



CHEMICAL EMERGENCY PREPAREDNESS AND PREVENTION IN INDIAN COUNTRY

The Emergency Planning and Community Right-to-Know Act (EPCRA) and the Clean Air Act's (CAA) chemical accident prevention provisions in section 112(r) require facilities to provide information on the presence of hazardous chemicals in communities. These laws have built better relationships among government at all levels, business and community leaders, environmental and other public-interest organizations, and individual citizens. The purpose of this fact sheet is to familiarize tribal leaders with EPCRA and CAA Section 112(r) Chemical Accident Prevention Program requirements. The information available under these laws can promote an integrated approach to chemical safety on tribal lands.

HOW DO EPCRA AND CAA APPLY TO TRIBAL LANDS?

EPCRA and the CAA Section 112(r) Chemical Accident Prevention Program require facilities to report on hazardous chemicals they store or handle. These two laws provide an array of complementary information on what chemicals are in the community, what chemicals are present at each location, what hazards these chemicals pose, what chemical releases have occurred in the area, and what steps industry is taking to prevent additional accidents.

Both laws give the public access to these reports. The information can be used to enhance the community emergency response plan and protect local communities from chemical hazards. Because of the importance of making this information available to all communities, EPA recognized tribal governments as the appropriate implementing authority of EPCRA in Indian Country. Through regulation, federally recognized tribes have the same role as states in the development of chemical emergency preparedness programs under EPCRA. In addition, the CAA provides that eligible federally recognized tribes may implement provisions of the CAA in the same manner as states within reservations and non-reservation areas under their jurisdiction.

WHAT ARE TRIBAL ROLES UNDER EPCRA?

Under Sections 301-303 of EPCRA, states form State Emergency Response Commissions (SERCs). Similarly, tribal chief executive officers appoint Tribal Emergency Response Commissions (TERCs) to accomplish the following:

- Designate local emergency planning districts as needed.
- Appoint a local emergency planning committee (LEPC) to serve each of the districts.
- Coordinate and supervise LEPC activities.
- Coordinate proposals for and distribution of federal grant funds for TERCs and/or tribal LEPCs.
- Review LEPC plans and recommend any needed changes.
- Establish procedures for receiving and processing public requests for information collected under EPCRA.
- Obtain further information about a particular chemical or facility, when needed.

Forming a TERC

Through TERCs, tribes can ensure the development of an emergency planning and implementation structure relevant to community needs. Additionally, TERCs can provide training, technical assistance, and information to communities within Indian Country so that persons know what to do in the event of a chemical accident.

There are several options available to tribes in the implementation of EPCRA programs. A tribe may choose to enter into cooperative agreements with another tribe, a consortium of tribes, or the state within which its lands are located to develop an EPCRA program that meets specific tribal needs. Some examples of EPCRA implementation include:

- A tribe may directly implement the program within Indian Country.
- Through a cooperative agreement with the SERC, a tribe may choose to implement some, but not all of the law's requirements, while the state implements the remainder.
- A tribe authorizes the SERC to perform the functions of the TERC within Indian Country and the tribe establishes an LEPC or joins an off-reservation LEPC that works directly with the SERC through a cooperative agreement.

The tribal chief executive officer operates as the TERC when a TERC is not established or a cooperative agreement is not developed.

LEPC Responsibilities

Local circumstances will determine how extensive a chemical safety program should be. Tribes often find that the TERC itself can accomplish the work of the LEPC. However, if an LEPC is formed, its membership must include, at a minimum, local officials such as police, fire, civil defense, public health, and transportation; environmental professionals; industry representatives of facilities subject to the emergency planning requirements of EPCRA; community groups; and the news media.

Among other things, LEPCs develop a contingency plan to prepare for and respond to emergencies involving hazardous substances in their communities. The plans should be reviewed, exercised, and updated annually and should include:

- Identity and location of hazardous materials.
- Procedures for an immediate response to a chemical accident.
- Public notification of evacuation or shelter-in-place procedures.
- Industry contact names.
- Timetables for testing and updating the plan.

Chemical facilities are required to notify LEPCs of emergency releases and to submit annual information on their hazardous chemical inventory (see the "What Information Is Needed?" section of this fact sheet). This information can help the LEPC keep its plan and response procedures up to date.

WHAT ARE TRIBAL ROLES UNDER THE CAA SECTION 112(R) CHEMICAL ACCIDENT PREVENTION PROGRAM?

Under CAA section 112(r), all chemical facilities with processes exceeding a threshold quantity for 77 acutely toxic substances (such as chlorine and ammonia) and 63 highly volatile flammable substances (when not used as a fuel), must implement a Risk Management Program. An example of

a facility subject to the Chemical Accident Prevention Program requirements would be a drinking water facility holding more than 2,500 pounds of chlorine. All facilities subject to such requirements must submit a summary of the program, known as a risk management plan (RMP) to EPA. The RMP includes:

- The facility hazard assessments, including worst-case release and alternative release scenarios.
- The facility accident prevention activities, such as the use of special safety equipment, employee safety training programs, and process safety hazards analyses conducted by the facility.
- The past chemical accidents at a facility.
- The management system in place at the facility.
- The facility's emergency response program.

There are special procedures for the public to access RMPs. These procedures are described in the fact sheet *Chemical Safety Information, Site Security and Fuels Regulatory Relief Act: Public Distribution of Offsite Consequence Analysis Information* at: <http://www.epa.gov/emergencies/docs/chem/ocafactsheet.pdf>.

Tribes that EPA finds eligible for treatment in the same manner as a state under the Clean Air Act Tribal Air Rule (40 CFR part 49) can apply for authorization to administer the Chemical Accident Prevention Program. If the tribe passes its own chemical safety legislation, it should ensure that its program is at least as stringent as the federal law in order to strengthen enforcement capabilities. For more information on how to receive delegation for your tribe, see *Risk Management Programs Under CAA Section 112(r) - Guidance for Implementing Agencies* (<http://www.epa.gov/oem/docs/chem/iquidfnl.pdf>).

WHAT INFORMATION IS NEEDED?

Regulatory requirements, by themselves, do not guarantee safety from chemical accidents. Both EPCRA and the Chemical Accident Prevention Program encourage communication between facilities and the surrounding communities about chemical safety and chemical risk. In this way, accident prevention is focused at the local level where the risk is found. For example, talking with industry about both the quantities of a chemical and a facility's prevention program allows local emergency officials and the tribe as a whole to gain a clearer picture of the chemical risks within Indian Country.

Under EPCRA, you receive information from covered facilities on the chemicals they have, the quantities of chemicals stored, the hazards associated with those chemicals, and information on storage locations and conditions.

In addition to the RMP database information, TERCs and LEPCs can access offsite consequence analysis (OCA) information about facilities that have submitted a RMP. A TERC or tribal LEPC member can receive the information directly from EPA for official use (e.g., to incorporate the information into their emergency preparedness plans). For more information on how to access the OCA information, visit the OEM Web site (<http://www.epa.gov/oem/content/rmp/readingroom.htm>).

HOW CAN TRIBES USE THIS INFORMATION?

Combining the EPCRA and Chemical Accident Prevention Program information allows tribes to gain a better understanding of the chemical risks within Indian Country. For example, what precautions are

in place to avoid a chemical release? Is a facility near a medical clinic or a highly traveled area? What procedures have been developed to notify and assist the people affected by an accidental release? Has the fire department coordinated with the facility to determine the best response procedures? If the tribe does not have a fire department, are mutual aid agreements in place with non-tribal departments? Using the chemical information available to you opens a new avenue of communication between you and the chemical facilities within Indian Country.

These programs also offer tribes an opportunity to partner with other tribes, states, and/or towns that border Indian Country. In reviewing your emergency response plan, do you see some sections that need to be updated or otherwise improved? Are there chemical risks in a locality bordering your community that need to be addressed? Some tribes have developed memorandums of agreement (MOAs) and/or mutual aid agreements with their neighbors in order to meet these needs, thereby creating better prevention and response plans.

WHAT ELSE SHOULD TRIBES CONSIDER?

EPCRA can provide tribes with the following:

- Notification from facilities that have extremely hazardous substances (EHSs) in excess of a certain threshold (EPCRA sections 302 and 303).
- Notification from facilities if there is an accidental chemical release of an EHS or any hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This information is reported to the TERC and LEPC community emergency coordinator (EPCRA section 304).
- Material Safety Data Sheets (MSDSs) or lists of hazardous chemicals. MSDSs contain chemical-specific information such as type of chemical, toxicity, hazard category, and emergency response procedures. This information and emergency and hazardous chemicals inventory forms (Tier I/II) are directly reported to the TERC/LEPCs and the appropriate fire department (EPCRA sections 311 and 312).
- Information on planned releases of toxic chemicals from regulated facilities through the Toxics Release Inventory (TRI) database (EPCRA section 313).

Chemical Releases Due to Criminal Actions

TERCs and LEPCs should also address the possibility of deliberate chemical releases in their emergency response plans. For example, accidental releases often occur when illegal drug makers steal anhydrous ammonia to produce methamphetamines. Another possible scenario would be a terrorist incident. TERCs and LEPCs should use already established mechanisms, when applicable, to address these issues rather than creating new organizations. Several sections of a tribe's response plan, including emergency contact information, response functions, and hazards analysis, should be evaluated to consider the effect of a deliberate release. The EPA Chemical Safety Alerts *Anhydrous Ammonia Thefts* and *LEPCs and Counter-Terrorism* provide more information on this topic (<http://www.epa.gov/oem/publications.htm#alerts>).

EPCRA Section 326 Considerations

EPCRA section 326 allows citizens to initiate civil actions against EPA, SERCs, and the owner or operator of a facility for failure to meet EPCRA requirements. The EPA rulemaking designating federally recognized Indian tribes as the EPCRA implementing authority does not preclude the use of sovereign immunity defense on legal actions against Indian tribes or tribal officials.

WHAT RESOURCES ARE AVAILABLE?

Chemical Data Sources

These are several Web sites that provide information to help you implement EPCRA and the CAA Chemical Accident Prevention Program:

- Profiles of the EPCRA extremely hazardous substances are available at: www.epa.gov/emergencies.
- Information on accidental releases reported under EPCRA is available through the National Response Center at: <http://www.epa.gov/emergencies/content/learning/response.htm>. Material Safety Data Sheets (MSDS) do not have a standard format and can sometimes be confusing. On-line databases, which often have multiple versions of MSDSs for individual chemicals, can assist in finding an MSDS that is well organized and easy to read. Online copies of MSDSs are maintained by universities at www.hazard.com.
- TRI and RMP data can be accessed through Envirofacts at www.epa.gov/enviro. Envirofacts also provides data on facilities that have:
 - Permits to release substances to water, in the Permit Compliance System database.
 - Permits to release hazardous pollutants to air, in the air release database.
 - Permits to store and treat hazardous wastes, in the RCRA database.

Guidance

To help officials as they develop their emergency plans, the National Response Team (NRT) has published the *Hazardous Materials Emergency Planning Guide* (NRT-1), which is available at www.nrt.org. In addition, the Federal Emergency Management Agency (FEMA) has published the *State and Local Guide (SLG) 101: Guide for All-Hazard Emergency Operations Planning*, which tells emergency planners how to identify hazards in the planning district, determine vulnerable zones for each hazard, assess risk, and then set priorities among hazards and begin to develop an emergency plan. This publication is available at <http://www.fema.gov/plan/gaheop.shtm> or by calling FEMA's Printing and Publications Branch at 1-800-480-2520.

EPA has also published documents to help industry comply with the reporting provisions of EPCRA and to help Tribal and local officials manage and analyze the information submitted. One of these documents is a fact sheet entitled *The Emergency Planning and Community Right-to-Know Act* (EPA 550-F-00-004), which is available at: <http://www.epa.gov/oem/docs/chem/epcra.pdf>.

EPA and FEMA staff also help TERCs administer EPCRA and understand the Chemical Accident Prevention Program by sponsoring workshops; speaking at TERC and LEPC meetings; providing guidance for developing and testing local emergency plans; and managing, understanding, and communicating the information submitted under EPCRA.

OEM has published several guidance documents that may assist TERCs and LEPCs with the Chemical Accident Prevention Program requirements. Examples of current guidance documents include the following:

- *Risk Management Programs Under CAA Section 112(r) - Guidance for Implementing Agencies* (EPA 550-B98-002) at: <http://www.epa.gov/emergencies/docs/chem/iquidfml.pdf>
- *Guidance for Auditing Risk Management Plans/Programs under Clean Air Act Section 112(r)* (EPA550-B99-008) at: http://www.epa.gov/emergencies/docs/chem/audit_gd.pdf

OEM has also published a *Chemical Safety Network series*, which shares successful practices in RMP implementation, risk communication, and use of the data.

These documents are available electronically on the OEM Web site. Copies of EPA guidance documents can be obtained by calling EPA's distribution warehouse at 1-800-490-9198.

Software

Computer-Aided Management of Emergency Operations (CAMEO) is a software program that can assist you to manage and use information collected under EPCRA and conduct a community hazards analysis. It also includes response information for over 3,000 chemicals commonly transported in the United States. CAMEO can be accessed at:

<http://www.epa.gov/emergencies/content/cameo/request.htm>

*RMP*Comp* helps users complete the offsite consequence analysis that is required under the Chemical Accident Prevention Program. RMP*Comp can be used to verify data submitted by industry. When RMP*Comp is used, by hand calculations are not necessary; the program guides the user through the process of making an analysis. RMP*Comp is available at:

http://www.epa.gov/oem/content/rmp/rmp_comp.htm.

Financial Assistance

One comprehensive source of financial assistance information is the *Tribal Environmental and Natural Resource Assistance Handbook* produced by the Domestic Policy Council Working Group on American Indians and Alaska Natives. This handbook provides a central location for federal sources of technical and financial assistance available to tribes for environmental management. The handbook is available at: www.epa.gov/indian.

The Department of Transportation's Hazardous Materials Emergency Preparedness (HMEP) grant program is intended to provide financial and technical assistance to enhance state, territorial, tribal, and local hazardous materials emergency planning and training. The HMEP Grant Program distributes fees collected from shippers and carriers of hazardous materials to emergency responders for hazmat training and LEPCs for hazmat planning. For more information, visit <http://www.phmsa.dot.gov/hazmat/grants> or call 202-366-0001.

FEMA has a grant program to fund six major firefighting preparedness categories: training, wellness and fitness programs, vehicles, firefighting equipment, personal protective equipment, and fire prevention programs. Visit FEMA's Web page at www.fema.gov.

EPA Regional Contact Information

EPA has Regional representatives that can provide you with more information on the subjects discussed in this fact sheet. Please contact the Call Center or use the OEM Web site to find the appropriate EPA Regional point of contact.

WHERE CAN MORE INFORMATION BE FOUND?

Visit EPA's Office of Emergency Management (OEM) Web site at: <http://www.epa.gov/emergencies>.

Contact the Superfund, TRI, EPCRA, RMP, & Oil Information Center (Call Center):

800-424-9346 or TDD 800-553-7672

703-412-9810 or TDD 703-412-3323 in the Washington, D.C. area

Monday – Thursday, 10:00 a.m. – 3:00 p.m. EST

Extended Hours of Operation (May, June, and July)

Monday – Friday, 9:00 a.m. – 5:00 p.m. EST

All EPA documents can be ordered for free from the National Service Center for Environmental Publications (NSCEP) by calling 800-490-9198 or via the Web site at: <http://www.epa.gov/nscep/>.