

## **PUBLIC RIGHTS TO INFORMATION ABOUT CHEMICAL STORAGE AND RELEASES**

This Supplement describes how citizens can use publicly available information about chemical storage and releases to help prepare their communities for chemical release emergencies and then to stay informed about how their communities are addressing emergencies once they occur.

Several federal laws require industrial and commercial facilities to provide information about their use, storage, and release of chemicals. Federal laws also require these facilities to coordinate with local emergency organizations to prepare for and respond to accidental releases of those chemicals. Some facilities must also prepare plans for responding to emergencies and accidental releases of chemicals. These laws likewise require these reports and plans to be accessible to the public. Not only does this public accessibility allow members of the public to know about potential hazards in their communities, but it also provides a way for them to help prepare their communities for emergencies by keeping facilities and local response organizations accountable for their preparations.

This Supplement covers provisions from the Emergency Planning and Community Right-to-Know Act (EPCRA), the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Each statute applies to a variety of chemicals: EPCRA covers “hazardous chemicals,” “extremely hazardous chemicals,” and “toxic chemicals;” RCRA covers “hazardous waste;” the CAA covers certain air pollutants (defined as “regulated substances”); and CERCLA covers “hazardous substances.” Although each category refers to a specific list of chemicals, many chemicals fall under multiple categories. Please see the federal statute summaries in this Supplement for how to find which specific chemicals each category includes.

This Supplement has two sections. The first provides instructions for how members of the public may access and use information on chemical storage and releases to help prepare their communities for chemical release emergencies. The second summarizes additional details on the statutory requirements, focusing primarily on federal statutes, but also including some state statutes as examples of how states have adopted the federal requirements.

# **I. ROADMAPS FOR LOCATING INFORMATION ABOUT CHEMICAL RELEASE PREPARATIONS AND RESPONSES**

The below roadmaps show you, as a member of the public, how to help your community prepare for chemical release emergencies and how to locate information about responses to release emergencies when they occur. The roadmaps identify the information facilities must report and the information members of the public have the right to access. Some of the information from these reports and plans is available online, but you must specifically request access to other information. These roadmaps explain where and how to access these reports and plans. Where applicable, the roadmaps include citations to the statutes and regulations that establish these requirements (*e.g.*, 42 U.S.C. § 11044 or 40 C.F.R. § 370.10). Statutes are published in the U.S. Code (U.S.C.), and regulations are published in the Code of Federal Regulations (C.F.R.). You should reference these legal citations as the authority for your request and the requirement that the information be released to you.

The information in these roadmaps is current as of December 2018.

## **A. HOW TO CHECK WHETHER YOUR COMMUNITY IS PREPARED FOR AN EMERGENCY**

Industrial and commercial facilities that store or use hazardous chemicals or hazardous waste must notify local and state entities about these chemicals and submit their plans for avoiding accidental releases. The local and state entities, in turn, must prepare emergency plans for responding to accidental releases. Additionally, industrial and commercial facilities that store or use toxic chemicals, hazardous waste, or certain air pollutants (defined by the Clean Air Act as regulated substances) must notify the federal government. These roadmaps explain how to obtain information facilities have reported and whether the community is prepared for accidental releases.

### **1. Check the Environmental Protection Agency's (EPA) Databases at Envirofacts**

[Envirofacts](#) is an online tool that lets users search multiple EPA databases. For example, the [Biennial Report](#) and [RCRA Info](#) databases provide information on hazardous wastes present at a facility, the [Toxics Release Inventory](#) (TRI) provides information on toxic chemicals present and released from a facility, the [Facility Registry Service](#) identifies specific regulations that apply to a facility, and [ICIS](#) and [PCS](#) provide information on a facility's releases into the air and water, respectively. This information will help you identify what chemicals are present at facilities in or near your community.

#### **Steps:**

- Use Envirofacts' "Multisystem Search" to bring up multiple reports on facilities in your community. You can enter the address of a specific facility, or you can search by zip code, city, or state for a list of regulated facilities in the area.
  - After entering your search terms, you will see a list of facilities that fit your search.
  - The "Summary Report" provides a list of chemicals present at the facility. The link to this report is below the facility's name on the left.
  - The "Compliance Report" indicates the facility's compliance status. The link to this report is also below the facility's name on the left.
  - The columns on the right provide links to other, more detailed reports.
- Use the "[Topic Searches](#)" to search by individual databases, such as the Biennial Report or RCRA Info databases.
- Toxics Release Inventory data can also be accessed from the [myRTK](#) application.

## 2. Contact your Local Emergency Planning Committee (LEPC)

EPCRA requires states to divide regions into emergency planning districts and to create a LEPC for each district. The LEPCs receive and review information reported by facilities, create emergency response plans, and provide information to citizens in the community. Contacting your LEPC will help you identify what information facilities have reported and whether your LEPC has created emergency response plans.

### Steps:

- To find the applicable LEPC:
  - Contact the State Emergency Response Commission (SERC). EPA's website includes a [list of SERCs and their contact information](#).
  - OR*
  - Contact the local fire department.
- Request any of the following from your LEPC:
  - Copies of Material Safety Data Sheets (MSDS) submitted by local facilities.
    - These sheets identify hazardous chemicals present at the facilities in amounts equal to or greater than thresholds established by law. The MSDSs explain the potential health effects of the chemicals.
    - Instead of submitting MSDSs, facilities may sometimes provide LEPCs with a list of all hazardous chemicals present at the facility in amounts equal to or above established thresholds. You may request these lists from the LEPC as well.
    - The LEPC must provide all MSDSs or chemical lists to members of the public who submit a written request. 42 U.S.C. § 11044(a). If the LEPC does not have a requested MSDS, it must obtain it from the facility. 40 C.F.R. § 370.60.
  - Copies of inventory forms reported by facilities (also known as Tier I information).
    - These forms include an estimate of the maximum amount of hazardous chemicals present at the facility during the preceding calendar year, an estimate of the average daily amount of hazardous chemicals present at the facility during the preceding year, the maximum number of days any single hazardous chemical has been present at the facility, and the general location of the hazardous chemicals. 40 C.F.R. § 370.41
    - The LEPC must make these inventory forms available to members of the public. 42 U.S.C. § 11044(a).
  - Copies of the LEPC's emergency response plan.
    - The emergency response plan establishes procedures for the local community's response to a hazardous chemical release at the reporting facilities. 42 U.S.C. § 11003.
    - The LEPC must make the emergency response plan available to the public. 42 U.S.C. § 11044(a).
  - Tier II information reported by facilities.
    - Tier II information contains more detailed information on each hazardous chemical present at the facility. Such information includes:

- Whether the hazardous chemical is a gas, solid, or liquid;
  - Whether the hazardous chemical is an extremely hazardous substance;
  - The maximum amount of each hazardous chemical present at the facility at any time during the preceding year;
  - The average daily amount of each hazardous chemical present during the preceding year;
  - The type of storage used for each chemical; and
  - The location of each hazardous chemical at the facility.
- Public requests must be made in writing and must identify the specific facility for which you are requesting information.
  - The LEPC must provide the information if currently in its possession. 40 C.F.R. § 370.61.
  - If the LEPC does not have the Tier II information, it must request the information from the facility if the facility has more than 10,000 lbs. of a hazardous chemical present at the site. 40 C.F.R. § 370.61.
    - Although not required to, the LEPC is allowed to request the Tier II information from the facility if your written request includes a statement of need, even if the facility has less than 10,000 lbs. of the chemical. 40 C.F.R. § 370.61.

#### **Potential Obstacles for Obtaining Information from LEPCs:**

Unfortunately, many LEPCs are understaffed and not running properly, so obtaining the above information might be difficult. However, you should still try identifying and contacting your LEPC because this will help you determine whether the LEPC is actually operating and prepared to respond to chemical emergencies. If you cannot reach or contact your LEPC, you should contact the local fire department and the SERC. Fire departments work closely with LEPCs and should therefore know how to contact them. Often, members of the fire department serve on the LEPC. Additionally, SERCs are responsible for appointing members of the LEPC. 42 U.S.C. § 11001(c). Inform the SERC if you believe your community's LEPC is not currently operating.

Note that, in practice, LEPCs sometimes take a while to respond to requests. Additionally, some LEPCs may be reluctant at first to provide information because they are unfamiliar with their obligations to provide the documents to the public. You may have to provide a reason for your request and a justification for why the LEPC should comply. For example, consider saying something like the following if requesting your LEPC's emergency response plan:

*“As a citizen in the community, I am interested in ensuring the community is prepared for any accidental releases of hazardous chemicals. I’ve seen in the news how important it is to be prepared for chemical releases like those that occurred during Hurricane Harvey in Texas and Hurricane Florence in North Carolina. The Environmental Planning and Community Right-to-Know Act states that the emergency response plan ‘shall be made available to the general public.’ 42 U.S.C. § 11044(a). As a member of the public, I would like to view the plan to know about our community’s emergency preparations.”*

You might also meet resistance if the state or local government has laws limiting the public availability of certain information about facilities' hazardous chemicals. Some laws call for the confidentiality of hazardous chemical information because it is deemed vulnerable to terrorist threats. The Emergency Planning and Community Right-to-know Act (EPCRA), which requires LEPCs to make information available to the public, specifically states that it does not preempt or "otherwise affect" local or state law. 42 U.S.C. § 11041. Thus, some states have asserted that their laws can limit the public availability of information even though EPCRA requires disclosure (See the state statute summaries at the end of this Supplement for examples of how state laws apply to these federal requirements). To decrease the chances of having your requests for documents denied, avoid making overly broad requests. For example, information concerning the specific locations of hazardous chemicals is often protected, so limiting your request to information besides the location of chemicals will increase your likelihood of receiving a response.

Federal and state statutes also protect confidential business information (CBI). For example, EPCRA allows some businesses to withhold the specific names of their chemicals because EPCRA recognizes that businesses' trade secrets may include the names of chemicals they use. If your request is denied on this ground, try requesting information on the general class or category of hazardous chemicals instead of the specific names. *See* 42 U.S.C. § 11042(a)(1)(B).

### 3. Contact the State Emergency Response Commission (SERC)

SERCs are the state-level entity in charge of preparing for and responding to chemical release emergencies. SERCs create and appoint members to the LEPCs. SERCs also receive some information directly from facilities regarding their chemical inventories and emergency preparations.

#### Steps:

- Find the SERC's website by checking EPA's list of [contact information for State Emergency Response Commissions](#).
- Check the SERC's website for how to access information.
  - SERCs should provide the following:
    - Copies of MSDSs or chemical lists;
    - Copies of Tier I inventory forms; and
    - Tier II information.
  - Some SERCs have specific, step-by-step instructions for requesting and accessing information. The website will provide these instructions. Please note that some SERCs charge a processing fee for your requests.
  - If you cannot find the information you want or instructions for how to access it, contact the SERC directly.

### **Potential Obstacles for Obtaining Information from SERCs:**

Although SERCs are often more established than LEPCs, requesting information from SERCs may include similar obstacles concerning the protection of confidential business or security information. See the *Potential Obstacles for Obtaining Information from LEPCs* section above for advice.

## **4. Request to see Facilities' Risk Management Plans (RMPs)**

A facility is required to have a RMP if regulated substances are present at the facility in amounts greater than their applicable thresholds. A list of regulated substances and their thresholds is located in 40 C.F.R. § 68.130. RMPs include:

- The names of regulated substances at the facility;
- MSDSs for all regulated substances at the facility;
- A five-year history of accidental releases;
- Evaluations of potential release scenarios;
- Contact information for local emergency responders (such as a fire department) with whom the facility last coordinated emergency response efforts;
- Procedures for informing the public and local emergency response agencies about accidental releases; and
- A list of scheduled exercises for training employees for emergencies.

*The Houston Chronicle* currently hosts the Right-to-Know Network at [RTK.net](http://RTK.net) as a tool for people throughout the U.S. to identify facilities in their communities that are subject to environmental reporting requirements. The Network's [RMP database](#) lets users search by location to find facilities that have submitted RMPs. Enter the city, county, state, or zip code to find facilities in your area. The website includes executive summaries and some publicly available data from each facility's RMP, but you will need to follow the steps below to review the complete RMP.

Note that this database is updated annually and will remain current only as long as the *Houston Chronicle* maintains the website.

### **Steps:**

- Upon request by any member of the public, the owner or operator of the facility must provide access to its RMP. 40 C.F.R. § 68.210(b).
- You can also access RMPs at EPA's Federal Reading Rooms. See EPA's [instructions for finding and using a Federal Reading Room](#).
- You may also access some RMP information by submitting a formal Freedom of Information Act (FOIA) request. See EPA's [instructions for the FOIA process](#). Note that complete responses to FOIA requests are not necessarily fast.

**Potential Obstacles for FOIA Requests:**

Although FOIA requires federal agencies to disclose information to the public, FOIA also includes exemptions for certain materials identified by other statutes or executive orders. In response to terrorist threats, the federal government has begun withholding some information relating to hazardous chemicals in order to protect homeland security. For example, the government protects facilities' chemical information deemed susceptible to use by terrorists, known as "Chemical-terrorism Vulnerability Information" (CVI). 6 C.F.R. § 27.400. Because of "the increased risk of terrorist or other criminal activity," the Clean Air Act now specifically limits the accessibility of the RMP's evaluation of potential release scenarios, called an "off-site consequence analysis." 42 U.S.C. § 7412(r)(7)(H).

To avoid having your FOIA request denied or significantly delayed, try narrowing your request to specific documents. For example, requesting RMP information on the names of regulated substances at the facility and the five-year accident history might be more successful than requesting all the RMP information, which includes the protected off-site consequence analysis. Similarly, requesting information on the exact locations of substances might complicate your request more than requesting the names of the substances present at the facility.

Please see the sample FOIA request template at the end of this section for guidance on how to write your FOIA request.

## **B. HOW TO LOCATE INFORMATION WHEN A CHEMICAL RELEASE EMERGENCY OCCURS**

Facilities must report releases of air pollutants and hazardous chemicals, substances, and wastes that exceed specific thresholds. Government entities must provide the public with information about these releases and the government's actions to monitor and respond to threats from the releases. These instructions explain how to find publicly available information once you believe a chemical release emergency has occurred. *See* Chapter 3 of this Manual for further discussion on obtaining publicly available information, and *see* Chapter 5 for instructions on how to begin collecting samples yourself to test the presence or concentration of hazardous chemicals in the air, ground, or water.

### **1. Check Public Records for Information about the Release**

- **National Response Center Website**
  - The [home page](#) has active alert notifications
  - Click on the link above for the current year's report.
    - This downloads an Excel spreadsheet with information on each call received reporting an incident. It includes information on what substance was released and how much was released.
    - Sort the columns by date to find the most recent reports. Sort by facility name or city to find the specific release you are researching.
- **"Emergency Response in My Community" Page**
  - [This EPA website](#) has a link to the "Cleanups in My Community" tool, which allows users to search for emergencies and cleanups in their communities.
    - This website focuses on cleanup operations, so it might not include recent accidental releases.
  - This website also has contact information and links for each EPA Region (*See EPA News Releases* below).
- **EPA News Releases**
  - Check the applicable EPA Region's website for news releases.
    - [Emergency Response in My Community](#) has a list of contact information for each Region and a link to each Region's website. A map at the top of the page shows which states each Region covers.
    - EPA Newsroom lets you search by key words and narrow results based on the Region, state, or date. Go to the [EPA Newsroom homepage](#) and click on "[All news releases](#)" or "[Subject, date, location.](#)" Enter the search terms and narrow your results.
    - Searching the Newsroom should bring up initial news releases and updated news releases, which contain data reports. These news

releases provide links to other sites, such as the facility's own public notices and the state agency's notices.

- For some large incidents, EPA creates a profile page for the site of the release. This site profile includes data and an online document repository. News releases link to these profiles.
  - Check news releases from EPA overall as well in case the reports are from other Regions or from the Headquarters Office.
  - If news releases don't bring up results, try searching the entire EPA website.
- **The State Environmental Agency's Website**
    - Each state has an agency in charge of environmental protection. Their websites include similar information as EPA's website. Such information includes links for finding data and health advisories.
    - Find the state environmental agency's website by checking EPA's list of [contact information for State Emergency Response Commissions \(SERCs\)](#) or by checking the Environmental Council of the States' [list of state agencies](#).
  - **The Chemical Safety Board (CSB)**
    - Established by the Clean Air Act, the CSB issues reports on its investigations of chemical releases that result in "a fatality, serious injury or substantial property damages." 42 U.S.C. § 7412(r)(6)(C).
    - The [CSB website](#) allows users to search for current or completed investigations. Current investigations will include minimal information, but they will probably give a brief description of the event and might list the substances present at the site. Completed investigations take a while, but they should include a detailed report of the incident and recommendations.
    - Sometimes the EPA or state agency website will include links to the CSB's reports.

## 2. Watch for Updated News Releases and Notifications

- **Local Emergency Planning Committees (LEPCs)**
  - The facility that released the chemicals must provide the LEPC with a written follow-up notice that explains how the facility has responded to and contained the release and that identifies health risks associated with the release. 42 U.S.C. § 11004(c). The LEPC must make these follow-up notices available to the public. 42 U.S.C. § 11044.
  - Contact the SERC to find your LEPC.
    - EPA's website includes a [list of SERCs and their contact information](#).
  - Local fire departments should also know how to contact the LEPC.
- **The Facility that Released Chemicals**
  - The facility is required by law to provide information to the public. For example, the Chemical Disaster Rule requires the facility to hold a **public**

**meeting** within 90 days of an accidental release if the release resulted in “deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.” 40 C.F.R. § 68.210(e). Check the facility’s website and the news for notices about this meeting.

- Upon request by any member of the public, the owner or operator of the facility must provide parts of the facility’s Risk Management Plan (RMP), such as a five-year accident history, names of regulated substances at the facility, and the facility’s procedures for responding to a chemical release emergency. 40 C.F.R. § 68.210(b).
  - The facility is not required to provide its entire RMP. For example, the facility is not required to provide the off-site consequence analysis.
- Note that EPA has proposed a rule to rescind the above public meeting and public availability requirements of the Chemical Disaster Rule. 83 Fed. Reg. 24,850 (May 30, 2018).

### **3. If Struggling to Locate Information about the Release, Try to Locate the List of Chemicals at the Facility**

- See the above *How to Check Whether Your Community is Prepared for an Emergency* instructions to identify the chemicals present at the facility. Use the following to collect information:
  - Envirofacts;
  - MSDSs;
  - Tier I Inventory Lists;
  - Tier II Information; and
  - RMPs
- Once you have identified the chemicals present, you can use the [Agency for Toxic Substances and Disease Registry’s \(ATSDR\)](#) index of chemicals to view information such as health effects and safe levels of exposure for each chemical.

### **EXAMPLE: Locating Information about Coal Ash Releases from Hurricane Florence**

*Below is an example of how these roadmaps were used to locate information about an actual accidental release.*

In September 2018, Hurricane Florence hit North Carolina. News agencies reported that flooding at a Duke Energy power plant caused releases of coal ash, a byproduct from burning coal at the plant. Here's how the Manual's roadmaps located more information about the release.

We started by accessing the Nation Response Center's (NRC) Excel spreadsheet. By narrowing the results to reports from North Carolina in September, we identified multiple reports by Duke Energy. A September 15<sup>th</sup> call reported a release of coal ash and arsenic at the Sutton Steam Plant, and a call the next day updated the report by estimating that the release included about 2000 tons of coal ash and 500 lbs. of arsenic. Sutton Steam Plant did not believe the releases had yet reached the public cooling lake nearby, but it warned of that possibility. The NRC recorded that it notified the North Carolina Department of Environmental Quality (DEQ) and EPA Region 4 and that an investigation was underway. The calls reported no injuries.

We next checked EPA Region 4's website. Region 4 has a specific link for "Hurricane Responses." Following this link, we found the [site profile for Hurricane Florence](#). The only documents uploaded at the time were press releases. These press releases reported that EPA was working with North Carolina to monitor and assess the coal ash releases. Going to the SERC website produced similar press releases from North Carolina.

We next checked the DEQ website for more information from the State. The homepage had a link to a section on coal ash, and this included [information on Duke Energy's permits](#), such as a [fact sheet](#) identifying the type of waste present at the site, the monthly average quantity of waste at the site, and the daily maximum quantity.

DEQ's press releases included multiple updates regarding coal ash releases. The updates reported that DEQ was conducting drone inspections. One press release stated, "[w]hile the state is currently in emergency response mode, a thorough investigation of events will soon follow to ensure that Duke Energy is held responsible for any environmental impacts by their coal ash facilities." The press releases identified a contact person at DEQ for information on the coal ash situation. The DEQ website also included a [Post-storm Recovery page](#) with contact information and public advisories related to Hurricane Florence in general.

One press release included links to the [DEQ Dashboard](#), where DEQ said it would continue to upload information from Sutton Steam Plant inspections. At the time, the DEQ Dashboard already included some results from samplings at the site, pictures from the inspections, and a video of aerial footage of the facility.

While waiting for DEQ to collect and report more data, citizens seeking more information more quickly could collect their own samples from public locations, as discussed in Chapter 5 of this Manual.

## **EXAMPLE FOIA REQUEST**

*Information about where to send FOIA requests at EPA can be found on [EPA's website](#). As an alternative to mailing a FOIA request, you may also submit electronic FOIA requests through [FOIAonline](#). The example request below may also be used for submitting information requests to state agencies. To do so, make sure you identify the specific state statute that authorizes public records requests.*

Dear \_\_\_\_\_,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and the implementing regulations of the Environmental Protection Agency (EPA), 40 C.F.R. Part 2, I am submitting the following request [*add "on the behalf of . . ." if you are submitting the request for an organization*].

Please provide a copy of the following documents:

*[Identify the documents or information you are seeking. Be as specific as possible]*

If EPA maintains that portions of a requested record are exempt from disclosure, please redact the exempt portions and provide the remainder of the record. If EPA determines to withhold any of the requested records, please identify under which statutory exception each record is being withheld.

For any FOIA-related charges, I am pre-authorizing an amount up to \_\_\_\_\_. Please contact me if the estimated fees will exceed this amount.

Sincerely,

\_\_\_\_\_

## II. STATUTE SUMMARIES

This section summarizes statutory requirements for preparing for and responding to chemical release emergencies. This section describes the information that facilities must report regarding their storage and releases of chemicals and whether members of the public can access this information. Please see the roadmaps above for more details on how to access the facility reports.

The first part of this section focuses on federal statutes, and the second part provides a few state statutes as examples of how states have applied these federal requirements. Each state has specific rules, so you should research your specific state's requirements.

Note that the legal summaries below are not exhaustive explanations of all requirements imposed by these statutes. The summaries are current as of December 2018.

### A. FEDERAL STATUTES

#### THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

*The Emergency Planning and Community Right-to-Know Act (EPCRA) focuses on planning to minimize the impact of chemical release emergencies. EPCRA requires facilities that house hazardous chemicals to report information concerning their use, storage, and release of hazardous chemicals to local, state, and federal government entities. The local government must use this information to make plans for responding to chemical emergencies. EPCRA also includes provisions for providing public access to this information. The tables below summarize reporting requirements imposed on facilities and include information on how the public may access information from these reports. The column on the right includes citations to the statutory and regulatory authority for these requirements. "U.S.C." refers to statutes published in the U.S. Code, and "C.F.R." refers to regulations published in the Code of Federal Regulations. Please see the roadmaps for more information on how to request information from Local Emergency Planning Committees (LEPCs) and State Emergency Response Commissions (SERCs) under EPCRA.*

#### MATERIAL SAFETY DATA SHEETS & CHEMICAL LISTS

Material Safety Data Sheets (MSDSs) contain information about a chemical's health hazards.

*FACILITY  
REPORT MUST  
INCLUDE:*

- A MSDS for each hazardous chemical present at the facility that meets or exceeds a threshold quantity
- Or

42 U.S.C. § 11021  
40 C.F.R. § 370.30

	<ul style="list-style-type: none"> <li>• A list of all hazardous chemicals present at the facility at or above threshold quantities. These should be grouped by the specific health and physical hazard categories specified in 40 C.F.R. § 370.66.</li> </ul>	
<i>FACILITY MUST REPORT IF:</i>	<ul style="list-style-type: none"> <li>• The MSDS is required by the Occupational Safety and Health Act (OSH Act) <i>AND</i></li> <li>• An extremely hazardous substance is present in a quantity at or above 500 lbs. or its threshold quantity <i>OR</i> a hazardous chemical is present in a quantity at or above its threshold (usually 10,000 lbs.).</li> </ul>	42 U.S.C. § 11021 40 C.F.R. § 370.10
<i>TO WHOM TO REPORT:</i>	LEPC, SERC, and the fire department.	42 U.S.C. § 11021(a)(1) 40 C.F.R. § 370.32
<i>WHEN TO REPORT:</i>	Report within 3 months after becoming subject to these requirements.	42 U.S.C. § 11021(d)(1) 40 C.F.R. § 370.33
<i>PUBLIC ACCESS TO REPORTED INFORMATION:</i>	<p>MSDSs and chemical lists must be made available to the public by the SERC or LEPC. The LEPC must annually publish a notice in the local newspaper saying the MSDSs have been submitted and announcing where the public may access the information.</p> <p>Any person may make a written request for MSDSs from the LEPC.</p> <p>The LEPC must provide the MSDS if in its possession. If the LEPC does not have the MSDS, it must request the MSDS from the facility.</p>	<p>42 U.S.C. § 11044</p> <p>42 U.S.C. § 11021(c)(2) 40 C.F.R. § 370.60</p> <p>42 U.S.C. § 11021(c)(2) 40 C.F.R. § 370.60</p>

## TIER I INFORMATION

A Tier I inventory includes more details than an MSDS or chemical list. The LEPC uses Tier I inventories to prepare an emergency response plan to address releases of hazardous chemicals.

<p><i>FACILITY REPORT MUST INCLUDE:</i></p>	<p>An annual inventory form consisting of:</p> <ol style="list-style-type: none"> <li>(1) An estimate of the maximum amount of hazardous chemicals in each category (physical vs health hazard) present at the facility during the preceding year;</li> <li>(2) An estimate of the average daily amount of hazardous chemicals in each category present at the facility during the preceding year;</li> <li>(3) The maximum days any single hazardous chemical was at the facility; and</li> <li>(4) The general location of hazardous chemicals in each category.</li> </ol>	<p>42 U.S.C. § 11022(d)(1) 40 C.F.R. § 370.41</p>
<p><i>FACILITY MUST REPORT IF:</i></p>	<ul style="list-style-type: none"> <li>• The MSDS is required by the OSH Act</li> <li>AND</li> <li>• The extremely hazardous substance is present in a quantity at or above 500 lbs. or its threshold quantity <i>OR</i> the hazardous chemical is present in a quantity over its threshold (usually 10,000 lbs.).</li> </ul>	<p>42 U.S.C. § 11022(a)–(b) 40 C.F.R. § 370.10</p>
<p><i>TO WHOM TO REPORT:</i></p>	<p>LEPC, SERC, and the fire department.</p>	<p>42 U.S.C. § 11022(a)(1) 40 C.F.R. § 370.44</p>
<p><i>WHEN TO REPORT:</i></p>	<p>Tier I inventories must be reported annually by March 1<sup>st</sup> for data from the preceding calendar year.</p>	<p>42 U.S.C. § 11022(a)(2) 40 C.F.R. § 370.45</p>
<p><i>PUBLIC ACCESS TO REPORTED INFORMATION:</i></p>	<p>Inventory forms must be made available to the public by the LEPC and SERC. The LEPC must annually publish a notice in the local newspaper saying the emergency response plan and inventory forms have been submitted and announcing where the public may access the information.</p> <p>Members of the public may request to see the LEPC's emergency response plan based on the Tier I inventory.</p>	<p>42 U.S.C. § 11044</p> <p>42 U.S.C. § 11044</p>

## TIER II INFORMATION

Tier II information provides even more details than the Tier I inventory. While the Tier I inventory groups hazardous chemicals into categories and then reports the estimated amount of each group of chemicals, Tier II information requires estimates on the amount of each individual chemical. Tier II information also requires more details concerning the location and storage of hazardous chemicals. Facilities are not required to report Tier II information unless requested to do so by the SERC, LEPC, or fire department.

<p><b>FACILITY REPORT MUST INCLUDE:</b></p>	<p>Tier II information, containing:</p> <ol style="list-style-type: none"> <li>(1) The chemical name or common name listed in the MSDS;</li> <li>(2) Whether the hazardous chemical is a gas, solid, or liquid;</li> <li>(3) Whether the hazardous chemical is an extremely hazardous substance;</li> <li>(4) An estimate of the maximum amount of the hazardous chemical present at any time during the preceding year;</li> <li>(5) An estimate of the average daily amount of the hazardous chemical present during the preceding year;</li> <li>(6) An indication of the type of storage (above-ground tank, drum, cylinder, etc.); and</li> <li>(7) The location of the hazardous chemical at the facility.</li> </ol>	<p>42 U.S.C. § 11022(d)(2) 40 C.F.R. § 370.42</p>
<p><b>FACILITY MUST REPORT IF:</b></p>	<ul style="list-style-type: none"> <li>• MSDS is required by the OSH Act</li> <li>AND</li> <li>• The LEPC, SERC, or fire department requests the information.</li> </ul> <p><i>There are no threshold requirements for this information.</i></p>	<p>42 U.S.C. § 11022(d)(2) 40 C.F.R. § 370.10</p> <p>40 C.F.R. § 370.10(b)</p>
<p><b>TO WHOM TO REPORT:</b></p>	<p>Whichever of the LEPC, SERC, or fire department requests the information.</p>	<p>42 U.S.C. § 11022(d)(2) 40 C.F.R. § 370.10</p>
<p><b>WHEN TO REPORT:</b></p>	<p>Tier II information must be reported within 30 days of receiving a request from the SERC, LEPC, or fire department.</p> <p>Tier II information will satisfy the Tier I requirement if the facility reports Tier II information for the preceding calendar year by March 1<sup>st</sup>.</p>	<p>40 C.F.R. § 370.45</p> <p>42 U.S.C. § 11022(a)(2)</p>

<b>PUBLIC ACCESS TO REPORTED INFORMATION:</b>	Any person may make a written request to the SERC or LEPC for Tier II information.	42 U.S.C. § 11022(e)(3)(A) 40 C.F.R. § 370.61(a)
	The SERC or LEPC must provide the information if in its possession.	42 U.S.C. § 11022(e)(3)(B) 40 C.F.R. § 370.61(a)(1)
	If it does not have the Tier II information, the SERC or LEPC must request the information from the facility if the person requesting is acting in an official capacity or if the quantity of the hazardous chemical present at the facility is over 10,000 lbs.	42 U.S.C. § 11022(e)(3)(B) 40 C.F.R. § 370.61(a)(2)
	The SERC and LEPC also have discretion to request the Tier II information if the person’s written request includes a statement of need.	42 U.S.C. § 11022(e)(3)(C) 40 C.F.R. § 370.61(a)(3)

## TOXICS RELEASE INVENTORY

The Toxics Release Inventory (TRI) is a national database maintained by EPA to track the management of toxic chemicals that may be harmful to human health and the environment. Chemicals defined as “toxic chemicals” for the TRI are listed in 40 C.F.R. § 372.65. A facility must report the annual quantity of such chemicals it stores on its premises and the quantities of any releases into the environment. While the other EPCRA provisions require facilities to report to local and state entities, this provision requires reporting to EPA in addition to reporting to a state entity.

<b>FACILITY REPORT MUST INCLUDE:</b>	Specific forms that identify quantities of toxic chemicals that were present at the facility the previous year in quantities over the reporting thresholds and that identify any releases during the previous year.	42 U.S.C. § 11023(a) 40 C.F.R. § 372.30 40 C.F.R. § 372.85
<b>FACILITY MUST REPORT IF:</b>	<p>The facility meets all three conditions:</p> <ul style="list-style-type: none"> <li>(1) Is part of a specified industry sector;</li> <li>(2) Employs 10 or more full-time employees; and</li> <li>(3) Manufactures, processes, or otherwise uses TRI-listed chemical in quantities above that year’s threshold.</li> </ul> <p><i>The threshold is generally 25,000 lbs. for manufacturing or processing and 10,000 lbs. for other uses.</i></p> <p><i>Covered chemicals are listed in 40 C.F.R. § 372.65 and can be viewed on EPA’s website.</i></p>	42 U.S.C. § 11023 40 C.F.R. § 372.22  40 C.F.R. § 372.25

	<i>Covered industries are listed by 6-digit NCAICS codes (See the EPA's <a href="#">TRI-Covered Industry Sectors</a> webpage for help identifying codes for industries and which codes are covered).</i>	
<b>TO WHOM TO REPORT:</b>	EPA and the state agency specified by the Governor	42 U.S.C. § 11023(a) 40 C.F.R. § 372.30
<b>WHEN TO REPORT:</b>	This inventory must be reported annually by July 1 <sup>st</sup> for data concerning the preceding calendar year.	42 U.S.C. § 11023(a) 40 C.F.R. § 372.30
<b>PUBLIC ACCESS TO REPORTED INFORMATION:</b>	EPA must make these toxic chemical release forms available to the public.  TRI information is available on the <a href="#">TRI website</a> , <a href="#">Envirofacts</a> , and <a href="#">myRTK</a> .  Members of the public may also submit written requests to EPA for information from the TRI.	42 U.S.C. § 11023(h) 42 U.S.C. § 11044

## EMERGENCY RELEASE NOTIFICATION

In contrast to the other EPCRA provisions' focus on preparing for emergencies and regulating the storage of hazardous chemicals, this provision focuses on regulating the responses to actual releases. This provision requires facilities to report when chemical release emergencies occur so that the community may respond. The provision requires two separate notifications: (1) an initial notification reporting the release, and (2) a follow-up notification identifying responses taken to address the release.

<b>FACILITY REPORT MUST INCLUDE:</b>	<p>A notification that:</p> <ul style="list-style-type: none"> <li>• Identifies the substance released;</li> <li>• Indicates whether the substance is extremely hazardous;</li> <li>• Estimates the quantity released;</li> <li>• Provides the time and duration of the release;</li> <li>• Offers any known or anticipated “acute or chronic health risks;” and</li> <li>• Identifies proper precautions to take as a result of the release.</li> </ul> <p>The written-follow up notification includes:</p> <ul style="list-style-type: none"> <li>• Actions taken to respond to and contain the release;</li> </ul>	<p>42 U.S.C. § 11004 40 C.F.R. § 355.40(a)</p> <p>40 C.F.R. § 355.40(b)</p>
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	<ul style="list-style-type: none"> <li>• Known or anticipated acute or chronic health risks from the release; and</li> <li>• Where appropriate, advice regarding medical attention necessary for exposed individuals.</li> </ul>	
<b><i>FACILITY MUST REPORT IF:</i></b>	<ul style="list-style-type: none"> <li>• The facility produces, uses or stores hazardous chemicals</li> </ul> <p><i>AND</i></p> <ul style="list-style-type: none"> <li>• There was a release of a reportable quantity in the past 24 hours of any extremely hazardous substance or hazardous substance defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).</li> </ul> <p><i>Substances and their reportable quantities are listed in Appendixes A and B of 40 C.F.R. Part 355.</i></p> <p><i>This section does not apply to continuous releases and permitted releases.</i></p> <p><i>These required notifications are in addition to those required under CERCLA. See the table in 40 C.F.R. § 355.60 for a comparison of the requirements.</i></p>	42 U.S.C. § 11004 40 C.F.R. § 355.30
<b><i>TO WHOM TO REPORT:</i></b>	LEPC and SERC.	42 U.S.C. § 11004(b) 40 C.F.R. § 355.42
<b><i>WHEN TO REPORT:</i></b>	<p>Provide the initial notification immediately after a release.</p> <p>Provide the written follow-up as soon as practicable.</p>	42 U.S.C. § 11004(b) 40 C.F.R. § 355.43
<b><i>PUBLIC ACCESS TO REPORTED INFORMATION:</i></b>	The follow-up emergency notice must be made available to the public “during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate.” The LEPC’s annual notice published in the paper must say where the public may access this information.	42 U.S.C. § 11044

## THE CLEAN AIR ACT

*The Clean Air Act (CAA) focuses on air pollution. In addition to regulating air emissions by setting emission limits and permit requirements, the CAA also regulates planning and responding to accidental chemical releases. It requires facilities to create Risk Management Plans (RMPs) and to report accidental releases. The tables below summarize these requirements imposed on facilities and include information on how the public may access information regarding these RMPs and accidental releases. The column on the right includes citations to the statutory and regulatory authority for these requirements. “U.S.C.” refers to statutes published in the U.S. Code, and “C.F.R.” refers to regulations published in the Code of Federal Regulations.*

<b>RISK MANAGEMENT PROGRAM</b>		
<p>The CAA’s Risk Management Program requires facilities with regulated substances to create their own Risk Management Plans. These plans must identify potential effects of chemical releases and identify procedures to prevent and respond to chemical releases. The facility must submit a copy of the plan to EPA and other government entities.</p>		
<p><b><i>FACILITY SUBMISSION MUST INCLUDE:</i></b></p>	<p>A RMP consisting of:</p> <ul style="list-style-type: none"> <li>• A hazard assessment that includes an estimate of potential release quantities, a determination of downwind effects and potential exposures to populations, a five-year history of releases, an evaluation of worst-case release scenarios, and an evaluation of an alternative, more likely scenario;</li> <li>• Prevention mechanisms such as employee training, safety precautions, and maintenance; and</li> <li>• An emergency response program with specific actions such as notifying government agencies, informing the public, providing emergency health care, and training employees.</li> </ul> <p><i>Note that there are three different program levels (Programs 1,2, and 3) with differing specifics, but this table focuses on the basic requirements applicable to all programs.</i></p>	<p>42 U.S.C. § 7412(r)(7)(B)(ii) 40 C.F.R. § 68.12</p>
<p><b><i>FACILITY MUST SUBMIT IF:</i></b></p>	<p>Regulated substances are present at the facility at or above their applicable thresholds.</p>	<p>42 U.S.C. § 7412(r)(7)(B)(ii) 40 C.F.R. § 68.10</p>

	<i>A list of regulated substances and their thresholds is located in 40 C.F.R. § 68.130.</i>	
<b>TO WHOM TO SUBMIT:</b>	Copies of the RMP must be submitted to EPA, the Chemical Safety Board, and any specified state or local entities.	42 U.S.C. § 7412(r)(7)(B)(iii)
<b>WHEN TO SUBMIT:</b>	<p>The initial RMP must be submitted within three years after the date the regulated substance is first listed under 40 C.F.R. § 68.130 or on the date the regulated substance is first present over the threshold quantity.</p> <p>RMPs must be updated and resubmitted once every five years.</p>	<p>40 C.F.R. § 68.150(b) 40 C.F.R. § 68.10</p> <p>40 C.F.R. § 68.190(b)</p>
<b>PUBLIC ACCESS TO SUBMITTED INFORMATION:</b>	<p>The facility must make its RMP available to the public, but the public availability of the worst-case scenario analysis may be limited for security reasons.</p> <p>Upon request, the facility must provide the following information:</p> <ul style="list-style-type: none"> <li>• MSDSs for all regulated substances at the facility;</li> <li>• Five-year accident history;</li> <li>• Contact information for the local emergency response organization with whom the facility; last coordinated emergency response efforts</li> <li>• Procedures for informing the public and local emergency response agencies about accidental releases;</li> <li>• A list of scheduled exercises as required by the RMP; and</li> <li>• LEPC contact information.</li> </ul> <p>The facility must also provide ongoing notifications about the availability of this data. The facility must provide instructions for requesting the information and identify where to access other available information on community emergency preparedness.</p> <p>Some RMP information may also be requested directly from EPA through FOIA requests or at federal reading rooms.</p>	<p>42 U.S.C. § 7412(r)(7)(B)(iii) 42 U.S.C. § 7414(c) 42 U.S.C. § 7412(r)(7)(H)</p> <p>40 C.F.R. § 68.210(b)</p> <p>40 C.F.R. § 68.210(c)</p>

	Please see the <i>Potential Obstacles for FOIA Requests</i> section in the above roadmaps for advice on submitting FOIA requests.	
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### ACCIDENTAL RELEASE NOTIFICATIONS

Like EPCRA's requirement to report releases of hazardous chemicals, the CAA also requires facilities to report accidental releases of regulated substances. The facility must hold a public meeting to notify the community about the release.

<b>FACILITY REPORT MUST INCLUDE:</b>	A notification identifying the following: <ul style="list-style-type: none"> <li>• Date, time, and approximate duration of the release;</li> <li>• Chemicals released;</li> <li>• Estimated quantity of chemicals released; and</li> <li>• The initiating event and contributing factors if known.</li> </ul>	40 C.F.R. § 68.42 40 C.F.R. § 68.210(e)
<b>FACILITY MUST REPORT IF:</b>	There is an accidental release “from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.”	40 C.F.R. § 68.42 40 C.F.R. § 68.210(e)
<b>TO WHOM TO REPORT:</b>	The public.	40 C.F.R. § 68.210(e)
<b>WHEN TO REPORT:</b>	Within 90 days after the accident.	40 C.F.R. § 68.210(e)
<b>PUBLIC ACCESS TO REPORTED INFORMATION:</b>	The owner or operator of the facility is supposed to hold a public meeting to provide this information.	40 C.F.R. § 68.210(e)
<b>NOTE:</b>	The Chemical Safety Board (CSB) is supposed to establish a requirement for reporting accidental chemical releases to the National Response Center, but the CSB has not done so yet.	42 U.S.C. § 7412(r)(6)(C)(iii)

## THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT

*The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) governs responses to and remediation of releases of hazardous substances and which parties will be liable for the cleanup and compensation. CERCLA requires facilities to notify the National Response Center (NRC) when there is a release of a hazardous substance over a specified threshold. The table below summarizes facilities' obligation under this requirement and includes information on how the public may access the information reported by the facilities. The column on the right includes citations to the statutory and regulatory authority for these requirements. "U.S.C." refers to statutes published in the U.S. Code, and "C.F.R." refers to regulations published in the Code of Federal Regulations.*

<b>RELEASES OF REPORTABLE QUANTITIES</b>		
While EPCRA requires the facility to notify local authorities (the LERC and SERC) concerning releases, CERCLA requires the facility to notify the NRC.		
<b>FACILITY REPORT MUST INCLUDE:</b>	Notification that release happened	42 U.S.C. § 9603(a) 40 C.F.R. § 302.6
<b>FACILITY MUST REPORT IF:</b>	<p>There is a release of a hazardous substance in a quantity equal to or exceeding the substance's reportable quantity within a 24-hour period.</p> <p><i>40 C.F.R. § 302.4 provides a list of hazardous substances and their reportable quantities.</i></p> <p><i>Solid wastes listed in 40 C.F.R. § 261.2 and with characteristics identified in 40 C.F.R. § 261.2 – 261.24 are also hazardous substances.</i></p> <p><i>If a hazardous waste is unlisted, its reportable quantity is 100 lbs.</i></p>	42 U.S.C. § 9603(a) 40 C.F.R. § 302.6
<b>TO WHOM TO REPORT:</b>	NRC.	42 U.S.C. § 9603(a) 40 C.F.R. § 302.6
<b>WHEN TO REPORT:</b>	As soon as the facility has knowledge of the release.	42 U.S.C. § 9603(a) 40 C.F.R. § 302.6

<p><i>PUBLIC ACCESS TO REPORTED INFORMATION:</i></p>	<p>Upon receiving a report, the NRC will immediately notify a designated On-Scene Coordinator (OSC) and local and state emergency responders. The OSC will then determine whether the release requires federal involvement.</p> <p>The OSC must provide the public with prompt, accurate information on the nature of the incident and on actions being taken to mitigate damages.</p> <p>If remedial actions are necessary for significant releases, the lead agency must inform the community of actions taken and provide information concerning the accident. A local information repository should be established near the location of the response action.</p> <p>EPA’s website has a <a href="#">list of Superfund sites</a> (where there is known contamination that is being remediated pursuant to the National Contingency Plan). The website includes publicly available documents for each site. <a href="#">Envirofacts</a> can also help identify contaminated sites.</p>	<p><i>National Response System,</i>  <a href="https://www.epa.gov/emergency-response/national-response-system">https://www.epa.gov/emergency-response/national-response-system</a></p> <p>40 C.F.R. § 300.155</p> <p>40 C.F.R. § 300.430(c)</p>
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# THE RESOURCE CONSERVATION AND RECOVERY ACT

*The Resource Conservation and Recovery Act (RCRA) regulates management of hazardous and non-hazardous waste (the term includes liquid, gas, and other solid wastes). For the purposes of preparing for and responding to chemical release emergencies, this summary and the below tables will focus on the hazardous waste requirements. Because of the significant threats to the environment and human health from coal ash releases, however, the last table focuses on requirements applicable to energy plants that create and store coal ash, which is not currently designated as a hazardous waste by EPA.*

*RCRA requires facilities that manage hazardous waste to create contingency plans for potential emergencies, report the quantities of hazardous wastes managed at the facility, and notify the National Response Center (NRC) of hazardous releases. RCRA divides facilities into three categories: hazardous waste generators; hazardous waste transporters; and hazardous waste treatment, storage, and disposal facilities. Similar provisions exist for each category, but RCRA lists the requirements separately for each category in order to account for any specific differences. The tables below summarize the requirements imposed on treatment, storage, and disposal facilities. For similar requirements for generators, see 40 C.F.R. Parts 261–62. For similar requirements for transporters, see 40 C.F.R. Part 263.*

*The tables below also include information on how the public may access information reported under RCRA. The column on the right includes citations to the statutory and regulatory authority for these requirements. “U.S.C.” refers to statutes published in the U.S. Code, and “C.F.R.” refers to regulations published in the Code of Federal Regulations.*

CONTINGENCY PLANS		
RCRA requires facilities to prepare contingency plans that identify procedures for responding to releases of hazardous waste. The facility must submit a copy of this plan to local emergency responders, such as the local fire department.		
<i>FACILITY SUBMISSION MUST INCLUDE:</i>	Copy of contingency plan, identifying: <ul style="list-style-type: none"> <li>• Evacuation plan;</li> <li>• Emergency equipment; and</li> <li>• Arrangements and coordination with local emergency responders.</li> </ul> <i>The arrangements with local emergency responders should seek to familiarize the responders with the facility layout and the hazardous wastes’ properties.</i>	40 C.F.R. § 264.52          40 C.F.R. § 264.37
<i>FACILITY MUST SUBMIT IF:</i>	The facility treats, stores, or disposes of hazardous wastes.	40 C.F.R. § 264.51 40 C.F.R. § 264.1

	<i>Characteristics of hazardous wastes are listed in 40 C.F.R. § 261 Subpart C. Specific hazardous wastes are listed in Subpart D.</i>	
<b>TO WHOM TO SUBMIT:</b>	Local emergency responders.	40 C.F.R. § 264.53
<b>WHEN TO SUBMIT:</b>	The facility must review and amend its contingency plan whenever it revises the facility permit, the facility changes in a way that materially increases the potential of a hazardous release, or the plan fails in an emergency.	40 C.F.R. § 264.54
<b>PUBLIC ACCESS TO REPORTED INFORMATION:</b>	Although RCRA does not require disclosure of specific contingency plans to the public, members of the public can try asking local emergency responders, such as the fire department, if they have received contingency plans from the facilities in order to check whether the plans have been submitted.	

## BIENNIAL REPORT

Every two years, facilities that manage hazardous waste (*i.e.*, treatment, storage, and disposal facilities) must report to EPA the type and quantity of hazardous waste they have managed since the last report.

<b>FACILITY REPORT MUST INCLUDE:</b>	The Biennial Report (EPA Form 8700-13 A/B), which consists of: <ul style="list-style-type: none"> <li>• A list of hazardous secondary materials managed; and</li> <li>• The quantity of each hazardous secondary material managed.</li> </ul>	40 C.F.R. § 264.75
<b>FACILITY MUST REPORT IF:</b>	The facility treats, stores, or disposes of hazardous wastes.  <i>Characteristics of hazardous wastes are listed in 40 C.F.R. § 261 Subpart C. Specific hazardous wastes are listed in Subpart D.</i>	40 C.F.R. § 264.70 40 C.F.R. § 264.1
<b>TO WHOM TO REPORT:</b>	EPA Regional Administrator.	40 C.F.R. § 264.75
<b>WHEN TO REPORT:</b>	Notification must be sent by March 1 <sup>st</sup> of each even-numbered year.	40 C.F.R. § 264.75

<p><b>PUBLIC ACCESS TO REPORTED INFORMATION:</b></p>	<p>Information provided to EPA under 40 C.F.R. Parts 260–66 or 268 should be made available to the public under the Freedom of Information Act.</p> <p>The <a href="#">Envirofacts website</a> lets the public search for data through the RCRAInfo database.</p> <p>Please see the <i>Potential Obstacles for FOIA Requests</i> section in the above roadmaps for advice on submitting FOIA requests.</p>	<p>40 C.F.R. § 260.2</p>
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<p align="center"><b>RELEASES OF HAZARDOUS WASTE</b></p>		
<p>As the other federal statutes do, RCRA also requires facilities to provide notifications concerning releases of hazardous waste. The facility must notify the NRC of releases of hazardous waste that pose threats to human health and the environment.</p>		
<p><b>FACILITY REPORT MUST INCLUDE:</b></p>	<p>Notification of:</p> <ul style="list-style-type: none"> <li>(1) The time and type of the incident (<i>e.g.</i>, release or fire);</li> <li>(2) The name and quantity of materials involved;</li> <li>(3) The extent of injuries, if any; and</li> <li>(4) The possible hazards to human health, or the environment, outside the facility.</li> </ul>	<p>40 C.F.R. § 264.56</p>
<p><b>FACILITY MUST REPORT IF:</b></p>	<p>A release, fire, or explosion occurs at the facility that could threaten human health or the environment outside of the facility.</p>	<p>40 C.F.R. § 264.56</p>
<p><b>TO WHOM TO REPORT:</b></p>	<p>The NRC and, if appropriate, local authorities.</p>	<p>40 C.F.R. § 264.56</p>
<p><b>WHEN TO REPORT:</b></p>	<p>Report during or immediately after the release.</p>	<p>40 C.F.R. § 264.56</p>
<p><b>PUBLIC ACCESS TO REPORTED INFORMATION:</b></p>	<p>Reports to the NRC activate the National Contingency Plan, so information will be made available to the public according to the NCP (<i>see Public Access to Reported Information</i> in the CERCLA summary table above).</p>	<p><i>National Response Center,</i>  <a href="https://www.epa.gov/emergency-response/national-response-center">https://www.epa.gov/emergency-response/national-response-center</a></p>

## COAL ASH INFORMATION

RCRA also includes provisions regulating the storage of coal ash. Facilities that store coal ash must publish information online for the public to be aware of the facility’s management of coal ash.

<p><i>FACILITY INFORMATION MUST INCLUDE:</i></p>	<p>Data and records containing, but not limited to, the following information:</p> <ul style="list-style-type: none"> <li>• An emergency action plan;</li> <li>• A history of construction at the plant;</li> <li>• Structural stability assessments;</li> <li>• Safety factor assessments;</li> <li>• Dust control plans;</li> <li>• Inspection reports;</li> <li>• A groundwater monitoring and corrective action report; and</li> <li>• A groundwater monitoring system certification.</li> </ul>	<p>40 C.F.R. § 257.107</p>
<p><i>FACILITIES REQUIRED TO MAKE INFORMATION AVAILABLE:</i></p>	<p>This requirement applies to all coal combustion residuals (CCR) units that do not meet the definition of beneficial use of CCR.</p> <p>A CCR unit is a landfill or surface impoundment for CCR, which includes “fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity.”</p> <p><i>See</i> 40 C.F.R. § 257.53 for what counts as a beneficial use of CCR.</p>	<p>40 C.F.R. § 257.107 40 C.F.R. § 257.50(b)  40 C.F.R. § 257.53</p>
<p><i>HOW TO MAKE INFORMATION AVAILABLE:</i></p>	<p>This information must be posted to a publicly accessible website maintained by the facility. The website must be titled “CCR Rule Compliance Data and Information.”</p> <p>EPA has a <a href="#">List of Publicly Accessible Internet Sites Hosting Compliance Data</a>, which includes links to these individual websites sorted by state.</p>	<p>40 C.F.R. § 257.107</p>
<p><i>WHEN TO MAKE INFORMATION AVAILABLE:</i></p>	<p>Required updates depend on the specific actions taken at the facility. Information must remain available to the public for five years after the date the information was initially posted to the website.</p>	<p>40 C.F.R. § 257.107</p>

## **B. STATE STATUTES**

In addition to reviewing federal statutes, citizens interested in ensuring their communities are prepared for chemical release emergencies should also check state laws. Many states have statutes that incorporate the federal requirements, and citizens may reference these state statutes as additional requirements for release of information to the public. However, some states' homeland security and right-to-know provisions limit the applicability of the federal requirements. EPCRA specifically states that it does not preempt or "otherwise affect" local or state law, 42 U.S.C. § 11041, so some states assert that their statutes may impose limits on EPCRA's requirements.<sup>1</sup> Accordingly, citizens need to be familiar with their states' statutes.

Below are a few illustrative provisions from different states.

### **Texas**

#### **Texas Toxic Chemical Release Reporting Act**

This Act is Texas' version of the EPCRA TRI reporting provisions, requiring facilities to submit toxic chemical release forms. Tex. Health & Safety Code § 370.003. It specifically requires toxic chemical release forms to be made available to the public. Tex. Health & Safety Code § 370.006.

#### **Manufacturing Facility Community Right-to-Know Act**

This Act requires manufacturing facilities to report Tier II information. Tex. Health & Safety Code § 505.006. Similar provisions exist for nonmanufacturing facilities, Tex. Health & Safety Code § 507.006, and for public employers, Tex. Health & Safety Code § 506.006.

#### **Homeland Security Act**

This Act protects information that the government deems confidential for security purposes. This confidential information includes information "collected, assembled, or maintained by or for a governmental entity" that "indicates the specific location of: a chemical, biological agent, toxic, or radioactive material that is more than likely to be used in the construction or assembly" of an "explosive weapon." Tex. Gov't Code § 418.178. The Texas Attorney General's Open Records Division has viewed this as justification for withholding information that indicates the location of hazardous chemicals. See [Open Records Letter Ruling, No. OR2014-10745, June 23, 2014](#); [Open Records Letter Ruling, No. OR2014-14876, Aug. 22, 2014](#). The Open Records Division has also withheld entire Tier II reports in some circumstances where the facilities' addresses were already known. See [Open Records Letter Ruling, No. OR2015-16460, Aug. 10, 2015](#); [Open Records Letter Ruling, No. OR2018-10123, Apr. 30, 2018](#).

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<sup>1</sup> While EPCRA's preemption provision is considered the basis for these states' assertions that their homeland security and right-to-know provisions limit federal requirements, the courts have not decided this issue. Indeed, when courts have considered EPCRA's preemption provision, they have generally found that EPCRA provides a floor for disclosure, not a ceiling. See *Ohio Chamber of Commerce v. State Emergency Response Comm.*, 597 N.E.2d 487 (Ohio 1992). Other federal regulations regarding national security also explicitly reserve EPCRA's disclosure requirements. See *Chemical Facility Anti-Terrorism Standards*, 6 C.F.R. § 27.405(a)(1) ("Nothing in this part is intended to displace other federal requirements administered by the Environmental Protection Agency....").

Some agencies have also argued for withholding EPCRA information based on the state’s protection of documents in the government’s possession that “identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism,” as provided in Tex. Gov’t Code § 418.181.

## Pennsylvania

### **Hazardous Material Emergency Planning and Response Act**

This Act incorporates EPCRA reporting requirements, 35 P.S. § 6022.205, and specifically requires emergency notifications of hazardous releases as well, 35 P.S. § 6022.206.

### **Public Utility Confidential Security Information Disclosure Protection Act**

This Act restricts the disclosure of information contained within records maintained by a government agency that “would compromise security against sabotage or criminal or terrorist acts.” 35 P.S. § 2141.2. This protected information specifically includes emergency response plans that identify and assess the vulnerability of public utility facilities. *Id.*

### **Right-to-Know Law**

This Act governs the release of government records to members of the public. The Act exempts from disclosure records that are “maintained by an agency in connection with . . . homeland security . . . or other public safety” and, if released, would be “reasonably likely to jeopardize or threaten public safety.” 65 P.S. § 67.708(b)(2). Pennsylvania has taken the position that Tier II information on facilities’ specific site plans are included in the exemption. See [Pennsylvania Office of Open Records, Final Determination, No. AP 2014-1203, Sept. 18, 2014](#).

## Florida

### **Florida Emergency Planning and Community Right-to-Know Act**

This Act applies EPCRA’s chemical list and Tier I and II information reporting requirements to manufacturers, nonmanufacturers, and government bodies within the state. Fla. Stat. § 252.87. It specifically exempts fire departments from disclosing all information reported to them under EPCRA. Fla. Stat. § 252.88.

### **Florida Accidental Release Prevention and Risk Management Planning Act**

This Act implements the Clean Air Act’s Accidental Release Prevention Program. Fla. Stat. § 252.935. The Act specifically states that the Division of Emergency Management, SERC, and LEPC may assist members of the public in electronically accessing information from EPA’s database and may provide copies of these records if requested. Fla. Stat. § 252.946.