



EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT: ENFORCEMENT ACTIONS ON THE RISE

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At first glance, it would seem that the regulatory environment for a chemical manufacturer and supermarket chain have little in common. However, due to recent high profile enforcement actions by the United States Environmental Protection Agency (“EPA”), both industries now know the costs of non-compliance with the [Emergency Planning and Community Right-to-Know Act](#) (“EPCRA”).

EPCRA was enacted in 1986 as Title III to the Superfund Amendments and Reauthorization Act (“SARA Title III”). The legislation was passed in the wake of the catastrophic toxic chemical release in Bhopal, India, which killed or injured thousands of people in the surrounding community. EPCRA and its implementing regulations require owners and operators of facilities that store, use, or release hazardous chemicals in excess of threshold quantities to report information on those substances to federal, state, and local emergency planning and response agencies. The federal program, partially implemented (and sometimes made more stringent) by state and/or local legislation, aims to prevent chemical disasters by collecting and disseminating facility chemical handling and release information for two purposes: (1) to provide governmental agencies with data to develop facility-specific emergency response plans, and (2) to alert the public regarding potentially hazardous chemicals in their neighborhoods.

In February 2011, EPA filed a complaint against a [New England supermarket chain](#) alleging a failure to adhere to EPCRA reporting requirements at its perishables distribution warehouse. Specifically, EPA alleged the chain failed to submit a [material safety data sheet](#) (“MSDS”) for a chemical containing chlorodifluoromethane which is used to service refrigeration systems. EPA also alleged the chain did not file chemical reporting inventory forms for other substances including sulfuric acid, gasoline and diesel fuel. Similarly, in March 2011, a [Connecticut chemical distributor](#) settled EPCRA and [Clean Air Act](#) violations for \$164,000 related to its failure to file [Toxic Release Inventory](#) (“TRI”) reports for four different chemicals. In a press release touting the settlement, EPA stated that while the chemical distributor’s “facility seemed relatively safe, the lack of reporting was not safe.” According to EPA, more EPCRA-related enforcement actions against chemical warehouse and distribution facilities are expected.

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EPCRA: ENFORCEMENT ACTIONS ON THE RISE (cont'd)

The lessons from these enforcement initiatives are clear: any entity that stores, uses or releases quantities of reportable chemicals in excess of EPCRA-established thresholds must timely follow the mandatory reporting requirements. In-house counsel whose clients are subject to EPCRA should carefully assess all aspects of EPCRA compliance, including annual [Tier 2 hazardous chemical inventory reporting](#) and [Form R](#) reporting for the EPA TRI database, coordinate with [local emergency planning committees](#) ("LEPCs"), and comply with emergency release notifications. Difficult issues can often arise in determining threshold reporting quantities, including the use of toxic chemicals in mixtures and manufactured articles. Accordingly, a comprehensive evaluation of company-specific EPCRA reporting obligations should be undertaken. Where hazardous chemicals trigger emergency planning obligations, any responses to LEPC information requests for county emergency plans must be carefully evaluated.

The web of potential EPCRA liability is broad and substantial. In addition to the two aforementioned industries, commercial bakeries, car rental agencies and pharmaceutical manufacturers have all been subject to EPCRA enforcement actions by EPA in recent years. By understanding the applicability of EPCRA and the full breadth of its requirements, companies can move proactively to avoid the prospect of expensive and invasive inspections and enforcement actions.