EPCRA & CERCLA 103 Reporting Requirements

E-Plan Users' Training
November 8-9, 2017

Overview

- Focus on regulatory & legislative requirements related to:
  - Notification for hazardous chemical releases
  - Community emergency planning
- Provide an overview of requirements of:
  - Emergency Planning and Community Right-to-Know Act (EPCRA)
  - Section 103 of the Comprehensive Environmental Response, Compensation, and Liabilities Act (CERCLA)

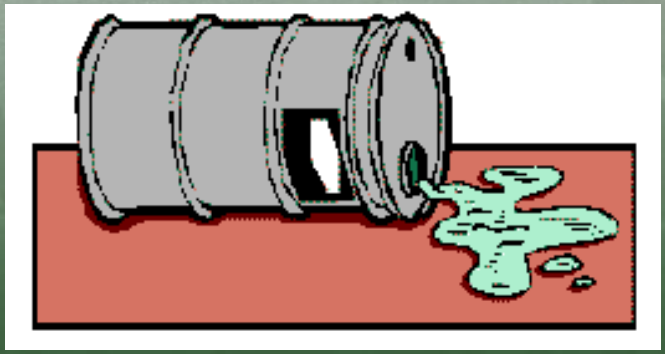
CERCLA Section 103 – Notification Requirements

Statutory & Regulatory Background

- CERCLA (1980)
  - Reportable Quantity (RQ) Adjustments (1985)
  - Reporting Continuous Releases of Hazardous Substances (1990)
- Superfund Amendments and Reauthorization Act (SARA) (1986)
  - Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements (1987)

The Big Picture

- CERCLA
  - Identifies sites that may warrant Superfund response action
  - Mandates notification to federal authorities in case of accidents or emergencies
- EPCRA
  - Mandates notification to state & local authorities in case of accidents or emergencies



The Basics: Reporting a Release

CERCLA Reportable Release

(Hazardous Substance)

↓

Call NRC Immediately

(40 CFR §302.6(a))

EPCRA Reportable Release

(Hazardous Substance or EHS)

↓

Call SERC & LEPC Immediately

(40 CFR §355.40(b)(1))

↓

Written Follow-up Emergency Notice

40 CFR 355.40(b)(3)

CERCLA & EPCRA Notification Requirements

- CERCLA §103
  - Any **person in charge** of a **vessel** or an onshore or offshore **facility** shall, as soon as he has knowledge of any **release**…of a **hazardous substance** from such **vessel or facility** in quantity equal to or exceeding the **reportable quantity**…in any **24-hour period**, immediately notify the NRC
    - 1-800-424-8802
- EPCRA §304
  - Any **facility** at which a hazardous chemical is produced, used or stored and at which there is a **release** of a **reportable quantity** of any **extremely hazardous substance (EHSs)** or **CERCLA hazardous substance**…shall immediately notify the LEPC and SERC

40 CFR §§302.6(a) & 355.40(a)

What is a Facility?

40 CFR §§302.3 & 355.20

What is a Facility?

- Under CERCLA, a *facility* is defined as:
  - Any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container…(§101(9))
- Under EPCRA, a *facility* is defined as:
  - All buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person (§329)

What is a Release?

- *Release* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing *into the environment…*

CERCLA §101(22), 40 CFR §302.3; EPCRA §304, 40 CFR §355.20

Is This into the Environment?

- A *release* directly to
  - Land
  - Air
  - Water

Into the Environment

- A *release* that is
  - Wholly enclosed

Not Into the Environment

Aggregating Releases

Aggregating Releases

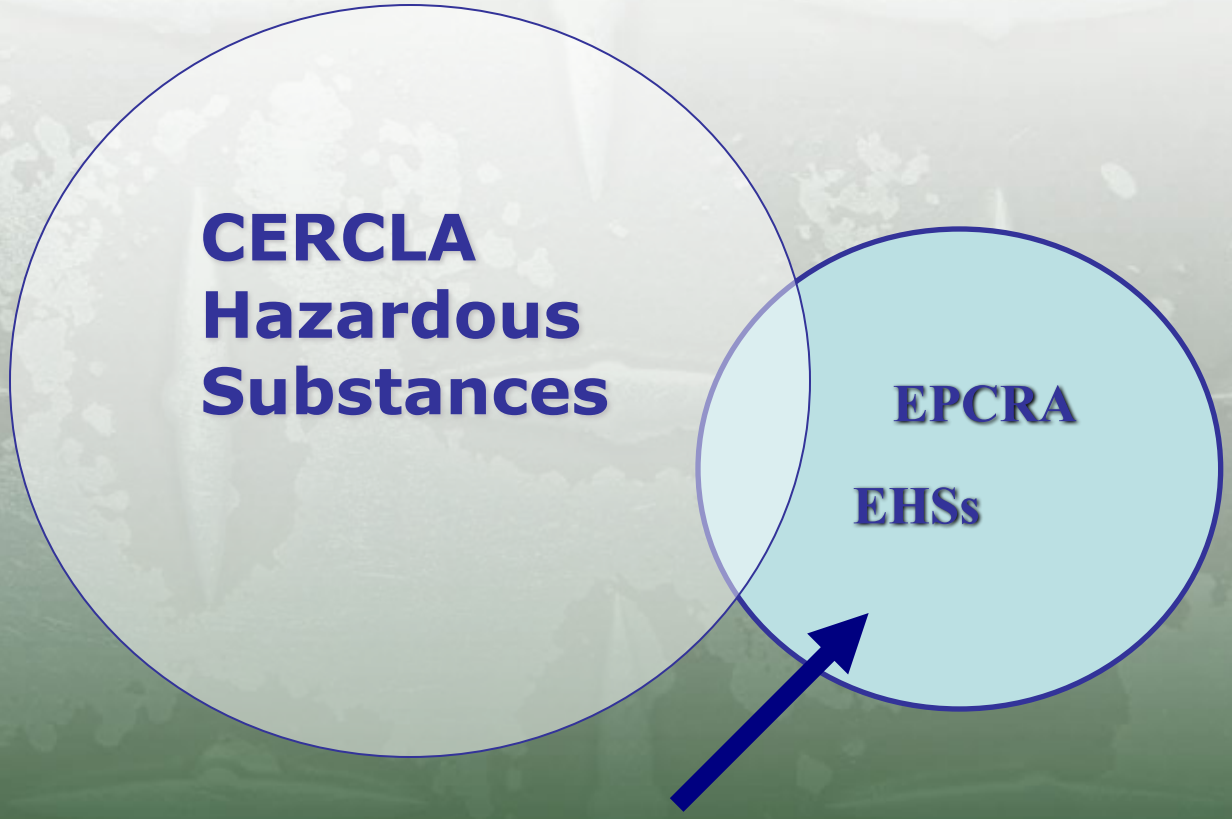
- All releases of same substance from single facility in any 24 hour period must be aggregated to determine whether an RQ has been released from facility into the environment (50 FR 13456, 13459; April 4, 1985)

Time Period of Release

- The total amount of hazardous substance released within any twenty-four hour period must be aggregated & compared with its RQ
- *Immediate notification* required once RQ is equaled or exceeded

50 FR 13456, 13463; April 4, 1985
63 FR 31268, 31283; June 8, 1998

CERCLA & EPCRA Reportable Substances



Non-CERCLA EHSs

Summary
Release Notification

CERCLA

- √ Release
- √ Hazardous Substance
- √ ≥ RQ
- √ From a Vessel *or* Facility
- √ Within any 24-Hour Period

EPCRA

- √ Release
- √ Hazardous Substance *or* EHS
- √ ≥ RQ
- √ From a Facility
- √ Within any 24-Hour Period

➢ Notify NRC

➢ Notify SERC & LEPC
➢ Written Follow-up

WHEN IN DOUBT: REPORT

Relationship Between CERCLA Liability & Reporting

- Failure to comply with CERCLA Section 103 notification requirements may result in fines, per offense, of up to $37,500 and prison sentences of up to three years (or up to five years for second and subsequent convictions)
- Proper and timely reporting of release in accordance with CERCLA Section 103 does not preclude liability for cleanup costs, natural resource damages & costs of any necessary health studies conducted under CERCLA section 104(i)
- A release of CERCLA hazardous substance *below* its RQ does not preclude liability from any damages that may result (including cleanup costs or natural resource damages)

Questions?

Emergency Planning and Community Right-to-Know Act (EPCRA)

Bhopal, India
December 1984

Institute, West Virginia
August 1985

Institute WV Gas Leak

- In August 1985, another Union Carbide plant experienced a toxic gas leak, this time in Institute, WV. More than 100 residents living near the facility were injured.
- In response to the accidents, in 1986, Congress passed the Emergency Planning and Community Right to Know Act (EPCRA), a major advance in the right-to-know movement. As its name suggests, the law focuses on two main areas: emergency planning for chemical releases and public disclosure of threats from toxic chemicals.

Emergency Release Notification (Section 304)

- Applicable if both of these conditions are met:
  - Facility at which hazardous chemical is produced, used or stored; and
  - There is a **release** of a **reportable quantity** (RQ) of any **extremely hazardous substance** (EHS) or **CERCLA hazardous substance**

Emergency Release Notification (Section 304)

- EPCRA notification is in addition to CERCLA release notification requirements:
  - SERC and LEPC (State or area likely to be affected by release)
  - Written follow-up of the notification (as soon as practicable after release)
  - Notify 911 or operator for transportation related-releases

Hazardous Chemical Reporting

- Two parts to hazardous chemical reporting:
  - Safety Data Sheet (SDS) reporting
    - One-time reporting requirement
  - Hazardous chemical inventory reporting
    - Annual hazardous chemical inventory due by March 1

Hazardous Chemical Reporting (section 311)

Requirements:

- Submit SDS or list of hazardous chemicals grouped by hazard category that meet or exceed applicable thresholds to following three entities:
  - State Emergency Response Commission (SERC)
  - Local Emergency Planning Committee (LEPC)
  - Local Fire Department with jurisdiction over facility
- One-time submission
- Supplemental Reporting – Information on new chemicals and significant new information on already submitted chemicals – must be provided within 3 months.

Hazardous Chemical Reporting (section 312)

- Section 312 – Submit Inventory Form (Tier I/Tier II or State form – paper form) for all hazardous chemicals present at facility <u>at any time</u> during previous calendar year in an amount equal to or in excess of applicable thresholds. Report is due March 1 annually.
  - SERC
  - LEPC
  - Local fire department with jurisdiction over facility
- Tier2 Submit or State Electronic format

General Duty Clause

- Owners & operators have general duty to:
  - Identify hazards associated with potential accidental release of an "extremely hazardous substance" using appropriate hazard assessment techniques
  - Design & maintain safe facility, taking steps to prevent releases
  - Minimize consequences of accidental releases which do occur
- Not limited to specific list of chemicals or threshold quantities

Rule Update for Reporting 2017

What is the Effective Date of this Final Rule?
Many states have developed their own software for hazardous chemical inventory reporting. Other states use Tier2 Submit, electronic software developed by EPA. To provide enough time for states (as well as EPA) to modify the software to incorporate the new hazard classes, **this final rule will be effective on January 1st, 2018. This means that, by March 1st, 2018,** facilities are required to report the revised physical and health hazards for their hazardous chemicals present during 2017 calendar year.

What are the Revisions to Hazard Categories for Reporting under Sections 311 and 312?

- The classification of chemicals that OSHA adopted from GHS affect the reporting requirements under EPCRA Sections 311 and 312.
- As stated in the statute, facilities are required to report the quantities, locations, and the potential hazards of the chemicals to the SERC (or TERC), LEPC (or TEPC) and the local fire department.
- Therefore, EPA is revising the existing hazard categories in 40 CFR part 370 to conform to the hazard classes in the revised OSHA HCS.

- In addition to the hazards adopted from GHS, OSHA specifically added three hazards that were not yet covered by GHS. These are simple asphyxiant, combustible dust, and pyrophoric gas.
- In this final rule, EPA is adopting the hazard classes as they are in the revised HCS for reporting under Sections 311 and 312.

Physical and Health Hazards effective January 1st, 2018

Physical Hazard	Health Hazard
Flammable (gases, aerosols, liquids, or solids)	Carcinogenicity
Gas under pressure	Acute toxicity (any route of exposure)
Explosive	Reproductive toxicity
Self-heating	Skin Corrosion or Irritation
Pyrophoric (liquid or solid)	Respiratory or Skin Sensitization
Pyrophoric Gas	Serious eye damage or eye irritation
Oxidizer (liquid, solid or gas)	Specific target organ toxicity (single or repeated exposure)
Organic peroxide	Aspiration Hazard
Self-reactive	Germ cell mutagenicity
In contact with water emits flammable gas	Simple Asphyxiant
Combustible Dust	Hazard Not Otherwise Classified (HNOC)
Hazard Not Otherwise Classified (HNOC)	
Corrosive to metal	