UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Dear (SERC Chair):

This letter is to bring you up to date on recent activities in EPA's Office of Emergency Management (OEM) as they relate to your implementation of the Emergency Planning and Community Right-to-Know Act (EPCRA). OEM was formed in 2004 by joining the Chemical Emergency Preparedness and Prevention Office (CEPPO) with the Superfund Emergency Response Program and EPA's Oil Spill Prevention Program. It has taken time to integrate the various functions of these programs, but I think we are succeeding in strengthening emergency preparedness and accident prevention for both chemicals and oil, while maintaining an excellent emergency response and removal program.

It is clear to me, as we come to the end of the first decade of the 21st century, that the EPCRA and Risk Management Program (RMP) implementation has matured, sometimes in ways we never anticipated. In the years after September 11, 2001, and the establishment of the U.S. Department of Homeland Security, we have noticed a new interest in information available under both EPCRA and RMP. There is a constant underlying effort to ensure that potential terrorists do not gain access to chemical inventory information, but Federal, State, and local agencies are also finding the right-to-know information helpful as they develop their own preparedness and security measures. In addition, we found that following the tragic Hurricane Katrina, the Midwest floods, and other natural disasters, the information available under EPCRA and RMP was of significant help to responders charged with preventing deaths and injuries due to accidental chemical releases.

I also realize that there have been changes in structure and personnel at the State and local levels. Many people who very successfully initiated EPCRA implementation have retired or moved on to new challenges. So I know that we at EPA need to continually provide guidance and technical assistance related to EPCRA and RMP because many of you and many LEPC members are new to the programs. From the first days of EPCRA in 1986, we saw this legislation as primarily a State program with the State Emergency Response Commission (SERC) directing the work of Local Emergency Planning Committees (LEPCs). EPA headquarters' responsibility was to develop regulations and guidance to assist you. Our Regional offices were to be EPA's front line for direct contact with you and providing the technical

assistance you requested. In fact, I believe that one of the most noteworthy things that EPA currently implements are the SERC and LEPC conferences organized by many of our Regional offices. If you have the opportunity, I urge you and your LEPCs to participate in any of those conferences. For my part, I will encourage all our Regions to support these SERC and LEPC conferences. Looking to the future, we at EPA continue to see our roles in such a cascading fashion, from headquarters to the Regional offices to the States, and through you to the LEPCs.

Providing Information about Chemicals at Resource Conservation and Recovery (RCRA) Sites. You are probably familiar with the accident investigations and related work conducted by the U. S. Chemical Safety and Hazard Investigation Board (CSB). I would like to draw your attention to the excellent videos developed by CSB (http://www.chemsafety.gov/). You may find these videos to be useful training tools for LEPCs.

In October 2006, a fire at Environmental Quality Company's (EQ) hazardous waste storage facility in Apex, North Carolina, resulted in approximately 16,000 residents being evacuated for two days, 30 people needing medical attention, and the hazardous waste building being completely destroyed. The CSB investigated the incident and published a case study in April 2008 (available at http://www.csb.gov/assets/document/EQFinalReport.pdf). CSB found that local emergency responders did not have complete and accurate information on the types and quantities of hazardous chemicals present at the EQ Company.

You may be aware that hazardous wastes regulated under RCRA are exempt from the hazardous chemical inventory reporting requirements of sections 311 and 312 of EPCRA. Further, while RCRA-permitted hazardous waste treatment, storage and disposal (TSD) facilities must attempt to make planning arrangements with local authorities as appropriate for the types of wastes handled, in many cases there is no requirement that this information be updated over the term of the permit. In such situations, local emergency planners and responders may not have complete and accurate chemical hazard information for TSD facilities.

Noting this gap in emergency planning information, the CSB case study recommended that EPA:

> Ensure that the emergency response planning required for permitted hazardous waste treatment, storage, and disposal facilities (40 CFR 264.37) includes providing written information to state and local emergency response officials on the type, approximate quantities, and locations of materials within the facility (similar to reporting requirements of the Emergency Planning and Community Right-to-Know Act). Additionally, ensure that permit holders periodically update this information throughout the ten-year permit period. (2007-01-I-NC-R1, page 12)

EPA responded to CSB in October 2008, indicating that while EPCRA does not give EPA the authority to require TSD facilities to provide chemical inventory information for RCRA-regulated hazardous wastes to State and local officials, State Governors and SERCs do have such authority under sections 302 and 303 of EPCRA, and that EPA would encourage Governors or SERCs to use this authority as appropriate.

Under Section 302, a facility owner or operator is required to provide emergency planning notification to the SERC and the LEPC if the facility has any extremely hazardous substance (EHS) present above the threshold planning quantity (TPQ) for that substance. Even if there are no EHSs present at a facility, Section 302(b)(2) of EPCRA authorizes the Governor or the SERC to designate additional facilities which shall be subject to the emergency planning requirements, if such designation is made after public notice and opportunity for comment. Once these facilities have been so designated, under Section 303, the LEPC may request the facility owner or operator to provide information necessary for developing and implementing the community emergency plan. Although the RCRA-regulated hazardous wastes at such designated facilities would still be exempt from the specific chemical inventory reporting requirements of Sections 311 and 312, the LEPC could use its authority under section 303 to obtain substantially equivalent information if the LEPC decided that, for example, annually updated chemical inventory information was necessary for development and maintenance of its community emergency plan.

With this letter, I am asking you to review whether RCRA-regulated hazardous waste TSD facilities in your State are subject to appropriate emergency planning requirements under State laws and regulations. If these regulations do not exist, I ask you to consider using your authority under sections 302 and 303 of EPCRA to ensure that State and local emergency officials receive all necessary emergency planning and response information for such facilities.

Assessing Program Effectiveness. For 20 years EPA has worked with the Organization for Economic Cooperation and Development's (OECD's) Chemical Accidents Programme to share best practices to prevent chemical accidents and to prepare for incidents if, unfortunately, they do occur. OECD recently published the revised *Guiding Principles for Chemical Accident Prevention, Preparedness and Response*, which incorporates the lessons learned and best practices from these efforts.

One lesson from this cooperative work is that national and local authorities, industry and other stakeholders must regularly assess their progress in chemical safety. With this in mind, OECD has recently published two complementary guidance documents, *OECD Guidance on Developing Safety Performance Indicators for Industry* and *OECD Guidance on Developing Safety Performance Indicators for Public Authorities and Communities/Public.* I am enclosing copies of these documents for your use.

I think it would be beneficial for several SERCs and/or LEPCs to establish measurement programs using the OECD guidance. Please consider this effort or identify one or more of the LEPCs in your State; we will work with the volunteers to implement the program and to share results. You can contact Kathy Jones on my staff to become an SPI participant (jones.kathy@epa.gov, 202-564-8353).

LEPC Survey. Just a year ago we conducted an electronic LEPC survey. We had email addresses for approximately 2600 LEPCs and 939 LEPCs responded to the survey. You can find a report on this LEPC Survey at http://www.epa.gov/emergencies/docs/chem/2008_lepcsurv.pdf.

I found several interesting results in the survey. For example, 77% of the responding LEPCs address terrorism in their plans, 70% receive Tier II information in paper format, and half use CAMEO. In addition, the LEPCs tend not to use our OEM website very much, and they requested EPA assistance with outreach tools to educate new or potential LEPC members as well as members of the general public. Several LEPC coordinators also requested that EPA develop a compendium of LEPC best practices or operational guidance both to assist newly forming LEPCs and to provide ideas for improvement of existing LEPCs. My staff will be working to address these requests.

EPCRA Regulations. There have been several recent changes to the EPCRA regulations. They are listed on our website. One change (the CERCLA/EPCRA administrative reporting exemption for air releases of hazardous substances from animal waste at farms) created a good deal of interest and confusion in the agricultural community. Many people thought that this was a new regulation with new requirements, not noticing that it actually provided exemptions to the reporting requirements. The fact sheet at http://www.epa.gov/emergencies/docs/chem/CAFO_rule_fact_sheet.pdf should be helpful for those who would like additional information.

With biofuels becoming more prevalent at retail gas stations, we have recently received a number of questions related to the reporting of these alternative fuels. Therefore, we want to take this opportunity to provide you with a clarification. The general threshold for reporting under EPCRA section 311 and 312 is 10,000 pounds, except for gasoline and diesel fuel where the threshold is 75,000 gallons and 100,000 gallons, respectively. However, this higher threshold is not applicable to alternative fuels containing more than 10% of ethanol. Those fuels are reportable at the lower 10,000 pounds threshold. We will be developing a short document on this issue for use by SERCs, LEPCs and others to educate people who handle these fuels; watch our website for news about this.

CAMEO. Many years ago we developed the CAMEO software program to help LEPCs in their planning and information management functions. We continue to improve and maintain the various CAMEO functions and we make it available free of charge from our website. Visit http://www.epa.gov/emergencies/content/cameo/index.htm to find a link to the most recent CAMEO (February 2009), MARPLOT (March 2009) and ALOHA (March 2009). On the same page you can find links to CAMEO training courses and user groups.

RMP*eSubmit. There has been a great deal of recent activity in the RMP program. Specifically, we have introduced new software, RMP*eSubmit, to enable facilities to submit RMPs electronically with electronic signature. So far, the system is working very well. You can get the details at http://www.epa.gov/emergencies/content/rmp/rmp_esubmit.htm. This information is primarily intended for the regulated community but you and the LEPCs might want to read about it.

Environmental Justice. I encourage you and your LEPCs to promote environmental justice utilizing right-to-know information about chemicals in the community. There is ample

evidence that hazardous chemicals are often stored and used near neighborhoods of low income and culturally diverse citizens. LEPCs can use the MARPLOT function of CAMEO to identify environmental justice communities in their planning area. One possible activity would be to develop outreach materials in several languages. Thirty-six percent of those responding to the LEPC survey indicated their emergency response plan takes into account environmental justice considerations. Please let us know of your successes in promoting environmental justice in your communities so that we can share the information with people throughout the country.

Citizen Corps. There are several Federal activities that reach into States and communities and might involve the same people who serve on LEPCs. For example, FEMA coordinates the Citizen Corps at the national level. We are aware that many LEPCs are already fully merged with the Citizen Corps and that many SERCs recommended such mergers. Citizen Corps is the component of USA Freedom Corps that creates opportunities for individuals to volunteer to help their communities prepare for and respond to emergencies. At the local level, Citizen Corps initiatives are carried out by Citizen Corps Councils. Currently, there are about 2,300 County/Local/Tribal Citizen Corps Councils across the country. One quarter of the respondents to the LEPC Survey indicated that the LEPC and Citizen Corps Council were merged. Several LEPCs said that merging with their Citizen Corps Council resulted in increased interest and meeting attendance as well as the incorporation of all-hazards planning. I suggest that you and your LEPCs consider whether working more closely with the Citizen Corps could make your EPCRA and RMP work more effective. Additional information on Citizen Corps can be obtained at http://www.citizencorps.gov/.

OEM Website. As you surely know, maintaining a current website is a major task. We are currently updating the content of our website (http://www.epa.gov/emergencies/) to remove dated material, as well as to provide current information. We are using the "Highlights" column at the right of the home page to list what is noteworthy. A small yellow icon with the word "NEW" should catch the eye of our frequent visitors. For several years we have provided a list serve to keep our government partners and industry aware of new information. I urge you and your LEPCs to use the link to the list serve on our home page.

LEPC Contact List. With respect to our website, we need your help to keep our contact list up to date. If you visit http://yosemite.epa.gov/oswer/lepcdb.nsf/HomePage?openForm, you can use the Search Tool or click on your State and find the information we currently have for your LEPCs. We ask that you and/or your LEPCs notify us or your EPA Regional contact of any changes. At a recent meeting of the National Association of SARA Title Three Program Officials (NASTTPO), attendees had diverse views on how this data may be best maintained in the future. The views ranged from States providing periodic updates to EPA, to relying on links to State Web sites rather than posting actual LEPC data on our Web site. We think it is important that this contact information is available on the Internet so that citizens know who they can contact regarding chemical safety in their communities. Therefore, we would appreciate hearing your views on a future process for maintaining this data. Please send your suggestions and preferences to our webmaster, Dana Robinson (robinson.dana@epa.gov).

Finally, OEM is now actively participating in EPA's Community Action for a Renewed Environment (CARE) program (www.epa.gov/CARE); there is a link to CARE on the OEM website. CARE has a grant program that could prove helpful to LEPCs. If you or your LEPCs are interested in seeking a grant, please be in touch with our EPA Regional contacts for the EPCRA program (http://www.epa.gov/emergencies/content/regional.htm) or with Bill Finan on my staff (finan.bill@epa.gov, 202-564-7981). Bill will coordinate with the Regional contacts.

As I said earlier, I believe that the implementation of EPCRA and RMP has significantly improved chemical safety in our country. Thank you and your LEPCs for all the work you have done. We look forward to hearing from you and/or your LEPCs regarding their updated LEPC contact information, interest in measuring program effectiveness using the Safety Performance Indicators Guidance, success with incorporating environmental justice into planning and your efforts in utilizing your authority to acquire information related to RCRA regulated facilities and the threats that they may pose to your LEPC communities. If EPA can be of any assistance to you, please contact your EPA Regional contacts at http://www.epa.gov/emergencies/content/regional.htm. You can also contact me at dietrich.debbie@epa.gov, 202-564-8600.

Sincerely,

Deborah Y. Dietrich

Deborah Y. Dietrich
Director, Office of Emergency Management

Enclosures