

Amendments to the Emergency Planning and Community Right-to-Know Act – America’s Water Infrastructure Act: A Guide for SERCs, TERCs, and LEPCs

On October 23, 2018, America’s Water Infrastructure Act was signed into law, amending the Emergency Planning and Community Right-to-Know Act (EPCRA). This new legislation requires state and tribal emergency response commissions to notify the applicable State agency (i.e., the drinking water primacy agency) of any reportable releases and provide community water systems with hazardous chemical inventory data. These requirements went into effect immediately upon signing the law.

Why are these revisions to EPCRA important to community water systems?

- A release into a source of drinking water or to the land in a source water protection area could compromise the ability of a community water system to deliver safe and reliable drinking water to their customers and could pose a risk to public health.
- Under some scenarios, contaminants from a release could reach the drinking water intake for a community water system in less than an hour.
- However, if a community water system receives prompt notification, it may be able to take actions to prevent or minimize the impacts associated with contaminated water from entering its system.
- Finally, a community water system can proactively plan for potential releases if they have access to hazardous chemical inventories in their source water protection area. Having access to this information, combined with other relevant information, allows them to characterize the risk of upstream contamination threats and prioritize source water protection activities.

Background

The Emergency Planning and Community Right-to-Know Act (EPCRA) was passed by Congress in 1986 in response to concerns raised about community preparedness for chemical emergencies and the availability of information on hazardous chemicals.

The purpose of EPCRA is to:

- Encourage and support emergency planning efforts at the state, tribal and local levels;
- Provide local governments and first responders with information concerning potential chemical hazards present in their community;
- Prevent, prepare for, and mitigate the effects of a chemical incident; and
- Provide the public with information on chemical risks in their community and information on what to do if a chemical accident occurs.

To achieve these goals, the law assigned responsibilities to state and local agencies to implement EPCRA. Accordingly, the Governor of each state designated a State Emergency Response Commission (SERC) to assist and supervise Local Emergency Planning Committees (LEPCs), who are responsible for developing emergency response plans for their communities. In tribal regions, Tribal Emergency Response Commissions (TERCs), have the same responsibilities as SERCs and Tribal Emergency Planning Committees (TEPCs) have the same responsibilities as LEPCs.

What are the EPCRA amendments that impact community drinking water systems?

The America's Water Infrastructure Act (AWIA), 2018, amended the Emergency Release Notification (EPCRA section 304) and Hazardous Chemical Inventory Reporting (EPCRA section 312) sections of EPCRA.

Overview of EPCRA emergency release notification (section 304)

Under EPCRA sections 304(a) and (b), facilities are required to provide immediate notification to the appropriate SERC (or TERC) and LEPC (or TEPC) of any releases of Extremely Hazardous Substances (EHSs) listed under EPCRA section 302 and hazardous substances listed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The initial release notification must include the following information from section 304(b)(2):

- The chemical name or identity of any substance involved in the release.
- An indication of whether the substance is a listed Extremely Hazardous Substance.
- An estimate of the quantity of any such substance that was released into the environment.
- The time and duration of the release.
- The 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, including evacuation (unless such information is readily available to the community).
- The name(s) and telephone number(s) of the person or persons to be contacted for further information.

Section 304(c) requires facilities to provide a written follow-up with additional information as soon as practicable after the release, including:

- Actions taken to respond to and contain the release;
- Any known or anticipated acute or chronic health risks associated with the release; and
- Where appropriate, advice regarding medical attention necessary for exposed individuals.

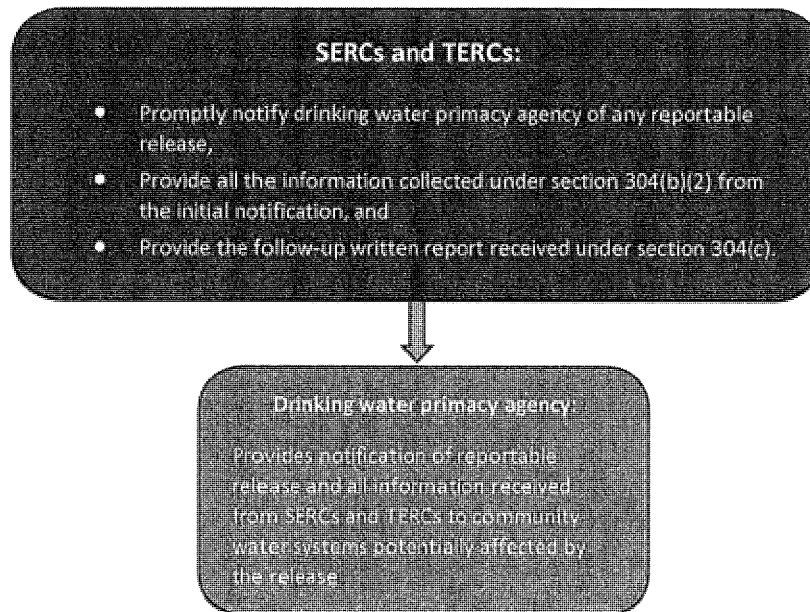
AWIA amendment to EPCRA section 304

AWIA section 2018(a) amends EPCRA section 304 to add a new sub-section, section 304(e), *Addressing Source Water used for Drinking Water*. This new sub-section requires SERCs and TERCs to perform the following actions:

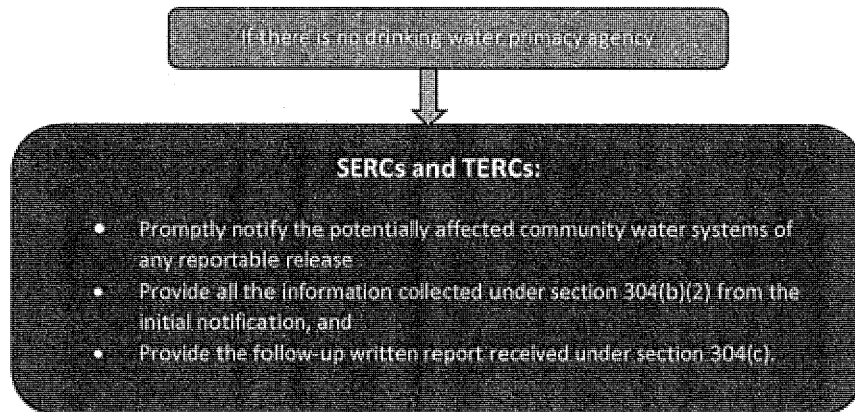
- Promptly notify the drinking water primacy agency of any reportable release and provide this agency with:
 - The information collected under section 304(b)(2) from the initial release notification; and
 - The follow-up written report received under section 304(c).

The drinking water primacy agency is then required to promptly forward all the information regarding the release to any community water systems whose source water is affected by the release. The source

water for a community water system is potentially affected if the release occurs in that system's source water area (also known as a source water protection area). Drinking water primacy agencies and community water systems can provide the boundaries for source water protection areas.



If there is no drinking water primacy agency in place, the SERC (or TERC) is required to directly notify the potentially affected community water systems. Community water systems should use this information to prepare for possible impacts to their systems resulting from the release. Furthermore, lessons learned from releases that occur should be integrated into long-term emergency response planning.



Overview of hazardous chemical inventory reporting (sections 311 & 312)

Sections 311 and 312 of EPCRA contain provisions for hazardous chemical inventory reporting, also known as community right-to-know reporting. Facilities that handle hazardous chemicals, defined under the Occupational Safety and Health Act and its implementing regulations, above set threshold amounts are required to provide information on the chemicals, quantities, locations, and potential hazards. Section 311 requires facilities to submit a Material Safety Data Sheet, MSDS (or Safety Data Sheet, SDS)

for each hazardous chemical, or a list of hazardous chemicals, present at or above the reporting thresholds specified in the implementing regulations. Section 312 requires that facilities submit an inventory of these hazardous chemicals (Tier II form) annually by March 1st. The MSDSs or list of chemicals and Tier II form are submitted to the SERC (or TERC), LEPC (or TEPC), and the local fire department.

Tier II forms contain the following information:

- The chemical name or the common name of the chemical as provided on the MSDS.
- An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.
- An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.
- A brief description of the manner of storage of the hazardous chemical.
- The location at the facility of the hazardous chemical.
- An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public as a trade secret.

AWIA amendment to EPCRA section 312

AWIA Section 2018(b) amends Section 312 to require SERCs (or TERCs) and LEPCs (or TEPCs) to provide affected community water systems with chemical inventory data (i.e. Tier II information) for facilities within their source water protection area upon request. Source water protection areas may span multiple jurisdictional boundaries at the local and state levels, potentially requiring access to Tier II data from multiple SERCs or TERCs, LEPCs or TEPCs. If the SERC, TERC, LEPC, or TEPC do not have Tier II information, these entities should request the information from facilities and make such information available to the affected community water systems.

This data is collected at the state level, so how a community water system gets access to this information for their community will vary from state to state, as well as the required security and protection controls for potentially sensitive information.¹ Further, some states require more information than the Federal program. Additionally, community water systems should be involved in larger planning efforts undertaken by the LEPC or TEPC, as section 2013 of AWIA requires community water systems to coordinate, to the extent possible with LEPCs or TEPCs since drinking water is a vital component of any community.

¹ Facilities are allowed to claim specific chemical identity as trade secret on their Tier II form, or state equivalent, provided that they submit trade secret claim package to EPA according to the regulations at 40 CFR part 350. State may request access to trade secret claims as provided in 40 CFR 350.19. Facilities are also allowed to claim hazardous chemical storage location information confidential, if they submit the confidential location information sheet along with their Tier II form to the SERC, LEPC and the fire department. (*Note: Facilities are not allowed to claim trade secrets under EPCRA section 304 release reporting*).

Key definitions

The following definitions are important to keep in mind while using this Guide:

- **Applicable State Agency** – the drinking water primacy agency that has primary responsibility to enforce the requirements of the Safe Drinking Water Act (SDWA) in the State. *(Note: The website below for the Association of State Drinking Water Administrators (ASDWA) provides a link to the website for each drinking water primacy agency)*
- **Community Water Systems** – a system that provides water for human consumption through pipes or other constructed conveyances and has at least fifteen service connections or regularly serves at least twenty-five individuals, and which serves the same population year-round (as defined in SDWA section 1401(15)).
- **Affected Community Water System(s)** – One or more community water systems (as defined in SDWA section 1401(15)) that receives supplies of drinking water from a source water protection area, delineated under SDWA section 1453, in which a facility that is required to prepare and submit an inventory form is located.

Resources

[EPCRA Factsheet](#)

[How to Better Prepare Your Community for a Chemical Emergency: A Guide for State, Tribal and Local Agencies](#)

[EPCRA Training for States, Tribes, LEPCs, Local Planners and Responders \(Non-Section 313\)](#)

[EPA EPCRA Regional Contacts](#)

[EPA EPCRA, RMP & Oil Information Center](#)

[State Emergency Response Commissions Contacts](#)

[Association of State Drinking Water Administrators](#) – Click on “Drinking Water Primacy Agencies” to find your state contact information