

NJ SERC Guidance to LEPCs Emergency Planning and Community Right to Know Act

Overview of Requirements for
Emergency Response Plans
&
Public Access

Purpose of Presentation

- This is not an extensive overview of the Emergency Planning and Community Right to Know Act (EPCRA)
- The focus is on two areas:
 - Emergency Response Plans (ERPs)
 - Public Access & Notification
- Background:
 - The EPCRA program began in the 1980s and addresses preparedness and planning for hazardous chemical storage at specific facilities
 - ERPs must contain 9 specific categories of information
 - EPCRA requires that ERPs and other documents must be made available to the public, but under limited circumstances
- Contents of presentation:
 - Broad overview of Subtitles A & B
 - Detail on ERPs & public access requirements to comply with EPCRA

Emergency Planning and Community Right to Know Act

- Subtitle A
 - Emergency Planning and Notification
 - State Emergency Response Commission (SERC) & Local Emergency Planning Committee (LEPC) Establishment
 - Substances & Facilities Covered & Notification
 - Comprehensive Emergency Response Plans
 - Emergency Notification
 - Emergency Training & Review of Emergency Systems
- Subtitle B
 - Reporting Requirements
 - Material Safety Data Sheets
 - Emergency & Hazardous Chemical Inventory Forms
 - Toxic Chemical Release Forms
- Public Access & Publication

Subtitle A

Emergency Planning & Notification

- SERC & LEPC establishment: (42 USC § 11001)
 - Governor Kean Executive Order #161 in 1987 established the NJ SERC
 - NJ SERC established the NJ LEPCs
- Substances and Facilities subject to EPCRA (42 USC § 11002)
 - Substances are subject to EPCRA if contained in the Environmental Protection Agency's published "list of extremely hazardous substances"
 - Facilities are subject to EPCRA if:
 - an "extremely hazardous substance" is present at the facility and
 - in an amount in excess of the threshold quantity established in EPA regulations
- **Emergency Response Plans (42 USC § 11003)**
 - **LEPCs complete ERPs and review at least annually**
- Emergency Notification (42 USC § 11004)
 - Owners/operators must provide notices if extremely hazardous substances are released from their facilities, including follow-up notices
- Emergency Training (42 USC § 11005)
 - EPCRA authorizes Federal trainings and grants to support them

Subtitle B

Reporting Requirements

- Material Safety Data Sheets (42 USC § 11021)
 - Owner or operator of a facility required to have a MSDS under the Occupational Safety and Health Act of 1970 (OHSA) submits a MSDS for each chemical or a list of chemicals to the SERC, LEPCs, and fire departments
- Emergency and Hazardous Chemical Inventory Forms (42 USC § 11022)
 - The owner or operator of a facility required to have a MSDS under OSHA submits an emergency and hazardous chemical inventory form to the SERC, LEPCs, and fire departments
 - Contains Tier 1 & Tier 2 information for the preceding calendar year
- Toxic Chemical Release Forms (42 USC § 11023)
 - An owner or operator of a facility completes a toxic chemical release form for each toxic chemical that was manufactured, processed, or otherwise used above threshold quantities during the preceding calendar year at a facility

Emergency Response Plan Requirements, Part 1

Nine Minimum requirements for ERPs:

1. Identification

- Facilities subject to EPCRA
- Routes used for transporting substances subject to EPCRA
- Other facilities contributing or subject to risk based on proximity to EPCRA facilities
 - Ex: natural gas facilities (contributing to) or hospitals (subject to)

2. Response Procedures

- Procedures for owners and operators of facilities and local emergency management personnel to respond to release of EPCRA substances

3. Emergency Coordinators

- List of emergency coordinators for the community and for each EPCRA facility

4. Notification Procedures

- For substances released by EPCRA facilities—procedures for timely notification by community and facility emergency coordinators to emergency management personnel and the public

Emergency Response Plan Requirements, Part 2

5. Release Detection & Impact
 - Identify methods for determining the occurrence of a release and the area or population likely to be affected by it
6. Emergency Equipment & Facilities
 - List emergency equipment and facilities in the community and at each facility and the person(s) responsible for them
7. Evacuation Plans
 - Include community evacuation plans and alternate traffic routes
8. Training Programs
 - List training programs available related to EPCRA & their schedules
9. ERP Exercises
 - Include the methods and schedules for exercising the ERP

Emergency Response Plan Requirements, Part 3

- NJOEM Template
 - NJOEM has developed a template for creating an ERP
 - The template includes the 9 minimum areas previously discussed
 - LEPCs must include those 9 areas; additional information is discretionary
- Relationship with EOP Hazmat Annexes
 - EOP hazmat annexes may already incorporate some of the information required in an ERP
 - But unless all ERP requirements are included, the EOPs do not satisfy EPCRA
 - To comply with EPCRA, LEPCs have a choice:
 - Maintain two separate plans: ERP and EOP hazmat annex; OR
 - Maintain only EOP hazmat annex: it must incorporate all ERP requirements
 - But note public access requirements (next topic)
 - EPCRA requires that ERPs be accessible to the public; no such requirement for EOPs
 - Using a hazmat annex to comply with ERP requirements may subject that annex to public disclosure

Public Availability of Plans, Data Sheets, Forms, and Follow-up Notices, Part 1

- EPCRA mandates public access to the ERP and other documents (42 USC § 11044)
- LEPCs must make available the following:
 - ERP
 - MSDS
 - List of hazardous chemicals requiring a MSDS
 - Emergency and Hazardous Chemical Inventory Forms
 - Toxic chemical release forms
 - Follow-up emergency notices
- The next slide discusses how the above documents are made available to the public

Public Availability of Plans, Data Sheets, Forms, and Follow-up Notices, Part 2

- Access to the ERP and other documents is limited
 - Requirement is to provide access to documents:
 - During normal working hours
 - At the location(s) determined by the LEPC
 - Ex: A LEPC provides public access to an ERP and other EPCRA documents in a “reading room” (that is, no electronic copying or photography permitted) at the Town Hall between 9:00AM-5:00PM
 - See 42 USC § 11044(a) for further information
- Note: EPCRA permits owners or operators of facilities to request that specific information be withheld from public disclosure as trade secrets or if categorized as Tier II chemicals

Public Availability of Plans, Data Sheets, Forms, and Follow-up Notices, Part 3

Notice of Public Availability

- LEPCs must publish an annual notice in local newspapers that the following information has been submitted pursuant to EPCRA:
 - ERP
 - MSDS
 - Emergency and Hazardous Chemical Inventory Forms
 - A statement that Follow-up Emergency Notices may be issued
- The notice must also announce the location where members of the public may review the EPCRA documents received by the LEPC

Emergency Operations Plans & OPRA

- A SERC or a county or local OEM may receive OPRA requests for access to that agency's EOP
- Do not confuse OPRA requests for EOPs with EPCRA's public access requirements for ERPs
- Disclosure of an EOP under OPRA is different than public access of an ERP under EPCRA
 - But be aware that incorporating an ERP into an EOP may subject some or all of that EOP to disclosure under EPCRA's public access requirements
- NJOEM cannot offer legal advice to a LEPC or a local or county OEM, but provides the following information that may be useful for municipal or county counsel when reviewing OPRA requests for EOPs
- McGreevey Executive Order 21 (2002), Paragraph 1(a) exempts the following from the definition of a "government record" and from that, disclosure under OPRA:
 - "Any government record where the inspection, examination or copying of that record would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, of which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism"
 - Note that this provision applies to all levels of government—State, county, municipal, and school district
- Also see the Government Records Council's decision in Complaint No. 2005-193 that denied an OPRA request for a county's EOP based on E.O. 21, Paragraph 1(a)

Next Steps

- Create ERP or modify existing EOP to satisfy ERP requirements
- Ensure that the LEPC has MSDS, chemical lists, inventory forms, and toxic chemical forms as required by EPCRA
- Designate a reading room or other location to comply with the public access requirements
- Publish the required notice announcing the receipt of documents and public access location