



Region 8 Emergency Preparedness Newsletter

Volume IX No. 3 July 2019 Quarterly Newsletter

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America's Water Infrastructure Act Amendments to EPCRA

On October 23, 2018, America's Water Infrastructure Act was signed into law, amending the Emergency Planning and Community Right-to-Know Act (EPCRA). This new legislation requires state and tribal emergency response commissions to notify the applicable state agency (i.e., the drinking water primacy agency) of any reportable releases and provide community water systems with hazardous chemical inventory data. These requirements went into effect immediately upon signing of the law.

AWIA Amendment to EPCRA Section 304

AWIA section 2018(a) amends EPCRA section 304 to add a new sub-section, section 304(e), 'Addressing Source Water Used for Drinking Water'. This new sub-section requires SERCs and TERCs to perform the following actions:

- Promptly notify the drinking water primacy agency of any reportable release and provide this agency with:
 - information collected under section 304(b)(2) from the initial release notification; and
 - the follow-up written report received under section 304(c).



The drinking water primacy agency is then required to promptly forward all the information regarding the release to any community water systems whose source water is affected by the release. The source water for a community water system is potentially affected if the release occurs in that system's source water area (also known as a source water protection area). Drinking water primacy agencies and community water systems can provide the boundaries for source water protection areas.

If there is no drinking water primacy agency in place, the SERC (or TERC) is required to directly notify the potentially affected community water systems. Community water systems should use this information to prepare for possible impacts to their systems resulting from the release. Furthermore, lessons learned from

releases that occur should be integrated into long-term emergency response planning.



AWIA Amendment to EPCRA Section 312

AWIA section 2018(b) amends EPCRA section 312 to require SERCs, TERCs and LEPCs to provide affected community water systems with chemical inventory data for facilities within their source water protection area *upon request*. Source water protection areas may span multiple jurisdictional boundaries at the local and state levels, potentially requiring access to data from multiple SERCs, TERCs, or LEPCs.

Additionally, community water systems should be involved in larger planning efforts undertaken by the LEPC as section 2013 of AWIA requires community water systems to coordinate, to the extent possible, with LEPCs since drinking water is a vital component of any community.

The [Federal Register Notice for New Risk Assessments and Emergency Response Plans for Community Water Systems](#) is available.

For more information concerning America's Water Infrastructure Act, please see <https://www.congress.gov/bill/115th-congress/senate-bill/3021/text>. For more information for **SERCs, TERCs and LEPCs**, please see the [AWIA EPCRA Fact Sheet](#).

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Local Governments Reimbursement Program

The Environmental Protection Agency's Local Governments Reimbursement Program is a funding mechanism to assist any unit of local government including town or townships, cities, municipalities, parishes, counties and federally-recognized Indian Tribes. This fund can reimburse for temporary, un-anticipated emergency measures in response to hazardous substance threats with the exception of petroleum products (which is not a reimbursable expense.) The fund will reimburse up to \$25,000 per incident.

Examples of **activities covered** include controlling the release source, containing released substance, controlling runoff that could contaminate drinking water sources, and temporary site security measures. **Materials that are covered** include expendable materials and supplies, rental or leasing equipment, special technical services and laboratory costs, evacuation services, compensation of overtime wages and decontamination of equipment.

Expenses that will **not** be reimbursed include disposable materials and supplies already owned by a local government, a purchase of durable goods, employee fringe benefits (including comp time), employee out-of-pocket expenses, legal expenses, medical expenses and administrative costs.

One key point to remember when applying is this program won't cover funding for items normally or regularly provided by the local government. In addition, applicants must have exhausted all other avenues to recover the costs from the responsible party, insurance companies, and state funding.

Chemical Facility Security and Safety Working Group Charter

Several hundred thousand facilities in the United States use, manufacture, and store chemicals encompassing everything from petroleum refineries to pharmaceutical manufacturers to hardware stores. The U.S. chemical industry manufactures over 70,000 unique products, many of which are critical to the health, security, and economy of the nation. The handling and storage of chemicals at facilities present security and safety risks that can be reduced with federal, state and local governments providing the necessary regulatory oversight and compliance assistance.

To address these issues, the Department of Labor, Department of Homeland Security, and the Environmental Protection Agency created and signed the [Chemical Facility Security and Safety Working Group Charter](#). The working group, which includes other federal agency representatives, has oversight of chemical facility security and safety and is committed to working with stakeholders to address security and safety at chemical facilities and reducing risks associated with hazardous chemicals to workers and communities.

If you have any questions or comments regarding the Chemical Facility Security and Safety Working Group, please email ChemSafe&Secure@hq.dhs.gov. If you would like to join the Region 8 quarterly calls, please contact Bre Bockstahler at Bockstahler.breann@epa.gov.

Summit County, Colorado, Exercise



The Environmental Protection Agency (EPA) Region 8 Emergency Management Branch participated in a full-scale exercise (FSE) with Summit County, Colorado, on May 30th and 31st, 2019. A primary objective was coordination with



several response and health agencies including the County Public Health, the Civil Support Team (National Guard), and the local Hazmat Team. Another objective was to test the Joint Information Center (JIC) activation with participating agencies. EPA had a Public Information Officer present at the JIC.

The hypothetical scenario for the FSE included illegal operations occurring at a mine that also had a large blowout resulting in mine adit releases along with unknown hazardous chemicals from multiple 55-gallon drums in the river. In the scenario, multiple reports to the local 911 dispatch center indicated nearby residents became sick from noxious odors coming from the river. The exercise included EPA Region 8 On-Scene-Coordinators and Incident Management Team (IMT) members, the Colorado Northwest IMT Team, Summit County personnel, Denver Water, Summit Fire and Emergency Management Services, American Red Cross, Peak One Surgery Center, St. Anthony Medical Center, and local police departments.



Notes from Colorado's Attorney General Phil Weiser — States and Federal Agencies

JUNE 7, 2019

A Word From Weiser

The Department of Law's Weekly Snapshot

“A few weeks ago, I was part of a joint meeting of our office and the Region 8 Environmental Protection Agency (EPA) office. I opened the meeting by discussing the broad legal framework that governs our cooperation with our federal counterparts. That framework is known as “cooperative federalism.” Over the last 25 years, I have thought hard about and worked on federal-state cooperation from a few different angles, including serving in federal and state government as well as an observer and commentator.



The first premise of federal-state cooperation is that it begins from a place of mutual respect and awareness of shared goals. Under our Constitution, for example, the federal government is not authorized to “commandeer” state and local officials to administer federal law.

In the meeting with the EPA, I talked about the importance of state agency implementation of federal law and policy goals. In practice, the federal government can rarely ensure by itself that federal policy goals—whether environmental protection, affordable health care, or competition in telecommunications markets—are achieved effectively. That’s why, in these policy areas and others, the federal government relies on state agencies to act to achieve important goals. At its best, this relationship is one of “better together”. And where the relationship is not working—either because of federal attempts to commandeer state officials or because of federal efforts to sideline state efforts to protect their citizens—it is important that States protect their sovereign responsibilities.

Effective cooperation also must take place between our state government and local governments. Last week, I witnessed a great example of that cooperation at an Emergency Preparedness event in Summit County. The collaboration at that event was first-rate. The goal of the exercise was to identify room for improvement, which it did effectively. In the exercise, there were both public health and environmental crime components, leading the participants to ask how they could best work with our office.”

Phil Weiser, Colorado State Attorney General, June 7, 2019, A Word From Weiser, The Department of Law's Weekly Snapshot

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Final Rule Amending EPCRA for F.A.R.M.

On June 4, 2019, EPA Administrator Wheeler signed a final rule to add a reporting exemption for air emissions from animal waste at farms. The final rule amends the **emergency release notification regulations** under the Emergency Planning and Community Right-to-Know Act (EPCRA).

The EPA is amending the release notification regulations under EPCRA to add the reporting exemption for air emissions from animal waste at farms provided in section 103(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

In addition, EPA is adding definitions of "animal waste" and "farm" to the EPCRA regulations to delineate the scope of this reporting exemption. This amendment establishes consistency between the emergency release notification requirements of EPCRA and CERCLA in accordance with the statutory text, framework and legislative history of EPCRA, and is consistent with the Agency's prior regulatory actions.

Excerpt from <https://www.epa.gov/newsreleases/administrator-wheeler-signs-final-rule-add-reporting-exemption-under-epcra-air>

Background: On March 23, 2018, the President signed into law the Consolidated Appropriations Act, 2018 ("Omnibus Bill"). Title XI of the Omnibus Bill is entitled the "Fair Agricultural Reporting Method Act" or the "FARM Act." The FARM Act expressly exempts reporting of air emissions from animal waste (including decomposing animal waste) at a farm from CERCLA section 103. The FARM Act also provides definitions for the terms "animal waste" and "farm." The FARM Act amended CERCLA by providing an exemption from reporting air emissions from animal waste at farms. Because these types of releases are exempted under CERCLA, based on the release reporting criteria under EPCRA section 304, these types of releases are also exempt under EPCRA section 304. Consequently, on November 14, 2018, EPA published a proposed rule to amend the release reporting regulations under EPCRA section 304.

Excerpt from <https://www.federalregister.gov/documents/2019/06/13/2019-12411/amendment-to-emergency-release-notification-regulations-on-reporting-exemption-for-air-emissions>

Oil Spill Response Training

EPA and Marathon Oil are pleased to offer a three-day Oil Spill Response Training class at the Bear River Migratory Bird Refuge in Utah on August 20-22, 2019. The training is sponsored by Marathon Petroleum, EPA Region 8 and the US Fish and Wildlife Service. The course will include some classroom instruction, but will emphasize hands-on exercises and include boat safety training. The course is offered free for all confirmed registrants.

The class size is limited, so please register soon. Registration is limited to ensure attendance from each sponsoring agency. [Register here.](#)

If you have any questions, call Joyel Dhieux at 303-312-6647.

EPCRA Section 304 FAQs

How are releases during transportation or storage incident to transportation covered under section 304?

Section 304 covers all releases of listed hazardous or extremely hazardous substances, including those involved in transportation in excess of the reportable quantity (RQ). Owners or operators of transportation facilities may call 911 or the local telephone operator, in order to satisfy section 304 notification requirements when a release occurs during transportation. Local emergency planning committees should work with the local 911 system and telephone operators to ensure such transportation release notifications are immediately relayed to the community emergency coordinator.

Who is the owner or operator for purposes of EPCRA 304 release reporting?

EPCRA section 304 allows either the owner or operator of a facility to give notice after a release. Owners and operators may make their own arrangements concerning which party is to provide release notification; however, under EPCRA section 304 both the owner and operator are responsible if no notification is provided.

Follow-up emergency notice requirements in EPCRA 304 for CERCLA hazardous substances

Must a follow-up emergency notice be given for a release of a CERCLA hazardous substance which is not an extremely hazardous substance and for which a reportable quantity has not been established under section 102(a) of CERCLA?

In lieu of the emergency release notification required under section 304(b), section 304(a)(3)(B) provides that owners and operators of facilities that produce, use or store a hazardous chemical and from which is released a CERCLA hazardous substance that is not an extremely hazardous substance and for which a reportable quantity has not been established under section 102(a) of CERCLA, shall provide the same notice to the local emergency planning committee as is provided to the National Response Center under section 103(a) of CERCLA. Although section 304(b) notice is not required, the facility owner or operator must still provide follow-up emergency notification under section 304(c). Section 304(c) states that, "As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written follow-up emergency notice... setting forth and updating the information required under subsection (b), and including additional information...". Notification of the above describe release is required under subsection (a), thus written follow-up emergency notice is required. Follow-up notification of these releases must be reported in the manner prescribed by section 304(b).

Excerpts for EPCRA Section 304 FAQs taken from <https://emergencymanagement.zendesk.com/hc/en-us/sections/202347837-Emergency-Planning-EPCRA-301-303->

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EPCRA Section 304 FAQs

Are on-site contractors responsible for extremely hazardous substances (EHSs) brought on-site?

For section 302 purposes, if a contractor brings an extremely hazardous substance (EHS) on-site to a facility over the threshold planning quantity, is the owner/operator of the facility or the contractor required to make the notification to the LEPC?

For section 304 purposes, if a contractor bursts a tank at a facility and causes a release of reportable quantity of an EHS, should the contractor or the owner/operator of the facility notify the community emergency coordinator?

For both sections 302 and 304, a contractor could be considered an operator of the facility or of a portion of the facility depending on if he/she has enough authority. The definition of operator is not defined by statute or in the regulations. If the contractor is considered an "operator," he or she could be held liable for not making the required notifications under sections 302 or 304. If no notification is made under sections 302 and 304,

What is the relationship between reportable quantities (RQs) and threshold planning quantities (TPQs)?

The reportable quantity that triggers emergency release notification (section 304) was developed as a quantity that when released, poses potential threat to human health and the environment. The RQs were developed using several criteria, including aquatic toxicity, mammalian toxicity, ignitability, reactivity, chronic toxicity, potential carcinogenicity, biodegradation, hydrolysis, and photolysis (50 FR 13468, April 4, 1985).

The threshold planning quantities for emergency planning provisions (section 302) were designed to help States and local communities focus their planning efforts. The TPQs are based on acute mammalian toxicity and potential for airborne dispersion and represent those quantities of substances that can cause significant harm should an accidental release occur.

Spills on concrete floors inside a building

A facility has a spill of an extremely hazardous substance (EHS) in an amount greater than its reportable quantity (RQ). The spill occurs on a concrete floor that is inside a facility building. Before the spill can be cleaned up, a portion (less than RQ) of the EHS enters the outside atmosphere through the window. Persons in off-site buildings report smelling the chemical. Does the facility owner/operator have a reporting requirement under EPCRA, section 304?

No. The reporting requirements codified at 40 CFR §355.30 apply when there is a "... release of a reportable quantity of any extremely hazardous substance or CERCLA hazardous substance." The definition of release further stipulates that the release must occur "...into the environment..." [40 CFR §355.61]. In this case, reporting is not required even though persons off-site are being affected by the spill because an RQ of material was not released "into the environment."

To determine if reporting is required under EPCRA section 304 for a spill of an EHS or CERCLA hazardous substance, first determine if an RQ of material has entered "into the environment" (as the phrase is understood under CERCLA). If an RQ has entered "into the environment", then there has been a release. A release must be reported unless a specific exemption from reporting applies [such as the exemption for releases affecting"... persons solely within the boundaries of the facility." 40 CFR §355.31].

Tooele, Utah LEPC



Tooele County sits just west of Great Salt Lake and extends to the Nevada border. Tooele (pronounced “tu ella”) covers much of the Great Salt Lake Desert, is the second largest county in Utah and is among the driest. The Skull Valley Indian Reservation lies within the county.

Bucky Whitehouse, the LEPC Chair, along with Beckie Boekweg of Tooele County Emergency Management, recently highlighted the LEPC’s activities and successes. They share the management of the LEPC which includes recording minutes, establishing the agenda and maintaining the LEPC contact list. The LEPC meets monthly at the Emergency Management offices in Tooele. Occasionally the group will take a field trip to industry locations to tour facilities.



Bucky Whitehouse

The County representatives to the LEPC include dispatch, the sheriff, fire districts, health and schools as well as one private citizen who has been attending the LEPC meetings for the last 20 years(!). Nonetheless, active participation of LEPC members remains a challenge. The LEPC has 100 people who receive the notifications of meetings and minutes, however often just 20-30 attend the meetings. The Tooele LEPC continually encourages participation from the commercial and industrial sectors.

To gain consistent engagement of LEPC members, Bucky and Beckie work to maintain a regular meeting schedule. The group’s goal is to achieve high participation with relevant topics and guest speakers.

During LEPC meetings, industry partners present current operations that could affect emergency responses. For example, recently, US Magnesium did a presentation on their new battery program making component parts to be used in processing batteries. Discussions like these provide critical information not only to response agencies but other businesses and community members. Of course, recent incidents that involve hazardous materials are discussed, including the agencies that responded and the challenges that were experienced. Finally, seasonal issues appear regularly such as “fire-wise” training.



Tooele, Utah LEPC Continued

Relationships with local industry are a high priority. For example, Tooele County often experiences severe weather which affects important transportation routes vital to industry. The LEPC group has seen firsthand how engagement between private industry and local government provides crucial communication and furthers resilience.

Mr. Whitehouse said, “We hope to continue developing new and progressive approaches to community engagement activities such as our annual contribution to the local Hazardous Waste Collection Day.” He added that one of the rewards of LEPC work is the feedback that the community is grateful to have local government working to improve industry relations.

He concluded, “For 20 years, Tooele County has had a very progressive and robust LEPC that continues to maintain a focus on the relationships between government and industry partners. We continually strive to further community awareness and overall preparedness.”



LEPC and SERC Meetings in Region 8



Above: Gunnison LEPC, June Meeting in Gunnison, Colorado



Left: Chaffee LEPC, June Meeting near Salida, Colorado

Both Chaffee and Gunnison face an influx of summer rafters, climbers and bikers as well as prodigious snow melt.

Right: Region 8 representatives at NASTTPO, Reno, Nevada in April upping their EPCRA edification.



Left: Utah SERC's Quarterly Meeting in beautiful and very sunny Richfield, Utah. (The halo around Cody is real.)

We will increase EPA Region 8 preparedness through:

- Planning, training, and developing outreach relations with federal agencies, states, tribes, local organizations, and the regulated community.
- Assisting in the development of EPA Region 8 preparedness planning and response capabilities through the RSC, IMT, RRT, OPA, and RMP.
- Working with facilities to reduce accidents and spills through education, inspections, and enforcement.



Region 8 SERC Contact Information

Colorado

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RMP Region 8 Reading Room: (303) 312-6345

RMP Reporting Center: The Reporting Center can answer questions about software or installation problems. The RMP Reporting Center is available from 8:00 a.m. to 5:30 p.m., Monday - Friday:(703) 227-7650 or email RMPRC@epacdx.net.

RMP: <https://www.epa.gov/rmp> **EPCRA:** <https://www.epa.gov/epcra>

Emergency Response: <https://www.epa.gov/emergency-response>

SPCC/FRP: <https://www.epa.gov/oil-spills-prevention-and-preparedness-regulations>

[Lists of Lists](#) (Updated June 2019)

Questions? Call the Superfund, TRI, EPCRA, RMP, and Oil Information Center at (800) 424-9346 (Monday-Thursday).

To report an oil or chemical spill, call the National Response Center at (800) 424-8802.



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This newsletter provides information on the EPA Risk Management Program, EPCRA, SPCC/FRP (Facility Response Plan) and other issues relating to Accidental Release Prevention Requirements. The information should be used as a reference tool, not as a definitive source of compliance information. Compliance regulations are published in 40 CFR Part 68 for CAA section 112(r) Risk Management Program, 40 CFR Part 355/370 for EPCRA, and 40 CFR Part 112.2 for SPCC/FRP.

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