

Association of Corporate Counsel
Legal Quick Hit Teleconference
**Emergency Planning and
Community Right to Know Act**
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EPCRA Background and Overview

- n Enacted in 1986 in response to 1984 toxic chemical release in Bhopal, India
- n Presence or release of “hazardous chemicals” or “extremely hazardous substances” at or from a facility triggers reporting obligations under EPCRA
- n Basic requirements
 - n Emergency planning
 - n MSDS submissions
 - n Annual chemical inventory reporting
 - n Release reporting

EPCRA Sections 301-303

Emergency Planning and Notification

- n Applies to any facility with one or more “extremely hazardous substances” (EHS) on-site greater than relevant “threshold planning quantities” (TPQs)
 - n EHS and TPQs identified at 40 CFR part 355
- n Facilities triggering thresholds must
 - n Notify the State Emergency Planning Commission (SERC) and the Local Emergency Response Planning Committee (LEPC) that the facility is subject to Section 302
 - n Designate and identify an emergency coordinator to LEPC
 - n 60 day deadline
 - n Must also notify LEPC of any changes relevant to emergency planning and provide information requested by LEPC for purposes of emergency planning

EPCRA Sections 311-312

Hazardous Chemical Inventory Reporting

- n Covered facilities
 - n Any facility required prepare or maintain material safety data sheets under OSHA HAZCOM regulations (29 CFR 1910.1200), and
 - n On-site presence of chemicals that equal or exceed
 - n For EHS, 500 lbs. or TPQ, whichever is less
 - n 10,000 lbs. for all other OSHA hazardous chemicals
 - n Maximum quantity on-site at any given time
 - n Note: no specific list of chemicals; driven by OSHA categories

EPCRA Sections 311-312

Hazardous Chemical Inventory Reporting

- n Section 311: One-time requirement to submit MSDSs or list of hazardous chemicals
 - n 3 month window
 - n Obligation to update
- n Section 312: Annual inventory report of same chemicals identified under Section 311 that exceed thresholds any time during prior calendar year
 - n Tier I or Tier II (most states require Tier II)
 - n March 1 deadline
- n Section 311 and 312 information submitted to
 - n SERC
 - n LEPC
 - n Local fire department

EPCRA Sections 311-312

Hazardous Chemical Inventory Reporting

n Section 311(e) exemptions

- n Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
- n 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;
- n 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;
- n 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
- n Any substance to the extent it is used in routine agricultural operations or is fertilizer held for sale by a retailer to the ultimate customer.

EPCRA Section 304 Release Reporting

- n EPCRA Section 304 requires immediate reporting of any release into the environment of an EHSs or CERCLA hazardous substances above “reportable quantities”
 - n SERC
 - n LEPC
 - n National Response Center (CERCLA hazardous substance)
- n Written follow-up to SERC and LEPC with additional information as soon as practicable
- n Look to EPA “List of Lists” for thresholds
 - n www.epa.gov/ceppo/pubs/title3.pdf
- n Exemptions
 - n Any release that results in exposure to persons solely within the boundaries of facilities
 - n Federally permitted releases
 - n Exempt pesticide releases
- n Reportable quantity “into the environment”

EPCRA Section 313

Toxic Release Inventory Reporting

- n Covered facilities
 - n Operations fall within certain North American Industry Classification System (NAICS) codes
 - n 10 or more full time employee equivalents
 - n Facility manufactures, imports, processes or otherwise Section 313 chemicals in quantities greater than threshold during the calendar year
 - n EPA Threshold Screening Tool
 - n www.epa.gov/tri/threshold/index.htm
- n Covered facilities must submit annual toxic chemical release form (Form R)
 - n Electronic reporting via EPA tool preferred, but can submit hard copies
 - n www.epa.gov/tri/report/software/trimeweb/index.htm

EPCRA Enforcement Example

- n Not limited to large industrial operations
 - n DeMoulas Super Markets
 - n Sulfuric acid and lead in lead acid batteries
 - n Refrigerants
 - n Gasoline and diesel fuel
 - n EPA sought penalty of \$42,171
- n Sulfuric acid and lead in lead acid batteries
 - n Emergency power generators, emergency lighting, computer back-up power, fork lifts and other equipment
 - n Considered an EHS with TPQ of 1000 lbs; 311 and 312 threshold is 500 lbs

EPCRA Compliance Considerations

- n Definition of “facility”
- n Trade secret protections for chemical identities (Section 322)
- n States may have separate (and more stringent) requirements
- n Recordkeeping
 - n Maintain copies of all submittals (notices, MSDSs or lists, annual Tier II submittals)
 - n Maintain copies of threshold calculations and other EPCRA determinations (i.e. backup calculations)
 - n Keep for 5 years
- n EPA (and state) audit policies
 - n Voluntary disclosure of violations pursuant to policies can result in reduced penalties

Questions?

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Notes

