

USG Hazmat Voluntary Notification Process

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT and PUBLIC EMPLOYEE HAZARDOUS CHEMICAL PROTECTION AND RIGHT-TO-KNOW ACT

Among the Environmental Health and Safety regulations that the University System of Georgia (USG) institutions must understand for compliance, there are two program areas that have similar names and scopes but emphasize very different regulatory and compliance guidelines. One is the Environmental Protection Agency (EPA) Emergency Planning and Community Right-to-Know Act (EPCRA). The other is the Georgia Public Employee Hazardous Chemical Protection and Right-to-Know Act (RTK). Both EPCRA and RTK regulations focus on disclosure of information concerning chemicals and the “right to know”, and these similarities can cause confusion for USG Health and Safety professionals responsible for maintaining safe workplaces and regulatory compliance. This document serves as guidance and provides a summary of the compliance requirements of both the federal and state regulations and what USG institutions need to do to satisfy the federal and state regulatory requirements and the USG Board of Regents (BOR) requirements.

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- Attachment A Flow Chart of CERLCA 103 and EPCRA Reporting Requirements
- Attachment B EPA Memo Summarizing Tier II Reporting of Lead Acid Batteries

1. EPCRA REGULATORY OVERVIEW

EPCRA focuses on improving public access to chemical information and facilitating state and local emergency preparedness. There are five sections to the EPCRA reporting regulations, Section 302, 304, 311, 312, and 313. Each section has specific requirements that apply in different situations. The requirements of each of these EPCRA sections is described below. There is a flow chart in Attachment A at the end of this document that provides a visual summary of the requirements of each section

The EPCRA regulations generally apply to any campus that stores or manages 10,000 pounds or more of any hazardous chemical, or lower amounts of certain designated extremely hazardous substances (EHS). There is an exemption from EPCRA 311 and 312 for chemicals used for research purposes discussed below in the “Hazardous Chemical Notification and Inventory Reporting” section. This exemption only applies to Sections 311 and 312. An institution that has more than one campus or location needs to determine the possible applicability of each campus/location separately.

1.1 Emergency Planning and Notification (EPCRA Section 302)

The EPCRA regulations set out a list of approximately 300 chemicals that are designated as EHS. This chemical list can be found in two different ways:

- by name in alphabetical order at 40 CFR Part 355 Appendix A
<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-355/appendix-Appendix%20A%20to%20Part%20355>
- by CAS number at 40 CFR Part 355 Appendix B
<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-355/appendix-Appendix%20B%20to%20Part%20355>

Each chemical has a designated threshold planning quantity (TPQ) and a reportable quantity (RQ). If an EHS is present at a USG campus in an amount equal to or exceeding the TPQ, the campus is subject to EPCRA's emergency planning requirements. The TPQ is based on the total amount of that chemical across a campus. Also, EPCRA section 302 covers all EHS at a campus and there is no exemption for chemicals used for research purposes. If this section applies, the institution must appoint an emergency coordinator to participate in the local emergency planning process on behalf of the campus. If the institution has more than one campus where the regulation applies, it may designate the same person for all campuses, or different persons, as it determines to be the best arrangement. The institution must also notify the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) as to who the emergency coordinator is, and any changes at the institution relevant to emergency planning. The notice should be a letter sent to both the SERC and the LEPC with a copy kept in the institution files to document that the institution complied with this requirement. The notice needs to be sent once, and only sent again if there is a new emergency coordinator. Institutions can use e-plan to satisfy this requirement.

1.2 Emergency Release Notification (EPCRA Section 304)

As mentioned above, each EPCRA EHS listed in 40 CFR part 355 (*Appendix A / Appendix B*) has a designated RQ. A USG institution must report any release of an EPCRA EHS that equals or exceeds a RQ within any 24-hour period.

In 40 CFR Part 355.31 (<https://www.ecfr.gov/current/title-40/section-355.31>), **there are several exemptions** from this notification requirement. One exemption, in 40 CFR 355.31(a), that may apply to a USG institution, exempts “any release that results in exposure to persons solely within the boundaries of your facility.” (in this instance, a facility is an entire contiguous campus, even if there are public roadways through the campus).

EPCRA section 304 covers all chemicals at a campus, and there is no exemption for chemicals used for research purposes.

If a release is not exempt, it is important to comply with emergency release notification requirements. There are two separate notification requirements:

- An immediate notification by phone; attached is a template listing the agencies to be contacted and the information that must be included in an immediate notification.
- As soon as practicable thereafter a written follow-up emergency notification (or notifications as more information becomes available) must be submitted to the same agencies.
- Notification is to the SERC(s) and LEPC(s) of any area likely to be affected by the release.

In addition to the list of EHS chemicals, there is a list of chemicals in another environmental regulation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) at 40 CFR Part 302.4 (<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-302/section-302.4>) Each chemical on the CERCLA list also has a designated RQ. If CERCLA reporting requirements apply, a USG institution must call the National Response Center at 800-424-8802 as well.

Note that this memo focuses on EPCRA requirements. There may be other reporting requirements in other regulations that may apply to the institution.

1.3 Hazardous Chemical Notification / Inventory Reporting (EPCRA Section 311-312)

This section of EPCRA applies to a facility subject to the Occupational Safety and Health Administration (OSHA) regulations. In Georgia, employees of state agencies, including USG institutions, are NOT subject to OSHA and so not subject to EPCRA Section 311-312 (informally referred to as “Tier II”).

Per BOR Policy 9.11.4 Environmental and Occupational Safety, institutions are expected to follow industry standards and good management practices where specific laws or regulations are absent. **USG institutions should voluntarily comply with EPCRA Section 311-312 to maintain good community relations and work proactively with local first responders.**

Under EPCRA Section 311-312, if hazardous chemicals are present in amounts exceeding designated quantities in total across the campus, an institution subject to OSHA is required to submit Tier II reports to the SERC, LEPC, and local fire department electronically using E-Plan. Therefore, in accordance with BOR Policy 9.11.4, any USG institution meeting the criteria of EPCRA Section 311-312 is expected to voluntarily submit Tier II reports using E-Plan in order to follow industry standard and good management practices.

The default amount for reporting any hazardous chemical under section 311/312 is 10,000 pounds. Some typical examples may be diesel fuel, No. 2 heating oil, gasoline, and refrigerants.

There is a lower reporting amount if the hazardous chemical is on the list of EHS set out in 40 CFR Part 355 (*Appendix A/Appendix B*). **For a chemical that is an EHS, the designated amount is the TPQ in Appendix A/Appendix B or 500 pounds, whichever is smaller.** For example, sulfuric acid (commonly found in UPS batteries) has a TPQ of 1,000 pounds, but if the institution has at least 500 pounds, it needs to be reported. For more information on how to calculate the amount of sulfuric acid in UPS batteries, please see the EPA memo in Attachment B at the end of this document.

USG institutions are expected to voluntarily submit Tier II reports, which include the amounts and locations of onsite chemicals, by March 1st of each year. A description of how to complete and file the Tier II report is set out further below.

Each institution should conduct a review annually by mid-February. If an institution does not exceed the designated amount for any chemical on the EHS list, or 10,000 pounds for any other chemical, there is no need to file a Tier II report. In that instance, the institution should document in a note to the file that the assessment has been made and that reporting is not required.

There is an important exemption that applies to many USG institutions. **Hazardous chemicals used in research laboratories, hospitals, or medical facilities under the direct supervision of a technically qualified individual are exempt from the Section 311-312 Tier II requirement.** This exemption is in 40 C.F.R. § 370.13. This exemption includes chemicals kept in a central storeroom or other storage location that will be used in a research laboratory. It is important to note that this exemption does not apply to chemicals at an institution that are not used directly for a laboratory/research or medical purpose (such as fuel oil, lead acid batteries, chemicals used by maintenance staff, etc.). Automobile batteries used for the purpose of transportation are also exempt.

1.4 Toxic Chemical Release Inventory and Reporting (EPCRA Section 313)

Federal facilities and facilities that are categorized within certain Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) codes and that manufacture, process, or use specified chemicals in amounts greater than threshold quantities must submit annual toxic chemical release reports, also known as Form R or TRI reports to EPA. Colleges and universities are not within the regulated SIC/NAICS codes under the EPA TRI program and usually are not subject to these requirements. It is rare but possible that an institution may own or operate an industrial facility in one of the designated SIC/NAICS codes, and then would need to comply with these requirements.

2. PUBLIC EMPLOYEE HAZARDOUS CHEMICAL PROTECTION AND RIGHT-TO-KNOW ACT

Georgia regulations require that any employee of a Georgia state agency or department, including any USG institution, has the right to know about the hazards associated with the chemicals with which they work or to which they may be exposed. [GA Code § 45-22-9 \(2020\) https://law.justia.com/codes/georgia/2020/title-45/chapter-22/section-45-22-9/](https://law.justia.com/codes/georgia/2020/title-45/chapter-22/section-45-22-9/)

The USG BOR requires that each USG institution submit a list of chemicals to the BOR Environmental Health and Safety Program Manager, twice each year, once in January and once in July. An email will be sent to institutions prior to January and July to remind of the upcoming submission and any additional information needed to complete their submission.

3. INSTRUCTIONS FOR HOW EPCRA APPLIES TO USG INSTITUTIONS

It is important for each institution's emergency coordinator to have good ongoing communication with local Fire Department and emergency responders:

- The list of chemicals on a campus can be long, but many Fire Departments are particularly concerned with a fairly focused group of chemicals - water reactive chemicals, those that are flammable or have the potential to explode, or those that may emit poisonous gases; the institution should ask the Fire Department what chemicals are of heightened concern.
- An institution should invite Fire Department personnel to the campus to show them the locations where chemicals are stored, particularly chemicals that are of heightened concern; the institution should consider providing its RTK chemical list to the Fire Department, in addition to the Tier II report.
- As noted above, each institution should review its chemical quantities annually by mid-February. If any chemical exceeds the threshold limit, the institution should file a Tier II report.

4. INSTRUCTIONS ON COMPLETING AND FILING TIER II REPORT (E-PLAN)

As the SERC, Georgia accepts only electronic filing (E-Plan) for all Tier II reporting. Georgia does not accept Tier II reports via email or postal mail. All Tier II related reports must be uploaded electronically to the E-Plan website at the following website: <https://tier2.erplan.net>. As of 2022, the filing fee is \$25.

How to complete a Tier II report

- Tier II reports are due by March 1 of each year; an institution that does not have any chemicals that exceed the threshold amounts does not need to file a Tier II report; it should document that it has conducted an assessment and does not need to file a report
- Tier II report should include chemical inventories at the campus for the prior calendar year (January 1 – December 31)
- It is not necessary to install any software. Start a submission by going to <https://tier2.erplan.net>. This will bring you to the E-Plan Online Tier II reporting system page.
- If the campus has already established an account, just sign in with the Access ID and password.
- If this is the first time using the E-Plan reporting system, click on "Request An Account" link to create an Access ID.
 - Fill in all the required fields, including your name and email address, the institution's name and street address
 - Check the e-mail inbox for instructions regarding your E-Plan Tier2 account request. If your request is approved and your E-Plan Tier2 account has been created successfully, you will receive a password reset message from the E-Plan Administrator (eplan@utdcsepi.org) with a reset password link. Use this email to create your password. If there are problems with your request, you will receive an email with an explanation and the reason your account request could not be approved.
- It is important to keep a record of the Access ID, password and the email used to set up the account, especially as the person handling the Tier II submittal is likely to change over time. Consider using a departmental/general email if possible.
 - You can retrieve the Access ID assigned to the institution's account by clicking on the **Forgot Access ID** link. A page appears requesting the submitter email. Enter the email address that was entered on the account information. Click the **Submit** button. The system will send the Access ID information to you.
 - You can retrieve the account password by clicking on the **Forgot Password** link. A page appears requesting the Access ID. Enter your Access ID and click the **Submit** button. You will receive a password reset message from E-Plan Administrator with a reset password link to create a new password.
- Under the **EPCRA 312 (Tier2)** tab, use the **Enter New Data or Retrieve Old Data** function to create a new report or make changes to the submitted data.
 - Select a **filing year** from the drop down
 - Click the **Continue** button
- The E-Plan's Online Tier2 Submit is organized into three modules (parts):
 - **Facilities module** - enter the campus name, physical address, mailing address, latitude and longitude coordinates (the system will help identify this information), data submitter's name and title, etc.
 - **Contacts module** - enter owner/operator, emergency contact (perhaps Public Safety), Tier II information contact (perhaps Environmental Health and Safety director/coordinator or Facilities Director/manager), and other contact's names, addresses, emails, and phone numbers.

- **Chemicals in Inventory module**- enter chemical property, storage information, mixture components, etc.
 - Add a **new chemical** to the report by clicking on the appropriate **Add New Chemical** icon shown on the Online Filing Home page
 - The Tier II standard is to report any chemical if it fits either of two categories:
 - the quantity of the chemical stored at the campus is at least 10,000 pounds at any one time
 - the chemical is an EHS and the quantity stored at the campus is at least 500 pounds or TPQ on the list at 40 CFR 355 Appendix A / Appendix B, whichever amount is smaller. For example, sulfuric acid (commonly found in UPS batteries) has a TPQ of 1,000, but if the institution has at least 500 pounds, it needs to be reported.
 - Hazardous chemicals used in research laboratories, hospitals, or medical facilities under the direct supervision of a technically qualified individual are exempt from the Tier II reporting requirement. This exemption is in 40 C.F.R. § 370.13. It is important to note that this exemption does not apply to chemicals at an institution that are not used directly for a laboratory/research or medical purpose (such as fuel oil, lead acid batteries, chemicals used by maintenance staff, etc.).
 - Enter/select/check all of the applicable information including the chemical details, physical state, physical hazards, health hazards, and quantity. Each chemical must have a type, pressure, and temperature, and at least one location.
 - If appropriate, chemicals can be designated as "Confidential". Marking the "Confidential" check box means that no locations are required for that chemical. However, in order to fulfill the proper reporting under EPCRA, you must submit a Confidential Location Information Sheet to the SERC, LEPC, and Fire Department. This form is used by the authorities to verify actual locations for audits and emergencies and not by public citizens.
 - Chemicals will be either pure substances or mixtures.
 - For pure chemicals, provide the name on the SDS sheet and the Chemical Abstracts Service (CAS) registry number, and indicate if the chemical is an Extremely Hazardous Substance (EHS).
 - For a mixture, provide the name of the mixture, product name or trade name on the SDS, and the CAS number if available; if the mixture contains any EHS, check the box and enter the name and CAS number of the EHS in the mixture.
 - After entering the required information, press the appropriate **Save and Continue** button to save the information.
- The first time you use the software, it will take some time to enter in all of the required information. For subsequent years, you can use the **Copy Data** function to copy the data from a previous year to any year up to the current filing year. Please note that the "copy" function will transfer all previously filed Tier II data and site plans from the designated previous year to the current year. You can then modify or edit the data if needed.
- To manage your account such as changing/updating the submitter name, password, or email, select **Account Information** menu at the top right side of the E-Plan Online Filing Submission Management page
- **GA has a \$25 filing fee. There is an option to pay online or to pay by check. Follow the instructions for making the payment.**
- For technical support related to software and upload issues, e-mail your questions directly to the E-Plan "Contact Us" address: <https://erplan.net/eplan/support/contactUs.htm>.
- There is training online on the E-Plan at <https://erplan.net/news/Training.htm>.

5. USG EPCRA EMERGENCY RELEASE IMMEDIATE NOTIFICATION TEMPLATE

Unless exempt under 40 CFR 355.31 (<https://www.ecfr.gov/current/title-40/section-355.31>), a USG institution must immediately report any release of an EPCRA EHS that equals or exceeds a RQ within any 24-hour period. Immediate notification is a phone call to the SERC(s) and LEPC(s) of the area likely to be affected by the release. There is a flow chart at the end of this document that provides a visual summary of the requirements of each section of EPCRA, including reporting requirements

Contact Information – GA SERC (as of April 2022):

Georgia Emergency Management and Homeland Security Agency (<https://gema.georgia.gov>).
935 United Avenue, Atlanta GA 30316
Phone: 1-800-241-4113 or 1-800-879-4362

Contact Information – LEPC

Please insert the contact information for your LEPC so that it is available if needing to make an immediate phone call

LEPC phone number _____ (to be completed by the institution)

Contact Information – National Response Center (if CERCLA reporting is required under 40 CFR Part 302.4 (<https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-302/section-302.4>))

Phone number: 800-424-8802

Required Information to be included in the immediate notification (<https://www.ecfr.gov/current/title-40/section-355.40>)

Notice to the SERC and LEPC shall include as much of the following information known at the time. Retrieval of this information should not cause a delay in the notification.

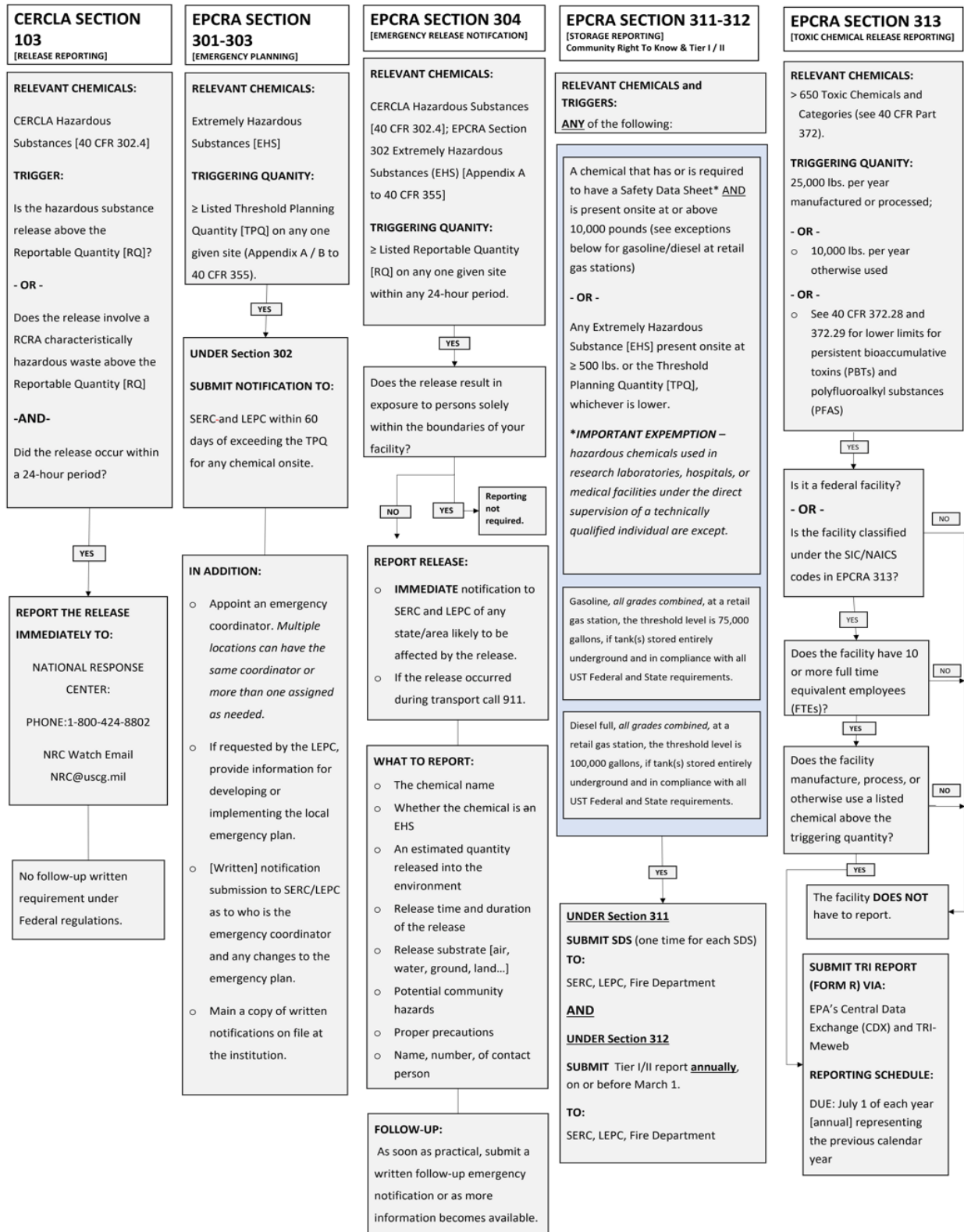
- (1) The chemical name or identity of any substance involved in the release.
- (2) Whether the substance is an EHS.
- (3) An estimate of the quantity of any such substance that was released into the environment.
- (4) The time and duration of the release.
- (5) The medium or media into which the release occurred.
- (6) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
- (7) 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).
- (8) The name and telephone number of the individual (or individuals) to be contacted for further information.

Written Notification

In addition to the immediate notification, as soon as practicable, a USG institution must submit written follow-up emergency notification (or notifications, as more information becomes available) to the SERC(s) and LEPC(s). The information required to be included in the written notification is set out in 40 CFR 355.40(b).

[https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-355/subpart-C/subject-group-ECFR69777e8e354b0d8/section-355.40#p-355.40\(b\)](https://www.ecfr.gov/current/title-40/chapter-I/subchapter-J/part-355/subpart-C/subject-group-ECFR69777e8e354b0d8/section-355.40#p-355.40(b))

ATTACHMENT A: FLOW CHART OF CERCLA 103 AND EPCRA REPORTING REQUIREMENTS



ATTACHMENT B: EPA MEMO SUMMARIZING TIER II REPORTING OF LEAD ACID BATTERIES



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 25 2007

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Lead Acid Battery Reporting Under EPCRA Sections 311 and 312 - REVISED
FROM: *Deborah Y. Dietrich*
Deborah Y. Dietrich, Director
Office of Emergency Management
TO: Regional Division Directors, Regions I-X

Questions have been raised recently about how to calculate the threshold and to report lead acid batteries under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). These batteries contain both an extremely hazardous substance (EHS) and other hazardous chemicals. The purpose of this memorandum is to provide guidance for the calculation of reporting thresholds under Sections 311 and 312 of EPCRA for non-consumer type lead acid batteries, such as those used in telephone switching stations or in forklifts

BACKGROUND

EPCRA sections 311 and 312 generally apply to the owner or operator of a facility that must prepare or have available a Material Safety Data Sheet (MSDS) for each "hazardous chemical" as required by the Occupational Safety and Health Act (OSHA) of 1970. EPA's regulations published in 40 CFR Part 370 establish minimum threshold levels that govern EPCRA reporting requirements for facilities covered by EPCRA sections 311 and 312. In addition, these regulations provide instructions on how to report if threshold levels are exceeded.

OSHA has determined that lead acid batteries are hazardous chemicals under the OSHA definition since there are chemical and physical hazards associated with them. Lead acid batteries have the potential to emit hydrogen gas which, upon ignition, may result in a fire or explosion. Furthermore, OSHA's Directive on Inspection Procedures for the Hazard Communication Standard (CPL 02-02-038, March 20, 1998), states that lead acid batteries do not fall under the article exemption because they have the potential to leak, spill, or break during normal conditions of use, including foreseeable emergencies.

GUIDANCE

Under EPCRA sections 311 and 312, a lead acid battery would be considered a mixture, containing both sulfuric acid, an extremely hazardous substance (EHS), and other hazardous chemicals such as lead, lead oxide, and lead sulfate. Since a lead acid battery contains sulfuric acid, an EHS, the regulations at 40 CFR § 370.28 require an owner or operator of a facility to aggregate the sulfuric acid present in all lead acid batteries as well as in any other mixture or in pure form at the facility, in order to determine if the threshold has been met or exceeded. If the aggregated amount of sulfuric acid present at the facility equals or exceeds the minimum EHS reporting threshold of 500 pounds, the sulfuric acid is reportable (see 40 CFR §370.20(b)(1)).

With regard to the non-EHS chemicals, the owner or operator of the facility is not required to aggregate those chemicals to determine threshold and reporting. Instead, the facility has two options. In the first option, the owner or operator would add the total weight of the lead acid batteries and if the reporting threshold has been met (which is 10,000 pounds for non-EHS hazardous chemicals), would report the lead acid batteries. In the second option, the owner or operator would add the total weight of each of the individual hazardous chemicals in the lead acid batteries as well as the amount of those chemicals present throughout the facility to determine if the threshold has been met. The owner or operator would then report each of the individual chemicals which have met the threshold.

Once the facility determines it needs to report the batteries, it has two primary choices under the regulations regarding the manner in which it reports. The facility may either list the sulfuric acid separately on the Tier II form or it may list the lead acid batteries, indicating that sulfuric acid, an EHS, is a component of the mixture.

It should be noted that the regulations at 40 CFR § 370.28(a)(2) state that reporting a mixture, such as the batteries, under both sections 311 and 312 must occur in the same manner, where practicable. Since MSDSs are commonly published for the lead acid batteries and not the individual components of the batteries, we anticipate a facility would typically submit a copy of the MSDS for the batteries to meet the requirements of section 311 and list the batteries on the Tier II form to meet the requirements of section 312.

CONCLUSION

To the extent there could be confusion regarding the Agency's views on aggregation of the hazardous chemicals in lead acid batteries, I want to clarify that the aggregation of non-EHSs for threshold determination is not required under EPCRA sections 311 and 312. See 55 Fed. Reg 30,640 (July 26, 1990). Aggregating a chemical is required only for the EHSs present at the facility.

For any questions regarding this memo, please contact Sicy Jacob at (202) 564-8019.

cc: Earl Salo, OGC
Rosemarie Kelley, OECA
EPCRA Coordinators