sensitive areas (e.g. drinking water supplies)
x. soliciting advice from CHEMTREC or other chemical support organizations.

NOTE: Each LEPC will have to determine how extensively its plan should address response procedures for emergency and medical personnel. The list above contains some basic areas of emergency response and management which all local plans should address to some degree.

(3a) Designation of a community emergency coordinator (Emergency Management Director) who shall make determinations necessary to implement the plan.

Intent

The intent of this item is to identify the person or persons authorized to implement the community emergency plan in the event of a hazardous materials release.

While more than one individual may hold such authority, at least during the initial stages of an emergency a single individual must be designated as responsible for the overall implementation of the community emergency plan.

Required

The (a) Name, (b) Title, (c) 24 hour telephone contact information must be provided for the emergency coordinator and also for at least one alternate to the emergency coordinator.

(3b) Designation of a facility coordinator who shall make determinations necessary to implement the plan.

Intent

The intent of this item is to identify an appropriate facility representative (emergency coordinator) responsible for emergency planning and response, and to provide their

direct 24-hour contact information for use in the event of a hazardous materials emergency.

Required

Name, title, work and 24-hour telephone numbers of each 302 facility emergency coordinator in the jurisdiction, plus the same contact information for at least one alternate emergency coordinator at each 302 facility. If there are no 302 facilities in the jurisdiction, this should be indicated.

Guidance for Element (3)

The facility emergency coordinator referred to above is not necessarily the facility representative designated to participate in the planning process, as is required by EPCRA. The facility coordinator referred to above should be designated by job title and should be someone very high in the facility's emergency response organization.

This person will communicate frequently with off-site authorities regarding conditions at the facility and public protective actions that might be necessary. The plan should specify, by job title who will act as an alternate.

The community emergency coordinator referred to above is the individual responsible for directing the local government response to a hazardous substances incident.

In communities with full-time fire departments, it is recommended the senior fire officer be the community coordinator.

In communities without full-time departments it may be necessary to designate someone else such as a police shift supervisor until the Senior Fire Officer can arrive on the scene.

If an individual is specifically named as the coordinator then alternates should also be named.

A primary consideration in selecting an emergency coordinator is the individual can be reached quickly at all times and has the authority, or is given the authority under the plan, to make critical decisions about what is to be done and to direct response activities.

(4) Describe procedures providing reliable, effective and timely notification by the facility emergency coordinators to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of EPCRA, Section 304.)

Intent

The intent of this item is to identify the responsible facility personnel and their procedures to be followed in notifying facility responders and the affected community that a hazardous chemical release has occurred.

Required

Notification procedures must include, but are not limited to:

1. Designated personnel to be notified of a hazardous release.
2. Personnel responsible for public notification.
3. Method(s) used to notify the public that a hazardous release has occurred.
4. Criteria used for mass public notification.

Guidance for Planning Element (4)

This planning element is perhaps the most important part of the emergency plan. All plans must include a clear, concise and viable procedure whereby EHS facilities in the district can provide notification of an incident to local authorities.

In most cases this procedure will be a simple telephone call to a warning point manned on a 24 hour basis such as a fire department, police department or dispatch center.

If some other means of notification is available as a back-up, this should be stated. The procedure should specify responsibility for making the call and the information to be provided.

LEPCs should work closely with their facility representatives to determine what information can and should be provided as part of initial notification. See page 40 of NRT-1 for some ideas.

The plan should include the requirements of EPCRA 304 for reporting of releases to hazardous substances and EHSs.

It is not necessary local plans contain internal facility alert rosters, except plans should state how the facility coordinator and/or his alternate will be notified of an incident.

Once notification of an incident has been made by the facility, the plan should clearly state how the notification will be fanned out by the warning point to local emergency response organizations, including support agencies such as the Red Cross if necessary.

Internal departmental fan-outs need not be included: they can be located in agency annexes or standard operating procedures. The fan-out procedures should state the information and/or instructions which should be provided to the various local departments.

The other procedure mandated by this planning element is notification of the public that a release has occurred.

Reliable, effective and timely notification of the public is a critical element of a good emergency plan. Local emergency plans should contain a procedure for rapidly disseminating emergency information and instructions over the local Emergency Alert System (EAS) station.

Pre-scripted messages should be considered and it is recommended plans specify how the EAS message will be coordinated with an attention signal sounded by area sirens (if available).

Plans should also contain a "Paul Revere" public notification method using emergency vehicles equipped with public address systems. The plan should specify which local department(s) will be responsible for notifying particular areas of the community.

ED_002941_00002942-00170

Door-to-door and/or telephone notification procedures should be considered for facilities such as nursing homes located in threatened areas, as well as using other notification systems, such as reverse 9-1-1 systems.

(5a) Methods for determining the occurrence of a release.

Intent

The intent of this item is to assure releases of EHSs at EPCRA, Section 302 facilities in the jurisdiction are detected in a timely manner.

Required

1. Identify the covered 302 facilities in the jurisdiction that do, and those that do not have in place and on-site adequate systems, methods and/or procedures to detect and determine in a timely manner that a release of an EHS has occurred.
2. Describe the individual systems, methods and/or procedures by reference to the specific 302 facilities' emergency response plans on file with the jurisdiction.

(5b) Methods for determining the area or populations likely to be affected by such a release.

Intent

The intent of this item is to assess the seriousness of the release, its scope and the potential hazard(s) it may cause to the surrounding population.

Required

Information required to determine the affected area and populations includes, but is not limited to the following:

- The identity of the substance released
- The approximate quantity of the release
- The hazard(s) created by the release
- The impact on the surrounding community created by the release
- Meteorological and other local conditions

Guidance for Planning Element (5)

This planning element requires a description of any release detection or monitoring devices in operation at a facility which would provide for discovery of a release.

If there are none, the plan should so state and provide instead a description of how a release would most likely be detected by the physical senses and/or physical affects upon people and who would most likely sense or perceive these affects first.

In addition, this planning element requires a description of how to determine potentially affected areas or populations.

To meet this requirement, plans must describe the best available method for quickly determining wind direction and how to utilize wind direction information in conjunction with either real-time computer dispersion models or previously developed information about the vulnerable zone of a given facility to determine the area affected.

(6a) A description of emergency equipment and facilities in the community, and an identification of the persons responsible for such equipment and facilities.

Intent

The intent of this item is to identify in advance the local availability of public and private response resources suitable for use during a hazardous materials incident.

Required

1. A listing of publicly owned and available specialized resources (tools, materials, equipment, facilities and qualified personnel) for use in responding to a hazardous materials incident, along with the location of all such specialized resources, title and 24 hour contact number(s) of the personnel authorized to release the resources for use in an emergency incident.
2. A listing of privately owned and available specialized resources (tools, materials, equipment, facilities and qualified personnel) for use in responding to a hazardous materials incident, along with the location of all such specialized resources, title and 24 hour contact number(s) of the personnel authorized to release the resources for use in an emergency incident.

Recommended

Reference can be made to the resource manual containing the above information that is maintained by many jurisdictions. Such reference should include the location of any such manual of resources and a copy of the table of contents or index page.

In addition, it is recommended any agreements with schools, churches, bus companies, etc. for congregate care and public transportation; as well as agreements with qualified hazardous materials clean up contractors, other jurisdictions, etc. be included

(6b) A description of emergency equipment and facilities at each facility in the community subject to the requirements of EPCRA, Section 302, and an identification of the persons responsible for such equipment and facilities.

Intent

The intent of this item is to:

1. Identify which covered Section 302 facilities within the jurisdiction have on their site specialized tools and equipment to effectively respond to an accidental release of that facility's hazardous substance(s).
2. Identify if and how specialized tools and equipment located on site at Section 302 facilities within the jurisdiction may be available for emergency response use at hazardous materials incidents elsewhere.

Required

A statement from the emergency management director or other responsible public safety official in the jurisdiction

indicating which, if any, covered 302 facilities within the jurisdiction have specialized tools and response equipment available for use at an off-site hazardous materials incident, along with rules for their release and use.

Any such specialized tools and equipment should be incorporated into the list of available private resources.

Recommended

Memoranda or agreements of understanding between the jurisdiction and private facilities regarding release and use of specialized tools and emergency response equipment for off-site purposes are encouraged, and mention of the same, is recommended in any lists of available private resources maintained by the jurisdiction.

Guidance for Planning Element (6)

This planning element requires a list of resources (i.e., equipment and facilities) applicable to a hazardous substances incident. Local government and facility resources must be included along with an identification of the persons responsible for such equipment.

Wherever possible this identification should be by job title with a phone number(s) for the person responsible included.

Although the list should be limited to resources germane to a hazardous substance incident, local planners and facility representatives are urged to "think through" an incident and thoroughly contemplate the types and amounts of equipment and supplies which would be needed to respond effectively and protect emergency responders.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

Intent

The intent of this item is to describe evacuation plans for the jurisdiction, including identification of primary and alternate traffic evacuation routes.

Required

1. Identification of primary and alternate evacuation routes within the jurisdiction (if a GIS map is not used, the names/numbers of streets, roads and highways must be used)
2. Describe evacuation plans, including but not limited to the following:
   - Public notification procedure
   - Procedures for initiating a protect in place option
   - Provisions to move special populations
   - Determination of re-entry procedures
   - Identification of shelter locations

Guidance for Planning Element (7)

The most effective evacuations are those undertaken and completed before the release of an EHS occurs.

Plans should include a statement acknowledging this protective action option and the effectiveness of precautionary evacuations.

Plans should identify special institutions such as schools, hospitals, jails, nursing homes, etc. Plans should also discuss precautionary preparations to evacuate special institutions during hazmat incidents.

It is not necessary to include maps in the plan itself showing specific evacuation routes, but for some facilities located in areas difficult to evacuate pre-planning of evacuation routes and maps are advisable.

Local plans must specify who will have the authority to order an evacuation. Plans must also specify which departments will provide evacuation assistance to special facilities such as nursing homes, hospitals, jails, etc.

Plans must acknowledge officials responsible for protective action decisions will consider the merits of a "take shelter" protective action as opposed to an evacuation.

Plans need not identify specific traffic routes to be used as detours around facilities or major transportation routes on which a hazmat incident has occurred.

However, each plan must identify an individual, by title, whom shall be responsible for determining alternative traffic routes as well as departments and agencies that shall handle re-routing of traffic. Lead and support agencies should be identified.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

Intent

The intent of this item is to describe a jurisdiction's training programs and identify the types and levels of training contained in those programs, and the responders who receive the training. Responders may include: Fire, Law Enforcement, EMS, Emergency Management, Public Works, other response groups

Required

Training documentation must contain the following information. More information can be added, if desired.

- Location of records
- Type of training
- Level of training (Awareness Level, Operations Level, Technician Level)
- Personnel who received the training
- Frequency of training

Guidance for Planning Element (8)

Information regarding hazardous materials training offered can be obtained through the State Training Officer of the Emergency Management Agency.

The LEPC should survey all organizations represented on the LEPC to determine if specific-agency training might be beneficial to other personnel. Local planners may incorporate this information into their plans to meet the requirements of planning element (8).

(9) Methods and schedules for exercising the emergency plan.

Intent

The intent of this item is to demonstrate the jurisdiction is seriously testing on a regular basis its ability to respond to a hazardous materials incident.

Required

A copy of the jurisdiction's methods and schedules for exercising its emergency plan must be provided or referenced (include location of this information).

Guidance for Planning Element (9)

Local plans should describe how frequently exercises will be held, the type of exercise to be conducted (i.e., full-scale, tabletop or functional) and who is responsible for organizing and conducting exercises of the plan. The three basic forms of exercises are defined below. It is recommended these definitions be included in local plans.

a. Tabletop Exercise. An activity in which elected/appointed officials and key staff with emergency management responsibilities are gathered informally, to discuss various simulated emergency situations. The exercise is designed to elicit constructive discussion by the participants without time constraints as they examine and then attempt to resolve problems based on existing emergency operations plans. The purpose is for participants to evaluate plans and procedures and to resolve questions of coordination and assignment of responsibilities throughout the exercise under minimum stress. An exercise of this type can usually be conducted in 4 hours or until the exercise objectives are met.
b. Functional Exercise. An activity designed to test or evaluate the capability of individual or multiple functions or activities within a function. This exercise is more complex than a tabletop exercise in that activities are usually under some type of time constraint with the evaluation/critique coming at the end of the exercise. It can take place in some type of operations center, the field, or a combination of both. For example: A Direction and Control functional exercise would be an activity designed to test and evaluate the centralized emergency operations capability and timely response of one or more units of government under a stress environment. It is centered in an emergency operations center and can simulate the use of outside activity and resources. An exercise of this type can usually be conducted in 4 to 8 hours or until the exercise objectives have been met.
c. Full Scale Exercise. The full scale exercise is intended to evaluate the operational capability of emergency management systems in an interactive manner •over a substantial period of time. It involves the testing of a major portion of the basic elements existing within emergency operations plans and organizations in a highly stressful environment. This type of exercise includes mobilization of personnel and resources, and the actual movement of emergency personnel, equipment, and resources to demonstrate coordination and response capability.

The emergency operations center is activated and field command posts may be established. An exercise of this type can usually be conducted in 8 hours or until the exercise objectives have been met.

Cities and towns receiving FEMA EMA funds and responding to actual emergencies or disasters may be given credit for an exercise providing certain criteria are met.

APPENDIX U. STRUCTURE OF SERCs IN REGION 6

Arkansas State Emergency Response Commission	Louisiana State Emergency Response Commission
Chair – Arkansas Department of Emergency Management	Chair – Department of Public Safety / State Police
61st Arkansas National Guard Arkansas Department of Environmental Quality Arkansas Department of Health Arkansas Department of Labor Arkansas Fire Training Academy Arkansas Highway Police Arkansas State Police Citizen Representative Clark County OES Coordinator LEPC Representative Virco Manufacturing Corporation Waste Management Sustainability Services	Louisiana Chemical Association Louisiana Department of Agriculture and Forestry Louisiana Department of Environmental Quality Louisiana Emergency Preparedness Association Louisiana Governor's Office of Homeland Security and Emergency Preparedness Louisiana Oil Spill Coordinators Office LSU Firemen and Emergency Training Institute At Large Baton Rouge Police Department Bossier Parish Police Jury Citizen Representative City of Gretna Fire Department City of Vidalia Louisiana State Senate St. Mary Parish Government Westlake Police Department
New Mexico State Emergency Response Commission	**Oklahoma Hazardous Materials Emergency Response Commission**
Chair – New Mexico Department of Homeland Security and Emergency Management	Chair – Oklahoma Department of Environmental Quality
Los Alamos National Laboratory New Mexico Department of Health / Scientific Laboratory Division New Mexico Department of Public Safety / Motor Transportation Police New Mexico Education Department New Mexico Lovelace Respiratory Research Institute New Mexico Public Regulation Commission / State Fire Marshal	Custer County Emergency Management Groendyke Transport, Inc. Oklahoma Department of Emergency Management Oklahoma Highway Patrol Oklahoma Office of Homeland Security Oklahoma State Fire Marshal
Texas State Emergency Response Commission	
Chair – Texas Governor's Division of Emergency Management	
Texas Commission on Environmental Quality Texas Commission on Fire Protection Texas Department of Agriculture Texas Department of Public Safety Texas Department of State Health Services Texas Engineering Extension Service Texas General Land Office Texas Parks and Wildlife Department Texas Railroad Commission	

APPENDIX V. Sample Facility EPCRA 302 Planning Letter Submitted to SERC / LEPC

FACILITY LETTERHEAD

[STATE EMERGENCY RESPONSE COMMISSION ADDRESS]

[LOCAL EMERGENCY PLANNING COMMITTEE ADDRESS]

To the SERC /LEPC Information Coordinators:

We are making Emergency Planning Notification under Section 302 or the Emergency Planning and Community Right-to-Know Act for the following facility:

NAME OF FACILITY _____

ADDRESS OF FACILITY _____

CITY, STATE, ZIP _____

The facility stores or uses the following Extremely Hazardous Substances on-site above the threshold planning quantity as specified in 40 CFR Part 355:

	CAS #	NAME	QUANTITY (in pounds)
1			
2			
3			
4			
5			
6			
7			
8			

If additional emergency planning information for this facility is necessary, please contact our Emergency Response Coordinator, _____, at phone _____ or email _____

Sincerely,

Owner / Operator of Facility

APPENDIX W. Evacuation versus Shelter-In-Place

Since Congress enacted EPCRA in 1986, numerous publications and seminars have evolved to help state and local agencies, communities and private facilities prepare for a chemical emergency.

Specific written guidelines on how to develop and implement an emergency preparedness plan are available through the National Association of Manufacturers (NAM), the Emergency Response Institute, Inc. and the NRT.

The NRT consists of fifteen Federal departments and agencies, such as EPA, DOJ, USCG, and FEMA. One area these guidelines have not addressed in detail is the question of when to evacuate a community in an emergency and when to institute shelter-in-place. The ultimate goal of EPCRA is to minimize the possibility that a community will be exposed to an accidental release of toxic materials and to ensure that citizens can be protected in case of a release.

To reach this goal, LEPCs must decide who will notify, alert and warn the public, and who is responsible for issuing and implementing evacuation orders.

To decide when to evacuate a community and when to institute shelter-in-place depends on the nature of the released material (e.g. explosive, reactive), the time of the release, the proximity to the release and the pathway of the release (i.e. air, water or land). To evacuate an area properly, the LEPC's planning process should identify the:

- Person responsible for issuing evacuation orders
- Areas within facility/community requiring evacuation
- Person responsible for coordinating with nearby jurisdictions regarding evacuation routes and reception centers
- Provisions for identifying the number of people requiring transportation and the means to get them to the receiving centers.
- Provisions for identifying central staging areas and pick up points for people requiring transportation.
- Provisions for a telephone information center where evacuees may receive correct evacuation information.
- Provisions regarding employee reentry into hazard area
- Floor plans specifying evacuation routes from building(s).
- Instituting shelter-in-place is much less time consuming. Instituting shelter-in-place consists of:
    - Properly notify public of nature of the emergency.
    - Identify reasons for insisting on remaining in place.
    - Identify precautions to take such as sealing doors and windows and turning off ventilation systems.
    - Patrol area of sheltered persons.

The advantages of instituting shelter-in-place are: It is instantaneous; People are more comfortable in their familiar surroundings; and Necessities (e.g. telephone, radio, television, food, and clothing) are readily accessible.

The major disadvantage is that accurate, reliable information is more difficult to receive.

The advantages of evacuating are that persons are away from the exposed area, and if the community moves to mass care shelters, information and medical relief are instantaneous. The disadvantages of evacuation are:

- Evacuation is time consuming.
- Evacuees may not be informed of where to go.
- The contaminant plume may shift into the evacuation route.
- People are unwilling or unable to leave their residences.
- Evacuees may move to locations other than mass care shelters making it more difficult to track them.
- Evacuees may return to affected area prior to danger passing.

In reality, evacuation is usually considered a last resort to protect the community because of the complex nature of completing a successful evacuation.

Federal law requires that at least twenty five percent of the affected population have a mass shelter to go to. It is estimated that approximately eighty five percent of evacuated persons decide to go to their relatives and only fifteen percent decide to move to mass care shelters.

In any case, individuals should not make the decision on whether to evacuate; they should follow official instruction.

The key issue is that communities should plan ahead by educating the public about evacuation and shelter-in-place. With planning and education, either choice can be implemented effectively during an emergency.

- -

Shelter-in-Place (SIP) vs. Evacuation: Which Is the "Right" Protective Action?

Disclaimer

This is not intended for a definitive work on Evacuation and Shelter-In-Place, but is intended to provide planners with information that would help them understand the decision making process and when Evacuation or SIP might be called. The decision as to which protective action to call for rests directly on the shoulders of the IC of a hazardous materials Incident.

The IC has all the information necessary to make the decision to request citizens to protect themselves in place or to leave the area. The determination of which protective action to utilize is very incident-specific. The IC must take into consideration the:

- materials involved,
- population at risk, including both facility personnel and the general public,
- resources will be required to implement the recommended protection action,
- time factors involved in the release,
- effects of meteorological conditions (present and future projections) on the control and movement of the release,
- capability to communicate with the population at risk and
- capabilities of emergency response personnel to implement, control, monitor and terminate the protective action.

Evacuation and Protection in Place Are Not Either/or Options

Public Protective Actions

The strategy used by the IC to protect unexposed people from the material by protecting-in-place or evacuation.

Evacuation

The movement of people from a threatened area to a safer location. Typically regarded as the controlled relocation of people from an area of known danger or unacceptable risk to a safer area, or one in which the risk is considered to be acceptable.

Protection In Place

Directing people to go inside of a building or structure and remain indoors until the danger from a hazardous materials release has passed. It is also referred to as safe haven, sheltering, taking refuge and SIP.

Evacuation

For an area that is only threatened by a release, it should be determined whether evacuees can be evacuated before hazards reach the area.

To safely evacuate the area a significant amount of lead time may be required. If it is decided to evacuate, the evacuation must be conducted in a 'well-coordinated, thorough and safe manner.

Evacuation decisions are very incident specific and good judgment is necessary. To evacuate an area, the IC must:

1. determine the area to be evacuated
2. secure authority
3. choose evacuation routes
4. identify needed traffic control points
5. activate warning system
6. issue appropriate instructions
7. provide transportation for those who need transportation
8. establish reception centers and public shelters
9. provide emergency medical care and traffic control personnel - just to name a few.

No amount of pre-planning can make evacuation anything but a lengthy and time consuming procedure. In addition to the logistics involved in an evacuation, the IC must also consider the behavioral traits identified in persons faced with an emergency situation out of their control. Research shows:

- Unless the family is together or missing members are safely accounted for, evacuation win not be attempted.
- Persons of limited financial means are less likely to evacuate because they are less likely to have reliable transportation, resources for sheltering, or be absent from their jobs.
- Residents with either prior knowledge of plans or who received SPECIFIC instructions during the incident were more likely to evacuate
- A high percentage of persons see evacuation as a matter of personal choice and consider alternatives. Enough information must be given so these persons can judge for themselves their personal risk and be convinced of the best action to take
- Different ethnic groups vary in what they perceive as risk, their attitude toward authority, and the credibility they place on organization which might be involved in the warning.

There are some definite advantages to utilizing evacuation as the protective action for a chemical emergency.

- Evacuees "feel" safer by traveling away from danger
- Most evacuees (65 - 76%) use an available family vehicle and many others (11 - 19%) use a relative's or friend's vehicle.
- Most evacuees (67%) go to homes of relatives and friends, or to second homes.
- Night time evacuations are as family units (whereas daytime evacuations are usually without family unity as many are at work, school, recreation, or shopping.)
- Precautionary evacuations are very effective when sufficient time is available or when the incident is under control.
- An evacuation is necessary when an accidental release could be long term or when there is real potential for explosion.

There are equally as many reasons to decide against using evacuation as a protective action.

- Requires considerable time to accomplish (may take 2 to 4 hours or longer)

- The warning message may be very lengthy since it has to identify the danger, describe the area to be evacuated, fist evacuation routes, identify public shelters, list what can and cannot be taken to shelters, etc.
- Requires setting up public shelters, traffic controls and area security and providing special transportation for those without vehicles, handicapped or on intensive care.
- Transient populations at parks, marinas, campgrounds, summer camps may not be familiar enough with area to accomplish an evacuation.
- If toxic fumes are present during the evacuation and wind changes speed/direction, evacuees could travel unaware into or through dangerous gases.
- The evacuation must be well controlled and organized with frequent credible information provided to prevent panic and erratic flight.
- Problems of coordination of effort exist when evacuees of one jurisdiction are sent to another, or where the area evacuated consists of parts of several communities.

Shelter - in - Place (SIP)

During some incidents there will not be enough time to evacuate because airborne toxicants have been released and are moving downwind rapidly.

There also may be uncertainties as to what is being released, how much, what exposure levels are now and what they will be, how dangerous are such levels.

If there is a great deal of uncertainty connected with the incident (and this is common in the early stages of any incident as the IC is accumulating information) SIP may be the only practical choice.

For short term releases, often the most prudent course of action for the protection of the nearby residents is to remain inside with the doors and windows closed and the heating and air conditioning systems shut off. An airborne cloud will frequently move past quickly. Vulnerable populations, such as the elderly and sick, may sustain more injury during evacuation than they would staying inside and putting simple countermeasures in effect.

SIP may be a sensible course of action when the risks associated with an evacuation are outweighed by the benefits of in place protection.

Even when a protective decision has not yet been made, SIP should be the initial response while the emergency situation is being assessed.

As with evacuation, there are advantages and disadvantages to utilizing SIP as the protective action of choice, The IC must be fully aware of both as he makes his decisions. The major disadvantages of SIP are:

- The general public needs to be trained on SIP actions and acceptance, as this action may be contrary to normal human nature to run from danger.
- Uncertainties may exist about whether indoor air concentrations will remain sufficiently low for a sufficiently long period of time.
- Inappropriate where releases of explosive or flammable gases could enter structures and be ignited by furnace and heater ignitions.
- May be very inappropriate for long term exposure of 12 hours or more.
- Infiltration of contaminated air into the structure over a period of time could result in high cumulative inhalation exposures unless the structure is vacated and "aired out" after the plume outdoors has passed on or dispersed.
- Those in parks, marinas, campgrounds and outdoor sporting events may not have suitable shelter available and would have to travel to such.

The advantages of SIP make it the preferred protection action.

- Protection can be provided immediately with little or no time required after warning
- The public warning message is short since it is only necessary to identify the danger, describe the area affected, and describe expedients to reduce air infiltration to the home or building.
- Little or no preparation time is necessary for shelter
- The home is an ideal life support system with food, water, sanitation, medicines, bedding, clear air, communications (radio/TV, and telephone), and familiar surroundings
- May be very appropriate for short term exposures of 2 to 4 hours duration.
- Requires considerably less emergency staff support than evacuation, as public shelter, traffic control, special transportation and security personnel are not needed.

APPENDIX X. What to Do in a Chemical Emergency

This language below can be tailored by an LEPC as part of outreach to their community on what to do if a chemical emergency happens.

Additional details, phone numbers, and contact information should be added to provide the appropriate information.

What are the actions you might need to take?

In case of a hazardous material emergency, you might be asked to take one of three actions:

Evacuate, Shelter in Place, and/or Protect your Breathing.

They are described below. Be sure you are clear about them.

If you have neighbors who are hard of hearing, do not see well or need additional assistance, please help them. Be sure they know what they are supposed to do in an emergency.

If you are told to evacuate?

You should move to the place designated by officials. Follow these steps to get ready for the trip.

- Stay as calm as you can. If you already know where to go and what to take, that will help.
- Gather what you and your family will need. Pack only what you will need most. Take these things along if you can.
    - This information sheet
    - Extra clothing
    - Eyeglasses, dentures, prescription drugs, other medicines, and first aid kit.
    - Baby supplies
    - Portable radio and flashlight (if you have them).
    - Checkbook and credit cards
    - Driver's license or identification
- Remember as you leave to do the following:
    - Turn off lights, your household appliances and heating, cooling or other ventilation systems.
    - Leave your refrigerator/freezer on.
    - Lock your house.
- Do not use your phones unless you or someone you know is injured or too sick to do what is needed. If you must use the phone, keep your call very short.
- This information sheet and your radio and TV will tell you what actions you need to take. Read it through and be sure you understand it. Clear up all questions you have, not later.
- Do not listen to rumors. Turn on your radio or TV for up-to-date information during the emergency.
- Use only one car (or other vehicle) for your family. If you have room, please check to see if any neighbors need a ride.
- Keep your car windows and air vents closed. Listen to your radio for reports about your route and other information.
- Drive safely, traffic will be heavy. Law officers along your route will help with the traffic.
- If you need a ride, go with a neighbor, a friend or relative.

If you are told to shelter in place?

You should protect yourself inside your house or other building. This is a good action to take if there is a short release or small amount of hazardous material in the air. Take these steps to protect yourself.

- Go inside if you are outside. When inside, stay inside until your radio or TV says you can leave safely. This is most likely to be no more than a few hours, rather than a day or more.
- Close all doors and windows.
- Turn off heating, cooling or ventilation systems.
- Do not use fireplaces. Put out the fire. Close the dampers.
- Listen to your local radio or TV for further instructions.

If you are told to protect your breathing?

- You should cover your nose and mouth with a damp handkerchief or other cloth to protect your breathing. Fold the cloth over several times.
- Close the windows and doors if you are in a building or a car.
- Turn off heating or cooling or ventilation systems.

What you should do if you know there is a release of hazardous materials and it's coming toward you?

You should be prepared to get yourself and your family out of the area if directed to do so by the local authorities.

You should also be prepared to protect yourself wherever you are if evacuation isn't possible or necessary.

Studies have shown that even poorly sealed buildings give some protection from a serious amount of gas entering the building.

ED_002941_00002942-00179

Those results would indicate that if you are outside you should go in your house or nearby public building, or get in your automobile.

Once inside, close off all outside ventilation such as the air conditioner or windows.

Stay inside and wait for the cloud to pass. If you feel the gas entering the building and you are in danger, a wet cloth or towel over your nose and mouth will act as a filter and offer some protection. In any event, staying inside is safer than trying to outrun a release.

If you are outside and can't possibly get in, move crosswind (in a direction so the wind is blowing from your left to right or vice versa, but not into your face or from behind).

This offers the best advantage for getting out of the path of the release. In either case, remain calm and wait until you receive further instruction before taking any further action.

If you think you have been exposed…

- Eyes: Gently hold your eyes open, or have someone assist you, and flush with saline or lukewarm water for 15 minutes. Encourage blinking while rinsing. If wearing contacts, remove the lenses after first flushing the eyes for 5 minutes.
- Skin: Remove contaminated clothing and flood skin with water for 15 minutes. Then wash gently with soap and water and rinse. It is important to cut off clothing rather than pulling off to avoid exposing other areas of the body.
- Inhaled: Immediately get the person to fresh air. Avoid breathing fumes. If victim is not breathing, call for help and start assisted (mouth-to-mouth) breathing.

APPENDIX Y. Examples of LEPC Mission Statements

When developing, or revising, the By-Laws for the LEPC, a strong mission statement should provide citizens and the LEPC members an understanding of the direction the LEPC plans on taking.

The mission of the LEPC is to protect and serve all citizens by promoting hazardous materials safety in all segments of the community.

This includes providing an advisory, educational, and technical resource for the development and implementation of hazardous safety programs, both locally and countywide.

Below are examples of mission assignments from several LEPCs within Region 6, which can be tailored for each LEPC.

Calcasieu Parish, LA

Appointed by the SERC, the LEPC includes representatives from state and local government, law enforcement, civil defense, fire fighting, first aid, health, environmental and transportation agencies, hospitals, broadcast and print media, community groups, and businesses that are subject to EPCRA requirements.

The LEPC develops an emergency plan, which is reviewed annually, to prepare for and respond to chemical emergencies.

The LEPC also receives emergency release and chemical inventory information from local facilities and make this information available to the public on request.

They also have the authority to request information from facilities for their own planning purposes.

Every LEPC serves as a focal point for each community for information and discussions about hazardous substances, emergency planning, and health and environmental risks.

LEPCs can be effective in taking steps to educate the public about chemical risks and working with businesses to minimize those risks.

Dallas County, TX

Mission: The mission of the LEPC is to:

- Develop a comprehensive hazardous materials emergency response plan for our community. To be effective, planning must be an ongoing activity.
- Receive and record information about chemical releases
- Collect, manage, and provide public access to information on hazardous chemicals in our area.
- Educate the public about the risks from accidental and routine releases of chemicals and work with facilities to minimize the risks.

Bernalillo County, NM

To support the Albuquerque/Bernalillo County Office of Emergency Preparedness to keep the community safe from the effects of hazardous materials in order to assure effective response to hazardous materials emergencies.

Deer Park (Harris County) TX

The LEPC is a non-profit community organization composed of city and school district officials, police and fire emergency response personnel, industry and environmental representatives, news media, and interested citizens of Deer Park.

LEPC members work together to develop plans to educate, communicate, and protect our local community in case of a chemical release.

Under terms of our By-laws, the purpose of the LEPC is to:

1. develop, train, and test a hazardous substances emergency response plan
2. develop procedures for regulated facilities to provide notification of a hazardous release to the LEPC
3. develop procedures for receiving and processing community right-to-know requests from the public
4. provide for public notification of committee activities.

Jasper County, TX

In addition to its formal responsibilities, the LEPC serves as a focal point in the community for information and discussions about hazardous substances, emergency planning, and health and environmental risks.

Citizens will expect the LEPC to reply to questions about chemical hazards and risk management actions.

It can also anticipate questions about the extent and the health and environmental effects of routine toxic chemical releases.

Even though this information is not required by the law to be sent to LEPCs, EPA and the states are working together to ensure this information is available at the local level.

Many companies are voluntarily providing local committees and other citizens with this information.

An LEPC can most effectively carry out its responsibilities as a community forum by taking steps to educate the public about chemical risks, and working with facilities to minimize those risks.

The value of the information provided by EPCRA will be limited unless citizens are given the means to understand the information and its implications.

The LEPC's ability to improve the safety and health of its community will be greatly enhanced by the support of an informed and active citizenry.

Larimer County, OK

The LEPC's mission shall be to enhance and create plans directing the response to hazardous materials incidents, increase compliance with hazardous materials reporting requirements and to offer access to information on the storage of such materials, for the benefit of the county's residents, businesses and industries.

ED_002941_00002942-00181

The Committee shall carry out its mission in Larimer County in compliance with EPCRA and other federal, state and local requirements in such a way that meets both the letter and spirit of those requirements and that enhances and encourages a partnership between county residents, businesses and industry through an exchange of information and mutual planning.

Hidalgo County, TX

The LEPC is made up of city and county officials, law enforcement, fire and emergency medical personnel, representatives of area industries, the media, and volunteer organizations.

In 1986, the U.S. Congress passed a law called EPCRA, requiring every county in the nation to form and maintain an LEPC. This group supports emergency planning for chemical hazards and provides local government and the public with information about possible chemical hazards.

In short, LEPC members are your co-workers, friends, and neighbors, who prepare for emergencies, which might pose health and safety hazards to Hidalgo County residents.

Such emergencies include releases of hazardous chemicals from any of the plants within the county or from any of the thousands of trucks and railroad cars which carry them through the county each year.

They also include natural disasters such as hurricanes and tornadoes, as well as spills of everyday chemicals like gasoline or agricultural chemicals and pesticides.

Year round, LEPC members meet to discuss response plans and means of better informing the public – that's YOU – about what to do when an emergency occurs.

They participate in drills at industrial plants, they help find ways to improve safety and aid the various involved organizations – police, sheriff's, fire and EMS departments, school districts and other governmental agencies, hospitals, civic and volunteer groups – work smoothly together in the event of an actual emergency.

Curry County, NM

To coordinate with the Clovis-Curry County Emergency Management Director and all first response agencies to make resources available to keep the community safe from the effects of hazardous materials and any other natural/man made hazards, and to assure effective response to all emergencies.

VISION: That the population of Curry County be well informed about the hazardous materials present in the community and know how to respond appropriately to emergencies.

Further, that businesses and agencies with hazardous material/operations are knowledgeable of their legal obligations under EPCRA and the compliance processes made available through the Curry County LEPC.

Potter / Randall Counties, TX

To develop, train, and test a hazardous substance emergency response plan for Potter and Randall Counties.

Develop procedures for regulated facilities to provide notification to the LEPC in accordance with EPCRA.

Develop procedures for receiving and processing requests from the public under the community right-to-know provisions of EPCRA.

Provide for the public notification of committee activities.

To implement other activities as legally required by the County Judges, SERC, or the Federal Government.

Bell County, TX

The LEPC promotes emergency planning, preparedness, and public awareness to protect Bell County's communities and its citizens from the release of hazardous chemicals and other disasters.

Muskogee County, OK

Muskogee County LEPC, Protecting You and the Environment.

While we enjoy an excellent quality of life, living in our community has never been and will never be risk free.

Hazardous materials are manufactured here and are transported through our county by pipelines, trucks, air, and trains.

The risk, however slight, always exists for an accident to occur. The LEPC was created in Fall of 1987.

The LEPC brings together an Emergency Management Team which includes state, county, and city officials, Industry response representatives, the Medical community, News media Environmental organizations, and Community Service Organizations.

The objectives of the LEPC are to develop Hazardous Material Inventory and Release Reporting procedures, and the development of a comprehensive Emergency Response Plan to be implemented in the event of a hazardous material release in our area.

The success of any Emergency Response Plan also depends upon an informed and educated public.

What would you do if a hazardous material emergency occurred near your home or your place of work?

What would your child's day care provider or school do?

This information is to inform you on what to do in case of a hazardous material emergency in our County, and educate you on how to obtain information on potential chemical hazards and chemical storage inventories within our County.

McClain County, OK

To heighten awareness through planning, preparation, and communications between citizens, business, and government, for the protection of the community and environment resulting from a disaster or hazardous event.

Nueces County, TX

The LEPC was set up in 1987. Its purpose is to plan for chemical accidents and insure the public understands the risks

associated with the manufacturing, processing, transporting and storing of chemicals in the community.

The primary mission of the LEPC is to reduce risk and provide emergency response planning for chemical and hazardous materials releases.

The LEPC is dedicated to public education and awareness, especially in the local schools.

Oklahoma County, OK

To enhance the protection of the community and environment from hazardous material incidents through planning, preparation and communication between citizens, business and government.

Taylor County, TX

To identify hazards; and plan and coordinate community resources for preparedness, response, mitigation, and recovery from all hazards, natural and man-made.

Under EPCRA, an LEPC is the focal point for chemical response planning and implementation in a community.

The key responsibilities are:

- assisting local governments in developing hazardous materials emergency response plans.
- evaluating the community's need for resources to respond to hazardous materials emergencies.
- processing requests from the public for information on hazardous chemicals in their communities.

Houston (Harris County), TX

Working together for a safer community, the LEPC promotes emergency planning, preparedness, and public awareness to protect the Houston community from the potential impact of hazardous chemical substances and related disasters

Navarro County, TX

The LEPC serves as a focal point in the community for information and discussions about hazardous substance, emergency planning, and health and environmental risk.

Southeast Region (Harris County), TX

The SERLEPC works with local government public safety agencies to develop emergency planning in the event of a chemical disaster and to increase citizen awareness of protection measures through community education projects

Matagorda County, TX

The LEPC is made up of city and county elected law enforcement, fire and emergency medical officials, representatives of area industries and volunteer organizations such as the American Red Cross.

In short, LEPC members are your co-workers, friends and neighbors, who prepare for emergencies which might pose health and safety hazards to Matagorda County residents.

Such emergencies include releases of hazardous chemicals from any of the plants within the county or from any of the thousands of trucks, barges and railroad cars which carry them through the county during each year.

But they also include natural disasters like hurricanes and tornados, as well as spills of everyday chemicals like gasoline or agricultural chemicals like pesticides.

Year round, members of the LEPC meet to discuss response plans and means of better informing the public - that's YOU - about what to do when an emergency occurs.

They participate in drills at plants, they help find ways to improve safety and aid the various organizations - police, sheriff's, fire and EMS departments, school districts and other governmental agencies, hospitals and civic and volunteer groups - work smoothly together in the event of an actual emergency.

ED_002941_00002942-00183

APPENDIX Z. Region 6 State EPCRA (Right-to-Know) Statutes

ARKANSAS

Title 12 - Law Enforcement, Emergency Management, & Military Affairs, Subtitle 5 - Emergency Management Chapter 82 - Arkansas SERC/LEPC Act

§ 12-82-101 - Title.

This chapter may be known and cited as the Arkansas SERC/LEPC Act.

§ 12-82-102 - Purpose.

Because of existing and increasing accidents, incidents, and events involving hazardous and toxic materials in transport, manufacturing, storage, refining, and usage and because of federal mandates imposed upon state and local governments under the provisions of EPCRA Act of 1986, 42 U.S.C. 11001 et seq., it is found and declared to be necessary to:

(1) Create a State Hazardous Materials Emergency Response Commission which shall be empowered to take the necessary actions and activities required under state and federal laws, rules, and regulations related to emergency planning, training, response, and recovery activities for hazardous and toxic materials;
(2) Administer the provisions of EPCRA of 1986, 42 U.S.C. 11001 et seq.; and
(3) Authorize the commission to investigate, review, implement, and manage such standards and requirements as may be needed for the certification of public emergency responders and other related emergency personnel as may be subject to emergency response and recovery actions related to hazardous and toxic materials incidents, accidents, or events.

§ 12-82-103 - Definitions.

As used in this chapter:

(1) "Certification" means a formal document acknowledging that an individual has reached the minimum level of formal training and education, required under federal regulations and guidance provided through the State Hazardous Materials Emergency Response Commission, to perform his or her normally assigned duties for hazardous and toxic materials emergency response;
(2) "Emergency responder" means a person or persons enrolled in organizations which are entities of state or local government, or acting in behalf of state or local government, including, but not limited to, professional or volunteer law enforcement, firefighting, emergency medical, emergency services, or other public emergency response personnel who respond to the scene of a disaster with an assigned role in public safety and emergency services;
(3) "Emergency response and recovery" means those actions required at the scene of a disaster or emergency, as described in the Arkansas Emergency Services Act of 1973, §§ 12-75-101 et seq., for public safety, health, and welfare;
(4) "Hazardous and toxic materials" or "HAZMAT" means:
   (A) EHSs under 42 U.S.C. § 11002, hazardous chemicals under 42 U.S.C. §§ 11021 and 11022, and toxic chemicals under 42 U.S.C. § 11023; and
   (B) Such other hazardous and toxic substances as may later be designated by federal regulatory agencies; and
(5) "State Emergency Response Commission" or "SERC" refers to the State Hazardous Materials Emergency Response Commission as specified in this chapter.

§ 12-82-104 - State Emergency Response Commission.

a) (1) The SERC shall be composed of:
   (A) The directors of the Department of Health, the Arkansas Department of Environmental Quality, the Department of Arkansas State Police, the Arkansas Department of Emergency Management, the Department of Labor, the Arkansas Fire Training Academy, the Arkansas State Highway and Transportation Department, the Adjutant General, or their designated representatives;
   (B) One (1) individual representing the LEPCs;
   (C) Two (2) individuals from regulated entities;
   (D) One (1) individual from an unregulated entity with knowledge of the EPCRA of 1986; and
   (E) One (1) private citizen to represent the public at large.
   (2) (A) The chair of the commission shall be elected by the members of the commission and shall serve for a two-year period.
   (B) (i) Each commission member designated in subdivisions (a)(1)(B)-(E) of this section shall serve for a term of four (4) years and shall serve at the pleasure of the Governor.
   (ii) The term of any member designated in subdivisions (a)(1)(B)-(E) of this section may be extended for a period of one (1) year to prevent the terms of all members from expiring in the same year.
b) The commission shall establish LEPCs within the authorized and established local emergency services jurisdiction of the state as prescribed in §§ 12-75-101 -- 12-75-129.

c) LEPC membership, functions, and duties shall be in accordance with the federal guidelines prescribed in the EPCRA of 1986, 42 U.S.C. 11001 et seq.
d) The commission may promulgate such rules, regulations, and guidelines as deemed necessary or desirable:
   (1) For the training and certification of public emergency response and recovery personnel, as defined in this chapter;
   (2) To ensure compliance with the appropriate federal guidelines and law governing public emergency response and recovery personnel; and
   (3) To adequately administer the requirements of the EPCRA of 1986, 42 U.S.C. 11001 et seq., in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
e) Any person who is denied training certification under this chapter may appeal such decision to the commission by notifying the commission in writing within fifteen (15) days after the denial of certification.

Chapter 79 - Arkansas Hazardous and Toxic Materials Emergency Notification Act

§ 12-79-101 - Title.

This chapter may be known and cited as the "Arkansas Hazardous and Toxic Materials Emergency Notification Act".

§ 12-79-102 - Creation.

Because of the existing and increasing possibility of a major disaster or emergency from the release of hazardous and toxic substances into the environment while in transport, during manufacturing, and in storage, and because of the immediate need to notify state and local emergency response and recovery forces and other governmental entities mandated to perform certain actions related to a release of hazardous or toxic substances into the environment, it is found and declared to be necessary to:

(1) Create within the ADEM a system to notify local, state, and federal emergency response and recovery forces and those other governmental and private sector entities with a mandated responsibility for emergency services; and
(2) Require any business, manufacturer, refiner, retailer, wholesaler, transporter in the private sector, or governmental entity at the local, state, or federal level to report as soon as possible any known incident involving the release of hazardous and toxic materials into the environment which requires, or may require, emergency response or recovery actions by public safety forces of local or state governmental entities, including volunteer emergency services such as, but not limited to, firefighters, law enforcement, emergency medical services, and other first responders.

§ 12-79-103 - Definitions.

As used in this chapter:

(1) "Director" means the Director of the ADEM established under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.;
(2) "Fixed facility" means any refinery, factory, storage site, assembly plant, warehouse, wholesaler, retailer, or other facility which receives, stores, processes, or ships hazardous and toxic materials;
(3) "Hazardous and toxic materials" means:
   (A) Those substances, except natural gas, manufactured, refined, or found in their natural state which, when released into the environment, by any means, have an immediate or potential threat to human, animal, or plant life and meet other criteria established under federal regulations, guidelines, or laws defining hazardous and toxic substances in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce, and which is designated as "hazardous material" in regulations prescribed by the United States Secretary of Transportation under Title 49 of the Code of Federal Regulations; and
   (B) Any other substance or pollutant designated by regulations of the director promulgated under this chapter;
(4) "HAZMAT" means the abbreviation of "hazardous and toxic materials";
(5) "Incident" or "accident" means the spilling, leaking, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of hazardous and toxic materials into the environment;
(6) "System for notification" means those communications facilities currently existing, or that may be later established, for direction, warning, and control of emergency response and recovery forces at the federal, state, and local levels;
(7) "Transport" means the movement of any hazardous and toxic material regardless of the mode of transportation from one place to another place and any loading, unloading, and storage incidental thereto; and
(8) "Transporter" means any person, firm, association, partnership, corporation, or other legal entity who transports or ships in a motor vehicle, rail freight car, freight container, cargo tank, rail tank car, pipeline other than a natural gas pipeline, aircraft, vessel, or other means of transportation any hazardous and toxic materials as a common carrier, contract carrier, or carrier for private use.

§ 12-79-104 - HAZMAT incident or accident reporting system.

a) The Director of the ADEM shall:
   (1) In cooperation with the SERC, establish a HAZMAT incident or accident reporting system within the State EOC for disseminating information to the appropriate agencies and emergency first responders for any release of a hazardous and toxic material that might present either an immediate or potential threat to the safety, health, and welfare of the public; and
   (2) Operate and maintain on a continuing basis emergency direction, control, and warning systems sufficient to meet the minimum requirements of this chapter.
b) The HAZMAT incident or accident reporting systems shall meet the minimum federal requirements specified in federal regulations and guidelines for hazardous and toxic materials emergency reporting and shall operate within the provisions established under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., and the State of Arkansas EOP to provide the most expeditious and practical means to notify state, local, and private sector entities assigned an emergency response or recovery role under this chapter.
c) Each agency, office, bureau, or commission of the State of Arkansas or its political subdivisions having a role or responsibility for HAZMAT planning, response, recovery, or mitigation, or providing public safety services or having regulatory or oversight authority shall establish guidelines and procedures to ensure prompt and accurate reporting of any accident, incident, or known or suspected release of toxic or hazardous materials within the State of Arkansas in violation of any state or federal environmental or health protective statutes, regulations, or guidelines.

§ 12-79-105 - Accidents or incidents.

Any fixed facility operator or any transporter involved in an accident or incident during refining, manufacturing, processing, storage, loading, unloading, transporting, or a related activity which involves the release of hazardous and toxic materials into the environment or any public safety emergency first responders from the local, state, or federal level, who have confirmed that the incident or accident has not been previously reported to the State EOC shall report immediately, by telephone, radio, or the most expeditious means available to the center any incident or accident which:
(1) Involves a fatality due to fire, explosion, or exposure to any hazardous and toxic materials;
(2) Results in the hospitalization of any person due to fire, explosion, or exposure to any hazardous and toxic materials;
(3) Results in a continuing danger to life, health, or property at the place of the accident or incident; and
(4) Results in the release of hazardous and toxic materials, in any amount, by any transporter onto public or private property, including roads, highways, or thoroughfares maintained by local, state, and federal government entities and upon regulated commerce rights-of-way.

§ 12-79-106 - Penalties

Any person who pleads guilty or nolo contendere to or is found guilty of violating any provisions of this chapter or any regulation promulgated hereunder shall be guilty of a misdemeanor and be fined not more than five hundred dollars ($500) per day of violation or imprisoned for not more than one (1) year, or both.

- -

Chapter 84 - Arkansas HAZMAT Emergency Management Act

§ 12-84-101 - Short title

This chapter may be known and cited as the "Arkansas HAZMAT Emergency Management Act".

§ 12-84-102 - Applicability.

a) Nothing in this chapter shall be construed as regulatory authority over acts, laws, rules, regulations, or guidelines of other state or federal agencies related to their designated responsibilities and duties as regulatory authorities over concerns of environmental, health, law enforcement, firefighting, medical, or other areas of responsibility.
b) The provisions of this chapter are intended to be supplemental to current provisions of Arkansas law, and shall not be construed as repealing or superseding any other laws applicable thereto.

§ 12-84-103 - Definitions.

As used in this chapter:

(1) "Emergency management" means those activities related to disaster and emergency planning, mitigation, training, response, and recovery as prescribed in the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.;
(2) "Hazardous and toxic materials" or "HAZMAT" means those EHSs described under 42 U.S.C. § 11023, and such other hazardous or toxic substances as may later be designated by federal regulatory agencies;
(3) "Local emergency planning committee" means those local entities authorized under the provisions of the Arkansas SERC/LEPC Act, § 12-82-101 et seq., and in

accordance with the EPCRA of 1986, 42 U.S.C. § 11001 et seq.;

(4) "State Hazardous Materials Emergency Response Commission" means that entity created under the provisions of the Arkansas SERC/LEPC Act § 12-82-101 et seq., and in accordance with the EPCRA of 1986, 42 U.S.C. § 11001 et seq.; and

(5) "Superfund Amendments and Reauthorization Act of 1986, Title III" refers to 42 U.S.C. § 11001 et seq. and activities mandated therein.

§ 12-84-104 - State Office of Hazardous Materials Emergency Management.

a) There is created by this chapter a State Office of Hazardous Materials Emergency Management within and under the administrative and operational control of the ADEM.

b) The office shall perform the necessary actions and activities as required under current federal and state laws, rules, and regulations related to emergency planning, training, response, and recovery and, as specified in the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., relating to accidental, deliberate, or act-of-God releases of hazardous or toxic materials which might threaten the public health, safety, welfare, environment, or property of the citizens of Arkansas.

§ 12-84-105 - Powers and duties.

The State Office of Hazardous Materials Emergency Management shall:

(1) Collect, file, and establish an accessible database and make available information derived from the required reports in 42 U.S.C. §§ 11022 and 11023, and in accordance with the laws, regulations, and guidelines established by the federal government and the State of Arkansas;

(2) Establish, staff, and manage an administrative, fiscal, and operational office to manage all programs and funds required under this chapter and in accordance with the current, accepted practices prescribed by the State of Arkansas and participating federal agencies;

(3) Establish and manage a system to train and certify emergency first responders at the minimum prescribed levels of competency and proficiency as required by federal or state law or regulation;

(4) Assist, as requested or directed by the State Hazardous Materials Emergency Response Commission's local emergency planning committees in meeting the minimum standards for planning, training, or exercising as required under the provisions of the EPCRA of 1986, 42 U.S.C. § 11001 et seq.;

(5) Establish a system to certify LEPCs as being in compliance with required actions and activities, as prescribed by the EPCRA of 1986, 42 U.S.C. § 11001 et seq., and other governing directives, laws, or regulations;

(6) Manage federal or state funding programs that provide direct fiscal assistance to certified LEPCs for planning, training, exercising, or administration, to ensure program and fiscal compliance with current federal and state law;

(7) Perform, manage, and oversee such other hazardous or toxic materials emergency management-related functions as may later be implemented, as directed by the Governor, the commission, and other state authority;

(8) Collect and administer fees provided in this chapter and such federal funding as may be specifically earmarked for the program of the office, in accordance with current federal and state laws, regulations, and rules and as recommended by the commission to ensure minimum compliance with federal mandates related to hazardous or toxic materials emergency preparedness;

(9) Provide a point of contact for state agencies, offices, and bureaus to assist with the coordination of specific emergency planning and training and other hazardous or toxic materials emergency management-related activities;

(10) Provide direct emergency management support to LEPCs to assist them with local hazardous or toxic materials emergency management activities and to assist them with reaching and maintaining compliance with federal mandates for these programs; and

(11) Manage, as designated by the Governor or the commission, such other hazardous or toxic materials emergency management programs as may later be mandated by federal or state law, regulation, or guidance.

§ 12-84-106 - Fees.

a) (1) Each facility required to report to the State Hazardous Materials Emergency Response Commission under the provisions of 42 U.S.C. §§ 11022 and 11023, shall pay the following annual fees to the State Office of Hazardous Materials Emergency Management:

(A) For each facility required to file one (1) or more hazardous chemical inventory reports, under the provisions of 42 U.S.C. § 11022, an annual fee of twenty-five dollars ($25.00), and an additional fee of five dollars ($5.00) for each report filed annually, with a maximum limit of two hundred dollars ($200) annually for each reporting facility; and

(B) For each facility required to file one (1) or more toxic chemical release forms, under the provisions of 42 U.S.C. § 11023, an annual fee of one hundred fifty dollars ($150) and an additional fee of twenty-five dollars ($25.00)

for each report, with a maximum limit of four hundred dollars ($400) annually for each reporting facility.

(2) Any business or other outlet which sells gasoline, diesel, and other motor fuel only at retail to the public shall be exempt from paying the fees outlined in this subsection.

b) The commission shall periodically assess the adequacy of the fees established in this section, and may, through the public hearing process, modify the fees imposed for each individual report, not to exceed the stated maximum limit for each reporting facility as indicated in subsection (a) of this section.

c) Reports under the provisions of 42 U.S.C. §§ 11022 and 11023 shall be submitted to the office in accordance with, and within the specified time frames of the EPCRA of 1986, 42 U.S.C. § 11001 et seq., and shall include a company check issued by the facility or its parent corporation for the appropriate amount of each submission, as specified in this section, and the check shall be made payable to the office.

d) Any facility or person failing to provide the reports and pay the fees, as specified in this section, shall be liable for civil penalties in such amount as the office shall find appropriate, not to exceed ten thousand dollars ($10,000) per violation, and for payment of any expenses reasonably incurred by the state therefrom.

§ 12-84-107 - Office of Hazardous Materials Emergency Management Revolving Fund.

a) There is created on the books of the Treasurer of State, Auditor of State, and Chief Fiscal Officer of the State a special revenue fund account to be known as the Office of Hazardous Materials Emergency Management Revolving Fund.

b) All moneys collected under this subchapter shall be deposited to the credit of that account as special revenues and shall be used by the State Office of Hazardous Materials Emergency Management to operate the office and enforce this chapter.

LOUISIANA

CHAPTER 16. HAZARDOUS MATERIALS INFORMATION DEVELOPMENT, PREPAREDNESS, AND RESPONSE ACT

§2361. Citation

This Chapter shall be known and may be cited as the "Hazardous Materials Information Development, Preparedness, and Response Act" and may be referred to as the "Right-to-Know" Law.

§2362. Declaration of policy and purpose

A. The legislature hereby adopts as a policy that the citizens of this state have the right and responsibility to know about and protect themselves from the risks and effects of hazardous materials in their environment. Inherent in the public's right to know is the public's need to know that state and local agencies have the information to both respond to their inquiries and to protect them by:

(1) Providing information to physicians for emergency medical diagnosis.

(2) Adequately preparing for disasters.

(3) Centralizing, and coordinating regional, and local long-range planning concerning the environmental hazards in various localities.

(4) Developing information on chronic health risks which may appear as the result of the presence of hazardous materials.

B. The purpose of this Chapter, therefore, is to create a comprehensive information system containing specific data regarding the presence and location of hazardous materials in Louisiana. Such information should be compiled in a way which permits the data to be shared with the public and among involved state agencies and local governing authorities.

C. The legislature recognizes that among the state agencies presently collecting, disseminating, and analyzing data there exists much of the technical capability, determination, and expertise to develop, implement, manage, and expand such an information system. The legislature therefore mandates and supports a cooperative effort of all involved agencies to work through an interagency advisory commission, and a single state supervisory agency to create a comprehensive information system, implement comprehensive state and local planning, and as soon as practical and feasible, make this crucial information available to the public through designated local repositories at a minimum of additional cost to owners or operators, the state, or local government.

§2363. Definitions

The following terms as used in this Chapter shall have the following meanings:

(1) "Commission" means the SERC appointed by the governor to implement the mandates of the Superfund Amendments and Reauthorization Act passed by the United States Congress in 1986. This commission is created within the Department of Public Safety and Corrections, public safety services.

(2) "Department" means the Department of Public Safety and Corrections.

(3) "Deputy secretary" means the deputy secretary for the office of public safety services in the Department of Public Safety and Corrections.
(4) "Environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.
(5) "Extremely hazardous substance" (EHS) means a hazardous substance listed by the EPA in 40 CFR Part 355, Appendix A (the list of EHSs and Their TPQs) and subject to the emergency planning, release reporting, MSDS filing, and inventory filing requirements of SARA Title III.
(6) "Facility" means the physical premises used by the owner or operator in which the hazardous materials are manufactured, used, or stored. A natural gas pipeline shall not be classified as a compressed natural gas facility.
(7) "Hazardous material" means any substance deemed a hazardous material or a hazardous substance and included on a list adopted by rule by the deputy secretary to include those materials deemed hazardous under the CERCLA, the SARA, Title III U.S.C., and certain substances included in the DOT regulations as found in 49 CFR Part 172.101. Hazardous material also means any substance designated by the deputy secretary by rule on recommendation of the commission which meets criteria established for adding other materials to the list. This term shall mean and include hazardous substances.
(8) "Hospitalization" means the admission into a hospital as a patient for an overnight stay or emergency treatment at a hospital to the extent that the owner or operator requested such treatment or becomes aware of such treatment within twenty-four hours of the initiation of the relevant release.
(9) "Immediately" means a reasonable period of time after identifying the nature, quantity, and potential off-site impact of a release considering the exigency of the circumstances.
(10) "Inventory form" means the reporting form adopted by the department, and completed by owners and operators, which contains certain requested information on hazardous materials and which is used in developing the information system mandated by this Chapter.
(11) "Local governing authority" means the police jury, parish council, the mayor's office of the city of New Orleans or the city-parish of East Baton Rouge or other primary governmental body of a parish.
(12) "Owner or operator" means any person, partnership, or corporation in the state including, unless otherwise stated, the state and local government, or any of its agencies, authorities, departments, bureaus, or instrumentalities engaged in business or research operations which use, manufacture, emit, or store a hazardous material at a facility.
(13) "Reasonably be expected to affect the public safety beyond the boundaries of the facility" means fire, explosion, incident, accident, or cleanup within a facility that may reasonably impact public safety beyond the facility, including but not limited to an impact of such nature as to require shelter-in-place orders, evacuations, immediate response by emergency responders, or off-site road closures. The term shall not include facility drills, internal facility announcements, internal facility alarms and sirens, or internal facility response activities such as rolling facility fire trucks or ambulances, and movement of facility personnel in personal protective equipment.
(14) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous material or substance. However, the term release as used in this Paragraph shall not include federal or state permitted releases.
(15) "Reportable release" means a release of a regulated hazardous material or substance which causes any injury requiring hospitalization or any fatality, results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility, or exceeds the reportable quantity when that RQ, as defined pursuant to rules promulgated by the deputy secretary, could be reasonably expected to escape beyond the site of the facility. A reportable release as defined herein shall be based upon the quantity of hazardous material or substance discharged continuously, intermittently, or as a one-time discharge, within any continuous twenty-four hour period.
(16) "Repository" means the local entity designated pursuant to R.S. 30:2368 to house and record information on hazardous materials received from the department, regulated facilities, and other state agencies for public dissemination and inspection.
(17) "Retail gas station" means a retail facility engaged in selling gasoline or diesel fuel primarily to the public, for use in land-based motor vehicles.
(18) "Small business" means a single business employing not more than nine full-time employees and having not more than two million dollars in average annual gross receipts. Any business employing more than nine persons shall not be considered a small business regardless of the average annual gross receipts. Any business with average annual gross receipts of over two million dollars shall not be considered a small business regardless of the number of employees.
(19) "Trade secret" means any confidential formula, pattern, process, device, information, or compilation of information, including chemical name or other unique identifier, that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.

§2364. SERC

The Hazardous Material Information Development, Preparedness, and Response Advisory Board is hereby abolished and in its place the SERC, which is appointed by the governor, is hereby established and will assume the advisory function of the board. The secretary of the LDEQ or his designee shall also serve as a member of the SERC.

This commission shall function under the supervision and authority of the deputy secretary, Department of Public Safety and Corrections, public safety services, office of the state police, and shall also be responsible for the following:

(1) Establishing emergency planning districts.
(2) Appointing LEPCs.
(3) Supervising and coordinating activities of the LEPCs.
(4) Providing the administrator of the EPA with information concerning notification received on certain releases of hazardous materials and substances.
(5) Designating, as necessary, additional facilities to be covered under this Chapter.
(6) Recommending a standardized inventory form to be used in gathering the required information under this Chapter and providing for alternative reporting procedures to reduce duplication of reporting.
(7) Recommending, as necessary, additional substances which should be defined as hazardous materials based on location, toxicology, known short and long term health effects, and other characteristics.
(8) Acting as the centralized advisory body for coordinating the state and federal activities concerning community "Right-to-Know" legislation with regard to hazardous materials and substances.
(9) Establishing procedures for receiving and processing requests from the public for information.
(10) Reviewing LEPC emergency response plans and making recommendations to the LEPC on revisions of the plan that may be necessary to ensure the coordination of such plan with emergency response plans of other emergency planning districts.

§2365. Responsibilities of the department

A. The deputy secretary shall:
   (1) Develop rules and regulations governing criteria for defining a substance as a hazardous material and for the development, implementation, compilation, supervision, and management of the information system for hazardous materials.
   (2) Make reasonable efforts to insure that owners and operators are aware of reporting requirements under this Chapter.
   (3) Develop a rule for alternative reporting requirements for businesses as provided for in R.S. 30:2370.
   (4) Supervise the dissemination of data to repositories and train repository personnel to provide information to the public. If the sheriff's office is not designated as the repository, the sheriff in each parish shall have access to the data compiled under this law through the local emergency planning committee and/or local fire departments in the respective parish.
   (5) Apply for, accept, and expend money through the budgetary process from federal sources for the further development, implementation, and dissemination of information to agencies, to emergency response personnel, and to the public.
   (6) Develop a centralized inventory reporting and notification system allowing for the standardization of reporting on the state, parish, and local government levels.

   The department, working in conjunction with other state agencies and parish government planning agencies, including LEPCs and local response agencies, will identify the standard content of reporting and develop a centralized state inventory reporting and notification system that can be used by all government agencies.
   (7) Develop a means to assist all parishes in developing comprehensive hazardous material emergency response plans which reflect local governments' primary responsibility for the protection of local citizens.
B. The department shall, whenever practical and feasible, consult with the commission in developing rules and regulations for the implementation of this Chapter.
C. The inventory form adopted under this Chapter shall replace, to the extent feasible and practical, all other reporting presently required for reporting the manufacture, use, storage, or release of all hazardous materials to state governmental agencies.

§2368. Designated repositories

A. The SERC shall designate the following as repositories for information gathered under this Chapter. The repositories shall be:
   (1) The LEPC, as designated by the commission.
   (2) The local fire department.
   (3) The Department of Public Safety and Corrections, office of state police, hazardous substance control section, acting for the SERC.
B. (1) Each repository designated pursuant to Subsection A of this Section shall provide information gathered under this Chapter to any person upon request during reasonable office hours and may charge such person a reasonable amount for copying charges and other administrative costs. The charges for the said costs shall be the same as the charges authorized

for copies of public records as provided for in R.S. 44:32.

(2) In addition, the repository may refer public requests for information regarding specific medical, toxic, and health effects to the Louisiana Regional Poison Control Center.

C. The department shall, whenever practical and feasible, enhance the capability of local governing authorities and repositories to maintain and update public information, train personnel in repository management, and to develop other capabilities to assist in their compliance with this Chapter.

D. Each local governing authority may adopt an ordinance to impose fees or charges on owners or operators whose facilities are located within the parish and who are subject to the reporting requirements of the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. 11022.

The amount of the fee or charge imposed pursuant to this Subsection shall provide anticipated proceeds not to exceed the anticipated costs for performing the services required in this Section, and the SARA of 1986, Title III, 42 U.S.C. 11022, including those initial costs necessary to establish a system for storage, updating, and dissemination of the information herein required to be made available to the public.

In no case shall the fees or charges imposed on any one person by the local governing authority exceed one dollar per page, fifty dollars per inventory report, or three hundred dollars per report including but not limited to reporting multiple facilities in one parish.

In no case shall charges imposed on small businesses, as defined in this Chapter, exceed fifteen dollars per inventory report.

§2369. Responsibilities of owners and operators

A. Owners or operators shall be responsible for filing inventory forms for all hazardous materials manufactured, used, or stored at their facilities and for immediately reporting releases of certain hazardous materials in certain RQs to be established by rule as provided for in R.S. 30:2373(B) and (C)(2).

B. (1) Owners or operators shall have the responsibility to obtain inventory forms and submit them to the SERC by way of the Department of Public Safety and Corrections, office of state police, Right-to-Know unit by March 1, 1988, and by March first of each year thereafter.

(2) This does not relieve the owner or operator from having to file inventory forms or make release notification to other agencies, e.g., local fire departments or LEPCs, as may be required by federal law.

C. Owners or operators shall post signs at their facilities, subject to a rule adopted by the deputy secretary, indicating that a hazardous material reported pursuant to the provisions of this Chapter is present on the premises. The deputy secretary shall develop, adopt, and disseminate rules and regulations which provide for such posting.

D. (1) Owners or operators who manufacture, use, store, or release a hazardous material at their facility shall so notify their present employees and each new employee within a reasonable time of his beginning employment. Such notification shall be made by posting a notice in a place in the facility where it is easily accessible to employees.

(2) Whenever the owner or operator has information regarding the toxic effects of a hazardous material manufactured, used, stored, or released at the facility, he shall so advise his employees, and make the information available to them on request for their examination only on the premises.

(3) Louisiana manufacturers, distributors, and packagers of hazardous materials and mixtures manufactured, blended, packaged, mixed, or distributed within Louisiana for those materials listed under the SARA Title III, Sections 302, 304, 311, and 312, or Louisiana's Right-to-Know Law, R.S. 30:2361 et seq., shall incorporate on the hazardous material's MSDS or supply a separate statement with the verbiage "This material may be regulated by Louisiana's Right-to-Know Law, R.S. 30:2361 et seq." for identifying the hazardous materials as regulated by the state of Louisiana or the SARA Title III, Sections 302, 304, 311, and 312, or use language of similar nature.

This Paragraph shall be effective only upon the promulgation by the deputy secretary of rules and regulations setting forth the criteria for the notice required herein. The deputy secretary may exempt from this requirement materials and mixtures with generic MSDSs used nationally or internationally.

§2371. Trade secret protection

With regard to trade secret protection and the information disclosure requirements of this Chapter, the state of Louisiana, through the Department of Public Safety and Corrections, hereby adopts as its own the trade secret provisions as found in Title III of the SARA, 42 U.S.C. 11042. All petitions for trade secret protection must be filed with the administrator of the EPA.

§2372. Trade secrets; emergency treatment disclosure

A. With regard to trade secret information needed for medical diagnosis or treatment of a person exposed to a hazardous material, the state of Louisiana, through the Department of Public Safety and Corrections, hereby adopts as its own the trade secret provisions as found in Title III of the SARA, 42 U.S.C. 11042.

B. Nothing in this Section shall be construed so as to interfere with the duty of a physician to report actual or potential public health problems to the proper authorities.

§2373. Failure to report; penalties

A. All owners and operators shall be required to report the information required under R.S. 30:2369 of this Chapter regarding the manufacture, storage, or use of hazardous materials by no later than March 1, 1988, and by March first of each year thereafter.

B. (1) Owners and operators shall immediately notify the department of any reportable releases, other than a federally or state permitted release or application of a pesticide or fertilizer, of a hazardous material or substance listed pursuant to this Chapter exceeding the reportable quantity when that RQ could be reasonably expected to escape the site of the facility, as soon as the owner or operator has knowledge of such release. Failure to do so shall subject owners and operators to civil penalties as provided in Subsection C of this Section. Notwithstanding any provision of law to the contrary, natural gas from distribution lines shall have a reportable release of one thousand pounds or more.

(2) Any reportable release of any hazardous material regulated by this Chapter which causes any injury requiring hospitalization or any fatality or any release which results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility shall be reported immediately to the department.

(3) Any incident, accident, or cleanup within a facility, which could reasonably be expected to affect public safety beyond the boundaries of the facility or where the owner or operator knows a protective action beyond the boundaries of the facility has been initiated, shall be reported immediately to the department.

(4) Any release or incident that occurs within the boundaries of a facility and may be subject to reporting under this Section shall not be reportable by the owner or operator of the facility, or the employees, non-commercial carriers, contractors, or consultants of such owner or operator pursuant to the provisions of Chapter 12 of Title 32 of the Louisiana Revised Statutes of 1950, unless such release or incident involves a railcar that is in transportation and the owner or operator of the facility is required to report the release or incident under 49 C.F.R. 171.15.

(5) The department shall not subject an owner or operator to a civil penalty as provided in Subsection C based on any incident or release that was not required to be reported under this Section and that was reported by the owner or operator as a courtesy.

(6) The secretary may develop rules and regulations to implement and clarify the reporting requirements of this Subsection and to address changes in federal regulations.

(7) The Department of Environmental Quality shall make available to the public for examination any information contained in reports required pursuant to R.S. 30:2025(J), 2060(H), and 2076(D).

C. (1) For owners and operators who knowingly fail to file an inventory form on hazardous materials as required by this Chapter by March 1, 1988, and by March first of each year thereafter, the department may levy a civil penalty which shall not exceed twenty-five thousand dollars per hazardous material not reported. Small businesses who have an omission from the inventory reporting forms shall receive a warning only for their first offense.

(2) The department may also levy a civil penalty not to exceed twenty-five thousand dollars per violation for failure to timely report nonpermitted releases pursuant to R.S. 30:2373(B).

(3) For owners and operators who knowingly fail to report a reportable release of a hazardous material regulated by this Chapter, the department may assess a civil penalty not to exceed twenty-five thousand dollars per violation per day.

(4) The department shall consider, in determining whether to assess a fine, the financial situation of owners and operators of small businesses as well as any willfulness in failing to comply with the provisions of this Chapter. Such fines shall be deposited in the Right-to-Know Fund pursuant to R.S. 30:2380.

D. (1) Any person who handles, stores, or otherwise maintains a hazardous material regulated by this Chapter in a negligent or unreasonable manner without regard for the hazards of the material and causes a significant impact to public health and safety as a result of a reportable release of a hazardous material shall be in violation of this Subsection.

(2) For any person, owner, operator, or facility that violates this Subsection, the department may levy a civil penalty not to exceed ten thousand dollars per violation.

E. (1) No person shall intentionally handle, store, or otherwise maintain any hazardous material regulated by this Chapter in a manner which endangers human life.

(2) Any person, owner, operator, or facility that willfully violates this Subsection may be assessed a civil penalty by the department not to exceed twenty-five thousand dollars per violation per day or upon first conviction shall be fined not more than five hundred dollars or imprisoned for not

more than six months, or both. Upon second or subsequent conviction of a violation of R.S. 30:2373(E)(1), said person, owner, operator, or facility shall be fined not less than five hundred dollars nor more than ten thousand dollars or imprisoned with or without hard labor for not less than six months nor more than ten years.

F. (1) Any owner or operator who causes a reportable release that requires a significant emergency response by the department or is in violation of Subsection D of this Section shall reimburse the department for reasonable and extraordinary costs of emergency response, including actions taken by the department to mitigate such reportable release.

(2) Reimbursement to the department pursuant to Paragraph (1) of this Subsection shall preclude reimbursement for the same incident to the department from other response funds, including but not limited to the Hazardous Waste Protection Fund, R.S. 30:2198, the Motor Fuels Underground Storage Tank Trust Fund, R.S. 30:2195, et seq., and the Oil Spill Contingency Fund, R.S. 30:2483, et seq.

(3) An owner or operator of a small business shall not be responsible for the emergency response costs of the department in excess of twenty-five thousand dollars.

§2374. Fees

A. An annual fee shall be submitted with the inventory form by each owner or operator required to report under this Chapter. The fee shall be assessed in proportion to the number of hazardous materials manufactured, used, or stored on site.

B. (1) The fees for facilities not meeting the definition of "small business" in R.S. 30:2363 shall be assessed as follows:

Number of Hazardous Materials Present at Facility	Amount of Fees Charged
01 to 25	$ 65.00
26 to 75	$ 85.00
76 to 100	$ 170.00
Over 100	$ 255.00

(2) Any facility required to pay a fee pursuant to this Section and any retail gas station exempt from reporting pursuant to R.S. 30:2370 shall not be required to pay an additional fee to the local emergency planning committee other than the fees already imposed by the local emergency planning committee for the collection of information required by this Chapter.

(3) In the case of owners or operators reporting facilities with numbers of hazardous materials referenced above at multiple locations throughout the state, no owner or operator shall be assessed total fees in excess of two thousand dollars.

(4) The fee per facility for small businesses as defined in this Chapter shall not exceed twenty-five dollars.

§2375. Access to facilities for emergency response

A. When there has been a release subject to the reporting requirements of R.S. 30:2373(B), the owners and operators of the facility where the release occurred shall, upon the request or demand, allow access to the facility by the designated local emergency response agency without delay; however, each representative of the designated local emergency response agency seeking access to the facility shall be certified or qualified in the handling of hazardous materials by an appropriate governmental agency and qualified in dealing with the particular emergency and the equipment and/or the facility involved. The parish governing authority shall designate one local emergency response agency which shall have access to facilities within the parish pursuant to this Section. The owner or operator of a facility where a release has occurred may delay access to the facility for a reasonable period of time, to the extent necessary in order to secure the facility, insure immediate safety, preserve property, or verify the authority of those persons seeking access to the facility pursuant to this Section.

B. An owner or operator who fails to comply with the requirements of this Section shall be subject to a civil fine of five thousand dollars.

C. The fine provided for in this Subsection shall be due, in the aggregate, to the agencies denied access in violation of this Section and may be levied by the district court of the parish in which the violations occurred.

D. Each representative of a state or local emergency response agency provided access to a facility under this Section shall be under the strict supervision of facility personnel and shall not take any direct action to respond to the release unless specifically authorized to do so by such facility personnel.

E. None of the provisions of this Section shall prohibit or hinder the Transportation and Environmental Safety Section of the Office of State Police from coordinating an emergency response as authorized in R.S. 30:2376.

§2376. Monitoring and enforcement

A. The deputy secretary or his designees shall have the right to reasonably monitor owners or operators to ensure their compliance with this Chapter. They shall have the right to enter and inspect any facility in which they have reasonable cause to believe hazardous

material, the reporting of which is required by this Chapter, is manufactured, stored, used, or released and which has not been reported, and to require the report of the presence of such hazardous material as required by this Chapter.

B. The deputy secretary may conduct investigations, make reports, conduct hearings, and conduct, directly or indirectly, the research, development, demonstration, or training activities necessary to undertake his responsibilities and exercise his authority under Subsection A of this Section. The deputy secretary, through the office of state police, hazardous materials unit, shall act as coordinator of emergency response activities arising as a result of releases of materials regulated under this Chapter.

C. Nothing in this Chapter shall be intended to diminish any sheriff's responsibility with regard to his authority to address emergency response needs in his parish.

§2380. Right-to-Know Fund

A. Subject to the exceptions contained in Article VII, Section 9 of the Constitution of Louisiana, all monies collected under R.S. 30:2373 shall be paid into the state treasury and shall be credited to the Bond Security and Redemption Fund.

Out of the funds remaining in the Bond Security and Redemption Fund, after a sufficient amount is allocated from that fund to pay all obligations secured by the full faith and credit of the state which become due and payable within a fiscal year, the treasurer shall, prior to placing such remaining funds in the state general fund, pay into a special fund, which is hereby created in the state treasury and designated as the "Right-to-Know Fund", hereinafter referred to as the fund, an amount equal to all monies collected under R.S. 30:2373. The fund balance shall not exceed two million dollars. Any monies in excess of that amount shall revert to the general fund.

B. Monies in the fund shall be paid to the deputy secretary on his warrant and shall be used to develop the Louisiana Chemical Network (LCN), a statewide centralized inventory and release reporting system. This centralized reporting system is intended to eliminate duplication in reporting requirements, develop centralized data management, and provide processed data to all parishes via the LEPCs.

The department shall have the responsibility to develop a centralized data distribution system and provide the local emergency planning committees with the necessary equipment, software, and training to support its application. The monies in the fund shall be dedicated to equipment acquisition and personnel training for LEPCs and for the department to properly staff the centralized data management functions. The deputy secretary shall adopt the necessary rules and regulations to administer this system.

- -

Title 33
ENVIRONMENTAL QUALITY
Part V. Hazardous Wastes and Hazardous Materials
Subpart 2. Department of Public Safety and Corrections — Hazardous Materials
Chapter 101. Hazardous Material Information Development, Preparedness, and Response Act

§10101. Declaration of Authority, Background, Policy and Purpose

A. The following rules are hereby promulgated pursuant to the authority provided in R.S. 30:2361-2380 regarding the Hazardous Material Information Development, Preparedness, and Response Act.

B. This Act was originally passed as Act 435 of the 1985 Legislative Session to implement the state's first "Right-to-Know" Law. In 1986 the United States Congress passed the SARA. Title III of SARA required, among other things, that the governor of each state appoint an SERC.

C. Compliance with Louisiana's Right-to-Know Law will attain compliance with SARA, Title III.

D. It should be noted that the Louisiana SERC, operating within the Department of Public Safety and Corrections, is the primary entity to which SARA, Title III communications are made. Copies of annual inventory forms must also be submitted to the LEPC in the parish where a facility is located and to the local fire department having jurisdiction over the facility.

E. Since the chemical lists, release RQs and threshold (inventory) quantities (TQ) in the federal regulation are subject to change, facility owners/operators should refer to the Federal Register and the CFR in addition to the Louisiana regulations to determine current reporting requirements before submitting their annual inventory forms and emergency release notifications.

F. It is the purpose of these rules to implement the information system conceived of in the state's original Right-to-Know Law by providing the citizens of this state, as well as emergency response personnel, with data on hazardous material storage necessary to make educated and responsible decisions.

§10103. Scope

A. These rules apply to the following:
   (1) any facility which manufactures, handles, uses, or stores any hazardous material(s) in excess of the threshold inventory quantity; and
   (2) any facility, transportation-related operation, or transport vehicle from which a reportable release occurs; and
   (3) all surface and subsurface related modes of hazardous materials transportation including but

not limited to all water (vessels and barges), air, highway, rail and pipeline operations.

§10105. Definitions

A. The following terms as used in this Chapter shall have the following meanings.

- Commission—the Louisiana SERC appointed by the governor to implement the mandates of the SARA passed by the U.S. Congress in 1986. This commission is created within the Department of Public Safety and Corrections, Public Safety Services.
- Department—the Department of Public Safety and Corrections.
- Deputy Secretary—the deputy secretary for the Office of Public Safety Services in the Department of Public Safety and Corrections.
- Environment—includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.
- Escape Beyond Facility—for the purposes of release reporting a release is considered off-site when the hazardous material or hazardous substance is released into the air or into any water, drainage ditch or canal such that the released hazardous material or hazardous substance could reasonably be expected to escape the confinement of the facility or to an area which the general public has unrestricted access.
- Extremely Hazardous Substance (EHS)—a hazardous substance listed by the EPA in 40 CFR, Part 355, Appendix A (the list of EHSs and their TPQ and subject to the emergency planning, release reporting and MSDS filing, and inventory filing requirements of SARA, Title III.
- Facility—the physical premises used by the owner or operator in which the hazardous materials are manufactured, used, or stored. A natural gas pipeline shall not be classified as a compressed natural gas facility.
- Hazardous Material—any substance deemed a hazardous material or a hazardous substance, and included on a list adopted by rule by the deputy secretary to include those materials deemed hazardous under the CERCLA, the SARA, Title III, U.S.C., and certain substances included in the most recent DOT regulations as found in 49 CFR, Part 172.101. Hazardous material also means any substance designated by the deputy secretary in these rules which meets criteria established for adding other materials to the list. This term shall mean and include hazardous substances.
- Hospitalization—the admission into a hospital as a patient for an overnight stay or emergency treatment at a hospital to the extent that the owner or operator requested such treatment or becomes aware of such treatment within twenty-four hours of the initiation of the relevant release.
- Immediately—a reasonable period of time, after identifying the nature, quantity, and potential off-site impact of a release considering the exigency of the circumstances.
- Incident—any release, fire, explosion or event which is other than any normal operational activity, and which results in an unusual or emergency condition. An actual release of any hazardous material is not required.
- Inventory Form—the reporting form adopted by the department and completed by owners and operators which contains certain requested information on hazardous materials and which is used in developing the information system mandated by the law and these regulations. This shall also include electronic transmission of data within the State Police's Louisiana Chemical Network Tier Two "E-filing" process.
- Local Governing Authority—the police jury, parish council, the mayor's office of the city of New Orleans or the city-parish of East Baton Rouge or other primary governmental body of a parish.
- Local Emergency Planning Committee—the committee in each parish designated by the SERC to coordinate Right-to-Know activities.
- Local Repository—the local entity designated pursuant to R.S. 30:2368 to house and record information on hazardous materials received from the department, regulated facilities, and other state agencies for public dissemination and inspection. For the purposes of Tier Two electronic reporting "e-filing", the local repository shall have the authority to designate the Department of Public Safety, Office of State Police, Right-to-Know Unit's electronic Tier Two system as its official repository of Tier Two records.
- Owner or Operator—any person, partnership, or corporation in the state including, unless otherwise stated, the state and local government, or any of its agencies, authorities, departments, bureaus, or instrumentalities engaged in business or research operations which use, handle, manufacture, release or store a hazardous material at a facility.
- Reasonably be Expected to Affect the Public Safety beyond the Boundaries of the Facility—fire, explosion, incident, accident, or cleanup within a facility that may reasonably impact public safety beyond the facility, including but not limited to an impact of such nature as to require shelter-in-place orders, evacuations, immediate response by emergency responders, or off-site road closures. The term shall not include facility drills, internal facility announcements, internal facility alarms and sirens, or internal facility response activities such as rolling facility fire trucks or ambulances, and movement of facility personnel in personal protective equipment.
- Release—any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels,

containers, and other closed receptacles) of any hazardous material or substance. However, the term release shall not include federal or state permitted releases.

- Reportable Release—a release of a regulated hazardous material or substance which causes any injury requiring hospitalization or any fatality, results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility, or exceeds the RQ when that RQ, as defined pursuant to rules promulgated by the deputy secretary, could be reasonably expected to escape beyond the site of the facility. A reportable release as defined herein shall be based upon the quantity of hazardous material or substance discharged continuously, intermittently, or as a one-time discharge, within any continuous 24 hour period.
- Retail Gas Station—a retail facility engaged in selling gasoline or diesel fuel primarily to the public, for use in land based motor vehicles.
- Small Business—a single business establishment employing not more than nine full time employees and having not more than $2,000,000 in average annual gross receipts. Any business employing more than nine persons shall not be considered a small business regardless of the average annual gross receipts. Any business with average annual gross receipts of over $2,000,000 shall not be considered a small business regardless of the number of employees.
- State Repository—the Department of Public Safety, Office of State Police, Right-to-Know Unit designated by the LEPC, local repository or fire department as the provider of Tier Two inventory records electronically to all response agencies. The state repository shall have the responsibility to process public information requests for Tier Two and release reporting data.
- Trade Secret—any confidential formula, pattern, process, device, information or compilation of information including chemical name or other unique chemical identifier that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it.
- Transportation Related Operation—any operation conducted outside the boundaries of a facility and involving the transportation, or storage incident to transportation, of hazardous materials where the hazardous materials are moving under active shipping papers and have not reached the ultimate consignee.

§10107. Alternate Means of Compliance—Inventory Reporting

A. The following non-exclusive list of facilities qualifies for alternate means of compliance under state law due to the nature of their respective operations as well as the fact that emergency response personnel can predict that hazardous materials should be present at these facilities. These alternate means of compliance may not exist under federal law and facilities subject to the federal law must determine their respective applicability:
   (1) oil and gas exploration and production facilities;
   (2) pipelines carrying any of the materials regulated by these rules;
   (3) certain facilities reporting to other state agencies;
   (4) gasoline service stations;
   (5) electrical transmission and distribution facilities;
   (6) hydrocarbon storage facilities other than at petroleum refineries;
   (7) transportation-related facilities.

B. The rules that follow in Subsection C are applicable to the state law. The reporting procedures outlined are the result of detailed consultation with the various regulated entities. These alternate compliance procedures will satisfy the mandates of the state's Right-to-Know Law, but if any federal regulations require a more stringent reporting procedure, the federal procedure should be followed.

C. Inventory Reporting Procedures (Alternate Means of Compliance)
   (1) Oil and Gas Production (Wells Already Drilled)
      a. These sites must be reported by field name, indicating the total number of wells in each field. This will be done on a separate inventory form for each field. The location of each field must be as detailed as possible with at least the parish given for each field.
      b. The inventory form can be filled out showing a generic list of materials commonly associated with an oil/gas production facility.
      c. Well heads not located in a reported field (wildcats) are each to be listed on a separate inventory form.
      d. All reportable releases must be reported immediately to the LEPC and the SERC.
   (2) Oil and Gas Exploration
      a. If the exploration site is in a previously reported field, a list of materials used in exploration will be shown on the inventory form for that field. This could be in the form of a generic list.
      b. Wildcat drilling operations (not in previously reported fields) anticipated to exceed 30 days will require written notification to the SERC via the Office of State Police, Transportation and Environmental Safety Section, as well as written notification to the local emergency planning committee in the respective parish, detailing the location and anticipated duration of the drilling operation. This notification will contain the names and telephone numbers of facility personnel to contact in case of an emergency. A generic list of materials

associated with exploration will be furnished to the local emergency planning committee in the parish in which the drilling occurs.

c. All reportable releases must be reported immediately to the LEPC and the SERC.

(3) Pipelines (not within the fence line of a facility)

a. One inventory form will be submitted for each parish. The form must list all pipelines operated by a facility in that parish, and must show the name of the material carried, the diameter, and the maximum operating pressure for each listed pipeline.

b. A map for each parish indicating the location of each pipeline and transmission and control station must be provided by each company to the SERC and the local emergency planning committee. If the pipeline is shown on the most current Dewitt map, no map submission is required. Facilities are responsible for updating any changes in location of pipelines and/or product by submitting new map(s). If a facility has already submitted a map to the SERC and the LEPC, and there are no changes, the annual map submission is not necessary.

c. Natural gas distribution lines are exempt from this reporting. Distribution lines are those pipes that carry the gas to individual buildings, residences, etc.

d. Crude oil and natural gas gathering lines are exempt from inventory reporting under these rules. Gathering lines are those pipelines 8 inches or less in nominal diameter that transport petroleum and natural gas from a production facility to the main pipeline.

e. All reportable releases, including those from natural gas distribution lines and crude oil and natural gas gathering lines, must be reported immediately to the LEPC and the SERC.

(4) Facilities Reporting to Other State Agencies.

a. Facilities licensed by the Liquefied Petroleum Gas Commission must complete an inventory form and comply with all other applicable parts of these rules with the exception that if liquefied petroleum gas is the only material being reported, no reporting fee is required.

b. Facilities licensed pursuant to and in full compliance with the Louisiana State Police Explosives Code are exempt from inventory reporting if no hazardous materials other than explosives are present on the facility. However, all incidents or releases involving explosives are subject to the reporting required herein.

(5) Electrical Transmission and Distribution Facilities

a. All oil-filled electrical equipment (transformers, capacitors, etc.) which has been identified as containing PCBs in concentrations exceeding 500 parts per million (ppm) shall be reported on the inventory form, by the reporting deadline, as applicable in these rules if the weight of the solution containing the PCBs meets or exceeds 500 pounds.

b. Any release from, or accident involving, oil-filled electrical equipment which has been identified as containing PCBs in concentrations exceeding 500 ppm will be reported immediately as applicable in the release reporting procedures detailed in these rules.

c. All fixed-site facilities where transformers are stored, cleaned or processed, or where other materials regulated in the rules are used or stored, will be reported on individual inventory forms for each separate site.

d. Fixed-site oil-filled electrical equipment that is associated with a facility must meet all area marking requirements under EPA and OSHA regulations.

e. Electrical storage batteries located at electrical substations are exempt from Tier Two filing requirements if the total weight of the sulfuric acid in all batteries found on the site of the substation is less than 500 pounds and the facility owner marks all doors, or means of access, to the storage location with a sign stating "CAUTION—ELECTRICAL STORAGE BATTERIES CONTAINING SULFURIC ACID" and further provides a MSDS in an accessible location near the storage location.

(6) Transportation-Related Industries

a. Regulated materials which are under active shipping papers (i.e., have not reached their final destination) are exempt from inventory reporting requirements contained in these rules.

b. Transportation related industries, including but not limited to trucking companies, railroads, maritime wharves and warehouses (including Foreign Trade Zones), that store, incidental to transportation and still under active shipping papers, any of the materials regulated by these rules will, on an annual basis (by March 1 of each year), send to the SERC, the LEPC, and the local fire department in their respective areas, a letter detailing the emergency contact personnel and emergency telephone numbers. The letter will also indicate where shipping papers

can be found by emergency response personnel.

c. Any hazardous materials regulated under these rules and stored on site but not under active shipping papers must be reported on an inventory form as applicable.

d. Shipping documents must be readily accessible to emergency response personnel and proximate to the regulated material.

e. All regulated materials must be properly marked and placarded according to applicable U.S. Department of Transportation regulations as listed in 49 CFR, Part 172, Subparts B, C, D, E and F.

f. All reportable releases must be reported immediately to the LEPC and the SERC.

§10109. Inventory Reporting

A. All substances listed on the list of "EHSs" as found in 40 CFR, Part 355, Appendix A, now in effect or amended hereafter, must be reported for the prior calendar year beginning January 1 and ending December 31, on an inventory form by March 1, 1988, and annually thereafter, if the material is present on site on any single day in amounts of 500 pounds or more or the listed threshold quantity if lower than 500 pounds. The threshold (inventory) quantity (TQ) for each of these materials is indicated (in pounds) in the column to the right of the material marked "Threshold Inventory Quantity (TQ)." Where a material shows a threshold (inventory) quantity (TQ) listed as 10/500 or 100/500 etc., it is reportable as follows: The lower number is the reportable amount if the material is a solid existing in powdered form and has a particle size less than 100 microns; or is handled in solution or in molten form; or meets the criteria for a NFPA rating of 2, 3, or 4 for reactivity. If the solid does not meet any of these criteria, it is subject to the higher inventory reporting threshold.

B. Any material for which a facility must prepare or maintain a MSDS under the OSHA HCS (as listed in 29 CFR 1910.1200 et seq.) must be reported, for the prior calendar year beginning January 1 and ending December 31, on an inventory form annually beginning March 1, 1988, if the material is present at a facility in threshold (inventory) quantities (TQ) of 500 pounds or more on any single day.

C. The materials regulated by Subsection B above of these rules are also regulated under the inventory reporting provision of Section 312 of Title III of the SARA. Incorporated in the federal reporting provisions was an initial temporary threshold for reporting quantities of these materials such that for 1987, 1988 and 1989 inventory quantities which met or exceeded 10,000 pounds were reportable. In 1990, EPA published its final threshold regulations setting the final threshold (inventory) quantity for 1990 and beyond at 10,000 pounds. In this area, the Louisiana law and federal law differ. The state requires reporting of all regulated materials at the 500-pound level unless the threshold quantity for an EHS is lower.

D. Mixtures without their own CAS numbers will be reported as follows: The mixture trade name or common name shall be listed with the hazardous component(s) which requires its reporting on the Tier Two inventory report. The component(s) CAS number, if available, will also be provided in association with the hazardous component. Any component information withheld in contradiction to the most current OSHA MSDS requirements or EPA's trade secret claim process shall be subject to enforcement and civil liability actions at the state and federal level. If a hazardous material is part of a mixture, you should report the entire mixture, its total weight, and the hazardous material(s) contained therein, with its percentage present in the mixture, (e.g., if a hazardous solution weighs 100 pounds and is composed of only 5 percent of a particular hazardous material, you should indicate 100 pounds of the mixture, identify the hazardous material and indicate that it is 5 percent of the mixture).

§10111. Release and Incident Reporting

A. Hazardous Materials Designation

1. The lists and categories of materials identified in Paragraphs C.1, C.2, C.3, and C.4 below are deemed hazardous materials and are hereby adopted pursuant to the authority of the deputy secretary in accordance with R.S. 30:2361 et seq.
2. The above-mentioned listings and categories apply to all inventory and release reporting and handling requirements mandated by R.S. 30:2361 et seq. and all regulations adopted pursuant thereto.

B. Reportable Releases and Incidents. Any release or incident involving a regulated hazardous material must be reported immediately by the owner or operator, or one of their designated representatives as soon as the owner or operator or designated representative, has knowledge of such release or incident, if it meets one or more of the following criteria:

1. the release directly causes any injury requiring hospitalization or any fatality; or
2. the release results in a fire or explosion which could reasonably be expected to affect the public safety beyond the boundaries of the facility; or
3. the release (other than an application of a pesticide or fertilizer) exceeds the reportable quantity during any continuous 24 hour period when that reportable quantity could be reasonably

expected to escape beyond the site of the facility; or

4. the incident, accident or cleanup within a facility could reasonably be expected to affect the public safety beyond the boundaries of the facility (for example: a facility evacuating its personnel); or
5. the owner or operator knows a protective action beyond the facility has been initiated.

C. Hazardous Materials are established as follows:

1. any material appearing on the most current list of EHSs as established by the EPA (40 CFR, Part 355, Appendix A);
2. any material appearing on the most current list of CERCLA Hazardous Substances as established by the EPA (40 CFR, Part 302, Table 302.4);
3. any material appearing on the most current list of Hazardous Substances as established by the DOT, Research and Special Programs Administration (49 CFR, Part 172, Appendix to 172.101);
4. any material on which maintenance of an MSDS is required under the OSHA's HCS as found in 29 CFR 1910.1200 et seq.

D. RQs are established as follows:

1. any material and its RQ appearing on the most current list of EHSs as established by the EPA (40 CFR, Part 355, Appendix A);
2. any material and its RQ appearing on the most current list of CERCLA Hazardous Substances as established by the EPA (40 CFR, Part 302, Table 302.4);
3. any material and its RQ appearing on the most current list of Hazardous Substances and RQs as established by the DOT, Research and Special Programs Administration (49 CFR, Part 172, Appendix to 172.101);
4. any material on which maintenance of an MSDS is required under the OSHA's HCS as found in 29 CFR 1910.1200 et seq., and does not appear on any of the lists found in Paragraphs 1, 2, or 3 of paragraph D of this section, must be reported if the material released exceeds the RQ of 5,000 pounds hereby established by the Department, except all compressed or refrigerated flammable gases and all flammable liquids (as defined in 49 CFR, 173.120) which will have a 100 pound RQ and all other liquids requiring maintenance of an MSDS which will have a 1000 pound RQ.

RQ Table	
Hazardous Material Group	RQ
EHS (40CFR Part 355, Appendix A)	As designated
CERCLA (40CFR Part 302, Table 302.4)	As designated
DOT (49CFR Part 172, Appendix 172.101)	As designated
Compressed or refrigerated flammable gases*	100 lbs.
Flammable liquids*	100 lbs.
All other liquids requiring an MSDS*	1000 lbs.
All other materials requiring an MSDS*	5000 lbs.

*Where there are no federal RQs established

E. Exceptions to RQ—Special Circumstances

1. The following special circumstances have been identified by the department and the following specific reportable quantities shall apply.
   a. Natural gas from crude oil and natural gas production operations (including but not limited to flowlines and gathering lines) regardless of system pressure, and natural gas transmission operations in which the operational pressure exceeds 100 psi, shall have an RQ of 1000 pounds.
   b. Petroleum refinery and chemical manufacturing facilities which operate flaring systems as part of their manufacturing process shall have the following reportable quantities:
      i. stack emissions involving the release of sulfur dioxide at a discharge rate of less than 1000 pounds per hour shall have a 24 hour period to report the unpermitted release; and
      ii. stack emissions involving the release of sulfur dioxide at a discharge rate of more than 1000 pounds per hour shall report the unpermitted release immediately.
   c. A release to the environment through a cooling tower of a hydrocarbon gas which has previously leaked into the cooling water of the related heat exchanger is not reportable if the concentration of such gas, when released into the atmosphere, is below its lower flammable limit.
   d. Compressed air, compressed nitrogen and water vapor are not reportable and have no RQs.
   e. The controlled release of natural gas for maintenance or other purposes is considered a permitted release and is not reportable provided the release cannot be reasonably expected to affect the public safety beyond the boundaries of the facility.
   f. Releases of nitrogen oxide to the air that are the result of combustion and combustion-related activities that are less than 1,000 pounds per 24 hours, and releases of nitrogen dioxide to the air that are the result of combustion and combustion-related

activities that are less than 1,000 pounds per 24 hours are not reportable.

2. For facilities meeting the criteria described below, compressed or refrigerated flammable gases will have a 1000 pound RQ. To qualify for this RQ, the owner or operator of the facility must provide certification to the department, in writing, that it meets the requirements of LAC 33:V.10111.E.2.; the revised RQ for compressed or refrigerated flammable gases for such facility will commence within 30 days after the department's receipt of such certification unless the department notifies the owner or operator otherwise, in writing, within such 30 day period. Facilities to which this RQ applies are those with:
   a. more than nine full time employees; and
   b. a designated person responsible for and knowledgeable on all applicable state and federal release reporting regulations; and
   c. twenty-four hour on-site emergency response capability for responding promptly to fires and hazardous materials releases. This capability must be internal to the facility or provided by formal industrial mutual aid where a written agreement has been signed and made available to the department for review as certified to the department. (Dependence on local fire departments and public employee emergency responders shall not qualify.)

F. All reportable releases must be reported immediately. Each release or incident must be reported to:
   1. local emergency planning committee with jurisdiction over a facility; and then to
   2. Office of State Police, Transportation and Environmental Safety Section using the Hazardous Materials Hotline phone number 225/925-6595 or toll free 1-877-925-6595. Proper notification to the LSP's Hazardous Materials Hotline shall constitute a legal and proper notification to the LDEQ, Louisiana Petroleum Gas Commission, and the LOSCO.

NOTE: In the event proper notification to the LEPC cannot be made, then immediate notification to the LSP is required.

   3. The owner or operator must ensure that timely notification is made to the department.
   4. The Uniform Hazardous Materials Reporting Form as supplied by the department, which includes the information in Paragraph G of this Section, should be used by all those involved in incident or release initial notifications (verbal or electronic). The success of this uniform process is dependent on its application on a statewide basis at all levels of the initial notification process.
   5. Update notifications must be made by each owner or operator if the circumstances of the release or incident substantially increase in severity, the incident classification changes, or if any of the information in Paragraph G of this Section which was initially reported changes significantly. For example:
      a. if there is a change in the recommended offsite protective action to be taken;
      b. if there are injuries requiring hospitalization or fatalities to personnel not known at the time of the initial report;
      c. if the release includes a different reportable material than included in the initial report;
      d. if there is a change in incident classification; or
      e. if the initial release notification indicated no offsite protective action and an offsite protective action of road closure or offsite shelter-in-place is made, then an update notification is required.

G. If a facility has a reportable release (i.e., one that meets the requirements specified by either the state and/or federal Right-to-Know Laws), the owner or operator must provide, at a minimum, the following information relating to the release:
   1. the name and telephone number, and employer of the contact person;
   2. the company or responsible party's name;
   3. where the incident occurred (mailing address and physical location);
   4. date and time the incident began and ended;
   5. the identity of the hazardous material released or involved (this would include proper chemical name if available, an indication of whether it is an extremely hazardous substance and whether it is a solid, liquid or gas);
   6. the actual amount or an estimate of the amount released; or in the absence of quantity data for the hazardous materials released, one of the following incident classifications may be used:
      a. Unusual Event. This is an incident that is out of the ordinary but does not present a current threat to persons or property. It will not have any adverse affect on public safety. The incident may have the potential to escalate to a more serious emergency, but it is not expected to do so. In this case, no protective action is necessary and none will be recommended;
      b. Site Emergency. This is an incident or emergency which may affect the near-site population but it is generally located within the boundaries of the facility or transport vehicle. Normal operations of the facility or transport vehicle have been adversely impacted. The incident or emergency is either secured, in the recovery mode, or ongoing, but generally confined to the facility or transport vehicle. The on-site incident or emergency may have the potential to

escalate to other areas of the facility or transport vehicle. This classification is used during emergencies in which a limited number of people have been affected but the potential exists to affect a much larger portion of the population. The facility or transporter may request the closure of adjacent roadways as precautionary action. A protective action of road closure, shelter-in-place, evacuation, or no protective action necessary must be provided;

c. General Emergency. This is an emergency which goes beyond the facility or transport vehicle. It has either affected or will affect the general population. The facility or transport vehicle experiences a large release which will impact beyond its boundaries. This occurs when there is an explosion or fire at the facility which may not be under control. The emergency situation is beyond the resources of the facility or transporter. The facility response personnel are unable to contain the event and it may escalate before coming under control. In order to protect the public safety, a protective action of road closure, shelter-in-place, or evacuation must be issued immediately;

7. whether the material released escaped or could reasonably be expected to escape, beyond the site of the facility;
8. if available, the substance's hazard class and any other identifier (e.g., U.N. number, CHRIS code, etc.);
9. medium into which the hazardous materials was released (e.g. air, water, land);
10. whether the release resulted in a fire or explosion;
11. injury to personnel, or a fatality resulting from the release or incident;
12. details regarding wind direction, wind speed, temperature, and precipitation;
13. any need or a recommendation for, an offsite protective action (road closure, shelter-in-place, evacuation, or none);
14. details of the release or incident; and
15. whether other responsible state and local agencies such as the LEPC have been notified.

H. Facilities must also make follow-up written reports for all reportable releases and incidents within five business days after the release or incident has occurred. This report must be made to the LEPC with jurisdiction over a facility and to the Department of Public Safety and Corrections, Office of State Police, TESS-Right-to-Know Unit, P.O. Box 66168, Baton Rouge, LA 70896. The format for this report should be as outlined in Subsection G above. Any additional information not given in the initial telephone notification should also be included.

§10112. Response, Command and Coordination

A. As per the authority granted in R.S. 30:2376, the Office of State Police, Transportation and Environmental Safety Section will coordinate emergency response activities arising from any release, or threatened release or incident requiring reporting under these rules. Except as otherwise provided by law, as State On-Scene Coordinator (SOSC), the Louisiana State Police shall have the responsibility to ensure a safe and timely resolution to any hazardous materials release or incident. All responding industries, contractors, and agencies shall participate in the Incident Command process. Only those participants meeting the training requirements of EPA in 40 CFR 311 and OSHA's regulations in 29 CFR 1910.120 shall engage in active response or remedial activities within areas of hazardous materials contamination or threatened release.

B. All persons and facilities regulated by R.S. 30:2361 et seq. shall comply with all the requirements relative to the entry, inspection, investigation, response and emergency coordination efforts of the Office of State Police as authorized in R.S. 30:2361 et seq.

§10113. Exemptions

A. Certain persons and substances have been exempted from the inventory reporting requirements contained in these rules. There are no exemptions granted for release reporting of regulated substances.

B. Persons exempted from reporting certain substances under state law as outlined in Subsection C below are cautioned to examine Title III of the SARA because not all of these exemptions are applicable to federal law. If a substance is not exempt under federal law, in most cases it is reportable to the SERC (via Department of Public Safety and Corrections), the LEPC (one in each parish), and the local fire department having jurisdiction over a facility.

C. The following persons are exempt from the inventory reporting requirements of these rules:
   1. residential users;
   2. owners or operators of hotels, motels, restaurants, apartment buildings or office buildings which use only small quantities of air conditioning and cleaning supplies;
   3. owners or operators of retail sales establishments which sell consumer products or food stuffs packaged for distribution to, and intended for use by, the general public and who have storage areas or storerooms in such establishments which are separated from shelf or display areas, but maintained within the physical confines of such retail establishments;

4. owners or operators of cosmetology salons and barber salons; and
5. owners or operators of retail gasoline service stations having only gasoline and/or diesel in underground storage tanks and in full compliance with the LDEQ UST Program.

D. The following materials are exempt from the inventory reporting requirements of these rules:
1. any hazardous waste as such term is defined by the SWDA as amended (42 U.S.C. 6901 et seq.) when subject to regulations issued under that Act;
2. tobacco or tobacco products;
3. wood or wood products;
4. "articles":
   a. which are formed to a specific shape or design during manufacture;
   b. which have end use function(s) dependent in whole or in part upon the shape or design during end use; and
   c. which do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;
5. food, drugs, cosmetics or alcoholic beverages in a retail establishment which are packaged for sale to consumers;
6. foods, drugs, or cosmetics intended for personal consumption by employees while in the workplace;
7. any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 1251 et seq.) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use, and which use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers;
8. any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) when it is in solid, final form for direct administration to the patient (i.e., tablets or pills);
9. any food, food additive, color additive, drug, or cosmetic regulated by the FDA;
10. any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
11. any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;
12. any substance to the extent it is used in a medical research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;
13. any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

§10115. Hazard Communication

A. The Department of Public Safety and Corrections adopts the HCS as detailed in Title 29 CFR, Parts 1910.1200 et seq., as part of these rules. All facilities subject to these state rules (other than any federal, state, or political subdivisions of a state) must also comply with the HCS as specified in the OSHA rules listed in Title 29, CFR Parts 1910.1200 et seq. These standards refer to marking of the workplace, communicating to employees of any known hazardous properties of various substances, etc.

§10117. Failure to Report: Penalties

A. Failure to report any regulated material on a Tier Two Inventory form, as provided in these rules and under the authority of R.S. 30:2361-2380, may result in the levying of civil penalties up to $25,000 for each regulated hazardous material not reported and/or for each non-reported release or incident involving a regulated hazardous material.
B. The burden of proof shall be on the owner or operator of a facility to show that the failure to report a hazardous material or release was inadvertent.
C. Small businesses, as defined by these rules, which have any omission from the inventory reporting forms will receive, on first offense, a warning rather than a civil penalty.
D. Careless Handling of a Hazardous Material
   1. R.S. 30:2373(D)(1). Any person who handles, stores, or otherwise maintains a hazardous material regulated by this Chapter in a negligent or unreasonable manner without regard for the hazards of the material and causes a significant impact to public health and safety as a result of a reportable release of a hazardous material shall be in violation of this Subsection.
   2. R.S. 30:2373(D)(2) provides that for any person, owner, operator, or facility that violates R.S. 30:2373(D) the department may levy a civil penalty not to exceed $10,000 per violation.
E. Reckless Handling of a Hazardous Material
   1. R.S. 30:2373.E.(1) provides that no person shall intentionally handle, store, or otherwise maintain any hazardous material regulated by the Right-to-Know Law in a manner which endangers human life.
   2. R.S. 30:2373.E.(2) provides that any person, owner, operator, or facility that willfully violates R.S. 30:2373.E may be assessed a civil penalty by the department not to exceed $25,000 per violation per day or upon first conviction shall be fined not more than $500 or imprisoned for not more than six months, or both. Upon second or subsequent conviction of a violation of R.S.

30:2373.E.(1), said person, owner, operator, or facility shall be fined not less than $500 nor more than $10,000 or imprisoned with or without hard labor for not less than six months nor more than 10 years.

F. Intentional Failure to Report a Hazardous Material Release or Incident
   1. R.S. 30:2373.C.(3) provides that for owners and operators who knowingly fail to report a reportable release of a hazardous material regulated by the Right-to-Know Law the department may assess a civil penalty not to exceed $25,000 per violation per day.

§10119. Inventory Form

A. Tier Two "E-filing" is the preferred method of reporting the chemical inventory required in these Rules. All industries and businesses, excepting small businesses, will be required to utilize this electronic means of inventory reporting by March 1, 2002. The use of this "E-filing" process allows for the immediate access of facility and chemical information by all LEPCs and fire departments having Internet capability. Paper filing of "Tier Two Emergency and Hazardous Chemical Inventory" shall be an acceptable alternative to the E-filing of such inventory for March 1, 2001 only.

B. Small businesses, as defined in §10105, are strongly encouraged to report their chemical inventory electronically, but such businesses shall have the option to file their chemical inventory by paper if the electronic reporting creates a hardship.

C. The "Louisiana Tier Two Emergency and Hazardous Chemical Inventory" form is the official inventory form for compliance with R.S. 30:2361-2380, Louisiana's Right-to-Know law, and is the form selected by the Louisiana SERC for inventory reporting as required under Section 312 of SARA. The inventory form can be obtained via the Right-to-Know website at www.lsp.org/rtk.html or upon request to the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section P.O. Box 66168, Baton Rouge, LA 70896.

§10121. Fees

A. An annual fee shall be submitted with the inventory form by each owner or operator required to report under the Right-to-Know Law. The fee shall be assessed in proportion to the number of hazardous materials manufactured, used, or stored on site.

B. 1. The fees for facilities not meeting the definition of small business in R.S. 30:2363 shall be assessed as follows.

Number of Hazardous Materials Present at Facility	Amount of Fees Charges
01 to 25	$ 65
26 to 75	$ 85
76 to 100	$170
Over 100	$255

   2. Any facility required to pay a fee pursuant to R.S. 30:2374 and any retail gas station exempt from reporting pursuant to R.S. 30:2370 shall not be required to pay an additional fee to the LEPC other than the fees already imposed by the local emergency planning committee for the collection of information required by the Right-to-Know Law prior to the 1997 Regular Legislative Session.
   3. In the case of owners or operators reporting facilities with numbers of hazardous materials referenced above at multiple locations throughout the state, no owner or operator shall be assessed total fees in excess of $2,000.
   4. The fee per facility for small businesses as defined in the Right-to-Know Law shall not exceed $25.

C. Small businesses, as defined in these rules, would submit a reduced fee of $25 for each facility. The same ceilings on fees as detailed above would apply.

D. State, parish, and municipal governmental entities who must report under these rules are exempt from paying any fee.

E. All checks must be made payable to the Right-to-Know Unit and submitted as applicable with the printed copy of the Tier II invoice (which is generated automatically by the program upon electronic submission of the completed Tier Two form). If an inventory form is received without proper payment, it cannot be processed and compliance with the law is not attained.

§10123. Trade Secret Claims; Procedures; Resolution

A. The Department of Public Safety and Corrections adopts as its own the Trade Secrets provisions as found in Title III, Section 322 of the SARA of 1986" (42 U.S.C.A. Section 11042) as passed by the United States Congress.

NEW MEXICO -- ARTICLE 4E
Hazardous Chemicals Information Act

74-4E-1. Short Title.

Sections 1 through 9 [74-4E-1 to 74-4E-9 NMSA 1978] of this act may be cited as the "Hazardous Chemicals Information Act."

74-4E-2. Purpose of act.

The purpose of the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978] is to ensure that current information on the nature and location of hazardous chemicals is available to LEPCs, emergency responders and the public as required by Title III.

74-4E-3. Definitions.

As used in the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978]:

A. "commission" means the SERC;
B. "department" means the public safety department;
C. "emergency responder" means any law enforcement officer; firefighter; medical services professional or other person trained and equipped to respond to hazardous chemical releases;
D. "hazardous chemical" means any hazardous chemical, EHS, toxic chemical or hazardous material as defined by Title III;
E. "facility owner or operator" means any individual, trust, firm, joint stock company, corporation, partnership, association, state agency, municipality or county having legal control or authority over buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites. For the purposes of Section 5[74-4E-5 NMSA 1978] of the Hazardous Chemicals Information Act, the term includes owners or operators of motor vehicles, rolling stock and aircraft;
F. "local emergency planning committee" means any local group appointed by the commission to undertake chemical release contingency planning;
G. "release" means any spilling, leaking pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any hazardous chemical, EHS or toxic chemical. "Release" includes abandonment or discarding of barrels, containers, and other closed recepticles; and
H. "Title III" means the federal EPCRA of 1986.

74-4E-4. Commission created; membership; terms; duties; immunity granted.

A. The "SERC" is created. The Commission shall consist of seven members who shall be qualified voters of the State of New Mexico. All members shall be appointed by the governor. Among the members appointed, there shall be representatives of private industry, federal facilities, public health and public safety.

Appointments shall be made for four year terms to expire on January 1 of the appropriate year. Commission members shall serve staggered terms as determined by the governor at the time of their initial appointments. Annually, the governor shall designate, from among the members, a chairman of the commission.

B. The commission shall:
   (1) exercise supervisory authority to implement Title III within New Mexico;
   (2) prescribe all reporting forms required by the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978]
   (3) provide direction to the emergency management task force and the hazardous materials safety board;
   (4) report periodically to the radioactive and hazardous materials committee; and
   (5) report annually to the governor and the legislature.

C. The commission may solicit and accept grants from federal or private sources for undertakings that further the purpose of the Hazardous Chemicals Information Act or the Emergency Management Act [Chapter 74, Article 4B NMSA 1978]
D. Commission members shall not vote by proxy. A majority of the Members constitute a quorum for the conduct of business.
E. Commission members shall not be paid but shall receive per diem and mileage expenses as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].
F. Immunity from tort liability for emergency response actions, including planning or preparation therefore, is granted to the state, its subdivisions and all their agencies, officers, agents and employees. Any waiver of immunity from tort liability granted under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] shall not be applicable to disaster or emergency response or planning.

74-4E-5 Notices and reports required; deadlines set.

A. Any facility owner or operator who is required by any section of Title III to file a written notice or report to the commission shall file that notice or report on or before the required deadline with the department.

With the exception of the written follow-up emergency notice required in Section 304(c) of Title III, all notices shall be filed annually and shall conform or amend information previously filed. Facility owners or operators shall file with the department:

ED_002941_00002942-00204

(1) notice that an extremely hazardous substance, at or above a specified quantity, is present at a facility;
(2) notice that a release of any chemical substance has occurred at or above RQs determined by the commission. The contents of the notice shall be determined by the commission. The notice shall be filed as soon as practicable following a release;
(3) an inventory form covering each hazardous material. This form shall be filed annually on or before March 1; and
(4) a toxic chemical release inventory form. This reporting requirement shall apply to facility owners and operators that have ten or more employees and that are in standard industrial classification codes 20 through 39, as in effect July 1, 1985. The form shall be filed annually on or before July 1.

B. The commission may simplify forms to be used for reporting, set deadlines for filing written notices or reports and adopt other regulations for the enforcement of the Hazardous Chemicals Information Act (74-4E-1 to 74-4E-9 NMSA 1978).

74-4E-6. Availability of information to the public; regulations promulgated.

A. The department shall make information, not defined as confidential gathered under Section 5 [74-4E-5 NMSA 1978] of the Hazardous Chemicals Information Act available to any citizen of the state upon written request.
B. The department shall promulgate policies and procedures for receiving and processing requests for information under Subsection A of this section.

74-4E-8. Hazardous chemicals reporting fees; schedule; distribution.

A. Any facility owner or operator required to file an inventory form covering a hazardous material as required in paragraph (3) of Subsection A of Section 5 [74-4E-5 NMSA 1978] of the Hazardous Chemicals Information Act shall pay at the time of filing a fee of twenty-five dollars ($25.00) per inventory form. In no case shall a facility owner or operator pay more than two hundred fifty dollars ($250) in any calendar year for all forms, notices and reports required by that section.
B. Federal governmental agencies, the state and its political subdivisions and other public institutions shall be exempt from the payment of any fee imposed in this section.
C. Fees collected pursuant to this section shall be deposited in the hazardous chemicals information management fund and distributed to the department at the end of each month.
D. The provisions of this section shall be administered Pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978.]

74-4E-9. Failure to file or pay fees; penalty.

After July 1, 1990, any facility owner or operator who knowingly, willfully, and intentionally fails to file any fails to file any notice, form or report or to pay any fee required by the Hazardous Chemicals Information Act [74-4E-1 to 74-4E-9 NMSA 1978] shall pay a civil penalty no greater than five thousand dollars ($5,000) for each violation.

All civil penalties shall be deposited in the hazardous chemicals information management fund.

- -

New Mexico

Chapter 12: Miscellaneous Public Affairs Matters
Article 12: Hazardous Materials Emergency Response Act, 12-12-1 through 12-12-30

12-12-17. Short title.

Sections 12-12-17 through 12-12-30 NMSA 1978 may be cited as the "Hazardous Materials Emergency Response Act".

12-12-18. Findings and purpose. (2007)

A. The legislature finds that the use of hazardous materials, including radioactive materials, and the transportation of such materials through or within New Mexico occurs on a daily basis, and, no matter how safety-conscious facilities, users, shippers or carriers are, accidents may occur. In the event of an accident, resource requirements may be beyond the capability of local governments, and the state must be prepared to respond quickly and effectively to protect the health and safety of its citizens and the environment.
B. It is the purpose of the Hazardous Materials Emergency Response Act [12-12-17 NMSA 1978] to:
(1) provide that adequate hazardous materials emergency management capability exists in the state to protect the health and safety of New Mexico citizens and the environment;
(2) delineate those state agencies that are responsible for responding to an accident and providing for the control and management of such an accident and to provide for the cooperation of other state agencies and local governments in emergency management; and
(3) provide for the formulation of a comprehensive hazardous materials emergency response plan that will be distributed statewide and that will be complied with by all persons who may be involved in responding to an accident.

12-12-19. Definitions. (2007)

As used in the Hazardous Materials Emergency Response Act:

A. "accident" means an event involving hazardous materials that may cause injury to persons or damage to property or release hazardous materials to the environment;
B. "administrator" means the hazardous materials emergency response administrator;
C. "board" means the hazardous materials safety board;
D. "chief" means the chief of the New Mexico state police;
E. "commission" means the SERC;
F. "department" means the homeland security and emergency management department;
G. "emergency management" means the ability to prepare for, respond to, mitigate, recover and restore the scene of an institutional, industrial, transportation or other accident;
H. "first responder" means the first law enforcement officer or other public service provider with a radio-equipped vehicle to arrive at the scene of an accident;
I. "hazardous materials" means hazardous substances, radioactive materials or a combination of hazardous substances and radioactive materials;
J. "hazardous substances" means flammable solids, semisolids, liquids or gases; poisons; corrosives; explosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents, but does not include radioactive materials;
K. "orphan hazardous materials" means hazardous substances, radioactive materials, a combination of hazardous substances and radioactive materials or substances used in the manufacture of controlled substances in violation of the Controlled Substances Act [30-31-1 NMSA 1978] where an owner of the substances or materials cannot be identified;
L. "plan" means the statewide hazardous materials emergency response plan;
M. "radioactive materials" means any material or combination of materials that spontaneously emits ionizing radiation. Materials in which the estimated specific activity is not greater than 0.002 microcuries per gram of material are not considered to be radioactive materials unless determined to be so by the hazardous and radioactive materials bureau of the water and waste management division of the department of environment for purposes of emergency response pursuant to the Hazardous Materials Emergency Response Act;
N. "responsible state agency" means an agency designated in Subsection D of Section 12-12-21 NMSA 1978 with responsibility for managing a certain type of accident or performing certain functions at the scene of such accident; and
O. "secretary" or "state director" means the state director of homeland security and emergency management.

12-12-20. State responsibility for management of accidents; immunity from liability; cooperative agreements; private property. (2007)

A. The state director shall have final authority to administer the provisions of the Hazardous Materials Emergency Response Act [12-12-17 NMSA 1978].
B. As between state and local governments, the state government has the primary responsibility for the management of an accident, and the local government in whose jurisdiction the accident occurs shall assist the state in its management of the accident.
C. Nothing in the Hazardous Materials Emergency Response Act shall be construed as a waiver or alteration of the immunity from liability granted under the Tort Claims Act [41-4-1 NMSA 1978] or as a waiver of any other immunity or privilege under law.
D. The state, through the state director or state director's designee, may enter into cooperative agreements with county and municipal governments for the management of accidents based on the severity of the accident and the resources of the local government. The plan shall set forth the criteria for determining when an accident may be managed by the local government in whose jurisdiction the accident occurred.
E. The state director shall support emergency response capabilities by assisting local and state responders in the acquisition of equipment, training and hazardous materials information.
F. The state, through the state director or state director's designee, may enter into cooperative agreements with the federal government, Indian tribes and pueblos and bordering states for assistance in the management of accidents.
G. Whenever an accident appears imminent or has occurred, employees or authorized persons of responsible state agencies as defined in Section 12-12-21 NMSA 1978 are authorized to enter upon any premises for the purpose of determining whether it is necessary for emergency management procedures to be implemented. The state on-scene coordinator or a responsible state agency may take full control and custody of the premises for the purpose of managing the accident.

12-12-21. State police emergency response officer; procedure for notification; cooperation of other state agencies and local governments. (2007)

A. The state director, in addition to having final authority to administer the provisions of the Hazardous Materials Emergency Response Act [12-12-17 NMSA 1978], shall be responsible for central coordination and communication in the event of an accident.

B. The chief shall designate one or more persons to be known as "state police emergency response officers". A state police emergency response officer shall be trained in accident evaluation and emergency response and shall be available to answer an emergency response call from the first responder.
C. In the event of an accident, if the first responder is a law enforcement officer, the officer shall immediately notify the state police district emergency response officer in the officer's area, who shall in turn immediately notify the state police emergency response center. If the first responder is a person with radio capability tied into the radio communications bureau of the information systems division of the general services department, the person shall immediately notify Santa Fe control, who shall in turn immediately notify the state police emergency response center. The state police emergency response center shall:
   (1) evaluate and determine the scope of the accident based on information provided by the first responder;
   (2) instruct the first responder on how to proceed at the accident scene;
   (3) immediately notify the state director and the appropriate responsible state agency and advise it of the necessary response;
   (4) notify the sheriff or chief of police in whose jurisdiction the accident occurred; and
   (5) coordinate field communications and summon additional resources requested by the emergency management team.
D. The responsible state agencies shall be:
   (1) the New Mexico state police division of the department of public safety for coordination, law enforcement and traffic and crowd control;
   (2) the department of environment for assistance with accidents involving hazardous materials or hazardous substances;
   (3) the state fire marshal's office for assistance with any accident involving hazardous materials;
   (4) the emergency medical services bureau of the department of health for assistance with accidents involving casualties;
   (5) the homeland security and emergency management department and the department of military affairs for assistance with accidents that require the evacuation of the vicinity of the accident or the use of the national guard of New Mexico; and
   (6) the department of transportation for assistance with road closures, designating alternate routes and related services.
E. Other state agencies and local governments shall assist the responsible state agencies when requested to do so.
F. Any driver of a vehicle carrying hazardous materials involved in an accident that may cause injury to persons or property or any owner, shipper or carrier of hazardous materials involved in an accident who has knowledge of such accident or any owner or person in charge of any building, premises or facility where such an accident occurs shall immediately notify the New Mexico state police division of the department of public safety by the quickest means of communication available.

12-12-23. Hazardous materials emergency response administrator; created; duties. (2007)

The position of "hazardous materials emergency response administrator" is created within the homeland security and emergency management department. The state director shall assign the administrator's duties.

12-12-24. Training officers. (2005)

Each responsible state agency shall designate one person who is knowledgeable in the area of hazardous materials accident response, as it applies to the functions of that agency, to be its training officer.

It is the duty of the training officer to teach the appropriate personnel within the agency the proper methods of discharging the agency's responsibilities in responding to hazardous materials accidents.

The training officer is also responsible for providing cross-training to personnel of other responsible state agencies and other persons as may be required by the hazardous materials safety board.

12-12-25. Hazardous materials safety board; creation; duties. (2005)

A. There is created the "hazardous materials safety board", composed of the training officers of the responsible state agencies. The chairman of the board shall be elected by the members of the board.
B. The board shall, at the direction of the SERC:
   (1) establish a curriculum of accident response training for the personnel of each responsible state agency designed to implement the plan adopted by the task force;
   (2) certify to each responsible state agency those persons who have completed the training curriculum or parts of the curriculum;
   (3) meet at least every four months to review the training needs of each responsible state agency and formulate a plan to meet those needs;
   (4) conduct, under the direction and administration of the state fire marshal, an annual comprehensive training course for all appropriate personnel from responsible state agencies, other state agencies and local governments, which course shall include

teaching the basic duties, responsibilities and procedures of responsible state agencies, other state agencies and local governments;

(5) in conjunction with the task force, prepare and submit to the SERC a budget for statewide training needs; and

(6) cooperate with and assist the task force as requested, including providing the task force with any requested information regarding safety and training of emergency response personnel.

12-12-26. Accident review; report. (2005)

After any hazardous materials accident which required the presence of an emergency management team, including a local government team pursuant to a cooperative agreement, the board shall meet to review the performance of the team and to establish the probable cause of the accident.

The board shall report its findings to the task force and the local government in whose jurisdiction the accident occurred; provided, however, the conclusions contained in the report shall not be admissible in evidence in any court proceeding to prove or disprove the negligence of any party found by the report to have contributed to the cause of the accident.

The report shall be filed with the state corporation commission [public regulation commission] and the administrator.

12-12-27. Clean-up. (2007)

Nothing in the Hazardous Materials Emergency Response Act [12-12-17 NMSA 1978] shall be construed to relieve hazardous materials owners, shippers or carriers of their responsibilities and liability in the event of an accident.

Such persons shall assist the state as requested in responding to an accident and are responsible for restoring the scene of the accident to the satisfaction of the state.

12-12-28. Good Samaritan law. (2005)

A. Notwithstanding any provision of law to the contrary, no person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened release of hazardous materials, or in preventing, cleaning up or disposing or attempting to prevent, clean up or dispose of such release, shall be subject to civil liabilities or penalties of any type.

B. The immunity provided for in Subsection A of this section does not apply to any person:

(1) whose act or omission caused, in whole or in part, the actual or threatened release of hazardous materials and who would otherwise be liable; or

(2) who receives compensation other than reimbursement for out-of-pocket expenses for his services in rendering assistance or advice.

C. Nothing in this section shall be construed to limit or otherwise affect the liability of any person for damages resulting from that person's gross negligence or reckless, wanton or intentional misconduct.

12-12-29. Orphan material recovery fund established. (2005)

A. There is created in the state treasury the "orphan material recovery fund". The fund shall be invested as other state funds are invested. All money remaining in the orphan material recovery fund at the end of any fiscal year shall remain in that fund.

B. The department shall administer the orphan material recovery fund. Money in the fund is appropriated to the department for the purpose of contracting for the disposal of orphan hazardous materials:

(1) held in the possession of the department; and

(2) identified by state emergency response officers.

C. Any expenditures made from the orphan material recovery fund that are recovered from the party responsible for the orphan hazardous materials shall be credited to the fund.

D. If the cost of disposing orphan hazardous materials exceeds the balance available in the orphan material recovery fund, the secretary is authorized to seek and the state board of finance is authorized to disburse funds from the state board of finance emergency fund in an amount necessary to cover the deficit in the orphan material recovery fund.

12-12-30. Cleanup of orphan hazardous materials; department recourse; appeal. (2005)

The department may assess charges against a party identified as responsible for orphan hazardous materials, for costs the department incurs in cleanup of the orphan hazardous materials and for damage to state property.

Amounts received in payment of assessments for cleanup of the orphan hazardous materials shall be deposited in the orphan material recovery fund.

Amounts received in payment of assessments for damage to state property shall be used to repair the damage. A person who is assessed charges pursuant to this section may appeal the assessment to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

ED_002941_00002942-00208

OKLAHOMA

§ 27A-4-2 OKLAHOMA HAZARDOUS MATERIALS PLANNING AND NOTIFICATION ACT

§ 27A-4-2-101. Short title.

This article shall be known and may be cited as the "Oklahoma Hazardous Materials Planning and Notification Act".

§ 27A-4-2-102.

A. For purposes of implementing the provisions of Title III of the federal SARA of 1986, the Governor shall appoint or designate the members of the Oklahoma Hazardous Materials Emergency Response Commission.

B. The Oklahoma Hazardous Materials Emergency Response Commission, shall include at a minimum:
   1. The Secretary of Safety and Security or designee;
   2. The Commissioner of the DPS or designee;
   3. The State Fire Marshal;
   4. The Executive Director of the DEQ or designee;
   5. The Director of the Department of Civil Emergency Management or designee;
   6. One member representing the response community for a term of three (3) years; and
   7. One member representing regulated industries for a three-year term, except the initial appointment shall only be for a two-year term.

C. An appointment shall be made by the Governor within ninety (90) days after the expiration of the term of any member due to resignation, death, or any cause resulting in an unexpired term. If no appointment is made within that ninety-day period, the Commission may appoint a provisional member to serve in the interim until the Governor acts.

D. The Commission shall have the power and duty to:
   1. Appoint a chairman and vice-chairman;
   2. Execute a Memorandum of Understanding subject to the Administrative Procedures Act with each member agency to designate responsibilities and conduct studies;
   3. Require reports or plans from member agencies;
   4. Advise, consult and coordinate with other agencies of the state and federal government;
   5. Ensure that the State of Oklahoma remains in compliance with the requirements of Title III of the SARA; Coordinate administrative penalties;
   6. Coordinate development of annual budgets for each member agency's respective costs for administration and implementation of its responsibilities pursuant to the Oklahoma Hazardous Materials Planning and Notification Act; and
   7. Supervise and coordinate the activities of the LEPCs.

E. On behalf of the Oklahoma Hazardous Materials Emergency Response Commission, member agencies shall have the following responsibilities:
   1. The ODEQ shall:
      a. provide administrative support to the Oklahoma Hazardous Materials Emergency Response Commission,
      b. review the activities of the LEPCs, and serve as liaison between the Oklahoma Hazardous Materials Emergency Response Commission, the LEPCs, and federal agencies, except as related to training funds from the FEMA,
      c. administer a notification program pursuant to federal requirements for emergency releases of EHSs and hazardous substances as identified by the federal EPA.

         Such notification shall include immediate notice of the release and written follow-up notice of response actions taken, risk analyses, and advice concerning medical treatment for exposure, and shall include releases from facilities subject to Title III of the SARA. Such notification requirements shall be in addition to those required by other agencies,
      d. administer and enforce the reporting requirements of Title III of the SARA pertaining to emergency planning notification, MSDSs, chemical lists, emergency and hazardous chemical inventory forms, and toxic chemical release forms,
      e. serve as the industrial liaison and the repository for required information,
      f. perform such environmental services as are necessary to validate required reports, and
      g. receive and respond to requests for information under the Oklahoma Open Records Act;
   2. The Oklahoma Department of Civil Emergency Management shall:
      a. administer and enforce the planning requirements of Title III of the SARA of 1986,
      b. receive and review emergency plans submitted by LEPCs, make recommendations on revisions to such plans for coordination purposes, and facilitate the training for and the implementation of such plans, and
      c. facilitate emergency training programs for LEPCs.

F. Each member agency of the Oklahoma Hazardous Materials Emergency Response Commission shall have the power and duty, relative to its respective Commission responsibilities, to:
   1. Require reports and plans;
   2. Prescribe rules and regulations consistent with Title III of the SARA. Any rule or regulation promulgated by any member agency pursuant to

the Oklahoma Hazardous Materials Planning and Notification Act shall not be more stringent than any such federal act;

3. Adopt federal rules. Any rule or regulation promulgated by any member agency pursuant to the provisions of the Oklahoma Hazardous Materials Planning and Notification Act shall not be more stringent than any such federal rules;
4. Cause investigations, inquiries and inspections;
5. Prescribe penalties;
6. Assess administrative penalties;
7. Cause prosecution;
8. Accept, use, disburse and administer grants, allotments, gifts, devises for the purposes of facilitating emergency response performance in the state;
9. Provide public information as requested regarding emergency response implementation in the state; and
10. Work with other agencies where applicable, to eliminate redundancy in the reporting requirements of the various state, federal and local agencies enforcing hazardous materials handling, storage, spills and training.

G. Any person violating any provision of the Oklahoma Hazardous Materials Planning and Notification Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than Ten Thousand Dollars ($10,000.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

H. The Oklahoma Hazardous Materials Emergency Response Commission shall:
   1. Designate emergency planning districts to facilitate preparation and implementation of emergency plans; and Appoint members of a LEPC for each emergency planning district.

§ 27A-4-2-103. Local emergency planning committees - Membership - Officers - Rules - Request for public information - Responsibilities.

A. Each local emergency planning committee shall include, at a minimum, representation from each of the following groups or organizations:
   1. Elected state and local officials;
   2. Law enforcement;
   3. Civil defense;
   4. Fire fighting;
   5. First aid;
   6. Health;
   7. Environmental;
   8. Hospital;
   9. Transportation personnel;
   10. Broadcast and print media;
   11. Community groups; and
   12. Owners and operators of facilities which manufacture, store, or use in any manner those substances specified as extremely hazardous by the administrator of the federal EPA.

B. The groups and organizations specified in subsection A of this section or any other person or group or organization may nominate an individual residing within the designated emergency planning district to serve on the LEPC. The names of such individuals shall be submitted to the Oklahoma Hazardous Materials Emergency Response Commission.

From among the names of the individuals so submitted, the Oklahoma Hazardous Materials Emergency Response Commission shall appoint the membership of the LEPC.

C. The Oklahoma Hazardous Materials Emergency Response Commission may revise its designations and appointments under this subsection as it deems appropriate. In addition, interested persons, groups or organizations may petition the Oklahoma Hazardous Materials Emergency Response Commission to modify the membership of a LEPC.

D. The members of the LEPC shall meet to elect a chairman who shall hold office according to rules adopted by the committee. The committee shall establish rules by which it shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan.

The LEPC shall establish procedures for receiving and processing requests from the public for information. Such procedures shall include the designation of an official to serve as coordinator for information.

E. Each local emergency planning committee shall:
   1. Complete preparation of an emergency plan in accordance with the federal SARA. After completion of an emergency plan under this paragraph for an emergency planning district, the LEPC shall submit a copy of the plan to the Oklahoma Hazardous Materials Emergency Response Commission. The Commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require;
   2. Evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with

respect to additional resources that may be required and the means for providing such additional resources;
3. Comply with the Oklahoma Open Meeting Law; and
4. Take such other action as may be required by the Oklahoma Hazardous Materials Emergency Response Commission or as otherwise deemed necessary to implement the provisions of this act or the federal SARA.

§ 27A-4-2-104. Member agencies - Annual budgets.

Each member agency, in cooperation with the Oklahoma Hazardous Material Emergency Response Commission, shall prepare an annual budget for the implementation and administration of its respective Commission responsibilities, and submit the same as an inclusion in its agency budget to the Oklahoma Legislature for appropriations to cover the costs of performance of the requirements of the Oklahoma Hazardous Materials Planning and Notification Act.

§ 27A-4-2-105. Local emergency planning committees - Privileges and immunities.

A. The Legislature finds that individuals appointed to the LEPC pursuant to the Oklahoma Hazardous Materials Planning and Notification Act in developing effective comprehensive local emergency response plans serve to protect the health, safety, and welfare of the citizens and the environment of this state. The Legislature, in addition, finds that potential exposure to liability has a detrimental effect on the participation of the individuals on LEPCs and that in order for these LEPCs to function effectively, individuals serving on such committees shall be exempt from civil liability, except as otherwise provided by the Oklahoma Hazardous Materials Planning and Notification Act, for any act or omissions made in the performance of their official duties which resulted in direct or proximate harm to any person or property.
B. 1. Any individual serving on a LEPC pursuant to appointment by the Oklahoma Hazardous Materials Emergency Response Commission, any duly authorized alternate member to a LEPC shall be exempt from civil liability for any acts or omissions made in the performance of their official duties which resulted in the direct or proximate harm or injury to any person or property.
   2. The immunity provided by this subsection shall only extend to the acts or omissions of the individual while serving in their designated, official capacity.
   3. The immunity provided by this subsection shall not extend to intentional torts or grossly negligent acts or omissions of such individual or to the extent specifically stated in the federal SARA.
   4. Any action taken by an individual serving on the committee within the scope of his authority pursuant to the provisions of the Oklahoma Hazardous Materials Planning and Notification Act shall be deemed to be the actions of the individual as a member of the committee and not the actions of such individual as a representative of the group or organization nominating such individual.
   5. The nomination of any individual to serve on the committee by any group or organization specified in subsection G of Section 689.1 of this title shall not subject such group or organization to any civil liability as a result of such nomination.

- -

Title 27A. Environment and Natural Resources
Chapter 4: Emergency Response Notification
Article I: Oklahoma Emergency Response Act

§ 4-1-101. Short Title - Purpose

A. This article shall be known and may be cited as the "Oklahoma Emergency Response Act".
B. The purpose of the Oklahoma Emergency Response Act is to:
   1. Provide a rapid, coordinated and effective network for response to dangerous substances incidents or events necessary to protect the public health and safety and the environment of this state, and to preserve property;
   2. Provide direction and information to responders for the management of dangerous substances incidents or events;
   3. Reduce duplication of effort between local, county and state entities; and
   4. Organize, prepare and coordinate all state available manpower, materials, supplies, equipment, facilities and services necessary for dangerous substances response.

§ 4-1-102. Definitions

For purposes of the Oklahoma Emergency Response Act:

1. "State environmental agency" includes:
   a. the Oklahoma Water Resources Board,
   b. the Corporation Commission,
   c. the State Department of Agriculture,
   d. the Oklahoma Conservation Commission,
   e. the Department of Wildlife Conservation,
   f. the Department of Mines and Mining,
   g. the Department of Public Safety,
   h. the Department of Labor,
   i. the Department of Environmental Quality, and

j. the Department of Civil Emergency Management;

2. "Lead official" means the person designated by the contact agency to be the official in charge of the onsite management of the emergency;
3. "Emergency" means a sudden and unforeseeable occurrence or condition either as to its onset or as to its extent, of such severity or magnitude that immediate emergency response or action is necessary to preserve the health and safety of the public or environment or to preserve property;
4. "Dangerous substance" means explosives, gases, flammable liquids and solids, poisons, radioactive materials, hazardous materials, deleterious substances, oil, or other substance or material in a quantity or form capable of posing an unreasonable risk to public health and safety, property or to the environment;
5. "Release" means a leakage, seepage, discharge, emission or escaping of a dangerous substance into the environment of the state;
6. "Extreme emergency" means any emergency which requires immediate protective actions;
7. "Protective actions" are those steps deemed necessary by first responders to an extreme emergency to preserve the health and safety of the emergency responders, the public and the protection of the environment and property during an incident involving the release of a dangerous substance. Protective actions include but are not limited to area isolation, evacuation, dilution, cooling, encapsulation, chemical treatment and diking;
8. "First responder" means the first person to arrive at the scene of an incident involving the release of a dangerous substance who has the authority by virtue of that person's position as a local law enforcement officer, peace officer, fire protection officer or Oklahoma Highway Patrol Officer or other law enforcement officer; and
9. "Contact agency" means a municipality, fire department or the Oklahoma Highway Patrol as determined by the location of an incident as follows:

Location	Contact Agency
a. Inside corporate municipal limites	Municipal Fire Department
b. Outside corporate limits on private property	Closest Municipal Fire Department
c. Outside corporate limits on federal/ state highway, public property, county road, or a railroad;	Oklahoma Highway Patrol

10. "Responsible party" means any person who owned, operated, or otherwise controlled activities at the facility at the time the incident or event involving releases of dangerous substances requiring protective actions occurred; and
11. "Facility" means:
    a. any building, structure, installation, equipment, pipe or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or
    b. any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise came to be located, or
    c. any vessel, including every description of watercraft or other artificial conveyance used, or capable of being used, as a means of transportation on water.

§ 4-1-103. First Responder to Incidents or Events Involving Releases of Dangerous Substances Requiring Protective Actions

A. For incidents or events involving releases of dangerous substances requiring protective actions, the first responder shall be responsible for initial evaluation of the incident and implementation of protective action measures.
B. As soon as reasonably possible after arriving at the scene of the incident, the first responder shall notify the lead official to respond to the incident pursuant to subsection C of this section. The first responder shall maintain authority to implement protective action measures until the lead official arrives or until the incident is stabilized.
C. Each contact agency specified to respond to a dangerous substance incident requiring emergency response shall designate lead officials who shall be capable of responding on a twenty-four-hour basis to an incident.
D. Upon arrival at the incident scene, the lead official will immediately assume responsibility for management of the incident. All other responding emergency persons are to assist the lead official in the discharge of the duties of the official.
E. If the first responder or the lead official believes the incident to be of a significant nature to threaten the public health, safety or the environment, the first responder or lead official shall contact the DEQ as soon as is reasonably possible. The DEQ shall maintain a twenty-four-hour toll free statewide telephone number to report emergencies.
F. The DEQ shall, as necessary:
    1. Provide technical information or advice to the lead official;
    2. Provide for personnel for assistance in completing material identification;
    3. Provide technical assistance on or initiate procedures for containment or suppression of the release;

4. Provide sampling and analysis of contaminated water or soil after the release has been contained or stabilized;
5. Notify the responsible party of the release; and
6. Oversee the planning of final containment, cleanup and recovery of dangerous materials.

G. The DEQ is authorized when determined to be necessary to protect the public health, safety and welfare of the environment to initiate cleanup operations of the release based upon seriousness of the release, location of the release, threat of the release to the public health and safety or the environment, responsiveness of the responsible party, or authorization of the responsible party. The responsible party shall be liable for any expenses incurred in any cleanup operation.

H. 1. Upon the release of dangerous substances requiring protective actions, the responsible party shall take immediate emergency response measures as directed by the lead official assuming responsibilities for management of the incident or the DEQ if contacted by the first responder or lead official pursuant to subsection E of this section.
2. If the responsible party fails to take immediate emergency response measures as required pursuant to paragraph 1 of this subsection, the contact agency, the district attorney of the county where the release occurred or the Department of Environmental Quality, as applicable, is authorized to apply for a temporary order to compel the responsible party to take immediate emergency response measures.

I. 1. In not less than four (4) hours nor more than seven (7) days, as determined by the contact agency or the DEQ, as applicable, the responsible party shall provide a written action plan for the proposed cleanup operations to the contact agency and shall initiate cleanup operations.
2. The contact agency, the district attorney of the county where the release occurred or the DEQ, as applicable, is authorized to apply for a temporary and permanent court order to compel the responsible party to provide the written action plan and to abate the release and restore the release site.

J. The DEQ shall maintain a list of licensed highway remediation contractors.

K. The lead official may request the Department of Civil Emergency Management to provide state resources in managing an emergency or extreme emergency. If the lead official does not request that the Department of Civil Emergency Management provide state resources in managing an emergency or extreme emergency, the lead official shall notify the Department of Civil Emergency Management after the emergency or extreme emergency no longer poses an immediate threat to the public's health or safety or the environment of the release of dangerous substances.

L. The Department of Civil Emergency Management shall keep a record of each emergency or extreme emergency which includes but is not limited to the location, first responder, lead official, type of emergency or extreme emergency, and actions taken to address said emergency or extreme emergency.

M. At the request of the contact agency, the Department of Civil Emergency Management shall provide assistance to the contact agency, in either reviewing the emergency procedure or emergency management plan used in managing the completed emergency or extreme emergency within the jurisdiction of the contact agency.

§ 4-1-104. Effect of Act

The provisions of the Oklahoma Emergency Response Act shall not be construed to effect or remove the liability of the person who owns the dangerous substance for injury or damage incurred as a result of the release of the dangerous substance.

§ 4-1-105. Authority to Enter Private or Public Property - Records and Reports - Administrative Warrant

A. During or after a release of a dangerous substance and as part of any required cleanup operations or remediation requirements, any duly authorized representative of the first responder, the contact agency, the Department of Civil Emergency Management of the DEQ shall have the authority to enter upon any private or public property for the purpose of responding to and stabilizing an incident or event involving a release of dangerous substances requiring protective action measures.

B. 1. The contact agency or the DEQ may require the establishment and maintenance of records and reports relating to the incident or event.
2. Copies of such records or reports shall be submitted to the requesting agency.
3. Any authorized representative of the contact agency of the DEQ shall be allowed access and may examine such records or reports.

C. 1. A contact agency or the DEQ may apply to and obtain from a judge of the district court, an order authorizing an administrative warrant or other warrant to enforce access to premises for the purpose of responding to and stabilizing an incident or event involving releases of dangerous substances requiring protective action measures or for the purpose of examining records or reports relating thereto.
2. Failure to obey an administrative warrant or other warrant of the district court may be punished by the district court as a contempt of court.

§ 4-1-106. Authority of Attorney General to Prosecute Violations of Oklahoma Emergency Response Act

A. The Attorney General of the district attorney of the county where the release occurs may bring an action in a court of competent jurisdiction for the prosecution of a violation of the Oklahoma Emergency Response Act by the responsible party.
B. 1. Any action for injunctive relief to redress or restrain a violation of the Oklahoma Emergency Response Act by such responsibility party may be brought by the district attorney of the county where the release occurred, as applicable, the contact agency, or the Attorney General or the DEQ on behalf of the State of Oklahoma.
   2. It shall be the duty of the Attorney General or the district attorney to bring such actions.
C. The court shall have jurisdiction to determine such action and to grant the necessary or appropriate relief including, but not limited to, mandatory or prohibitive injunctive relief and interim equitable relief, and for inhibiting response to an incident, punitive damages.
D. A responsible party who violated any of the provisions of, or who fails to perform any duty imposed by, the Oklahoma Emergency Response Act shall, upon conviction, be guilty of a misdemeanor and may be punished by a fine of not less than Two Hundred Dollars ($200.00) and not more than Ten Thousand Dollars ($10,000.00) per day for each violation. Each day or part of a day upon which such violation occurs shall constitute a separate offense.

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 20. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

252:20-1-1. Purpose

The rules in this Chapter implement the Oklahoma Hazardous Materials Planning and Notification Act as it relates to the Oklahoma DEQ. The rules in this Chapter are to administer and enforce the reporting requirements of Title III of the SARA for emergency planning notification, MSDSs, chemical lists, emergency and hazardous chemical inventory forms, and toxic chemical release forms. The rules in this Chapter are intended to be consistent with the federal SARA Title III regulations.

252:20-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

- "Claim of confidentiality" means a submittal under SARA Title III of information to the EPA according to 40 CFR Part 350.
- "Department" means the Oklahoma Department of Environmental Quality.
- "EPA" means the United States Environmental Protection Agency.
- "SARA Title III" means Title III of the Superfund Amendments and Reauthorization Act of 1986.

252:20-1-3. Incorporations by reference

(a) Reference to CFR. Reference to Title 40 of the CFR shall mean (unless otherwise specifically provided) the Superfund, Emergency Planning, and Community Right-to-Know Regulations, July 2009.
(b) Incorporation. The following Parts of 40 CFR are, unless otherwise specified, incorporated by reference in their entirety:
   (1) Part 355 (Emergency Planning and Notification);
   (2) Part 370 (Hazardous Chemical Reporting: Community Right -to-Know);
   (3) Part 372 (Toxic Chemical Release Reporting: Community Right-to-Know).
(c) Interface with CFR. In the Parts of 40 CFR incorporated by reference, the term "Commission" shall mean the Department.
(d) References incorporated. Incorporation by reference of a provision of the Code of Federal Regulations also incorporates all citations and definitions contained therein.
(e) Penalties. Penalties cited in 40 CFR are subject to limitations under Oklahoma law.

252:20-1-4. Submission of plans and reports

(a) Emergency planning and notification, Part 355. The owner or operator of a facility subject to emergency planning or emergency release notification as described in 40 CFR Part 355 shall comply with the requirements of such Part.
(b) Hazardous Chemical Reporting: Community Right-to-Know, Part 370. The owner or operator of a facility subject to MSDS or chemical lists, and inventory reporting (Tier I or Tier II), as described in 40 CFR Part 370 shall comply with the requirements of such Part. Tier II forms shall be submitted to the DEQ electronically via the DEQ internet website utilizing DEQ approved software. Only submissions via the website shall be accepted. A two-year grace period from the requirement to submit via the website for facilities with less than 5 full time employees and companies operating under SIC code 1311 with fewer than 20 locations will be granted from the time of the effective date of these rules. The owner or operator of a

facility subject to Tier II reporting also shall report the latitude/longitude for each location reported.

(c) Toxic Chemical Release Reporting: Community Right-to-Know, Part 372. The owner or operator of a facility subject to toxic chemical release record-keeping and reporting as described in 40 CFR Part 372 shall comply with the requirements of such Part.

(d) Requests for information. Any person who owns or operates any facility that may be subject to regulation under 40 CFR shall accurately respond to requests from the Department for information on the type of facility and the nature and quantity of chemical substances present.

252:20-1-5. Claims of confidentiality

(a) All materials to be submitted under a Claim of confidentiality shall be submitted to the EPA according to the procedures described at 40 CFR Part 350 [Trade Secrecy Claims for Emergency Planning and Community Right-to-Know Information: and Trade Secret Disclosures to Health Professionals].

(b) A copy of the sanitized version of the documents, and a copy of page 1 of the accompanying EPA substantiation form, submitted to the EPA under a Claim of confidentiality shall be submitted to the Department.

(c) All materials submitted to the Department, except separate Tier Two Confidential Location Information Sheets (40 CFR 370.41), will be available to the public.

252:20-1-6. Address for submitting reporting forms

(a) Non-confidential. All non-confidential forms, sanitized versions of materials submitted under a Claim of confidentiality, and separate Tier Two Confidential Location Information Sheets (see 40 CFR 370.41), shall be submitted to the Department via the DEQ internet website.

(b) Confidential. All materials submitted under a Claim of confidentiality, except separate Tier Two Confidential Location Information Sheets, shall be submitted as described in 40 CFR 350.16 to EPCRA Substantiation Packets, P.O. Box 1515, Lanham-Seabrook, MD 20703-1515 or FedEx and courier packages to EPCRA Substantiation Packets, c/o Computer Sciences Corp., Suite 300, 8400 Corporate Dr., New Carrollton, MD 20785.

(c) Information dissemination. Any requirement for an owner or operator of a facility subject to Tier II reporting under 40 CFR 370 to submit a paper Tier II report to the appropriate LEPC and to the local Fire Department is met by reporting to DEQ via electronic on-line internet reporting as the Department will make the information available, in a timely fashion, to the LEPCs and Fire Departments.

252:20-1-7. Fees

Fees for environmental services to validate reports from facilities required to report (but not merely to notify) under the Oklahoma Hazardous Materials Planning and Notification Act (27A O.S.Supp. 2005, § 4-2-101 et seq.) are:

(1) For owner/operators of facilities other than oil and gas production facilities (SIC code 1311) and agriculture chemical dealership facilities:
   (A) $15.00 per hazardous substance per 40 CFR 370 subject to Tier II reporting;
   (B) $30.00 per extremely hazardous substance per 40 CFR 355 subject to Tier II reporting;
   (C) With a $1,000 maximum fee per company.

(2) For owner/operators of oil and natural gas production facilities (SIC code 1311):
   (A) $12.00 per reported facility
   (B) With a $1,000 maximum fee per company.

(3) For agriculture chemical dealerships:
   (A) $12.00 per facility
   (B) With a $1,000 maximum fee per company.

TEXAS

HEALTH AND SAFETY CODE
CHAPTER 505 - MANUFACTURING FACILITY COMMUNITY RIGHT-TO-KNOW ACT

§ 505.001. SHORT TITLE.

This chapter may be cited as the Manufacturing Facility Community Right-To-Know Act.

§ 505.002. FINDINGS; PURPOSE.

(a) The legislature finds that:
   (1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and
   (2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal EPCRA.

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:
   (1) fire departments responsible for dealing with chemical hazards during an emergency;
   (2) LEPCs and other emergency planning organizations; and

(3) the director to make the information available to the public through specific procedures.

§ 505.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS.

(a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.
(b) In this chapter, a reference to Standard Industrial Classification (SIC), to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

§ 505.004. DEFINITIONS.

In this chapter:

(1) "Article" means a manufactured item:
  (A) that is formed to a specific shape or design during manufacture;
  (B) that has end-use functions dependent in whole or in part on its shape or design during end use; and
  (C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.
(2) "Board" means the Texas Board of Health.
(3) "Chemical name" means:
  (A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or
  (B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.
(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.
(5) "Department" means the Texas Department of Health.
(6) "Director" means the director of the Texas Department of Health.
(7) "EPA" means the United States Environmental Protection Agency.
(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.
(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the EPA in 40 CFR Part 355, Appendices A and B.
(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person, and that is in Standard Industrial Codes (SIC) 20-39.
(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.
(12) "Fire chief" means the elected or paid administrative head of a fire department.
(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:
  (A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
  (B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
  (C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;
  (D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and
  (E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.
(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).
(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the MSDS for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.
(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.
(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the SERC for the purposes of emergency planning and public information.
(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.
(19) "OSHA standard" means the HCS issued by the OSHA and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.
(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.
(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.
(23) "Tier two form" means:
  (A) a form specified by the department under Section 505.006 for listing hazardous chemicals as required by EPCRA; or
  (B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.
(24) "Workplace chemical list" means a list of hazardous chemicals developed under 29 CFR Section 1910.1200(e)(i).

505.005. APPLICABILITY OF CHAPTER.

(a) Facility operators whose facilities are in SIC Codes 20-39 shall comply with this chapter.
(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:
  (1) the seal remains intact while the chemical is in the facility;
  (2) the chemical does not remain in the facility longer than five working days; and
  (3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.
(c) This chapter does not apply to:
  (1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;
  (2) tobacco or tobacco products;
  (3) wood or wood products;
  (4) articles;
  (5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;
  (6) foods, drugs, or cosmetics intended for personal consumption by an employee while in the facility;
  (7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;
  (8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;
  (9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and
  (10) radioactive waste.
(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

§ 505.006. FACILITY CHEMICAL LIST.

(a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by board rule for certain highly toxic or extremely hazardous substances.
(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.
(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate LEPC.
(d) The tier two form shall be used to comply with the updating requirements in EPCRA Section 311, but a fee may not be associated with filing the report.
(e) A facility operator shall file the tier two form with the department not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or EHS. The operator shall furnish a copy of each tier two form to the fire

chief of the fire department having jurisdiction over the facility and to the appropriate LEPC.

(f) A facility operator shall file a MSDS with the department on the department's request.

(g) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 505.015, documents filed under this chapter are subject to Chapter 552, Government Code.

§ 505.007. DIRECT CITIZEN ACCESS TO INFORMATION.

(a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the department.

(d) Any facility electing to furnish the material to the department under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the department and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

§ 505.008. EMERGENCY PLANNING INFORMATION.

(a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the LEPC such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the LEPC a copy of the MSDS for any chemical on the tier two form furnished under Section 505.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the NFPA 704 identification system if an equivalent system is not in use.

§ 505.009. COMPLAINTS AND INVESTIGATIONS.

On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

§ 505.010. ADMINISTRATIVE PENALTY.

(a) The director may assess an administrative penalty against an operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator may respond as provided by either Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) Except as provided in Subsection (l), the director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.
(l) If a violation involves a failure to make a good faith effort to comply with this chapter, the director may assess the administrative penalty at any time.
(m) In determining the amount of the penalty, the director shall consider:
  (1) the operator's previous violations;
  (2) the seriousness of the violation;
  (3) any hazard to the health and safety of the public;
  (4) the employer's demonstrated good faith;
  (5) the duration of the violation; and
  (6) other matters as justice may require.
(n) The penalty may not exceed $500 a day for each day a violation continues, with a total not to exceed $5,000 for each violation.

§ 505.011. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

(a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.
(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.
(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.
(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.
(e) If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the LEPC or a member organization instead of paying the penalty. The department may specify that the operator join the LEPC and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.
(f) The director may consolidate a hearing held under this section with another proceeding.

§ 505.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW.

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.
(b) Except as provided by in Section 505.011(e), within 30 days after the date the director's order is final as provided by Subchapter F, Chapter 2001, Government Code, the facility operator shall:
  (1) pay the amount of the penalty;
  (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or
  (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.
(c) Within the 30-day period, a facility operator who acts under Subsection (b)(3) may:
  (1) stay enforcement of the penalty by:
    (A) paying the amount of the penalty to the court for placement in an escrow account; or
    (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or
  (2) request the court to stay enforcement of the penalty by:
    (A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
    (B) giving a copy of the affidavit to the director by certified mail.
(d) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.
(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.
(f) Judicial review of the order of the director:
  (1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and
  (2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the facility operator to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the facility operator paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the facility operator.

The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the facility operator gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond.

If the facility operator gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the facility operator pays the amount.

(i) All proceedings under this section are subject to Chapter 2001, Government Code.

§ 505.013. CIVIL PENALTIES.

(a) A person who knowingly discloses false information or negligently fails to disclose a hazard as required by this chapter is subject to a civil penalty of not more than $5,000 for each violation.

(b) This section does not affect any other right of a person to receive compensation under other law.

§ 505.014. CRIMINAL PENALTIES.

(a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by this chapter commits an offense punishable by a fine of not more than $25,000.

(b) This section does not affect any other right of a person to receive compensation under other law.

§ 505.015. TRADE SECRETS.

Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

§ 505.016. RULES; FEES.

(a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee for facilities may not exceed:

(1) $100 for each required submission having no more than 25 hazardous chemicals or hazardous chemical categories;

(2) $200 for each required submission having no more than 50 hazardous chemicals or hazardous chemical categories;

(3) $300 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories;

(4) $400 for each required submission having no more than 100 hazardous chemicals or hazardous chemical categories; or

(5) $500 for each required submission having more than 100 hazardous chemicals or chemical categories.

(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The department may use up to 20 percent of the fees collected under this section as grants to LEPCs to assist them to fulfill their responsibilities under EPCRA. The department may use up to 15 percent of the fees collected under this chapter and Chapter 506, or the amount of fees paid by the state and its political subdivisions under Chapter 506, whichever is greater, to administer Chapter 502.

- -

Texas Non-Manufacturing Right to Know Act
HEALTH AND SAFETY CODE
CHAPTER 507 - NON-MANUFACTURING FACILITIES COMMUNITY RIGHT-TO-KNOW ACT

§ 507.001. SHORT TITLE.

This chapter may be cited as the Nonmanufacturing Facilities Community Right-To-Know Act.

§ 507.002. FINDINGS; PURPOSE.

(a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during

emergency situations or as a result of proximity to the use of those chemicals; and
(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal EPCRA.

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:
(1) fire departments responsible for dealing with chemical hazards during an emergency;
(2) local emergency planning committees and other emergency planning organizations; and
(3) the director to make the information available to the public through specific procedures.

§ 507.003. FEDERAL LAWS AND REGULATIONS.

In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

§ 507.004. DEFINITIONS.

In this chapter:

(1) "Article" means a manufactured item:
(A) that is formed to a specific shape or design during manufacture;
(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and
(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.
(2) "Board" means the Texas Board of Health.
(3) "Chemical name" means:
(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or
(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.
(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.
(5) "Department" means the Texas Department of Health.
(6) "Director" means the director of the Texas Department of Health.
(7) "EPA" means the United States Environmental Protection Agency.
(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.
(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the EPA in 40 CFR Part 355, Appendices A and B.
(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person, and that is in Standard Industrial Codes (SIC) 20-39.
(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.
(12) "Fire chief" means the elected or paid administrative head of a fire department.
(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:
(A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;
(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and
(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.
(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).
(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the MSDS for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.
(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.
(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the SERC for the purposes of emergency planning and public information.
(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(19) "OSHA standard" means the HCS issued by the OSHA and codified as 29 CFR Section 1910.1200.
(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.
(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.
(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.
(23) "Tier two form" means:
  (A) a form specified by the department under Section 505.006 for listing hazardous chemicals as required by EPCRA; or
  (B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.

§ 507.005. APPLICABILITY OF CHAPTER.

(a) Facility operators who are not subject to Chapter 505 or 506 shall comply with this chapter.
(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:
  (1) the seal remains intact while the chemical is in the facility;
  (2) the chemical does not remain in the facility longer than five working days; and
  (3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.
(c) This chapter does not apply to:
    (1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;
    (2) tobacco or tobacco products;
    (3) wood or wood products;
    (4) articles;
    (5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;
    (6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;
    (7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;
    (8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;
    (9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and (10) radioactive waste.
(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

§ 507.006. FACILITY CHEMICAL LIST.

(a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by board rule for certain highly toxic or extremely hazardous substances.
(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.
(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate LEPC.
(d) The tier two form shall be used to comply with the updating requirements in EPCRA, Section 311, but a fee may not be associated with filing the report.
(e) A facility operator shall file the tier two form with the department not later than the 90th day after the date on

which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or EHS. The operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate LEPC.

(f) A facility operator shall file a MSDS with the department on the department's request.

(g) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 507.012, documents filed under this chapter are subject to Chapter 552, Government Code.

§ 507.007. EMERGENCY PLANNING INFORMATION.

(a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the LEPC such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the LEPC a copy of the MSDS for any chemical on the tier two form furnished under Section 507.006 or for any chemical present at the facility.

(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the NFPA 704 identification system if an equivalent system is not in use.

§ 507.008. COMPLAINTS AND INVESTIGATIONS.

On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

§ 507.009. ADMINISTRATIVE PENALTY.

(a) The director may assess an administrative penalty against a facility operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.

(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the conference. A request for a conference made in bad faith is a violation of this chapter.

(e) The operator may correct the violation and certify to the department that the corrections have been made.

(f) The operator may request a hearing.

(g) Following a conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the violation, the operator may respond as provided by either Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.

(h) The operator may correct the violation and certify to the department that the corrections have been made.

(i) The operator may request a hearing.

(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.

(k) Except as provided in Subsection (l), the director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.

(l) If a violation involves a failure to make a good-faith effort to comply with this chapter, the director may assess the administrative penalty at any time.

(m) In determining the amount of the penalty, the director shall consider:
  (1) the operator's previous violations;
  (2) the seriousness of the violation;
  (3) any hazard to the health and safety of the public;
  (4) the operator's demonstrated good faith;
  (5) the duration of the violation; and
  (6) other matters as justice may require.

(n) The penalty may not exceed $50 for each day a violation continues, with a total not to exceed $1,000 for each violation.

§ 507.010. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

(a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.
(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.
(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.
(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty.
(e) If a penalty is assessed, the department may allow the facility to make a grant to the LEPC or a member organization instead of the penalty. The department may specify the operator join the LEPC and attend all meetings for one year or write an article, approved by the department, concerning right-to-know laws applicable in Texas for a journal or other publication.
(f) The director may consolidate a hearing held under this section with another proceeding.

§ 507.011. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW.

(a) Not later than the 30th day after the date an order finding a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.
(b) Except as provided by Section 507.010(e), within 30 days after the date the director's order is final as provided by Subchapter F, Chapter 2001, Government Code, the facility operator shall:
  (1) pay the amount of the penalty;
  (2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the violation and the amount of the penalty; or
  (3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.
(c) Within the 30-day period, a facility operator who acts under Subsection (b)(3) may:
  (1) stay enforcement of the penalty by:
    (A) paying the amount of the penalty to the court for placement in an escrow account; or
    (B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the director's order is final; or
  (2) request the court to stay enforcement of the penalty by:
    (A) filing with the court a sworn affidavit of the facility operator stating that the facility operator is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and
    (B) giving a copy of the affidavit to the executive director by certified mail.
(d) If the director receives a copy of an affidavit under Subsection (c)(2), the director may file with the court, within five days after the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The facility operator who files an affidavit has the burden of proving that the facility operator is financially unable to pay the amount of the penalty and to give a supersedeas bond.
(e) If the facility operator does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.
(f) Judicial review of the order of the director:
  (1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Code; and
  (2) is under the substantial evidence rule.
(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the facility to pay the full or reduced amount of the penalty. If the court does not sustain the the violation, the court shall order that no penalty is owed.
(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the facility operator paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the facility operator. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the facility operator gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the facility operator gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the facility operator pays the amount.
(i) All proceedings under this section are subject to Chapter 2001, Government Code.

§ 507.012. TRADE SECRETS.

Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

§ 507.013. RULES; FEES.

(a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.
(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee may not exceed:
  (1) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or
  (2) $100 for each submission having more than 75 hazardous chemicals or chemical categories.
(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.
(d) The department may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA.

- -

HEALTH AND SAFETY CODE
CHAPTER 506 - PUBLIC EMPLOYER COMMUNITY RIGHT-TO-KNOW ACT

§ 506.001. SHORT TITLE.

This chapter may be cited as the Public Employer Community Right-To-Know Act.

§ 506.002. FINDINGS; PURPOSE.

(a) The legislature finds that:
  (1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and
  (2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal EPCRA.
(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemical is provided to:
  (1) fire departments responsible for dealing with chemical hazards during an emergency;
  (2) LEPCs and other emergency planning organizations; and
  (3) the director to make the information available to the public through specific procedures.

§ 506.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS.

(a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.
(b) In this chapter, a reference to nomenclature systems developed by the IUPAC or the CAS, or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

§ 506.004. DEFINITIONS.

In this chapter:

(1) "Article" means a manufactured item:
  (A) that is formed to a specific shape or design during manufacture;
  (B) that has end-use functions dependent in whole or in part on its shape or design during end use; and
  (C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.
(2) "Board" means the Texas Board of Health.
(3) "Chemical name" means:
  (A) the scientific designation of a chemical in accordance with the nomenclature system developed by the IUPAC or the CAS rules of nomenclature; or
  (B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.
(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.
(5) "Department" means the Texas Department of Health.
(6) "Director" means the director of the Texas Department of Health.
(7) "EPA" means the United States Environmental Protection Agency.
(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the SARA of 1986, Title III, Pub. L. No. 99-499 et seq.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the EPA in 40 CFR Part 355, Appendices A and B.
(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person and that is operated by the state or a political subdivision of the state.
(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.
(12) "Fire chief" means the elected or paid administrative head of a fire department.
(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:
  (A) any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
  (B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
  (C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;
  (D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and
  (E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.
(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).
(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the MSDS for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the MSDS.
(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.
(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.
(18) "Material safety data sheet" or "MSDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.
(19) "OSHA standard" means the HCS issued by the OSHA and codified as 29 CFR Section 1910.1200.
(20) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water-reactive in terms defined in the OSHA standard.
(21) "Public employer" means:
  (A) the state and political subdivisions of the state, including state, county, and municipal agencies;
  (B) public schools, colleges, and universities;
  (C) river authorities and publicly owned utilities;
  (D) volunteer emergency service organizations; and
  (E) other similar employers who are not covered by the federal OSHAct of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164).
(22) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.
(23) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as defined by the EPA pursuant to EPCRA, Section 302.
(24) "Tier two form" means:
  (A) a form specified by the department under Section 506.006 for listing hazardous chemicals as required by EPCRA; or
  (B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the department for administering its functions related to EPCRA.
(25) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a).

§ 506.005. APPLICABILITY OF CHAPTER.

(a) Public employers shall comply with this chapter.
(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:
  (1) the seal remains intact while the chemical is in the facility;
  (2) the chemical does not remain in the facility longer than five working days; and
  (3) the chemical is not an EHS at or above the TPQ or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.
(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;
(2) tobacco or tobacco products;
(3) wood or wood products;
(4) articles;
(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;
(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;
(7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;
(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;
(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and
(10) radioactive waste.

(d) The director shall develop an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

§ 506.006. FACILITY CHEMICAL LIST.

(a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by board rule for certain highly toxic or EHSs.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the appropriate fee according to the procedures specified by board rules. The facility operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate LEPC.

(d) A facility operator shall file the tier two form with the department not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or EHS, but a fee may not be associated with filing this report. The operator shall furnish a copy of each tier two form to the fire chief of the fire department having jurisdiction over the facility and to the appropriate LEPC.

(e) A facility operator shall file a MSDS with the department on the department's request.

(f) The department shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(g) Documents filed under this chapter are subject to Chapter 552, Government Code.

§ 506.007. DIRECT CITIZEN ACCESS TO INFORMATION.

(a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the department.

(d) Any facility electing to furnish the material to the department under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the department and refer the request to the department for that filing period. The notice to persons making requests shall state the address of the department and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

§ 506.008. EMERGENCY PLANNING INFORMATION.

(a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the LEPC such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the director, the fire chief, or the LEPC a copy of the MSDS for any chemical on the tier two form furnished under Section 506.006 or for any chemical present at the facility.
(c) The board by rule may require certain categories of facility operators under certain circumstances to implement the NFPA 704 identification system if an equivalent system is not in use.

§ 506.009. COMPLAINTS AND INVESTIGATIONS.

On presentation of appropriate credentials, an officer or representative of the director may enter a facility at reasonable times to inspect and investigate complaints.

§ 506.010. ADMINISTRATIVE PENALTY.

(a) The director may assess an administrative penalty against an operator who violates this chapter, board rules adopted under this chapter, or an order issued under this chapter.
(b) If the department finds one or more violations of this chapter, the director may issue a notice of violation to the operator. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of this chapter, and state the amount of the penalty, if any, to be assessed by the director.
(c) An operator who receives a notice of violation may respond to the department in writing within 15 days of the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).
(d) If the operator disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the operator may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the operator to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.
(e) The operator may correct the violation and certify to the department that the corrections have been made.
(f) The operator may request a hearing.
(g) Following an informal conference, the department shall respond in writing to the operator, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the operator may respond as provided by Subsection (h) or (i) within 10 days of the date of receipt of the department's correspondence.
(h) The operator may correct the violation and certify to the department that the corrections have been made.
(i) The operator may request a hearing.
(j) A request for an informal conference or a statement by an operator that the operator is in compliance with the provisions of this chapter does not waive the operator's right to a hearing.
(k) The director may not assess an administrative penalty for any violation that has been corrected within 15 days of the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the operator of the department's response to the informal conference provided for in Subsection (d), whichever is later.
(l) In determining the amount of the penalty, the director shall consider:
  (1) the operator's previous violations;
  (2) the seriousness of the violation;
  (3) any hazard to the health and safety of the public;
  (4) the employer's demonstrated good faith;
  (5) the duration of the violation; and
  (6) other matters as justice may require.
(m) The penalty may not exceed $50 a day for each day a violation continues, with a total not to exceed $1,000 for each violation.

§ 506.011. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.

(a) An administrative penalty may be assessed only after a facility operator charged with a violation is given an opportunity for a hearing.
(b) If a hearing is held, the director shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.
(c) If the facility operator charged with the violation does not request a hearing, the director may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.
(d) After making a determination under this section that a penalty is to be assessed against a facility operator, the director shall issue an order requiring that the facility operator pay the penalty. If a penalty is assessed on a complaint, the department may allow the facility operator to make a grant to the LEPC or a member organization instead of paying the penalty. The department may specify that the operator join the LEPC and attend all meetings for one year or write an article, approved by the department, concerning community right-to-know laws applicable in Texas for a trade journal or other business publication.
(e) The director may consolidate a hearing held under this section with another proceeding.

§ 506.012. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW.

(a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the director shall inform the facility operator against whom the order is issued of the amount of the penalty for the violation.
(b) Except as provided in Section 506.011(e), not later than the 30th day after the date on which a decision or order charging a facility operator with a penalty is final, the facility operator shall pay the penalty in full, unless the facility operator seeks judicial review of the amount of the penalty, the fact of the violation, or both. The board may by rule provide for appeals by the state and political subdivisions of the state.

§ 506.013. REFUND OF ADMINISTRATIVE PENALTY.

Not later than the 30th day after the date of a judicial determination that an administrative penalty against a facility operator should be reduced or not assessed, the director shall remit to the facility operator the appropriate amount of any penalty payment already paid plus accrued interest.

§ 506.014. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL.

The attorney general at the request of the director may bring a civil action to recover an administrative penalty under this chapter.

§ 506.015. CIVIL PENALTIES.

(a) A person who knowingly discloses false information or negligently fails to disclose a hazard as required by this chapter is subject to a civil penalty of not more than $5,000 for each violation.
(b) This section does not affect any other right of a person to receive compensation under other law.

§ 506.016. CRIMINAL PENALTIES.

(a) A person who proximately causes an occupational disease or injury to an individual by knowingly disclosing false information or knowingly failing to disclose hazard information as required by this chapter commits an offense punishable by a fine of not more than $25,000.
(b) This section does not affect any other right of a person to receive compensation under other law.

§ 506.017. RULES; FEES.

(a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.
(b) The board may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. The fee may not exceed:
  (1) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or
  (2) $100 for each required submission having more than 75 hazardous chemicals or chemical categories.
(c) To minimize the fees, the board by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.
(d) The department may use up to 15 percent of the fees collected under Chapter 505 and this chapter, or the amount of fees paid by the state and its political subdivisions under this chapter, whichever is greater, to administer Chapter 502.

- -

TEXAS ADMINISTRATIVE CODE
TITLE 30 – ENVIRONMENTAL QUALITY
PART 1 – TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHAPTER 327 – SPILL PREVENTION AND CONTROL

RULE §327.1 Applicability

(a) This chapter applies to discharges or spills that result in a release to the environment within the territorial limits of the State, including the coastal waters of this state.
(b) This chapter does not apply to:
  (1) discharges or spills of oil that enter or threaten to enter coastal waters of the State. Except for spills of oil of 240 barrels or less for which the RRC of Texas is the OSC, such discharges or spills are regulated by the Texas General Land Office under the Oil Spill Prevention and Response Act of 1991, the Texas Natural Resources Code, Chapter 40, Subchapters C, D, E, F, and G;
  (2) spills or discharges from activities subject to the jurisdiction of the RRC of Texas under the Texas Water Code, §26.131;
  (3) releases only to air;
  (4) the lawful placement of waste or accidental discharge of material into a solid waste management unit registered or permitted under Chapter 335, Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General);

(5) units and activities regulated under the authority of the Texas Water Code, Chapter 26, Subchapter I (Underground and Aboveground Storage Tanks);
(6) the application of materials, including fertilizers and pesticides, to land or water;
(7) discharges that are authorized by a permit, order, or rule issued under federal law or any other law of the State; provided, however, that discharges not so authorized shall be reported under this chapter unless the permit, order, or another commission rule provides an applicable reporting requirement;
(8) discharges or spills that are continuous and stable in nature, and are reported to the EPA under 40 CFR §302.8; and
(9) discharges or spills occurring during the normal course of rail transportation.

RULE §327.2 Definitions

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency OSC --The official designated by the executive director to coordinate and direct agency responses, or to oversee private responses to discharges or spills.
(2) Coastal waters--The definition of Coastal waters as it appears in Title 31, Texas Administrative Code, §19.2 (Definitions) of the Texas General Land Office rules.
(3) Discharge or spill--An act or omission by which oil, hazardous substances, waste, or other substances are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into waters in the State of Texas or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter water in the State of Texas.
(4) Emergency response team--A unit of the agency that is responsible for the coordination of response to spills and discharges under the agency's jurisdiction.
(5) Environment--Waters in the state, land surface or subsurface strata, for purposes of this chapter only.
(6) Facility--Any structure or building, including contiguous land, or equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, aircraft, or any site or area where a discharge or spill has occurred or may occur.
(7) Hazardous substance--Any substance designated as such EPA under the CERCLA, 42 USC 9601-9675, regulated under the CWA, §311, 33 USC 1321, or designated by the commission.
(8) Industrial solid waste--Solid waste, as defined in §335.1 of this title (relating to Definitions), resulting from or incidental to any process of industry or manufacturing, or mining, or agricultural operations, which may include hazardous waste as defined in §335.1 of this title.
(9) Oil--Oil of any kind including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include used oil, petroleum product, or oil designated as a hazardous substance in 40 CFR §302.4.
(10) Other substances--Substances that may be useful or valuable and therefore are not ordinarily considered to be waste, but that will cause pollution if discharged into water in the state.
(11) Petroleum product--A petroleum substance obtained from distilling and processing crude oil that is liquid at standard conditions of temperature and pressure, and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including but not necessarily limited to motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.
(12) Petroleum storage tank (PST) exempted facilities--Electric service facilities including generation, transmission, distribution equipment and transformers; petrochemical plants; petroleum refineries; bulk loading facilities; and pipelines that are exempted from the Aboveground Storage Tank (AST) program under §334.123(a)(9) and (b) of this title (relating to Statutory Exemptions for ASTs), and §334.124(a)(4) of this title (relating to Commission Exclusions for ASTs).
(13) Pipeline--A pipeline is:
  (A) an interstate pipeline facility, including gathering lines and any aboveground storage tank connected to such facility, if the pipeline facility is regulated under:
    i. the Natural Gas Pipeline Safety Act of 1968 (49 United States Code §§1671, et seq); or
    ii. the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC §§2001, et seq).
  (B) an intrastate pipeline facility or any aboveground storage tank connected to such a facility, if the pipeline facility is regulated under one of the following state laws:
    i. the Natural Resources Code, Chapter 111;
    ii. the Natural Resources Code, Chapter 117; or
    iii. Texas Civil Statutes, Article 6053-1 and Article 6053-2.
(14) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal, vegetation, or property or to public health, safety, or welfare, or impairs public enjoyment of the water for any lawful or reasonable purpose.
(15) Responsible person--A person who is:
  (A) the owner, operator, or demise charterer of a vessel which a discharge or spill emanates; or
  (B) the owner or operator of a facility from which a discharge or spill emanates; or
  (C) any other person who causes, suffers, allows, or permits a discharge or spill.

(16) Used oil--Oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.
(17) Vessel--Every description of watercraft, used or capable as a means of transportation on the water.
(18) Water or water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface waters, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

RULE §327.3 Notification Requirements

(a) Reportable discharge or spill.

A reportable discharge or spill is a discharge or spill of oil, petroleum product, used oil, hazardous substances, industrial solid waste, or other substances into the environment in a quantity equal to or greater than the RQ listed in §327.4 (relating to RQs) in any 24-hour period.

(b) Initial notification.

Upon the determination that a reportable discharge or spill has occurred, the responsible person shall notify the agency as soon as possible but not later than 24 hours after the discovery of the spill or discharge.

(c) Method of notification.

The responsible person shall notify the agency in any reasonable manner including by telephone, in person, or by any other method approved by the agency. In all cases, the initial notification shall provide, to the extent known, the information listed in subsection (d) of this section. Notice provided under this section satisfies the federal requirement to notify the SERC in the State of Texas. The responsible person shall notify one of the following:

(1) the State Response Center at 1-800-832-8224;
(2) during normal business hours only, the regional office for the agency region in which the discharge or spill occurred; or
(3) the agency at the agency 24-hour spill number.

(d) Information required in initial notification.

The initial notification shall provide, to the extent known, the information in the following list. Copies of spill reports prepared for other governmental agencies shall satisfy this requirement if they contain, or are supplemented to contain, all the information required by this subsection. The initial notification shall contain:

(1) the name, address and telephone number of the person making the telephone report;
(2) the date, time, and location of the spill;
(3) a specific description or identification of the oil, petroleum product, hazardous substances or other substances discharged or spilled;
(4) an estimate of the quantity discharged or spilled;
(5) the duration of the incident;
(6) the name of the surface water or a description of the waters in the state affected or threatened by the discharge or spill;
(7) the source of the discharge or spill;
(8) a description of the extent of actual or potential water pollution or harmful impacts to the environment and an identification of any environmentally sensitive areas or natural resources at risk;
(9) if different from paragraph (1) of this subsection, the names, addresses, and telephone numbers of the responsible person and the contact person at the location of the discharge or spill;
(10) a description of any actions that have been taken, are being taken, and will be taken to contain and respond to the discharge or spill;
(11) any known or anticipated health risks;
(12) the identity of any governmental representatives, including local authorities or third parties, responding to the discharge or spill; and
(13) any other information that may be significant to the response action.

(e) Update notification.

The responsible person shall notify the agency as soon as possible to provide information that would trigger a change in the response to the spill or discharge.

(f) Correction of records.

Notifying the agency that a reportable discharge or spill has occurred shall not be construed as an admission that pollution has occurred. Furthermore, if the responsible person determines, after notification, that a reportable discharge or spill did not occur, the responsible person may send a letter to the agency documenting that determination.

If the executive director agrees with that determination, the executive director will note the determination in commission records. If the executive director disagrees with that determination, the executive director will notify the responsible person within 30 days.

(g) Notification of local governmental authorities.

If the discharge or spill creates an imminent health threat, the responsible person shall immediately notify and cooperate with local authorities (fire department, law enforcement, health authority, or LEPC, as appropriate).

The responsible party will cooperate with the local emergency authority in providing support to implement appropriate notification and response actions. The local emergency authority, as necessary, will implement its emergency management plan, which may include notifying and evacuating affected persons.

In the absence of a local emergency authority, the responsible person shall take reasonable measures to notify potentially affected persons of the imminent health threat.

(h) Notification to property owner and residents.

As soon as possible, but no later than two weeks after discovery of the spill, the responsible person shall attempt to notify the owner (if identifiable) or occupant of the property

upon which the discharge or spill occurred as well as the occupants of any property that the responsible person reasonably believes is adversely affected.

(i) Additional notification required.
  (1) Except as noted in paragraph (2) of this subsection, complying with the notification requirements set forth in this section does not relieve, satisfy, or fulfill any other notification requirements imposed by permit or other local, state, or federal law.
  (2) Notice provided under this section satisfies the federal requirement to notify the SERC in the State of Texas.

(j) Alternative notification plans.
  (1) Responsible persons in charge of activities and facilities may submit and implement an alternative notification plan. This alternative notification plan shall comply with the Texas Water Code, §26.039. Responsible persons shall obtain the agency's written approval before implementing any alternative notification plan.
  (2) Upon approval of the agency regional manager, responsible persons may provide the initial notification by facsimile to the regional office during normal business hours.

RULE §327.4 Reportable Quantities

(a) Hazardous substances.
The reportable quantities for hazardous substances shall be:
  (1) for spills or discharges onto land--the quantity designated as the Final RQ in Table 302.4 in 40 CFR §302.4; or
  (2) for spills or discharges into waters in the state--the quantity designated as the Final RQ in Table 302.4 in 40 CFR §302.4, except where the Final RQ is greater than 100 pounds in which case the RQ shall be 100 pounds.

(b) Oil, petroleum product, and used oil.
  (1) The RQ for crude oil and oil other than defined as petroleum or used oil shall be:
    (A) for spills or discharges onto land--210 gallons (five barrels); or
    (B) for spills or discharges directly into water--quantity sufficient to create a sheen.
  (2) The RQ for petroleum product and used oil shall be:
    (A) except as noted in subparagraph (B) of this paragraph, for spills or discharges onto land—25 gallons;
    (B) for spills or discharges to land from PST exempted facilities--210 gallons (five barrels); or
    (C) for spills or discharges directly into water --quantity sufficient to create a sheen.

(c) Industrial solid waste or other substances.
The RQ for spills or discharges into water in the state shall be 100 pounds.

RULE §327.5 Actions Required

(a) The responsible person shall immediately abate and contain the spill or discharge and cooperate fully with the executive director and the local incident command system. The responsible person shall also begin reasonable response actions which may include, but are not limited to, the following actions:
  (1) arrival of the responsible person or response personnel hired by the responsible person at the site of the discharge or spill;
  (2) initiating efforts to stop the discharge or spill;
  (3) minimizing the impact to the public health and the environment;
  (4) neutralizing the effects of the incident;
  (5) removing discharged or spilled substances; and
  (6) managing the wastes.

(b) Upon request of the local government responders or the executive director, the responsible person shall provide a verbal or written description, or both, of the planned actions and all actions taken before the local responders or the executive director arrive.
When the agency on-scene coordinator requests this information, it is subject to possible additional response action requirements by the executive director. The information will serve as a basis for the executive director to determine the need for:
  (1) further actions by the responsible person;
  (2) initiating state funded actions for which the responsible person may be held liable to the maximum extent allowed by law; and
  (3) subsequent reports on the response actions.

(c) Except for discharges or spills occurring during the normal course of transportation about which carriers are required to file a written report with the DOT under 49 CFR §171.16, the responsible person shall submit information, such as a letter, describing details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TNRCC regional manager within 30 working days of the discovery of the reportable discharge or spill. The regional manager has the discretion to extend the deadline. The documentation shall contain one of the following items:
  (1) A statement that the discharge or spill response action has been completed and a description of how the response action was conducted. The statement shall include the initial report information required by §327.3(c) of this title (relating to Notification Requirements).
The executive director may request additional information. Appropriate actions at any time

following the spill include use of the Texas Risk Reduction Program rules in Chapter 350 of this title (relating to Texas Risk Reduction Program).

(2) A request for an extension of time to complete the response action, along with the reasons for the request. The request shall also include a projected work schedule outlining the time required to complete the response action. The executive director may grant an extension up to six months from the date the spill or discharge was reported. Unless otherwise notified by the regional manager or the Emergency Response Team, the responsible person shall proceed according to the terms of the projected work schedule.

(3) A statement that the discharge or spill response action has not been completed nor is it expected to be completed within the maximum allowable six month extension. The statement shall explain why completion of the response action is not feasible and include a projected work schedule outlining the remaining tasks to complete the response action. This information will also serve as notification the actions to the discharge or spill will be conducted under the Texas Risk Reduction Program rules in Chapter 350 of this title (relating to Texas Risk Reduction Program).

Texas Statutory Authorities and Jurisdictions

Texas Commission on Environmental Quality

Section 26.127 of the Texas Water Code establishes the Texas Commission on Environmental Quality (TCEQ) as the principal authority in the State on matters relating to the quality of water in the State.

In addition, the Hazardous Substances Spill Prevention and Control Act (Chapter 26, Subchapter G, §26.262, Texas Water Code) stipulates that it is the policy of this State to prevent the spill or discharge of hazardous substances into the waters in the State and to cause the removal of any spills and discharges without undue delay. This subchapter shall be construed to conform with Chapter 40 of the Natural Resources Code.

The TCEQ is the State's lead agency in spill response to certain inland oil spills, all hazardous substance spills, spills of other substances which may cause pollution, as well as any releases of substances which may adversely impact air quality.

The TCEQ shall conduct spill response for the State, and shall otherwise administer the provisions of the Act. The Act also authorizes the Executive Director of the TCEQ (hereinafter referred to as the Executive Director) to act independently if no federal on-scene coordinator is present or no action is being taken by an agency of the federal government in response to a spill or discharge of oil, hazardous substances, or other substances. The Executive Director's response may include actions to abate and remove the spill.

Under the authority of certain provisions of Chapter 361 of the Texas Health and Safety Code, the TCEQ has additional removal authorities with respect to cleanup of a release or threatened release of hazardous substances at a facility on the TCEQ's registry as described in the Act.

The TCEQ has been designated by the Governor of Texas, in accordance with the provisions of the CERCLA of 1980 (CERCLA), (42 U.S.C. §9601, et seq.); the SARA of 1986, (Public Law 99-499); the CWA, as amended (33 U.S.C. §1251, et seq.); and, the NCP (40 CFR Part 300), as the State's lead agency for "Superfund" activities and as one of the State's representatives to the federal RRT.

In accordance with 40 CFR Part 300.32(b), the RRT serves as the regional body for planning and preparedness before a response action is taken and for coordination and advice during such actions.

Further, the Governor of Texas has designated the TCEQ as one of the three State Trustees for damage assessment and restoration of the State's natural resources that may be affected by a spill, discharge or release.

The TCEQ is the designated trustee for air, surface water including sediments, groundwater, and drinking water resources. The TCEQ as a natural resource Trustee has the obligation to protect and preserve all trust resources of the State of Texas. The State's municipal hazardous waste and industrial solid waste program is implemented by 30 Texas Administrative Code (TAC, Chapter 335), adopted under the authority of the State SWDA (Texas Health and Safety Code Ann., Chapter 361, Vernon Supp. 1990).

Chapter 335 includes the requirement that any person who conveys or transports hazardous waste by truck, ship, pipeline or other means, shall clean up any hazardous waste discharge or release or take such action as may be required or approved by the TCEQ so that the hazardous waste discharge or release no longer presents a hazard to human health or the environment (see 30 TAC 335.93).

These Rules also require that owners and operators of hazardous industrial solid waste storage, processing, or disposal facilities must maintain and operate such facilities so as to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or water which could threaten human health or the environment.

Additionally, each owner or operator of a hazardous industrial solid waste facility must have a contingency plan for the facility designed to minimize the above possibilities (see 30 TAC 335.152, incorporating by reference 40 Code of Federal Regulations Part 264). The State's regulation of underground and aboveground storage tanks, as administered by the Petroleum Storage Tank Program, is authorized by 30 Texas Administrative Code (TAC, Chapter 334), promulgated under the Texas Water Code §§26.341-26.359. This program establishes standards and procedures to protect and maintain the quality of the state's groundwater and surface water resources from

contamination that could result from any releases of harmful substances stored in such tanks. Authority was granted to assess and collect fees for deposit into a fund which could then be used for remediation purposes.

In addition to ongoing preventive and remedial actions, emergency orders may be issued to the owner and/or operator of an underground or aboveground storage tank if there is an actual or threatened release of a regulated substance (Texas Water Code §26.354).

Emergency orders may also be issued if it is determined that more expeditious corrective action than is otherwise provided for is necessary to protect the public health and safety or the environment from harm. Orders issued under this provision may prohibit a person from allowing or continuing the release (or threatened release) and require the person to take the actions necessary to eliminate it. Additionally, the TCEQ is authorized to undertake corrective action measures under any circumstances in which the commission considers it necessary to protect the public health and safety or the environment (Texas Water Code §26.3511).

Under the authority of the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382, Vernon Supp. 1990), the TCEQ is charged with safeguarding the State's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the aesthetic enjoyment of air resources by the public and the maintenance of adequate visibility.

The TCEQ Office of Air Quality requires facilities to report any major upset condition (see 30 TAC §101.6). A major upset is defined as an unscheduled occurrence or excursion of a process or operation that results in an emission of air contaminants that contravenes the Texas Clean Air Act and is beyond immediate control, or a release that is initiated to protect life in the immediate or adjacent areas (see 30 TAC §101.1). Many may constitute a spill under the Hazardous Substances Spill Prevention and Control Act as well as a major upset under the TCEQ rules.

General Land Office

The Texas General Land Office (GLO) is the state's lead agency for response to oil spills that enter or threaten to enter coastal waters. State discharge response and cleanup operations resulting from unauthorized discharges of oil that enter or threaten to enter coastal waters are administered and directed by the GLO pursuant to the Oil Spill Prevention and Response Act of 1991 (OSPRA), Texas Natural Resources Code §40.001 et seq.

OSPRA defines coastal waters as the waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous thereto that are navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo. Thus, the jurisdiction of the GLO extends beyond simply waters that are subject to tidal influence.

OSPRA defines unauthorized discharge of oil as any discharge of oil, or any discharge of oil emanating from a vessel into waters adjoining and accessible from coastal waters, that is not authorized by a federal or state permit.

OSPRA defines discharge of oil as an intentional or unintentional act or omission by which harmful quantities of oil are leaked, spilled, pumped, poured, emitted, or dumped into or on coastal waters or at a place adjacent to coastal waters where, unless controlled or removed, an imminent threat of pollution to coastal waters exists. The GLO has been designated by the Governor of Texas as a natural resource trustee under CERCLA, 42 U.S.C.A. §§ 9601 et seq. and the OPA of 1990, 33 U.S.C.A..

The natural resources for which the GLO is responsible are those related to State-owned lands. The GLO as a natural resource Trustee has the obligation to protect and preserve all trust resources of the State of Texas. Sections 51.121 and 51.291 of the Texas Natural Resources Code also give the GLO permitting authority over pipelines and platforms located on State lands and antipollution requirements are built into GLO contracts and rules.

Railroad Commission of Texas

The Railroad Commission of Texas (RRC) has spill response authority for spills or discharges from all activities associated with the exploration, development, or production, including storage or transportation, of oil, gas, and geothermal resources (Texas Natural Resources Code §§85.042, 91.101, and 91.601).

Spills or discharges from brine mining or surface mining are also under the jurisdiction of the RRC (Texas Revised Civil Statutes Ann. Art. 5920-11 (Vernon) and Chapter 131 of the Texas Natural Resources Code). Any spill or discharge, whether hazardous or nonhazardous, that emanates from an oil, gas, or geothermal resource exploration or production facility or brine mine or surface mine is under the jurisdiction of the RRC.

Activities associated with the exploration, development, and production of oil or gas do not include refining or manufacturing processes; however, the processing of natural gas or natural gas liquids at gasoline plants or at natural gas or natural gas liquids processing plants is subject to the jurisdiction of the RRC with one narrow exception concerning waste from gas processing activities.

Until the RRC receives delegation of RCRA authority, waste from gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and that is a hazardous waste under RCRA is under the authority of the TCEQ. If the waste from these gas processing plants is not hazardous under RCRA, then the waste is under the jurisdiction of the RRC (Texas Natural Resources Code §91.101).

Prevention of pollution from spills or discharges of hazardous or nonhazardous materials from crude oil and

natural gas pipelines is under the jurisdiction of the RRC. The RRC does not have pollution prevention authority over pipelines carrying refined petroleum products such as gasoline, diesel, and other fuel oil. A spill of crude oil into coastal waters may involve both the RRC and the GLO. Although the GLO is the lead agency for spills of oil, including crude oil, into coastal waters or that pose an imminent threat to coastal waters if not abated, the RRC is OSC for coastal spills of 240 barrels or less (Texas Natural Resources Code §40.008).

The RRC also has pipeline jurisdiction over pipleines carrying carbon dioixde, natural gas, and liquids. The Pipeline Safety Division of the RRC is charged with ensuring the safe operation of such pipelines (Texas Revised Civil Statutes, Article 6053-1 Texas Natural Resources Code, Chapter 117). Therefore, personnel from the RRC's Pipeline Safety Division may be present at the scene of a spill to investigate concerns related to the safe operation of the pipeline and to determine a cause of the spill.

Texas Parks and Wildlife Department

The Texas Parks and Wildlife Department (TPWD) is the State agency with the primary responsibility for protecting the State's fish and wildlife resources (Chapter 12, Texas Parks and Wildlife Code).

In addition to TPWD authority granted under Chapter 26 of the Texas Water Code, §12.0011 of the Texas Parks and Wildlife Code states that TPWD's resource protection activities include investigating fish kills and any type of pollution that may cause loss of fish and wildlife resources, taking necessary action to identify the cause and party responsible for the fish kill or pollution, estimating the monetary value of lost resources, and seeking restoration through presentation of evidence to the agency responsible for permitting or through county or district court.

By designation of the Governor of Texas, the TPWD is also a State natural resource Trustee. The natural resources for which the TPWD is responsible are the biota, i.e., aquatic life, wildlife, birds, vegetation, etc. The TPWD as a natural resource Trustee has the obligation to protect and preserve all trust resources of the State of Texas. Section 11.071 of the Texas Parks and Wildlife Code gives the TPWD the authority to regulate the use of Department lands for oil, gas, and other mineral recovery and associated activities as the TPWD considers reasonable and necessary to protect the surface estate of Department lands or to protect human health or property. Department lands include State parks, wildlife management areas, and natural areas.

Chapter 86 of the Texas Parks and Wildlife Code authorizes the TPWD to regulate, control, and protect marl and sand of commercial value and all gravel, sand, and mudshell located within the tidewater limits of the State and on islands within those limits, and within the freshwater areas of the State not embraced by a survey of private land and on islands within those areas.

Texas Department of Public Safety

The Texas Department of Public Safety (DPS) has adopted rules relating to the reporting of all transportation incidents involving releases of reportable quantities of hazardous materials and on-site coordination of transportation emergencies on public roads and railroads (Texas Government Code Ann., §411.018, Vernon Supp. 1990). These rules specify DPS's role in on-site coordination and outline a written report requirement for carriers involved in hazardous materials transportation incidents (see 37 TAC §§3.101 and 3.102).

During transportation incidents involving hazardous materials, the DPS official, as on-site coordinator, is responsible for on-site coordination of transportation emergencies for all unincorporated areas and may assume the on-site coordination role within cities when requested to do so by local government (37 TAC §3.101(a)).

The DPS officer who is the first responder on-site is responsible for the on-site coordination (37 TAC §3.101(b)). The DPS on-site coordinator is authorized to make emergency rules when normal operating procedures prove inadequate (37 TAC §3.101(d)). DPS coordination responsibilities will be performed until relieved by appropriate DPS authority or until the incident is concluded.

Texas Department of Transportation

The Texas Department of Transportation (TxDOT) and the TCEQ, as provided in §25.264(f) of the Texas Water Code, have developed a contractual agreement whereby TxDOT personnel, equipment, and materials may be used in State-funded cleanup actions. All expenses and costs resulting from cleanup activities are subject to reimbursement from the Texas Spill Response Fund.

Additionally, 43 TAC 25.7(c)(3) authorizes TxDOT to remove cargo or property that it believes is a hazardous material or a hazardous susbtance in compliance with Government Code Section411.018, and the Texas Hazardous Substances Spill Prevention and Control Act, Water Code, Chapter 26, Subchapter G (see also 30 TAC 327).

The Governor of Texas and the Governor's Division of Emergency Management

If a spill presents or threatens to become a disaster, the Governor of Texas may utilize the authority granted under the Texas Disaster Act of 1975 (Texas Government Code Ann., Chapter 418, Vernon Supp. 1990) to make available and bring to bear all resources of the State to prevent or lessen the impact of such a disaster. As defined in the Texas Disaster Act, disaster means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause or other public calamity requiring emergency action.

A disaster is declared by executive order or proclamation if the Governor finds that a disaster has occurred or that the occurrence or the threat of a disaster is imminent. Such an executive order activates the recovery and rehabilitation phase of the State of Texas Emergency Management Plan.

The Texas Disaster Act of 1975 authorizes the Governor to establish an Emergency Management Council to advise and assist the Governor in all matters relating to disaster preparedness, emergency services, energy emergencies, and disaster recovery.

The Emergency Management Council is composed of the heads of all the State's agencies, boards and commissions, and representatives of organized volunteer groups whose legal functions relate to important phases of emergency management (Texas Government Code Ann., §418.013, Vernon Supp. 1990).

The director of DPS also serves as the director of the Governor's Division of Emergency Management (DEM) and chairs the Emergency Management Council.

Under the State of Texas Emergency Management Plan, the Emergency Management Council is responsible for the coordination and utilization of all State resources during a disaster. Operations of the Council are coordinated by the Governor's DEM.

Under the State of Texas Emergency Management Plan, emergencies concerning spills or discharges of hazardous substances, or the release or threatened release of hazardous substances, radiological emergencies, and release which may adversely impact the State's air quality, are addressed under ESF-10.

The TCEQ serves as the lead agency for ESF-10 with support being provided by the General Land Office and the Railroad Commission of Texas.

Notification Requirements and Reportable Quantities

Federal

Reportable spills, as defined by federal regulations, shall be reported by the responsible person immediately to the (NRC duty officer in Washington D.C. The toll-free number for the NRC is 800/424-8802. All notices of spills received at the NRC are relayed immediately by telephone to the predesignated federal OSC for the affected area. If it is not possible to immediately report to the NRC, the report may be given to the office of the appropriate federal OSC (Coast Guard or EPA, Appendix A).

However, the responsible person is still required to notify the NRC as soon as possible. Notification of the NRC does not constitute notice to the State.

State of Texas

The State of Texas has established a toll-free Environmental Release Hotline at 1-800-832-8224 to provide the regulated community with a notification system designed to satisfy their State reporting requirements with a single phone call.

Callers dialing the hotline will be connected to the Texas Department of Public Safety Communications Center where DPS dispatchers will record the incoming call, determine which State agency has jurisdiction, and relay the report to the agency with jurisdiction both verbally and by telefax. Agencies included in the system are the TCEQ, GLO, and RRC. This system generates an incident report and establishes a common incident numbering system.

Texas Commission on Environmental Quality

The Texas Water Code, Section 26.039 and Subchapter G requires reporting to the TCEQ of discharges, spills and releases, "which cause or may cause pollution of water in the state". A telephone report is required by the person responsible, "as soon as possible and not later than 24 hours after the occurrence". The toll-free number 1-800-832-8224 may be called by the regulated community to report discharges, spills, and releases to the TCEQ.

Although TCEQ anticipates that the Environmental Release Hotline will accept any call that they receive, the number has been established primarily for the regulated community. Additionally, there are other State and federal requirements for release reporting which may be satisfied by calling the TCEQ at 1-800-832-8224.

Callers may also satisfy reporting requirements by contacting their TCEQ Regional Office during regular business hours (8:00 am to 5:00 pm) or by calling the agency's 24-hour location at 512-463-7727 or 512-239-2507. TCEQ may also be called directly by persons other than the person responsible for a discharge, spill, or release when the caller wants to provide or obtain information regarding an environmental emergency.

A reportable discharge or spill is a discharge or spill of oil, petroleum product, used oil, hazardous substances, industrial solid waste, or other substances into the environment in a quantity equal to or greater than the reportable quantity listed in 30 TAC §327.4.

Upon the determination that a reportable discharge or spill has occurred, the responsible person shall notify the agency as soon as possible but not later than 24 hours after the discovery of the spill or discharge.

The responsible person shall notify the agency in any reasonable manner including by telephone, in person, or by any other method approved by the agency. The responsible person shall notify one of the following:

(1) State Emergency Response Center at 1-800-832-8224;
(2) during normal business hours only, the regional office for the agency region in which the discharge or spill occurred; or
(3) agency at the agency 24-hour spill reporting number

The initial notification shall provide, to the extent known, the information in the following list. Copies of spill

reports prepared for other governmental agencies shall satisfy this requirement if they contain, or are supplemented to contain, all the information required by this subsection.

The initial notification shall contain:

(1) the name, address and telephone number of the person making the telephone report;
(2) the date, time, and location of the spill or discharge;
(3) a specific description or identification of the oil, petroleum product, hazardous substances or other substances discharged or spilled;
(4) an estimate of the quantity discharged or spilled;
(5) the duration of the incident;
(6) the name of the surface water or a description of the waters in the state affected or threatened by the discharge or spill;
(7) the source of the discharge or spill;
(8) a description of the extent of actual or potential water pollution or harmful impacts to the environment and an identification of any environmentally sensitive areas or natural resources at risk;
(9) if different from paragraph (1) of this subsection, the names, addresses, and telephone numbers of the responsible person and the contact person at the location of the discharge or spill;
(10) a description of any actions that have been taken, are being taken, and will be taken to contain and respond to the discharge or spill;
(11) any known or anticipated health risks;
(12) the identity of any governmental representatives, including local authorities or third parties, responding to the discharge or spill; and
(13) any other information that may be significant to the response action.

The responsible person shall notify the agency as soon as possible whenever necessary to provide information that would trigger a change in the response to the spill or discharge. Notifying the agency that a reportable discharge or spill has occurred shall not be construed as an admission that pollution has occurred. Furthermore, if the responsible person determines, after notification, that a reportable discharge or spill did not occur, the responsible person may send a letter to the agency documenting that determinaion.

If the executive director agrees with that determination, the executive director will note the determination in commission records. If the executive director disagrees with that determination, the executive director will notify the responsible person within 30 days.

If the discharge or spill creates an imminent health threat, the responsible person shall immediately notify and cooperate with local emergency authorities (fire department, fire marshall, law enforcement authority, health authority, or LEPC, as appropriate).

The responsible party will cooperate with the local emergency authority in providing support to implement appropriate notification and response actions.

The local emergency authority, as necessary, will implement its emergency management plan, which may include notifying and evacuating affected persons. In the absence of a local emergency authority, the responsible person shall take reasonable measures to notify potentially affected persons of the imminent health threat.

As soon as possible, but no later than two weeks after discovery of the spill, the responsible person shall attempt to notify the owner (if identifiable) or occupant of the property upon which the discharge or spill occurred as well as the occupants of any property that the responsible person reasonably believes is adversely affected.

TCEQ Reportable Quantities

Hazardous substances. The reportable quantities for hazardous substances shall be:

(1) for spills or discharges onto land - the quantity designated as the Final RQ in Table 302.4 in 40 CFR §302.4; or
(2) for spills or discharges into waters - the quantity designated as the Final RQ in Table 302.4 in 40 CFR §302.4, except where the Final RQ is greater than 100 pounds in which case the RQ shall be 100 pounds.

Oil, petroleum product, and used oil.

(1) The RQ for crude oil and oil other than that defined as petroleum product or used oil shall be:
   (A) for spills or discharges onto land - 210 gallons (five barrels); or
   (B) for spills or discharges directly into water in the state - quantity sufficient to create a sheen.
(2) The RQ for petroleum product and used oil shall be:
   (A) except as noted in subparagraph (B), for spills or discharges onto land - 25 gallons;
   (B) for spills or discharges to land from PST exempted facilities - 210 gallons (five barrels); or
   (C) for spills or discharges directly into water in the state - quantity sufficient to create a sheen.

Industrial solid waste or other substances. The RQ for spills into water in the state shall be 100 pounds. Regulations for spills from certain USTs and ASTs are outlined in 30 Texas Administrative Code §334.75 entitled "Reporting and Cleanup of Surface Spills and Overfills".

Owners and operators of UST systems must contain and immediately clean up a spill or overfill, report to the Commission within 24 hours, and begin corrective action in accordance with 30 TAC §§334.76-334.81 (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan) in the following cases:

- a spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and,
- a spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its RQ under CERCLA (40 CFRs Part 302).

Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons, and a spill or overfill of a hazardous substance that is less than the RQ under CERCLA (40 CFR Part 302). If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the executive director.

Railroad Commission of Texas Notification Requirements and Reportable Quantities

The responsible party must immediately notify the RRC of any fire, leak spill, or break from activities associated with the exploration, development, and production of oil, gas, or geothermal resources. These include:

- All spills of crude oil greater than five (5) barrels;
- All spills of any quantity of crude oil than enters water;
- All blowouts and/or fires associated with oil, gas, and geothermal activities;
- Any accidental release of hydrogen sulfide gas of sufficient volume to present a hazard and of any hydrogen sulfide related accident; or,
- Any injury, death, property damage from gas pipelines ($5,000) or hazardous liquid pipelines ($50,000) or other significant incident.

Spills should immediately be reported to the appropriate Railroad Commission division through the appropriate district office, or if necessary to the RRC 24-hour statewide emergency number 512/463-6788. Examples of some spills requiring notification are spills from leases, crude oil or natural gas pipelines, rigs or platforms operating in coastal waters, or trucks on an oil or gas lease. Upon notification, the RRC will:

- Act as lead agency and State OSC for spills from facilities associated with the exploration, development, and production, including transportation or storage, of oil, gas, or geothermal resources, along with brine and other surface mining activities.
- Act as OSC for a crude oil spill of less than 240 barrels from an exploration, development, or production facility that enters coastal waters or poses an imminent threat of entering coastal waters.
- Provide technical expertise to the SOSC regarding releases of hydrogen sulfide gas.
- Provide communications gear, H2S monitoring equipment, and boats if requested by the OSC.

Reporting requirements for Operators Regulated by the RRC

(1) Crude oil spills over five barrels. For each spill exceeding five barrels of crude oil, the responsible operator must comply with the notification and reporting requirements of 16 TAC §3.20 of this title (relating to Notification of Fire Breaks, Leaks, or Blow-outs) and submit a report on a Form H-8 to the appropriate district office. The following information must be included:
   (A) area (square feet), maximum depth (feet), and volume (cubic yards) of soil contaminated with greater than 1.0% by weight total petroleum hydrocarbons;
   (B) a signed statement that all soil containing over 1.0% by weight total petroleum hydrocarbons was brought to the surface for remediation or disposal;
   (C) a signed statement that all soil containing over 5.0% by weight total petroleum hydrocarbons has been mixed in place to 5.0% by weight or less total petroleum hydrocarbons or has been removed to an approved disposal site or to a secure interim storage location;
   (D) a detailed description of the disposal or remediation method used or planned to be used for cleanup of the site;
   (E) the estimated date of completion of site cleanup.
(2) Crude oil spills over 25 barrels. For each spill exceeding 25 barrels of crude oil, in addition to the report required in paragraph (1) of this subsection, the operator must submit to the appropriate district office a final report upon completion of the cleanup of the site. Analyses of samples representative of the spill site must be submitted to verify that the final cleanup concentration has been achieved
(3) Crude oil spills of five barrels or less. Spills into the soil of five barrels or less of crude oil must be remediated to these standards, but are not required to be reported to the commission. All spills of crude oil into water must be reported to the commission.

General Land Office Notification Requirements and RQs

Any person responsible for an unauthorized discharge of oil or the person in charge of any vessel or terminal facility from or at which an unauthorized discharge of oil has occurred, as soon as that person has knowledge of the discharge, shall:

(1) immediately notify the GLO at 1-800-832-8224 of the discharge, and
(2) undertake all reasonable actions to abate, contain, and remove pollution from the discharge.

On notification of a spill, the GLO will act as OSC. The OSC shall ensure that response activities are consistent with the NCP, the State Coastal Discharge Contingency Plan, State of Texas Oil and Hazardous Substances Spill Contingency Plan, and any other applicable plans.

Any responsible person or person or organization under the control of the responsible person shall comply with directions and orders of the OSC. The only grounds which the OSC's orders and directions can be challenged are:

(1) they constitute an unreasonable threat to public safety or natural resources or
(2) they conflict with direction or orders of the federal OSC

The responsible person or his agent must verbally state the grounds for his refusal to comply and must given written notice of the grounds for failure to comply within 48 hours of the refusal. Written notice of reasons for failure to comply with the orders or directions of the OSC shall be mailed to :

Division of Oil Spill Prevention and Response
Texas General Land Office
1700 North Congress Avenue, Room 740
Austin, Texas 78701-1495

TCEQ Spill Response and Remediation Requirements

The responsible person shall immediately abate and contain the spill or discharge and cooperate fully with the executive director and the local incident command system. The responsible person shall also begin reasonable response actions which may include, but are not limited to, the following actions:

(1) arrival of the responsible person or response personnel hired by the responsible person at the site of the discharge or spill;
(2) initiating efforts to stop the discharge or spill;
(3) minimizing the impact to the public health and the environment;
(4) neutralizing the effects of the incident;
(5) removing the discharged or spilled substances; and
(6) managing the wastes.

Upon request of the local government responders or the executive director, the responsible person shall provide a verbal or written description, or both, of the planned response actions and all actions taken before the local governmental responders or the executive director arrive.

When the agency on-scene coordinator requests this information, it is subject to possible additional response action requirements by the executive director. The information will serve as a basis for the executive director to determine the need for:

(1) further response actions by the responsible person;
(2) initiating state funded actions for which the responsible person may be held liable to the maximum extent allowed by law; and
(3) subsequent reports on the response actions.

The responsible person shall submit written information, such as a letter, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate agency regional manager within 30 working days of the discovery of the reportable discharge or spill. The regional manager has the discretion to extend the deadline. The documentation shall contain one of the following items:

(1) A statement that the discharge or spill response action has been completed and a description of how the response action was conducted. The statement shall include the initial report information required by 30 TAC §327.3(c). The executive director may request additional information. Appropriate response actions at any time following the discharge or spill include use of the Risk Reduction Rules in 30 TAC §335.8 or other appropriate agency risk-based corrective action programs.
(2) A request for an extension of time to complete the response action, along with the reasons for the request. The request shall also include a projected work schedule outlining the time required to complete the response action. The executive director may grant an extension up to six months from the date the spill or discharge was reported. Unless otherwise notified by the appropriate regional manager or the Emergency Response Team, the responsible person shall proceed according to the terms of the projected work schedule.
(3) A statement that the discharge or spill response action has not been completed nor is it expected to be completed within the maximum allowable six month extension. The statement shall explain why completion of the response action is not feasible and include a projected work schedule outlining the remaining tasks to complete the response action.

This information will also serve as notification that the response actions to the discharge or spill will be conducted under the Risk Reduction Rules in 30 TAC §335.8 or other commission risk-based corrective action rules, and shall indicate the appropriate risk-based corrective action program.

- -

ED_002941_00002942-00239

APPENDIX AA. CRITERIA FOR REVIEW OF HAZARDOUS MATERIALS EMERGENCY PLANS – May, 1988 – National Response Team

This document transmits the NRT's recommended criteria for reviewing emergency plans submitted to RRT's under the provisions of Section 303(g) of the EPCRA of 1986 (SARA Title III).

The criteria for Review of Hazardous Materials Emergency Plans are to serve as a supplement to the National Response Team's Hazardous Materials Emergency Planning Guide (NRT-1) published in March 1987. In addition to their use by the RRT's, the criteria also can be useful to SERCs and LEPCs in the development and review of plans. The NRT suggests the following for RRT reviews:

(1) Local plans should be submitted to the RRT through the appropriate SERC after the SERCs have completed their own review;
(2) RRT plan review should focus primarily on plans prepared for designated priority areas within each State, i.e. those areas where there are concentrations of hazardous substances manufacturing, storage, or transportation facilities that pose substantial hazards to the public health and safety, and should ensure consistency between those local plans and the relevant Federal plans: and
(3) RRTs should use the review and comment process as a form of technical assistance to SERCs and LEPCs. The reviews do not constitute formal approval or disapproval.

CRITERIA FOR REVEIW OF HAZARDOUS MATERIALS EMERGENCY PLANS

INTRODUCTION

This document contains a set of criteria which may be used by the RRTs in the review of local plans under the provisions of Section 303(g) of the SARA of 1986. These criteria also may be used by LEPCs for preparing plans as required under Section 303(a) and by SERCs for reviewing plans as required under Section 303(e) of the Act. This review guide is intended as a companion document to the Hazardous Materials Emergency Planning Guide (NRT-1), and can be viewed as a supplement to the planning process as implemented by LEPCs.

BACKGROUND

Section 303 (a) of the SARA of 1986 requires each LEPC to prepare comprehensive hazardous substances emergency response plans by October, 1988. The LEPC is required to review the plan once a year, or more frequently as changed circumstances in the community or at any facility may require.

Section 303(b) requires each LEPC to evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and to make recommendations with respect to additional resources that may be required and the means for providing these additional resources.

Section 303(c) specifically states that "Each emergency management plan shall include (but is not limited to) each of the following:

(1) Identification of facilities subject to the requirements of this subtitle that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of EHSs referred to in Section 302(a), and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subtitle, such as hospitals or natural gas facilities.
(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.
(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.
(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of Section 304).
(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.
(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle, and an identification of the persons responsible for such equipment and facilities.
(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.
(8) Training programs, including schedules for training of local emergency response and medical personnel.
(9) Methods and schedules for exercising the emergency plan."

Under Section 303(e) of the Act, SERCs are required to review and make recommendations on each plan to ensure "coordination" with the plans of other local emergency planning districts.

Under Section 303(g) of the Act, the RRTs "may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a LEPC." This review is viewed by the NRT to be a form of technical assistance to the LEPCs and the SERCs and is not to be considered as an approval of these plans.

Finally, under Section 303 (f), the NRT is required to issue guidance documents for the preparation and implementation of emergency plans. In March, 1987 the NRT published and distributed the first such guidance document by issuing NRT-1, the Hazardous Materials Emergency Planning Guide. NRT-1 contains extensive discussion of both the planning process and the elements or contents required for an effective hazardous materials emergency response plan. The following plan review criteria are issued as supplemental technical guidance to NRT-1.

USE OF CRITERIA

The NRT expects that the primary use of these criteria will be in plan review by RRTs. Through the use of these criteria and the development of comments related thereto, the RRTs can both conduct organized and systematic reviews of local plans and ensure that plan elements of particular interest to RRTs are covered. The RRTs should also use the criteria as a basis for ensuring coordination between federal plans developed under the NCP (e.g., RCPs and OSC Plans) and plans developed at the local level.

As mentioned above, the LEPCs may find the criteria useful in the development of plans required under Section 303 (c) of the Act. These criteria are concise statements of the contents of plan elements covered in NRT-1 and, SLG 101, and all of the plan elements required in Section 303(c). It is essential, however, that the criteria be used by LEPCs only in concert with the full range of available guidance.

SERCs may find the plan criteria useful in the coordination of LEPCs and in the review of each local plan. The criteria offer a useful guide for all of the planning elements which may require coordinated and consistent treatment among the LEPCs within a state. They also provide the basis for a more general review of plans.

RRT CONSIDERATION ·OF THE LEPC PLANNING PROCESS

One of the major themes of NRT-1 is that the way in which a local hazardous materials emergency plan is developed is as important as the actual contents of such a plan. Thus, the RRTs may find it useful to secure the following information pertaining to the LEPC under review:

(1) A list of the names and affiliations of the members of the LEPC;
(2) A description of the activities and accomplishments completion dates) of the committee in compliance with Section 301, including:
    a. Appointment of a chairperson;
    b. Establishment of rules for committee operations;
    c. Development of methods for public notification of committee activities;
    d. Conduct of public meetings on the emergency plan;
    e. Receiving and responding to public comments; and
    f. Public notice of availability of emergency response plan, MSDSs, and inventory forms under Section 324;
    g. Dealing with public requests for information under Sections 311, 312 and 313; and
    h. Securing information from facilities covered by the plan.
(3) A description of the major activities of the committee in completing the tasks for the hazard analysis and capability assessment.
(4) A summary of the data produced by these tasks, if not already described in the plan.
(5) A summary of the resources expended in developing the plan, including local funds, staff effort and technical expertise, plus a summary of resources required for maintaining and revising the plan.
(6) A description of any findings on ways to fund hazardous materials emergency planning within the district.

CRITERIA FOR PLANS	DOCUMENTATION	
1. INCIDENT INFORMATION SUMMARY		
The Plan should contain:	A.1	
a. Detailed description of the essential information that is to be developed and recorded by the local response system in an actual incident, e.g. , date, time, location, type of :release, and material released;		
2. PROMULGATION DOCUMENT		

The Plan should contain:		
a. A document signed by the chairperson of the LEPC, promulgating the plan for the district;	A.2	
b. Documents signed by the chief executives of all local jurisdictions within the district; and		
c. Letters from affected facilities endorsing the plan.		
The Plan might contain:		
d. Letters of agreement between the affected facilities and local jurisdictions for emergency response and notification responsibilities.	A.2	
3. LEGAL AUTHORITY AND RESPONSIBILITY FOR RESPONSE		
The Plan should:		
a. Describe, reference, or include legal authorities of the jurisdictions whose emergency response roles are described in the plan, including authorities of the emergency planning district and the local jurisdictions within the district; and	A.3	
b. List all other authorities the LEPC regards as essential for response within the district, including state and federal authorities.		
4. TABLE OF CONTENTS		
The Plan should:		
a. List all elements of the plan, provide tabs for each and provide a cross-reference for all of the nine required elements in Section 303 of the Act. Plans that are prepared in the context of requirements of SLG 101 should contain an index to the location of both NRT-1 and Section 303 elements.	A.4	
5. ABBREVIATIONS AND DEFINITIONS		
The Plan should:		
a. Explain all abbreviations and define all essential terms included in the plan text	A.5	
6. PLANNING FACTORS		
Assumptions: Assumptions are the advance judgments concerning what might happen in the case of an accidental spill or release.		
The Plan should:		
a. List all of the assumptions about conditions that might develop in the district in the event of accidents from any of the affected facilities or along any of the transportation routes.	A.6	
Planning Factors		
The planning factors consist of all the local conditions that make an emergency plan necessary		
The Plan shall:		
b. Identify and describe the facilities in the district that possess EHSs and the transportation routes along which such substances may move within the district;	A.6	
c. Identify and describe other facilities that may contribute to additional risk by virtue of their proximity to the above mentioned facilities;	A.6	
d. Identify and describe additional facilities included in the plan that are subject to additional risks due to their proximity to facilities with EHSs; and	A.6	
e. Include methods for determining that a release of EHSs has occurred, and the area of population likely to be affected by such release.	A.6	
The Plan should:	A.6	
f. Include the major findings from the hazard analysis, (date of analysis should :be provided) which should consist of:	A.6	
i. Major characteristics of affected facilities/transportation routes impacting on the types and levels of hazards posed, including the types, identities, characteristics, and quantities of hazardous materials related to facilities and transportation routes;	A.6	
ii. Potential release situations with possible consequences beyond the boundaries of facilities, or adjacent to transportation routes. Use may be made of historical data on spills and any data on spills and any data secured from facilities under Section 303 (d) (3) of the Act;	A.6	
iii. Maps shaving locations of facilities, transportation routes, and special features of district, including vulnerable areas;	A.6	
g. Geographical features of the district, including sensitive environmental areas, land use patterns, water supplies, and public transportation;	A.6	

h. Major demographic features of the district, including those features that impact most on emergency response, e.g., population density, special populations, and particularly sensitive institutions;	A.6	
i. The district's climate and weather as they affect airborne distribution of chemicals; and	A.6	
j. Critical time variables impacting on emergencies, e.g., time of day and month of year in which they would be most likely to occur.	A.6	
7. CONCEPT OF OPERATIONS		
The Plan shall:		
a. Designate a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.		
The Plan should:		
b. Identify, by title, the individual designated as the community emergency coordinator and each of the facility emergency coordinators;	A.7b	
c. Explain the relationships between these coordinators, their organizations, and the other local governmental response authorities within the district, e.g., the county emergency management authority;	A.7b	
d. Describe the relationship between this plan and other response plans within the district which deal in whole or in part with hazardous materials emergency response, e.g. the county Emergency Operations Plan and plans developed by fire departments under OSHA Regulation CFR 29 Part 1910.120;	A.7c	
e. List all the facility emergency plans within the district that apply to hazardous materials emergency response, including all plans developed under OSHA Regulation on Hazardous Waste Operations and Emergency Response (CFR 29 CFR Part 1910.120);	A.7c	
f. Describe the way in which the above plans are integrated with local response plans;	A.7c	
g. Describe the functions and responsibilities of all the local response organizations within the district, including :public and private sector as well as volunteer and charitable organizations;	A.7b	
h. List mutual aid agreements or other arrangements for sharing data and response resources;	A.3	
i. Describe conditions under which the local government will coordinate its response with other districts and the means or sequence of activities to be followed by districts in interacting with other districts;	A.7b	
j. Describe the relationship between plans of the district and related state plans;	A.7c	
k. Describe the relationship between local and state emergency response authorities; and	A.7b	
l. Describe the relationships between emergency response plans and activities in the district and response plans and activities by federal agencies, including all plans and responses outlined in the National Contingency Plan.	A.7b; A.7c	
[Emphasis should be given to the allocation of responsibilities among federal emergency response agencies, including listing the names and the responsibilities of federal response agencies and entities such as the RRT, describing the means for their notification, the types of resources to be sought from them, the means for obtaining them, the conditions under which assistance is to be provided, and the methods of coordination during a response]		
8. INSTRUCTIONS FOR PLAN USE		
The Plan should:		
a. Contain a discussion of the purpose of the plan; and	A.8a	
b. Contain a list of organizations and persons receiving the plan or plan amendments and the date the plan was transmitted as well as a specific identification number for each plan.	A.8b	
9. RECORD OF AMENDMENTS		
The Plan should:		
a. Contain a section that describes methods for maintaining and revising the plan and recording all changes in the plan, including a method for controlling distribution.	A.9	
10. EMERGENCY NOTIFICATION PROCEDURES		
The Plan shall:		
a. Include procedures for providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred.	C.4	

The Plan should:		
b. Include procedures for immediately notifying the appropriate 24-hour hotline first, and should locate these procedures in a prominent place in the plan;	C.1	
c. List the 24-hour emergency hotline number(s) for the local emergency response organization(s) within the district;	C.1	
d. Contain an accurate and up to-date Emergency Assistance Telephone Roster that includes numbers for the:	B	
i. Technical and response personnel;	B	
ii. Community emergency coordinator, and all facility emergency coordinators;		
iii. CHEMTREC;	B	
iv. National Response Center;	B	
v. Other participating agencies;	B	
vi. Community emergency coordinators in neighboring emergency planning districts;		
vii. Public and private sector port groups; and the	B	
viii. Points of contact for all major carriers on transportation routes within the district;		
e. List all local organizations to be notified of a release, and the order of their notification, and list names and telephone numbers of primacy and alternate points of contact;		
f. List all local institutions to be notified of the occurrence of a release and the order of their notification, and the names and telephone numbers of contacts;		
g. List all state organizations to be notified, and list the names and telephone numbers of contacts; and		
h. List all federal response organizations to be notified, and the names and telephones numbers of the contacts.		
11. INITIAL NOTIFICATION OF RESPONSE AGENCIES		
The Plan should:		
a. Describe methods or means to be used by facility emergency coordinators (FECs) within the district to notify community emergency coordinators (CECs) of any potentially affected districts, and SERCs of any potentially affected states, and any other persons to whom the facility is to give notification of any release, in compliance with section 304 of Title III;	C.1	
b. Describe methods by which the CECs and local response organizations will be notified of releases from transportation accidents, following notification through 911 systems or specified alternative means;	C.1	
c. Describe methods by which the CEC, or his designated agent, will ensure that contents of notification match the requirements of section 304, including the regulations contained in 40 CFR Part 355 (Notification Requirements, Final Rule);	C.1	
d. List procedures by which the CEC will assure that both the immediate and follow-on notifications from facility operators are made, within the time frames specified. by Notification of Final Rule in 40 CFR Part 355; and	C.1	
e. Identify the person or office responsible for receiving the notification for the community emergency coordinator or his/her designated agent and list the telephone number;	C.1	
12. DIRECTION AND CONTROL		
The Plan shall:		
a. Include methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to a release of EHSs.		
The Plan should:		
b. Identify the organization within the district responsible for providing direction and control to the overall emergency response system described in the Concept of Operations;	C.2	
c. Identify persons or offices within each response organization who provide direction and control to each of the organizations;	C.2	
d. Identify persons or offices providing direction and control within each of the emergency response function;	C.2	
e. Describe persons or offices responsible for the performance of incident command functions and the way in which the incident command system is used in hazardous substances incidents;	C.2	

f. Describe the chain of command for the total response system, for each of the major response functions and for the organization controlled by the incident commander; and	C.2	
g. Identify persons responsible for the activation and operations of the emergency operations center, the on-scene command post, and the methods by which they will coordinate their activities;	C.2	
h. List three levels of incident severity and associated response levels;	C.2	
i. Identify the conditions for each level; and	C.2	
j. Indicate the responsible organizations at each level.	C.2	
13. COMMUNICATION AMONG RESPONDERS		
The Plan should:		
a. Describe all the methods by which identified responders will exchange information and communicate with each other during a response, including the communications networks and common frequencies to be used;	C.3	
[At a minimum, these methods should be described for each function. Both communications among local response units and between these units and facilities where incidents occur should be described]		
b. Describe the methods by which emergency responders can receive information on chemical and related response measures; and	C.3	
[May include a description of computer systems with on line data bases]		
c. Describe primary and back-up systems for all communication channels and systems.		
The Plan might:		
d. Contain a diagram or matrix showing the flows of information within the response system.		
14. WARNING SYSTEMS AND EMERGENCY PUBLIC NOTIFICATION		
The Plan should:		
a. Identify responsible officials within the district and describe the methods by which they will notify the public of a release from any facility or along any transportation route, including sirens or other signals, and use of the broadcast media and the Emergency Alert System. This should include a description of:	C.4	
i. The sirens and other signals to be employed, their meaning, their methods of coordination, and their geographical coverage;	C.4	
ii. other methods, such as door-to-door alerting, that may be employed to reach segments of the population that may not be reached by sirens or other signals; and	C.4	
iii. Time frames within which notification to the public can be accomplished;	C.4	
b. Describe methods for the coordination of emergency public notification during a response; and	C.4	
c. Describe any responsibilities or activities of facilities covered by the Act for emergency public notification during a response.	C.4	
15. PUBLIC INFORMATION AND COMMUNITY RELATIONS		
The Plan should:		
a. Describe the methods used by local governments, prior to emergencies, for educating the public about possible emergencies and planned protective measures;	C.5	
b. Describe the role and organizational position of the public information officer during emergencies;	C.5	
c. Designate a spokesperson and describe the methods for keeping the public informed during an emergency situation, including a list of all radio, and press contacts; and	C.5	
a. Describe any related public information activities of affected facilities, both prior to an emergency am during an emergency.		
16. RESOURCE MANAGEMENT		
The Plan shall:		
a. Include a description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subtitle and an identification of the persons responsible for such equipment and facilities.		
The Plan should:		
b. List personnel resources available for emergency response by major categories, including governmental, volunteer, and the private sector;	C.6	

c. Describe the types, quantities, capabilities and locations of emergency response equipment available to the local emergency response units, including fire, police and emergency medical response units.	C.6	
[Categories of equipment should include transportation, communications, monitoring and detection, containment, decontamination, removal, and cleanup]		
d. List the emergency response equipment available to each of the affected facilities and describe them in the same way as community equipment is described;	C.6	
e. Describe the emergency operating centers or other facilities available to the local community and the facility emergency coordinators and other response coordinators, such as incident commanders;	C.6	
f. Describe emergency response equipment and facilities available to each affected facility and the conditions under which they are to be used in support of local responders;	C.6	
g. Describe significant resource shortfalls and mutual support agreements with other jurisdictions whereby the district might increase its capabilities in an emergency;	C.6	
[This may be discussed under the Concept of Operations]		
h. Describe procedures for securing assistance from federal and state agencies and their emergency support contractors;	C.6	
[This may be discussed under the Concept of Operations]		
i. Describe emergency response capabilities and the expertise in the private sector that might be available to assist local responders, facility managers, and transportation companies during emergencies.	C.6	
17. HEALTH AND MEDICAL		
The Plan shall:		
a. Include methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to a release of EHSs.		
The Plan should:		
b. Describe the procedures for summoning emergency medical and health department personnel;	C.7	
c. Describe the procedures for the major types of emergency medical services, including first aid, triage, ambulance service, and emergency medical care, using both the resources available within the district and those that can :be secured in neighboring districts;	C.7	
d. Describe the procedures to be followed for decontamination of exposed people;	C.7	
e. Describe the procedures for providing sanitation, food water supplies, and safe re-entry of persons to the accident area;	C.7	
f. Describe procedures for conducting health assessments upon which to base protective action decisions;		
g. Describe the level and types of emergency medical capabilities in the district to deal with exposure of people to extremely hazardous substances;	C.7	
h. Describe the provisions for emergency mental health care; and	C.7	
i. Indicate mutual aid agreements with other communities to provide backup emergency medical and health department personnel, and equipment.		
18. RESPONSE PERSONNEL SAFETY		
The Plan should:		
a. Describe initial and follow-up procedures for entering and leaving incident sites, including personnel accountability personnel safety precautions, and medical monitoring;	C.8	
b. Describe personnel and equipment decontamination procedures; and	C.8	
c. List sampling, monitoring and personnel protective equipment appropriate to various degrees of hazards based on EPA levels of protection (A, B, C, & D).	C.8	
19. PERSONAL PROTECTION OF CITIZENS/IN-DOOR PROTECTION		
The Plan shall:		
a. Describe methods in place in the community and in each of the affected facilities for determining the areas likely to be affected by a release.	C.9a	
The Plan should:		

b. Include methods to predict the speed, direction, and concentration of plumes resulting from airborne releases, and methods for modeling vapor cloud dispersion as well as methods to monitor the release and concentrations in real time;	C.9a	
[19a and 19b may be considered in the hazard analysis, included in section 6, Planning Factors]		
c. Identify the decision making process, including the decision making authority for indoor protection;	C.9a	
d. Describe the roles and activities of affected facilities in the decision making for indoor protection decisions, including the determination that indoor sheltering is no longer required;		
e. Indicate the conditions under which indoor protection would be recommended, including the decision making criteria;	C.9a	
f. Describe the methods for indoor protection that would be recommended for citizens, including provisions for shutting off ventilation systems; and		
g. Describe the methods for educating the public on indoor protective measures;	C.9a	
[May be discussed in the section on public information]		
20. PERSONAL PROTECTIVE MEASURES / EVACUATION PROCEDURES		
The Plan shall:		
a. Describe evacuation plans, including those for precautionary evacuations and alternative traffic routes;	C.9b	
The Plan should:		
b. Describe the authority for ordering or recommending evacuation, including the personnel authorized to recommend evacuation;	C.9b	
c. Describe the authority and responsibility of various governmental agencies and supporting private sector organizations, such as the Red Cross and the chain of command among them;		
d. Describe the role of the affected facilities in the evacuation decision-making;		
e. Describe methods to be used in evacuation, including methods for assisting the movement of mobility impaired persons and in the evacuation of schools, hospitals, prisons and other facilities;	C.9b	
f. Describe the relationship of evacuation procedures to other protective measures.		
g. Describe potential conditions requiring evacuation, i.e., the types of accidental releases and spills that may require evacuation;	C.9b	
h. Describe evacuation routes, including primary and alternative routes;	C.9b	
[These may be either established routes for the community or special routes appropriate to the location of facilities]		
i. Describe evacuation zones and distances and the basis for their determination;	C.9b	
[These should be related to the location of facilities and transportation routes and the potential pathways of exposure]		
j. Describe procedures for precautionary evacuations of special populations;	C.9b	
k. List the mass care facilities for providing food, shelter and medical care to relocated populations;	C.9b	
[This may be discussed under the human services section]		
l. Describe procedures for providing security for the evacuation, for evacuees and of the evacuated areas;	C.11	
[May be covered under the law enforcement discussions]		
m. Describe methods for managing the flow of traffic along evacuation routes and for keeping the general public from entering threatened areas, including maps with traffic and other control points; and	C.9b	
[May be covered in the law enforcement section]		
n. Describe the procedures for managing an orderly return of people to the evacuated area;	C.9b	
21. FIRE AND RESCUE		
The Plan should:		
a. List the major tasks to be performed by firefighters in coping with releases of EHSs;	C.10	
b. Identify the public and private sector fire protection organizations with a response capability and responsibility for hazardous materials incidents;	C.10	

c. Describe the command structure of multi-agency, multi-jurisdictional incident management systems in place, and identify applicable mutual aid agreements and Good Samaritan provisions in place;	C.10	
d. List available support systems, e.g. protective equipment and emergency response guides, DOT Emergency Response Guidebook, mutual aid agreements, and good samaritan provisions; and	C.10	
[May be covered under resource management]		
e. List and describe any HAZMAT teams in the district.		
[May be covered in Section 21babove]		
22. LAW ENFORCEMENT		
The Plan should:		
a. Describe the command structure of multi-agency, multi-jurisdictional incident management systems in place, and identify applicable mutual aid agreements and Good samaritan provisions in place;	C.11	
b. List the major law enforcement tasks related to responding to releases of extremely hazardous materials, including those related to security for the accident site and for evacuation activities; and	C.11	
c. List the locations of control points for the performance of tasks, with appropriate maps.		
23. ON-GOING INCIDENT ASSESSMENT		
The Plan should:		
a. Describe methods in place in the community and/or each of the affected facilities for determining the areas likely to be affected by an on-going release.	C.12	
b. Describe methods for determining the private and public property that may be in the affected areas and the nature of the impact of the release on this property;	C.12	
c. Describe methods and capabilities of both local response organizations and facilities for monitoring the size, concentration, and migration of leaks, spills, and releases, including sampling around the site; and	C.12	
d. Describe provisions for environmental assessments, biological monitoring, and contamination surveys;	C.12	
24. HUMAN SERVICES		
The Plan should:		
a. List the agencies responsible for providing emergency human services, e.g., food, shelter, clothing, continuity of medical care, and crisis counseling; and	C.13	
b. Describe the major human services activities and the means for their accomplishment.	C.13	
25. PUBLIC WORKS		
The Plan should:		
a. Describe the chain of command for the performance of public works actions in an emergency; and	C.14	
b. List all major tasks to be performed by the public works department in a hazardous materials incident.		
26. TECHNIQUES FOR SPILL CONTAINMENT AND CLEANUP		
The Plan should:		
a. Explain the allocation of responsibilities among local authorities and affected facilities and responsible parties for these activities;	D.1	
b. Describe the major containment and mitigation activities for all major types of HAZMAT incidents;	D.1	
c. Describe cleanup and disposal services to be provided by the responsible parties and/or the local community;	D.1	
d. Describe major methods for cleanup;	D.1	
e. Describe methods to restore the surrounding environment, including natural resource areas, to pre-emergency conditions;	D.1	
f. Describe the provisions for long term site control;	D.2	
g. List the location of approved disposal sites;	D.2	
h. List cleanup material and equipment available within the district;	D.2	
[May be covered in the resource management section]		

i. Describe the capabilities of cleanup personnel; and	D.2	
j. List the applicable regulations governing disposal of hazardous materials in the district.	D.2	
27. DOCUMENTATION AND INVESTIGATIVE FOLLOW-UP		
The Plan should:		
a. List all reports required in the district and all offices and agencies that are responsible for preparing them following a release;	E	
b. Describe the methods of evaluating responses and identify persons responsible for evaluations; and	E	
c. Describe provisions for cost recovery.	E	
28. PROCEDURES FOR TESTING AND UPDATING THE PLAN		
The Plan shall:		
a. Include methods and schedules for exercising the emergency plan.	F.1	
The Plan should:		
b. Describe the nature of the exercises for testing the adequacy of the plan;	F.1	
c. List the frequency of such exercises, by type;	F.1	
d. Include an exercise schedule for the current year and for future years;	F.1	
e. Describe the role of affected facilities or transportation companies in these exercises; and	F.1	
f. Describe the procedures by which performance will be evaluated in the exercise, revisions will be made to plans and deficiencies in response capabilities will be corrected.	F.6	
29. TRAINING		
The Plan shall:		
a. Include the training programs, including schedules for training of local emergency response and medical personnel.	6.4.3	
The Plan should:		
b. Describe training requirements for LEPC members and all emergency planners within the district;		
c. Describe training requirements for all major categories of hazardous materials emergency response personnel, including the types of courses and the number of hours;		
d. List and describe the training programs to support these requirements, including all training to be provided by the community, state and federal agencies, and the private sector; and		
e. Contain a schedule of training activities for the current year and for the following three years.		