

Chapter 4. EPCRA Section 304: Emergency Release Notification

Prior to EPCRA, there were other programs, such as CERCLA Section 103, that required facilities to notify federal authorities of releases of hazardous substances defined under CERCLA. However, these programs did not require facilities to notify the authorities at the community level that would be affected by the release.

EPCRA Section 304 emergency notification supplements CERCLA Section 103 release notification by requiring facilities to notify the state, tribal and local authorities of any area(s) likely to be affected by any releases of CERCLA hazardous substances and EPCRA extremely hazardous substances. This notification allows the state, tribal and local authorities to receive release information as soon as releases occur in order to protect the community from potential hazards.

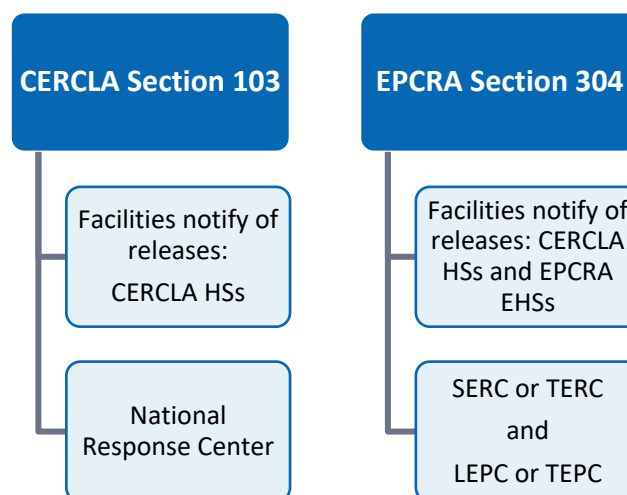


Figure 13. Release notification under CERCLA and EPCRA.

This chapter explains facilities' requirements for providing proper notification of releases, as well as suggestions for LEPCs and TEPCs to use the information to plan and prepare the community for potential future chemical releases.

In addition, this chapter will discuss the recent amendments to EPCRA Section 304 under the American Water Infrastructure Act of 2018, which places responsibilities on SERCs and TERCs as well state drinking water agencies.

Note: As in the previous chapters in this document, the italicized text boxes are provisions from the EPCRA statute.

4.1 Substances Covered in EPCRA Section 304 Release Notification

EPCRA Section 304(a) Types of Releases

(1) 302(a) substance which requires CERCLA notice

If a release of an extremely hazardous substance referred to in section 302(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9603(a)] (hereafter in this

section referred to as “CERCLA”) (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b).

(2) Other 302(a) substance

If a release of an extremely hazardous substance referred to in section 11002(a) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator of the facility shall immediately provide notice as described in subsection (b), but only if the release—

- (A) is not a federally permitted release as defined in section 101(10) of CERCLA [42 U.S.C. 9601(10)],
- (B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and
- (C) occurs in a manner which would require notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)].

Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b).

(3) Non-302(a) substance which requires CERCLA notice

If a release of a substance which is not on the list referred to in section 302(a) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA [42 U.S.C. 9603(a)], the owner or operator shall provide notice as follows:

- (A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)], the owner or operator shall provide notice as described in subsection (b).
- (B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA [42 U.S.C. 9602(a)]—
 - (i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA [42 U.S.C. 9603(a)].
 - (ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b).

(4) Exempted releases

This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

The first part of this chapter provides a brief explanation on the type of substances covered for release notification requirements under EPCRA Section 304. See **Error! Reference source not found.**

As provided in Section 304(a), there are two types of substances covered under the release notification. These are hazardous substances listed under Section 103(a) of CERCLA

(“CERCLA HSs”) and the extremely hazardous substances listed under Section 302 of EPCRA (“EPCRA EHSs”). Facilities are required to provide notification of releases of these substances, provided that the release(s) meet certain criteria and the releases are not exempted.

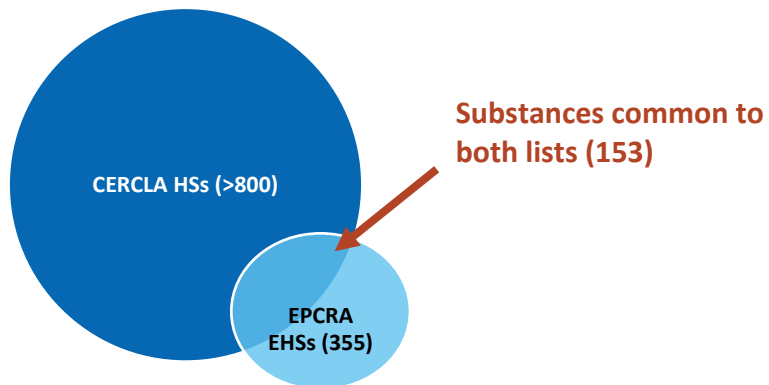


Figure 14. Substances subject to release reporting under EPCRA Section 304.

This chapter discusses the release notification process and provides suggestions for LEPCs and TEPCs on how to use the information received for planning for chemical releases and protecting the community from potential hazards. It does not include any details on the regulated substances. For details, refer to the online training “EPCRA Training for States, Tribes, LEPCs, Local Planners and Responders (Non-Section 313),” posted at <https://www.epa.gov/epcra/epcra-training-states-tribes-lepcs-local-planners-and-responders-non-section-313>.

Note: The legislative text for initial release notification process, as well as the entities that receive the notification and the contents of initial notification, is provided below.

4.2 Facilities: Initial Release Notification Process

EPCRA Section 304(b): Notification

(1) Recipients of notice

Notice required under subsection (a) shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section 11001(c) of this title, for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

Section 304(b)(1) requires facilities to immediately notify the community emergency coordinator of the LEPC or TEPC and the SERC or TERC if there is a release into the environment of a hazardous substance that is equal to or exceeds the minimum reportable quantity set in the regulations. This requirement covers the 355 extremely hazardous substances as well as the more than 800 hazardous substances subject to the emergency notification requirements under CERCLA Section 103(a). The EPCRA Section 304 requirement supplements the reporting requirement under CERCLA Section 103. The implementing regulations of EPCRA Section 304, *Emergency Release Notification*, are codified in 40 CFR Part 355: <https://www.ecfr.gov/cgi-bin/text-idx?node=sp40.30.355.c&rgn=div6>.

4.2.1 Community Emergency Coordinator

The statute requires facilities to report releases to the community emergency coordinator of the LEPC or TEPC and SERC or TERC. LEPCs and TEPCs should assign a contact from their organization for receiving emergency release notification (initial telephone notification). Alternatively, LEPCs, TEPCs, SERCs, and TERCs may establish a call center/dispatcher/hotline that would be available 24 hours for facilities to timely report releases. It is important to provide this information to facilities in the planning district to ensure that proper notification is received.

One of the requirements in EPCRA Section 301 for LEPC and TEPC is that they should establish rules on its functionality, which may include designating a person who would be the community emergency coordinator. This person would handle all the release notifications from facilities and ensure that emergency response personnel would be notified and the LEPC or TEPC local emergency response plan can be activated (notify the community if necessary, activate evacuation or shelter in place, etc.). In some communities, the community emergency coordinator is the emergency management office in the county/district.

Generally, facilities can determine their LEPC or TEPC contact information from their SERC or TERC. Additionally, LEPCs and TEPCs can also update their websites with contact information.

EPA is aware that some communities may already have a certain process established for release notification. LEPCs and TEPCs should ensure that every facility in their district that handles any hazardous chemical has the LEPC or TEPC community emergency coordinator contact information or other release notification process information. If you need assistance in developing a pamphlet or other materials with phone numbers of the dispatch/community emergency coordinator for facility owners or operators in your planning district, reach out to states or EPA Regional EPCRA Coordinators.

It is also important for LEPCs and TEPCs to update emergency response plans with the contact information of all facility emergency coordinators in the district as changes occur. If the facility is subject to hazardous chemical inventory reporting requirements (*see Chapter 5 of this document*), the contact information for the facility emergency coordinator would be reported on the Tier II form annually. Facilities are required to update this information annually as necessary, however, EPA encourages LEPCs and TEPCs to contact all facility emergency coordinators in their district periodically to ensure that the contact information is current.

The Tier II form also includes facility 24-hour emergency contact information, which is important for first responders to have to reach out during any chemical emergency.

Note: As mentioned earlier in this document, some communities may not have representatives from every organization in the community as LEPC or TEPC members. In such cases, it may be beneficial to join a neighboring LEPC or TEPC to coordinate release notification and response.

4.2.2 Facilities: Contents of Initial Notification

EPCRA Section 304(b): Notification

(2) Contents

Notice required under subsection (a) shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

- (A) The chemical name or identity of any substance involved in the release.*
- (B) An indication of whether the substance is on the list referred to in section 302(a) of this title.*
- (C) An estimate of the quantity of any such substance that was released into the environment.*
- (D) The time and duration of the release.*
- (E) The medium or media into which the release occurred.*
- (F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.*
- (G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).*
- (H) The name and telephone number of the person or persons to be contacted for further information.*

As provided in EPCRA Section 304(b)(2), facilities are required to provide certain information while notifying the community emergency coordinator or their designee of the LEPC or TEPC or other established system and the SERC or TERC. The LEPC and TEPC should ensure that the person(s) receiving the notification are trained to collect all the information from facility representatives reporting the release. EPA suggests that the LEPC and TEPC develop a form with all the required elements provided in Section 304(b)(2) to ensure all the information is collected from the caller reporting the release.

4.3 Facilities: Follow-up Emergency Notice (Written Report)

EPCRA section 304(c): Followup emergency notice

As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written followup emergency notice (or notices, as more information becomes available) setting forth and updating the information required under subsection (b), and including additional information with respect to—

- (1) actions taken to respond to and contain the release,*
- (2) any known or anticipated acute or chronic health risks associated with the release, and*
- (3) where appropriate, advice regarding medical attention necessary for exposed individuals.*

The law also requires facilities to provide a written follow-up report of the release as soon as practicable after the release (EPCRA Section 304(c)). EPA published guidance on July 13, 2010 (75 FR 39852), to define the term “as soon as practicable” as 30 days (<https://www.govinfo.gov/content/pkg/FR-2010-07-13/pdf/2010-17031.pdf>).

In the guidance, EPA provided flexibility to the states to require more stringent timeframes if they choose to do so. EPA is aware that a few states require fewer than 30 days for facilities to submit a written follow-up report.

EPCRA Section 304(c): Follow up Emergency Notice

- Facilities shall provide a written follow-up notice or notices “as soon as practicable,” which is defined as no longer than 30 days, and update the information provided in the initial notification as well as provide additional information

Figure 15. Written follow-up report.

The written follow-up report is required to be submitted to the SERC or TERC and LEPC or TEPC. This report would include any updates on the initial telephone notice and on actual response actions taken, as well as advice regarding medical attention necessary for citizens exposed. LEPCs and TEPCs should designate a person to receive this report and inform the facilities where to send the follow-up report. Among other information collected under EPCRA, the written follow-up report should also be available to the public as required under EPCRA Section 324, which will be covered in Chapter 8.

LEPCs and TEPCs are encouraged to use the information provided in the immediate notification and the written follow-up report to plan for possible future incidents. Table-top exercises of actual events can be useful tools for this purpose.

4.4 Transportation Related Releases

If any chemical releases occur during transportation or occur while chemicals are stored incident to transportation, facilities and/or the vehicle operator are required to contact 911 or the local telephone operator as provided in Section 304(b)(1) (see statutory language provided in section 4.1 of this chapter). LEPCs and TEPCs should train local telephone and 911 operators, as well as dispatch system or other personnel, on how to get complete information from the caller so they can notify emergency responders appropriately. Development of a form outlining the needed information that operators can use to record information from the person providing the release notification would be highly useful.

Under the federal EPCRA regulations, facilities (or transportation operators) are not required to submit follow-up reports for transportation related releases. (See 40 CFR 355.40(b): https://www.ecfr.gov/cgi-bin/text-idx?node=sp40.30.355.c&rgn=div6#se40.30.355_140.)

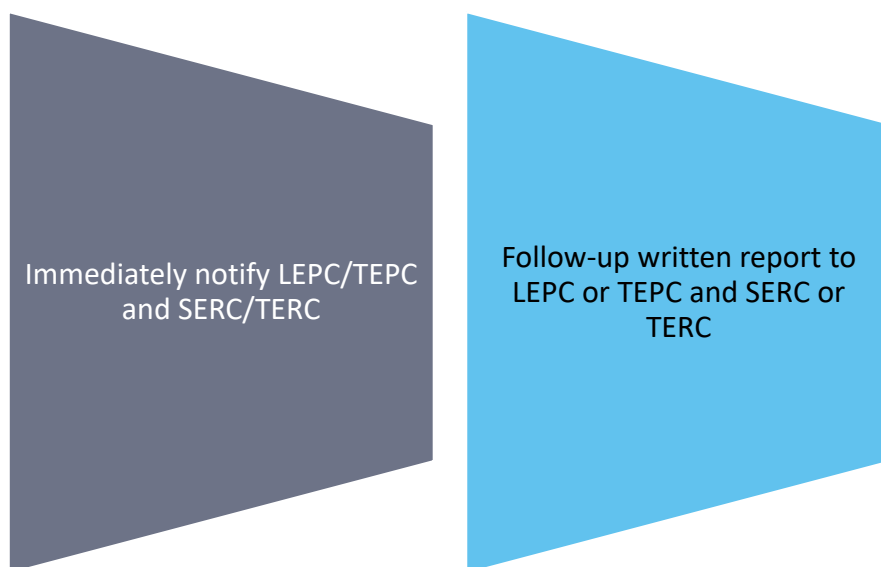


Figure 16. Facility responsibilities under EPCRA Section 304 for releases of EPCRA EHSs and CERCLA HSs.

4.5 America's Water Infrastructure Act of 2018

Recent incidents prompted amendments to certain provisions under EPCRA.

On January 9, 2014, 11,000 gallons of crude methylcyclohexane methanol (MCHM) and polyglycol ethers (PPH, stripped) were released into the Elk River in Charleston, West Virginia. This release compromised the drinking water of approximately 300,000 residents in nine counties for more than two weeks.⁷ A leaking aboveground storage tank at Freedom Industries released the MCHM, which traveled 1.5 miles downstream to the intake of the West Virginia

⁷ U.S. Chemical Safety and Hazard Investigation Board. (2016). Chemical Spill Contaminates Public Water supply in Charleston, West Virginia. Report No. 2014-01-I-WV. Available at <https://www.csb.gov/freedom-industries-chemical-release/>.

American Water (WVAW) water treatment facility, inundating the drinking water filtration system servicing Charleston and the surrounding areas. The incident resulted in the issuing of a “Do Not Use” order to the community and caused approximately 600 residents to seek medical attention. A closer examination of over half of their medical charts show that the contamination resulted in skin, eye and respiratory tract irritation, consistent with crude MCHM exposure.



Photo: Chemical Safety Board.

Figure 17. Freedom Industries aboveground storage tanks released 11,000 gallons of crude MCHM and PPH into the Elk River on January 9, 2014, contaminating the drinking water of 300,000 residents in and around Charleston, WV.

Due to this and other incidents that affected community water systems, the America’s Water Infrastructure Act (AWIA) amended EPCRA Section 304 on October 23, 2018. The amendments require states and tribal agencies to notify the drinking water primacy agency, or community water systems if there is no drinking water primacy agency, of any reportable releases.

AWIA Section 2018(a) amends EPCRA Section 304 to add a new subsection, Section 304(e), *Addressing Source Water used for Drinking Water*. This new subsection requires SERCs and TERCs to perform the following actions to provide information to the drinking water primacy agency:

- Promptly notify the state agency of any reportable release.
- Provide all the information collected under Section 304(b)(2) from the initial notification.
- Provide the follow-up written report received under Section 304(c).

EPCRA Section 304(e): Addressing source water used for drinking water

(1) Applicable State agency notification

A State emergency response commission shall—

- (A) promptly notify the applicable State agency of any release that requires notice under subsection (a);*
- (B) provide to the applicable State agency the information identified in subsection (b)(2); and*
- (C) provide to the applicable State agency a written follow-up emergency notice in accordance with subsection (c).*

(2) Community water system notification

(A) In general

An applicable State agency receiving notice of a release under paragraph (1) shall—

- (i) promptly forward such notice to any community water system the source waters of which are affected by the release;*
- (ii) forward to the community water system the information provided under paragraph (1)(B); and*
- (iii) forward to the community water system the written follow-up emergency notice provided under paragraph (1)(C).*

(B) Direct notification

In the case of a State that does not have an applicable State agency, the State emergency response commission shall provide the notices and information described in paragraph (1) directly to any community water system the source waters of which are affected by a release that requires notice under subsection (a).

(2) Definitions

In this subsection:

(A) Community water system

The term “community water system” has the meaning given such term in section 1401(15) of the Safe Drinking Water Act [42 U.S.C. 300f(15)].

(B) Applicable State agency

The term “applicable State agency” means the State agency that has primary responsibility to enforce the requirements of the Safe Drinking Water Act in the State.

While the AWIA amendments do not require LEPCs and TEPCs to directly notify the drinking water agency or the community water systems, EPA encourages the sharing of any information on releases that affect community water systems, especially releases involving transportation. EPA was informed by many states that notifications of transportation-related releases are provided either to the 911 operators or the local emergency response personnel. The LEPC and TEPC usually have local emergency responders as members who receive first-hand notification of any releases from fixed facilities, as well as transportation-related releases. EPA also encourages LEPCs and TEPCs to reach out to the community water systems to participate in implementing and exercising the local emergency response plan.

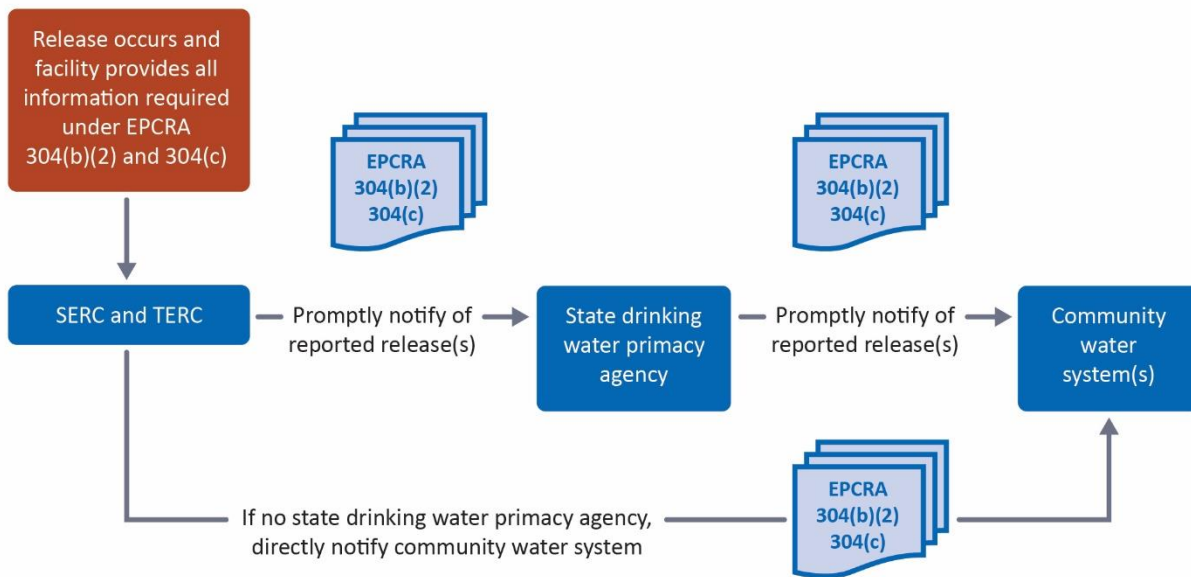


Figure 18. Information flow under the America’s Water Infrastructure Act under EPCRA Section 304(e).

EPA developed a fact sheet that outlines AWIA amendments to EPCRA, Frequently Asked Questions, amendatory legislative language, etc.: <https://www.epa.gov/epcra/amendments-epcra-america-water-infrastructure-act>.

4.6 Public Access to Follow-up Report

EPCRA Section 324 (*see Chapter 8*) requires LEPCs and TEPCs to provide public access to the follow-up reports on releases. As provided in Section 301, LEPCs and TEPCs should have procedures in place for processing requests from the public for information under EPCRA. This includes selecting an official to serve as information coordinator.

4.7 Facilities: Reporting Requirements for Continuous Releases of EHSs and CERCLA Hazardous Substances

CERCLA Section 103(f)(2) and EPA’s implementing regulations at 40 CFR parts 302 and 355 provide a reduced reporting option for “continuous” releases of CERCLA HSs and EPCRA EHSs. This reduced reporting option applies to facilities that release CERCLA HSs or EPCRA EHSs that are “continuous” and “stable in quantity and rate.” For these types of releases, reporting facilities can choose either to 1) report on a per occurrence basis, or 2) report as a “continuous” release.

Continuous release reporting (CRR) regulations for CERCLA and EPCRA are codified at 40 CFR 302.8 and 355.32, respectively. The final rule was published on July 24, 1990 (55 FR 30166): https://www.epa.gov/sites/production/files/2018-08/documents/continuous_release_fr_notice_-_final_rule.pdf.

The purpose of CERCLA Section 103(f)(2) is to reduce reporting of predictable release notifications. CERCLA Section 103(f)(2), however, does not eliminate the requirement to report. Government response officials need to receive notification of all releases that equal or exceed an RQ on a continuous basis, so that the releases can be evaluated and, if necessary, a response action can be taken.

4.7.1 Standard Reporting Requirements for facilities—CRR

The CRR requirements under CERCLA and EPCRA are slightly different. Figure 139 illustrates the type of notification and the information on where to submit continuous release reports for CERCLA HSs and EPCRA EHSs.

To begin the reporting process for continuous releases, the facilities must have a sufficient basis for establishing that the release is continuous and stable in quantity and rate. Once such a basis has been established, the initial telephone notification would be made to the appropriate federal, state, tribal and local officials.

Within 30 days of the initial telephone notification, any person in charge of a facility (or the owner or operator of a facility) is required to submit an initial written report to EPA, SERC or TERC, and LEPC or TEPC. Unlike CERCLA Section 103, EPCRA Section 304 or its implementing regulations do not require facilities to submit a first anniversary report to the state, tribal and local agencies. Figure 19 provides a summary of continuous release reporting requirements under EPCRA and CERCLA. Visit EPA’s website for detailed information at <https://www.epa.gov/epcra/cercla-and-epcra-continuous-release-reporting>.

Continuous Release Reporting Requirements under CERCLA (CERCLA HSs)	Continuous Release Reporting Requirements under EPCRA (EPCRA EHSs and CERCLA HSs)
Step 1: Initial telephone notification to the NRC	Step 1: Initial telephone notification to the SERC or TERC and LEPC or TEPC
Step 2: Initial written notification within 30 days to EPA	Step 2: Initial written notification within 30 days to the SERC or TERC and the LEPC or TEPC
Step 3: A one-time first anniversary follow-up written report to EPA	Step 3: No anniversary report required under EPCRA continuous release reporting.
Step 4: SSI notification to the NRC	Step 4: SSI notification to the SERC or TERC and the LEPC or TEPC.

Figure 19. CRR requirements for facilities.