

## **V. HAZARDOUS SUBSTANCES (SUPERFUND LIABILITY) SELF-AUDIT CHECKLIST**

This section contains a checklist and associated background information on the U.S. Environmental Protection Agency's (EPA) hazardous substance requirements. These requirements fall under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as "Superfund") and the Emergency Planning and Community Right-to-Know Act (EPCRA). The requirements of Superfund and EPCRA include emergency planning and release reporting requirements.

The construction site may be affected by Superfund if:

- The site is listed on the National Priorities List (NPL);
- The site is a brownfield site;
- Soil, surface water, or groundwater tests indicate the presence of a hazardous substance, as defined by CERCLA; or
- A hazardous substance, as defined by CERCLA, is discovered during construction or demolition activities.

If the site meets any of the above, site personnel should work with EPA to clean up any hazardous substances. If site personnel discover a hazardous substance at the site, they must notify the National Response Center (1-800-424-8802).

If a CERCLA-listed hazardous substance is released, the site may be subject to reporting requirements. Notify the National Response Center (1-800-424-8802) when there is a hazardous substance release in an amount equal to or greater than the reportable quantity for that substance (CERCLA Section 103(a)).

The construction site may be affected by EPCRA emergency planning requirements if it stores an extremely hazardous substance (EHS) as defined by EPCRA, or any substance regulated by state or local authorities, and stores the substance above the designated Threshold Planning Quantity, which varies by substance. Planning requirements include providing information to State Emergency Response Commissions (SERC) and Local Emergency Planning Committees (LERC).

If a hazardous substance (defined by EPCRA) or an EHS release occurs, the site may be subject to reporting requirements under EPCRA Section 304. However, EPA has found that most construction sites do not produce, use, or store EPCRA-listed hazardous substances or EHS

and are not subject to the requirements of EPCRA. Therefore, this guide provides only a brief discussion and checklist on EPCRA requirements.

The list of hazardous substances subject to CERCLA and EPCRA reporting requirements (and the respective reportable quantities) can be found in EPA's *Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA) and Section 112(r) of the Clean Air Act* (EPA 550-B-01-003, [http://yosemite.epa.gov/oswer/ceppoweb.nsf/vwResourcesByFilename/title3.pdf/\\$File/title3.pdf](http://yosemite.epa.gov/oswer/ceppoweb.nsf/vwResourcesByFilename/title3.pdf/$File/title3.pdf)).

Section VII in Part 1 of this guide and the Background section following the checklist provide more details on the Superfund and EPCRA program requirements.

**CHECKLIST OF SUPERFUND REQUIREMENTS FOR  
CONSTRUCTION ACTIVITIES**

**BACKGROUND INFORMATION**

**Name of Auditor:** \_\_\_\_\_

**Date of Audit:** \_\_\_\_\_

**Name of Project/Site:** \_\_\_\_\_

A “notes” area is provided at the end of each section of this checklist. For every “No” answer, enter a description of the missing information and the action required to bring the site into compliance in the “notes” area.

**PRE-PLANNING ISSUES/APPLICABILITY**

<u>Yes</u>	<u>No</u>	
<input type="checkbox"/>	<input type="checkbox"/>	1. Prior to bidding on a construction project, was the site researched to determine if it is a Superfund site or National Priorities List (NPL) site? EPA’s database is located at: <a href="http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm">http://cfpub.epa.gov/supercpad/cursites/srchsites.cfm</a> .
<input type="checkbox"/>	<input type="checkbox"/>	2. Was a historical review of the construction site conducted to determine the possible presence of hazardous substances? The review should include the following:  <div style="margin-left: 40px;">                     Historical records to determine site’s previous uses.                       Historical aerial photographs to identify potential areas of contamination.                       State/local files to identify past environmental concerns.                 </div>
<input type="checkbox"/>	<input type="checkbox"/>	3. If the site is a Superfund or brownfield property, was it determined whether there are specific issues associated with the site (e.g., are there ongoing or remaining cleanup or long-term maintenance obligations associated with the site)?
<input type="checkbox"/>	<input type="checkbox"/>	4. Have any hazardous substances been discovered during construction or demolition activities?
<input type="checkbox"/>	<input type="checkbox"/>	5. If hazardous substances are suspected, was the soil, surface water, or groundwater sampled and analyzed?

**NOTES / ACTIONS NEEDED TO BRING SITE INTO COMPLIANCE:** \_\_\_\_\_

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**SUPERFUND REQUIREMENTS**

<u>Yes</u>	<u>No</u>	
<b>Brownfield Requirements</b>		
<input type="checkbox"/>	<input type="checkbox"/>	6. Did the site follow the steps of the Brownfields Program if the construction site is a brownfield site? More information is available at the following web site: <a href="http://www.epa.gov/swerosps/bf/index.html">http://www.epa.gov/swerosps/bf/index.html</a> .
<b>If a Hazardous Substance Is Found at the Site</b>		
<input type="checkbox"/>	<input type="checkbox"/>	7. Was the National Response Center (1-800-424-8802) contacted?
<input type="checkbox"/>	<input type="checkbox"/>	8. Did the site coordinate with EPA regarding any necessary site cleanup activities?
<input type="checkbox"/>	<input type="checkbox"/>	9. Did the site properly handle, store, transport, and dispose of the discovered (i.e., generated) waste?
<input type="checkbox"/>	<input type="checkbox"/>	10. Are the documents/records containing hazardous substance information maintained?
<b>If a Hazardous Substance Is Released at the Site</b>		
<input type="checkbox"/>	<input type="checkbox"/>	11. Did the amount of hazardous substance released meet or exceed the reportable quantity (RQ)?

<u>Yes</u>	<u>No</u>	
		12. If the RQ has been met, did the site notify the:
<input type="checkbox"/>	<input type="checkbox"/>	National Response Center (1-800-424-8802)?
<input type="checkbox"/>	<input type="checkbox"/>	State Emergency Response Commission - if the release may potentially affect off-site persons?
<input type="checkbox"/>	<input type="checkbox"/>	Local Emergency Planning Committee - if the release may potentially affect off-site persons?
<input type="checkbox"/>	<input type="checkbox"/>	13. Did the site properly clean up the release (or arrange for proper cleanup)?
<input type="checkbox"/>	<input type="checkbox"/>	14. Did the site provide notice in local newspapers serving the affected area?
<input type="checkbox"/>	<input type="checkbox"/>	15. Are the documents/records about the hazardous substance release maintained?

**NOTES / ACTIONS NEEDED TO BRING SITE INTO COMPLIANCE:** \_\_\_\_\_

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**CHECKLIST OF EPCRA REQUIREMENTS FOR CONSTRUCTION ACTIVITIES**

**BACKGROUND INFORMATION**

**Name of Auditor:** \_\_\_\_\_

**Date of Audit:** \_\_\_\_\_

**Name of Project/Site:** \_\_\_\_\_

<b>Yes</b>	<b>No</b>	
<input type="checkbox"/>	<input type="checkbox"/>	1. Does the site produce, use, or store hazardous substances or extremely hazardous substances (EHS), as defined by EPCRA?
<input type="checkbox"/>	<input type="checkbox"/>	2. If the site produces, uses, or stores hazardous substances or EHS, was the information provided to the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) for planning purposes?
<input type="checkbox"/>	<input type="checkbox"/>	3. If a hazardous substance release occurred, did the release meet the reportable quantity and have the potential to affect off-site persons? If yes, were the SERC and LEPC notified?
<input type="checkbox"/>	<input type="checkbox"/>	4. If a release has occurred, were the necessary response actions performed?
<input type="checkbox"/>	<input type="checkbox"/>	5. Are the documents/records about the hazardous substance release maintained?

**NOTES / ACTIONS NEEDED TO BRING SITE INTO COMPLIANCE:** \_\_\_\_\_

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## BACKGROUND ON HAZARDOUS SUBSTANCES REQUIREMENTS FOR CONSTRUCTION ACTIVITIES

### DEFINITIONS

- **Brownfield.** A property where any expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant, not including sites that are part of a planned or ongoing removal action or are on the National Priorities List.
- **Extremely Hazardous Substances (EHSs).** Chemicals that most likely induce serious acute reactions following short-term airborne exposure (defined at 40 CFR Part 355). The list of extremely hazardous substances subject to EPCRA reporting requirements can be found in EPA's *Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA) and Section 112(r) of the Clean Air Act* (EPA 550-B-01-003). Note that an extremely hazardous substance may also be included in the CERCLA list of hazardous substances.
- **Hazardous Substances.** Defined in CERCLA Section 101(14) and includes hazardous air pollutants (designated in Section 112(b) of the Clean Air Act), radionuclides, toxic pollutants (designated in Section 307(a) of the Clean Water Act), elements and compounds that present an imminent danger to public health when discharged into waters of the United States (designated in Section 311(b)(2)(A) of the Clean Water Act), TSCA substance that EPA has taken action against (currently none), RCRA-listed hazardous wastes and characteristic wastes. The list of hazardous substances subject to CERCLA and EPCRA reporting requirements can be found in EPA's *Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA) and Section 112(r) of the Clean Air Act* (EPA 550-B-01-003). Certain substances are excluded from CERCLA and/or EPCRA reporting requirements.
- **National Priorities List (NPL).** The list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation.
- **Release.** Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance.

- **Reportable Quantity.** Amount of hazardous substance (or extremely hazardous substance) released into the environment within a 24-hour period that must be met or exceeded before emergency release notification requirements are triggered. Reportable quantities are listed in EPA's *Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA) and Section 112(r) of the Clean Air Act* (EPA 550-B-01-003).

### **SUPERFUND APPLICABILITY**

The construction site may be affected by Superfund and federal cleanup activities if it is a brownfield site, listed on the NPL, or CERCLA-defined hazardous substances are present at the site. If a CERCLA-listed hazardous substance is discovered during construction/demolition activities or based on soil, air, or water test results, the National Response Center (1-800-424-8802) must be notified.

If a hazardous substance is released into the environment, the site may be subject to reporting requirements. Notify the National Response Center (1-800-424-8802) when there is a hazardous substance release in an amount equal to or greater than the reportable quantity for that substance (CERCLA Section 103(a)). Depending on the substance, the reportable quantity may be 1, 10, 100, 1,000, or 5,000 pounds within a 24-hour period.

EPA uses these notifications to identify sites that require federal response (i.e., cleanup). CERCLA was originally enacted to address hazardous substances at inactive or abandoned sites. The Superfund program is administered by EPA in cooperation with individual states and tribal governments. The program includes a revolving Trust Fund used by EPA and other agencies to clean up hazardous waste sites where no responsible party can be identified. Site personnel should work with EPA to clean up any discovered or released hazardous substances.

Responsibility for the cleanup of hazardous waste usually falls on the "generator" (i.e., person whose activity first produces the waste). However, if soils containing a hazardous substance (e.g., waste pesticides) are excavated or spread, site personnel may be responsible under CERCLA as an operator, arranger, or transporter. For example:

- Site personnel may be an operator if they spread soil that contains a hazardous substance on the land.
- Site personnel may be an arranger if they dispose of a hazardous substance or arrange to have it removed from the construction site. For example, if soil that contains pollutants buried by a previous owner is excavated and spread, the person who spread the soil may be liable for disposal of a hazardous substance.



- Site personnel may be a transporter if they move a hazardous substance from one location to another. For example, they may be liable if they transport dioxin-contaminated soil even if they did not know the soil contained dioxin.

## **SUPERFUND REQUIREMENTS**

### ***Hazardous Substance Discoveries***

If hazardous materials or contaminated soil, surface water, or groundwater are discovered at the construction site, the National Response Center must be notified at 1-800-424-8802. The site may be entered into the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), EPA's computerized inventory of potential hazardous substance release sites. When this happens, the responsible parties should work with EPA to evaluate the severity of the problem and develop remedies. The evaluation includes determining the potential for a release of hazardous substances from the site through these steps in the Superfund cleanup process:

- Preliminary Assessment/Site Inspection (PA/SI) - Investigate the site conditions;
- Hazard Ranking System (HRS) Scoring - Based on the results of the PA/SI, rate the site and determine if it should be placed on the NPL; and
- NPL Site Listing Process - Based on the HRS score, EPA lists the most serious of the sites for further investigation and possible long-term cleanup.

If the construction site is placed on the NPL, the responsible parties must work with EPA to conduct several steps to clean up the site, including:

- Remedial Investigation/Feasibility Study (RI/FS) - Investigate the NPL site to determine the nature and extent of contamination as well as the potential treatment options;
- Records of Decision (ROD) - Use the results of the RI/FS to explain which cleanup alternatives will be used at the NPL site;
- Remedial Design/Remedial Action (RD/RA) - Design the cleanup technology and begin the site cleanup process;
- Construction Completion - Complete any required construction activities or remove the site from the NPL; and

- Postconstruction Completion - Once construction is complete, begin cleanup and maintenance programs that will provide for the long-term protection of human health and the environment.

### ***Superfund Release Reporting***

If there is a hazardous substance release exceeding the reportable quantity for CERCLA at the site, the National Response Center must be notified immediately at 1-800-424-8802. The State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) should also be notified if the release may affect off-site persons. In addition to these notifications, a notice must be published to potentially injured parties in local newspapers serving the affected area.

The CERCLA definition of release specifically excludes emissions from engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engines; certain releases of nuclear materials; the normal application of fertilizers in accordance with product instructions; and application of pesticide products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Federally permitted releases are also excluded from the CERCLA (and EPCRA) notification requirements, including releases regulated by National Pollutant Discharge Elimination System (NPDES) permits, Dredge and Fill (Clean Water Act Section 404) permits, RCRA-permitted units, clean dumping and incineration permits, Clean Air Act permits, publicly owned treatment works (POTW) pretreatment agreements, and nuclear materials under the Atomic Energy Act.

### **EPCRA PLANNING AND REPORTING APPLICABILITY**

The construction site may be affected by EPCRA emergency planning requirements if it stores an extremely hazardous substance (EHS), or any substance regulated by the state or local authority, and stores the substance above the designated Threshold Planning Quantity, which varies by substance. Planning requirements include providing information to SERCs and LERCs. EHSs are defined at <http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/chemicalinfo.htm>, Threshold Planning Quantities can be found at [http://yosemite.epa.gov/oswer/ceppoweb.nsf/vwResourcesByFilename/title3.pdf/\\$File/title3.pdf](http://yosemite.epa.gov/oswer/ceppoweb.nsf/vwResourcesByFilename/title3.pdf/$File/title3.pdf).

To trigger EPCRA Section 304 reporting requirements, the construction site must:

- Release a hazardous substance or EHS (as defined by EPCRA) with the potential to affect off-site persons; AND

- Release the hazardous substance or EHS in an amount that meets or exceeds the reportable quantity within a 24-hour period; AND
- Produce, use, or store the hazardous substance or EHS.

### **EPCRA PLANNING AND REPORTING REQUIREMENTS**

If EPCRA applies to the construction project, the SERC/LEPC may require information on the presence of hazardous chemicals and their releases (accidental or routine). In addition, the SERC/LEPC may have additional requirements. EPA has found that most construction sites are not subject to EPCRA requirements.

If the site produces, uses, or stores a hazardous substance or EHS defined by EPCRA, it may be subject to reporting requirements. Notify the SERC and LEPC when there is a release in an amount equal to or greater than the reportable quantity for that substance (EPCRA Section 304(a)) and the release may potentially affect off-site persons. The notice to the SERC and LEPC must include:

- The chemical name or identity of any released substance;
- Indication of whether the substance is an EHS;
- Estimate of amount released into the environment;
- Time and duration of the release;
- Medium or media into which the release occurred;
- Any known or anticipated acute or chronic health risks associated with the emergency, and, where appropriate, advice regarding medical attention necessary for exposed individuals;
- Proper precautions to take as a result of the release (unless already readily available to the community emergency coordinator); and
- Contact names and numbers.

Federally permitted releases are excluded from the EPCRA notification requirements, including releases regulated by NPDES permits, Dredge and Fill (Clean Water Act Section 404) permits, RCRA-permitted units, clean dumping and incineration permits, Clean Air Act permits, POTW pretreatment agreements, and nuclear materials under the Atomic Energy Act.