

Chemical Emergency Preparedness and Prevention on Tribal Lands

The Emergency Planning and Community Right-to-Know Act (EPCRA) and the Clean Air Act's (CAA) chemical accident prevention provisions in section 112(r) require facilities to provide information on the presence of hazardous chemicals in communities. These laws have built better relationships among government at all levels, business and community leaders, environmental and other public-interest organizations, and individual citizens. EPA intends this fact sheet to familiarize Tribal leaders with EPCRA and CAA section 112(r) Risk Management Program requirements and how the information gathered under these laws can enhance Tribal chemical accident prevention, preparedness and response activities.

Overview

EPCRA and the CAA section 112(r) Risk Management Program requires facilities to report on hazardous chemicals they store or handle. Both laws give the public access to these reports.

The CAA explicitly authorized EPA to treat Federally Recognized Tribes in the same manner as States for the purposes of implementing environmental programs. For the purposes of EPCRA, EPA has taken the position that all Federally Recognized Tribes have the same responsibilities as States.

As a result of these two laws provide an array of complementary information on what chemicals are in the community; what chemicals are present at each location; what hazards these chemicals pose; what chemical releases have occurred in the area; and what steps industry is taking to prevent additional accidents.

This information can be used to enhance your community emergency response plan and protect your community from chemical hazards.

A Role for Tribes in EPCRA

Under sections 301-303 of EPCRA, States form State Emergency Response Commissions (SERCs). Likewise, Tribal chief executive officers must appoint Tribal Emergency Response Commissions (TERCs) to accomplish the following:

1. Designate local emergency planning districts;

2. Appoint a local emergency planning committee (LEPC) to serve each of the districts;
3. Coordinate and supervise LEPC activities;
4. Coordinate proposals for and distribution of Federal grant funds for TERCs and/or Tribal LEPCs;
5. Review LEPC plans, recommending any needed changes;
6. Establish procedures for receiving and processing public requests for information collected under EPCRA; and
7. Ask for further information about a particular chemical or facility, when needed.

Forming a TERC Through TERCs, Tribes provide leadership to ensure that an EPCRA emergency planning and implementation structure is developed. Additionally, TERCs provide training and technical assistance to communities so that Tribal members know what to do in the event of a chemical accident.

The Tribal chief executive officer operates as the TERC if a TERC is not established or a cooperative agreement is not developed. A Tribe may choose to enter into cooperative agreements with another Tribe or a consortium of Tribes or the State within which its lands are located to achieve a workable EPCRA program. Some examples of a cooperative agreement include:

1. A Memorandum of Agreement (MOA) with the SERC to become a Tribal LEPC or join an off-reservation LEPC.

2. A MOA with the SERC so that the Tribe implements some but not all of the law's requirements, while the State implements the remainder.

LEPC Responsibilities LEPC responsibilities depend upon the needs of the local community and Tribes often find that the SERC itself can accomplish the work of the LEPC. However, if an LEPC is formed, its membership must include, at a minimum, local officials such as police, fire, civil defense, public health, transportation and environmental professionals, industry representatives of facilities subject to the emergency planning requirements of EPCRA, community groups, and the media.

LEPCs must develop a contingency plan to prepare for and respond to emergencies involving hazardous substances in their communities. The plans should include:

- The identity and location of hazardous materials;
- Procedures for an immediate response to a chemical accident;
- Public notification of evacuation or shelter-in-place procedures;
- Industry contact names; and
- Timetables for testing and updating the plan.

The plans should be reviewed annually, exercised, and updated annually to best meet the needs of the reservation.

LEPCs also receive the emergency release notifications and the annual hazardous chemical inventory information submitted by facilities (see the "What Information Do You Have Section?" of this factsheet). This information can help the LEPC keep its plan and response procedures up-to-date.

A Role for Tribes in the CAA Section 112r Risk Management Program

Under the CAA section 112(r), Tribally-owned facilities with processes exceeding a threshold quantity for 77 acutely toxic substances (such as chlorine and ammonia) and 63 highly volatile flammable substances (when not used as a fuel), must adopt a Risk Management Program. An

example of such a Tribally-owned facility would be a drinking water facility holding more than 2,500 pounds of chlorine. Additionally, a summary of the program, known as a risk management plan (RMP) must be submitted to EPA. The RMP includes:

- The facility hazard assessments, including worst-case release and alternative release scenarios;
- The facility accident prevention activities, such as the use of special safety equipment, employee safety training programs, and process safety hazards analyses conducted by the facility;
- The past chemical accidents at a facility;
- The management system in place at the facility; and
- The facility's emergency response program.

RMPs that have been submitted can be reviewed at <http://www.epa.gov/enviro>.

If a Tribe is authorized under the Clean Air Act Tribal Air Rule (40 CFR Part 49) for treatment as a State, it can obtain delegation for the RMP program. If the TERC passes its own chemical safety legislation, it should ensure that its program mirrors the federal law in order to strengthen enforcement capabilities. For more information on how to receive delegation for your Tribe, see the Risk Management Programs Under CAA Section 112(r) - Guidance for Implementing Agencies at <http://www.epa.gov/emergencies/docs/chem/iguidfnl.pdf> (PDF)

NOTE: On August 4, 2000, EPA and the Department of Justice published a rule outlining how the public and members of TERCs, SERCs and LEPCs can access offsite consequence analysis (OCA) information about facilities that have submitted an RMP. A TERC or Tribal LEPC member can receive the information directly from EPA for use in their official government position (e.g., to incorporate the information into their emergency preparedness

plans). For more information on this rule and how you can access the OCA information, visit the EPA website at <http://www.epa.gov/emergencies> or call your EPA Regional Contact (see list at the end of this factsheet).

What Information Do You Have?

Regulatory requirements, by themselves, do not guarantee safety from chemical accidents. Both EPCRA and the Risk Management Program encourage communication between facilities and the surrounding communities about chemical safety and chemical risk. In this way, accident prevention is focused at the local level where the risk is found. For example, talking with industry about both the quantities of a chemical and a facility's prevention program allows local emergency officials and the Tribe as a whole to gain a clearer picture of the chemical risk on your lands.

Under EPCRA, you receive information from covered facilities on the chemicals they have, the quantities of chemicals stored, the hazards associated with those chemicals, and information on storage locations and conditions. Specifically, EPCRA provides you with:

- Notification from facilities that it has extremely hazardous substances (EHSs) in excess of a certain threshold. (EPCRA sections 302 and 303).
- Notification from facilities if there is an accidental chemical release of an EHS or any substance regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This information is reported to the TERC/LEPC community emergency coordinator. (EPCRA section 304).
- Material Safety Data Sheets (MSDSs) or lists of hazardous chemicals. MSDSs contain information on the quantity, hazard category, and location and storage conditions of hazardous chemicals at facilities. This information is directly reported to the TERC/LEPC and the

appropriate fire department. (EPCRA sections 311 and 312).

Annual reports on planned releases of toxic chemicals from regulated facilities. This information is reported to EPA. EPA compiles this information in a database called the Toxics Release Inventory (TRI) and makes the information available to the public. (EPCRA section 313). This information can be received on the Internet at <http://www.epa.gov/enviro>.

How Can Tribes Use This Information?

Combining this EPCRA information with the Risk Management Program information listed above, allows you to gain a better understanding of the chemical risk on your land. For example, what precautions are in place to avoid a chemical release? Is a facility near a medical clinic or a highly traveled area? What procedures have been developed to notify and assist the people affected by an accidental release? Has the fire department coordinated with the facility to determine the best response procedures? If the Tribe does not have a fire department, are mutual aid agreements in place with an off-reservation department? Using the chemical information available to you opens a new avenue of communication between you and the facility on your land.

These programs also offer you an opportunity to partner with other Tribes or possibly the States and/or towns that border your lands. In reviewing your emergency response plan, do you see some areas that need to be updated or otherwise improved? Are there chemical risks in a locality bordering your land that need to be addressed? Some Tribes have developed MOAs and/or mutual aid agreements with their neighbors in order to meet these needs, thereby lowering their chemical risk while creating better prevention and response plans.

What Else Should Tribes Consider?

Deliberate Chemical Releases. TERCs and LEPCs should also address the possibility of deliberate chemical releases in their emergency response plans. For example, accidental releases

often occur when illegal drug makers steal anhydrous ammonia to produce methamphetamines. Another possible scenario would be a terrorist incident. TERCs and LEPCs should focus on using established mechanisms rather than creating new organizations to deal with these issues. Several sections of a Tribe's response plan, including emergency contact information, response functions, and hazards analysis, should be evaluated to consider the effect of a deliberate release. The CEPPO Chemical Safety Alerts *Anhydrous Ammonia Thefts and LEPCs and Counter-Terrorism* provides more information on this topic.

Citizen Suits. EPCRA section 326 allows citizens to initiate civil actions against EPA, TERCs, and the owner or operator of a facility for failure to meet the EPCRA requirements. A TERC, LEPC, and State or local government may institute actions against facility owner/operators for failure to comply with EPCRA requirements.

Available Resources

Data Sources. These are several websites that can provide you with information to help you implement EPCRA and the CAA Risk Management Program.

- Profiles of the EPCRA extremely hazardous substances are available at <http://www.epa.gov/emergencies>
- EPA maintains information on accidental releases reported under EPCRA in a database, the Emergency Response Notification System (ERNS). You can access ERNS online at: <http://www.nrc.uscg.mil/foia.html>
- MSDSs do not have a standard format and can sometimes be confusing. On-line databases, which often have multiple versions of MSDSs for individual chemicals, can help you find an MSDS that is well organized and easy to read. You can access online copies of MSDSs maintained by universities at <http://www.hazard.com>.

- TRI and RMP data can be accessed through Envirofacts at <http://www.epa.gov/enviro>. Also available in Envirofacts are data on facilities that have:
 - ▷ Permits to release substances to water, in the Permit Compliance System database.
 - ▷ Permits to release hazardous pollutants to air, in the air release database.
 - ▷ Permits to store and treat hazardous wastes, in the RCRA database.

Guidance. To help officials as they develop their emergency plans, the National Response Team (NRT) has published the *Hazardous Materials Emergency Planning Guide* (NRT-1), which is available at <http://www.nrt.org>. In addition, FEMA has published the *State and Local Guide (SLG) 101: Guide for All-Hazard Emergency Operations Planning*, which tells emergency planners how to identify hazards in the planning district, determine vulnerable zones for each hazard, assess risk, and then set priorities among hazards and begin to develop an emergency plan. This publication is available at <http://www.fema.gov> or by calling FEMA's Printing and Publications Branch at (800) 480-2520.

EPA has also published documents to help industry comply with the reporting provisions of EPCRA and to help Tribal and local officials manage and analyze the information submitted. One of these documents is a factsheet entitled *The Emergency Planning and Community Right-to-Know Act* (EPA 550-F-00-004), which is available at: <http://www.epa.gov/emergencies/index.htm>

EPA and FEMA staff also help TERCs administer EPCRA and understand RMP by sponsoring workshops, speaking at TERC and LEPC meetings, providing guidance for developing and testing local emergency plans, and managing, understanding, and communicating the information submitted under EPCRA.

EPA has published several guidance documents which may assist TERCs and LEPCs with the RMP requirements. Each of the following

guidance documents are available for free by calling EPA's distribution warehouse at 1-800-490-9198 or visiting the EPA website at <http://www.epa.gov/ceppo/ap-imag.htm>:

- *RMPs Are on the Way* (EPA 550-B99-003)
- *Risk Management Programs Under CAA Section 112(r) - Guidance for Implementing Agencies* (EPA 550-B98-002)
- *Guidance for Auditing Risk Management Plans/Programs under Clean Air Act Section 112(r)* (EPA550-B99-008)

Software. *Computer Aided Management of Emergency Operations (CAMEO)* is a software program that can assist you to manage and use information collected under EPCRA and conduct a community hazards analysis. It also includes response information for over 3,000 chemicals commonly transported into the U.S. You can obtain CAMEO by visiting the EPA/NOAA CAMEO website at <http://www.epa.gov/emergencies/content/cameo/index.htm>

*RMP*Comp* helps users complete the offsite consequence analysis that is required under the Risk Management Program. You can also use *RMP*Comp* to verify data submitted by industry. When you use *RMP*Comp*, (a) you don't need to make any calculations by hand and (b) the program guides you through the process of making an analysis. You can obtain *RMP*Comp* by visiting <http://www.epa.gov/emergencies/content/rmp/index.htm>

Financial Assistance. EPA's Chemical Emergency Preparedness and Prevention (CEPP) Technical Assistance Grants offer funding aid to Tribes in establishing TERCs, in developing emergency plans, and in preparing to integrate accident prevention information into their plans. These activities are related to EPCRA and Section 112(r) of the CAA.

The grantee must provide matching funds equal to 25 percent of the total project cost. To obtain

further information on the CEPP grants, contact your EPA Regional Contact (see below). The Hazardous Materials Emergency Preparedness (HMEP) grant program is intended to provide financial and technical assistance to enhance State, Territorial, Tribal, and local hazardous materials emergency planning and training. The HMEP Grant Program distributes fees collected from shippers and carriers of hazardous materials to emergency responders for hazmat training and LEPCs for hazmat planning. For more information, visit <http://hazmat.dot.gov/training/state/hmep/hmep.htm>

One comprehensive source of financial assistance information is the *Tribal Environmental and Natural Resource Assistance Handbook* produced by the Domestic Policy Council Working Group on American Indians and Alaska Natives. This handbook provides a central location for federal sources of technical and financial assistance available to Tribes for environmental management. The handbook is available online at <http://www.epa.gov/tribalportal/>

EPA Regional Contact Information

For more information on any of the information in this fact sheet, please contact your EPA Regional Representative listed here.

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For More Information:

Visit EPA's Chemical Emergency Preparedness and Prevention Office website at <http://www.epa.gov/oem>

Contact the RCRA, Superfund, and EPCRA Hotline

(800) 424-9346 or (703) 412-9810TDD (800)553-7672

Monday -Friday, 9 AM to 6 PM, EST

All EPA documents can be ordered for free from the National Service Center for Environmental Publications by calling 1-800-490-9198.

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