State of Delaware
EPCRA Reporting

Reporting Year 2016
Presentation #1

REGULATORY OVERVIEW
This presentation is available online…

We’ll see this screen again in Presentation #2.
The Federal Law
established in 1986 (30 years!)

Usually Referred to as:
Emergency Planning and Community Right-to-know Act

Also Known As:
Title III of the Superfund Amendments and Reauthorization Act
(SARA Title III)

U.S. EPA Regulations in 40 CFR Parts 355, 370, and 372
And the Delaware Code...

Delaware Code (1991)

Title 16 Chapter 63

http://delcode.delaware.gov/title16/c063/index.shtml
SERC and LEPCs

- EPCRA established a network for planning
- Required each State to establish a State Emergency Response Commission (SERC)
- SERCs then establish emergency planning districts and appoint Local Emergency Planning Committees (LEPCs)
- Promote public involvement in managing chemical risks in their community

The organization of emergency planning
Local Emergency Planning Committees

Meet every “odd” month

- **Sussex County** (2nd Thursday 10:00 at Georgetown 911 center)
- **Kent County** (2nd Tuesday 10:00 at Dover 911 center)
- **New Castle County** (2nd Monday 2:30 at NCC Fire School)
- **City of Wilmington** (2nd Friday 10:00 at Wilmington OEM)

- Emergency Planners, Government Agencies, & Facility Representatives
  - *Connecting those with chemicals with those who plan for & respond to emergencies*
EPCRA Sections

Accomplished via TierIIManager™

302 & 303* — Emergency Planning Notification

311 — MSDS List and updates

312 — Annual Hazardous Chemical Inventory (Tier II) Reporting

Executed through other reporting systems:

304 — Emergency Release Notification

313 — Toxics Release Inventory (TRI) Reporting

* Ongoing LEPC communication required
Sections 302/303
Emergency Planning and Notification

• Facilities with Extremely Hazardous Substances (EHSs) above Threshold Planning Quantities (TPQs)
• Provide initial notification within 60 days to LEPC & EPCRA Reporting Program
• Identify Facility Emergency Coordinator
• Provide info for planning and notice of changes
• **Exemptions for 311/312 do not apply**
Section 304
Emergency Release Notification

- Facilities and transporters
- List of substances & reportable quantities (RQ)
- Immediate initial notification (within 15 minutes) to
  - 1-800-662-8802: SERC/DNREC, and
  - 1-800-424-8802: National Response Center, and
  - 1-866-274-0884: affected LEPC(s)
- Written follow-up report
- Regulation 1203, Title 7 of Delaware Administrative Code
Release Reporting

Section 304 and DE Regulation 1203 requirements

For more information see the SERC webpage:

EPCRA Section 312

Annual Hazardous Chemical Inventory Report Tier II

Due March 1st Every Year

covering the previous calendar year
Section 312 (Tier II) Covered Facilities

Reporting requirements apply to any facility that is required to provide a Safety Data Sheet (SDS) for a hazardous chemical present at the facility in accordance with Federal OSHA or Delaware Worker Right-to-Know.

Facility means all buildings, equipment, structures and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person.
Section 312 (Tier II) 
Covered Chemicals

• **Hazardous Chemicals**
  - There is no specific list of these chemicals
  - Defined by OSHA (29 CFR 1910.1200) to mean any chemical (element, chemical compound or mixture of elements and/or compounds) which is a *physical hazard* or a *health hazard*

• **Extremely Hazardous Substances (EHSs)** –
  - A specific list of substances designated by the U.S. EPA in 40 CFR Part 355
  - Can also be found in EPA’s general reference document, *List of Lists*
  - And can be found at the SERC webpage: [http://www.dnrec.delaware.gov/SERC/Services/Pages/HazardousChemicalInventoryReporting.aspx](http://www.dnrec.delaware.gov/SERC/Services/Pages/HazardousChemicalInventoryReporting.aspx)
OSHA Regulations Provide for the Following Exemptions
(as stated in 29 CFR Section 1910.1200(b)(6))

(i) Hazardous Waste when subject to Hazardous Waste regulations
(ii) Hazardous substances that are subject to remedial or removal action
(iii) Tobacco or tobacco products;
(iv) Wood or wood products
(v) “Articles”
(vi) Food or alcoholic beverages
(vii) Drugs defined by the Federal Food and Drug Cosmetic Act
(viii) Cosmetics
(ix) Consumer products covered by the Consumer Product Safety Act
(x) Nuisance particulates
(xi) Ionizing and nonionizing radiation
(xii) Biological hazards

Exact wording can be found in our instructions and on our Web site
Federal and State EPCRA reporting regulations provide exemptions for the following substances:

(a) Any food, food additive, color additive, drug or cosmetic regulated by the Food and Drug Administration;

(b) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(c) Any substance to the extent it is used:
   (1) For personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;
   (2) In a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual;
   (3) In routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.
Additional Exemptions

Chemicals or substances in transportation or being stored incident to such transportation, including the transportation and distribution of natural gas, are not subject to the inventory reporting requirements.

• Natural Gas piping to a facility is exempt
• If material is under active shipping papers
• Railcar exemption ends when facility takes possession
Caution

Since many of these exemptions can be easily misinterpreted, please contact the Delaware EPCRA Reporting Program if you have any questions concerning applicability of these exemptions to chemicals at your facility.

Because Delaware’s program is more stringent, EPA’s guidance may not be applicable.
Section 312 (Tier II) Thresholds

Delaware Thresholds are lower than Federal

A substance may be reportable if present at the facility at any time during the calendar year at levels that equal or exceed the following thresholds:

• **Hazardous Chemical**
  - 55 gallons or 500 pounds, whichever is lower

• **Extremely Hazardous Substances (EHSs)**
  - 55 gallons, 500 pounds or the Threshold Planning Quantity (TPQ), whichever is lower. (~170 listed chemicals have TPQs < 500 lbs.)

• **Substances used solely for building heating purposes (at the site)**
  - 10,000 pounds
EHS Threshold Determination

Aggregation of EHSs

To determine if the threshold has been meet for an EHS, the amount of the EHS in both pure form and in mixtures at the facility must be aggregated. If the threshold for the EHS is met, the EHS and/or the mixtures containing EHS must be reported.
EHS Mixture Determination

• If an EHS is present in a mixture in a particular container, determine the quantity (lbs) of the EHS in that container.
  – If the concentration of an EHS is < 1% (or 0.1% for a carcinogen) in the mixture, you don’t have to count that EHS.

• You MUST aggregate the amounts of EHS in both the pure form and the mixture to determine if the TPQ or the reporting threshold (whichever is lower) is present.

• If the threshold for the EHS is met, the EHS and/or the mixtures containing EHS must be reported.
Mixture Determination for Hazardous Chemicals

- Aggregation of Non-EHS hazardous chemicals present in mixtures is not required.

- Substance should be reported on Tier II in the same manner in which it is described by the SDS. (e.g., If you have batteries on site, if the SDS is for Lead Acid Battery, report the chemical as Lead Acid Battery. Do not report 2 separate chemicals: Lead & Sulfuric Acid)

- Keep in mind the purpose of reporting. Information is distributed to emergency planning and response organizations.
Summary
Determining if a chemical is reportable

1. Is the substance a hazardous chemical or EHS for which you must have or prepare an MSDS in accordance with Federal OSHA or Delaware Worker Right-to-Know?
   - If yes, continue
   - If no, it is not a reportable substance

2. Was the applicable threshold met or exceeded?
   - If yes, continue
   - If no, it is not a reportable substance

3. Do any of the exemptions apply?
   - If yes, the substance is NOT reportable
   - If no, substance MUST be reported under § 312
Tier II Reporting Fees

• Developed in cooperation with State Emergency Response Commission (SERC)
• Per Statute, Fees are due March 1st
• Fees are appropriated to SERC for allocation primarily to LEPCs and data collection and management
• Legislation passed in 2002 allows support for portable decontamination trailers in each county
Tier II Reporting Fees

- Fees are as follows:
  - $40 per hazardous chemical
  - $80 per extremely hazardous substance
  - Fees for mixtures depend on concentration of EHSs:
    - Less than 10% by weight EHS = $40
    - Equal to or greater than 10% EHS = $80

$0 per voluntary chemicals
(those which do not meet the reporting threshold)
Tier II Reporting Fees

- Cap of $5000 per facility per year
- Facilities **exempt** from fees:
  - Federal, state, county, and local government facilities
  - Non-profit organizations
- Substances exempt from fees:
  - **Motor Vehicle Fuels** are exempt when offered for *retail sale* at the facility (Ex. Gasoline & Diesel)
Tier II Site Plot Plans

• upload the plan into TierIIManager™
• clear & concise
• label with facility name and address
• draw to scale or use dimensions
• include a north arrow
• include all structures, outside storage areas, and any obstacles that could be encountered by emergency personnel

➢ use the same terms on the Plot Plan as in the Inventory Report (step 2 / Storage Location)
Example Plot Plan

EPCRA Workshop Incorporated
100 Penny Lane, Dover, DE 19901

Warehouse

Front Door

Parking Lot

2000 gal Fuel Oil tank

Name of Road

1 inch = 20 feet

12/14/16
Changes for the 2016 Reporting Year

No regulatory changes for 2016

Updates on Delaware EPCRA
“What’s New” web page:
http://www.dnrec.delaware.gov/SERC/Pages/What'sNew.aspx
Changes
for the 2017 Reporting Year

effective 1/1/18

New Hazard Classes
from 5 to 24
Current Categories under 311/312


**Physical Hazards**
- Combustible liquid
- Compressed Gas
- Explosive
- Flammable
- Pyrophoric
- Oxidizer
- Organic Peroxide
- Unstable (Reactive)
- Water-Reactive

**Health Hazards**
- Carcinogens
- Toxic or highly toxic agents
- Reproductive toxins
- Irritants; Corrosives
- Sensitizers
- Agents which damage the lungs, skin, eyes, or mucous membranes
- Hepatotoxins
- Nephrotoxins
- Neurotoxins
- Agents which act on the hematopoietic system

**EPA Categories under 311/312**
- Sudden (Acute) Health Hazard
- Delayed (Chronic) Health Hazard
- Flammable
- Sudden Loss of Pressure
- Reactivity
OSHA Adopts GHS in 2012

Physical and Health Hazards (effective January 1\textsuperscript{st}, 2018)

**Physical Hazard**
- Flammable (gases, aerosols, liquids, solids)
- Gas under pressure
- Explosive
- Self-heating
- Pyrophoric (liquid or solid)
- Pyrophoric Gas
- Oxidizer (liquid, solid or gas)
- Organic peroxide
- Self-reactive
- Contact with water emits flammable gas
- Combustible Dust
- Hazard Not Otherwise Classified (HNOC)
- Corrosive to metal

**Health Hazard**
- Carcinogenicity
- Acute toxicity (any route of exposure)
- Reproductive toxicity
- Skin Corrosion or Irritation
- Respiratory or Skin Sensitization
- Serious eye damage or eye irritation
- Specific target organ toxicity
- Aspiration Hazard
- Germ cell mutagenicity
- Simple Asphyxiating
- Hazard Not Otherwise Classified
Special Considerations
Centralized Reporting

In Delaware, by submitting electronically via the web-based portal TierIIManager™, the requirement to report to SERC, LEPC, and the local fire department under Federal law is satisfied.
Change of Ownership

Both Parties are responsible for their portion of the year.

• New Owner can cover all the year if seller agrees
• Can’t avoid reporting liability by language in sale contract
Owners & Operators

• “The owner or operator of a facility which is required to prepare or have available MSDS's must comply with the requirements of 40 CFR 370, Subpart B.” (EPA regarding 311/312 reporting)

  – “Private parties cannot by contract exempt themselves from liability created by the statutory provisions of EPCRA.”

  – “The owner of the facility whose only connection to the facility is a real estate interest and has no employees at the facility would not be required to have MSDS's.” (EPA regarding 311/312 reporting)
Owners & Operators

• A contractor could be considered an operator of the facility or of a portion of the facility depending on if they have enough authority.

• For 302, public warehouse owners should make notification (if tenants exceed TPQ).
  – Subtle but important nuance vs. 311/312
  – 302 not based on MSDS applicability
  – No “only real estate interest” out
EPCRA Section 311

Safety Data Sheet List Reporting

- Must submit *list* of *hazardous chemicals* on site above threshold quantities

- Submitting information via *TierIIManager™* is *the list*

- Covered facilities & chemicals, thresholds, & exemptions are *identical to 312/Tier II*
EPCRA Section 311

- Initial reporting is when the facility first opens or within 3 months of becoming subject to reporting

- Updates within 3 months when chemicals first exceed thresholds on-site
EPCRA Section 311

Per the EPA, an annual Tier II report can serve as an initial list for any facility that failed to submit an initial list.

The real substance of the Section 311 requirement is that it provides for updates (within 3 months) to the chemical inventory data for a facility in between the annual Section 312 reports.
311 & 312 Similarities

Identical:
• Covered chemicals
• Covered facilities
• Thresholds
• Exemptions

Both are completed using TierIIManager™
## 311 & 312 Differences

<table>
<thead>
<tr>
<th>Section 311</th>
<th>Section 312</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Initial submission and updates within 3 months</td>
<td>• Annually by March 1\textsuperscript{st} for the previous calendar year</td>
</tr>
<tr>
<td>• Submit List of Chemicals</td>
<td>• Submit Tier II Forms</td>
</tr>
<tr>
<td>• No Fees</td>
<td>• Reporting Fees</td>
</tr>
</tbody>
</table>
EPCRA Section 313
Toxic Release Inventory (TRI)

- Specific facilities – based on # of employees and industrial classification codes
- List of TRI chemicals
- Threshold quantities – manufacture or process 25,000 lbs/yr or otherwise use 10,000 lbs/yr
- PBT Substances – significantly lower thresholds
- Forms due July 1 for previous calendar year
- Annual report
- For more information contact:

Deb Nielson at 302-739-9405
### DE EPCRA Chemicals and Reporting Thresholds

<table>
<thead>
<tr>
<th>Section</th>
<th>Chemicals Covered</th>
<th>Thresholds</th>
</tr>
</thead>
<tbody>
<tr>
<td>302/303</td>
<td>EHS List by EPA (over 360 chemicals)</td>
<td>Threshold Planning Quantity (TPQ)</td>
</tr>
<tr>
<td>304 (DE Reg 1203)</td>
<td>&gt;1,000 substances</td>
<td>Reportable quantity, released in a 24-hr period</td>
</tr>
<tr>
<td>311</td>
<td>Any substance that has a physical or health hazard</td>
<td><strong>Lower than Federal Thresholds</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>EHS</strong>: 55 gallons, 500 lbs or the TPQ, whichever is lower;</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Hazardous chemical</strong>: 55 gallons or 500 lbs on site at any one time;</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Heating Fuel</strong>: 10,000 lb when used on site</td>
</tr>
<tr>
<td>312</td>
<td>Same as 311</td>
<td>Same as 311</td>
</tr>
<tr>
<td>313</td>
<td>650 + toxic chemicals and categories</td>
<td><strong>Manufactured or processed</strong>: 25,000 lbs per year;</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Otherwise Used</strong>: 10,000 lbs a year;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>*** Certain persistent bioaccumulative toxics have lower thresholds</td>
</tr>
</tbody>
</table>
## Reporting Schedules

<table>
<thead>
<tr>
<th>Section</th>
<th>Due Dates</th>
<th>To Whom</th>
</tr>
</thead>
<tbody>
<tr>
<td>302/303</td>
<td>One time notification AND Updates as necessary: within 60 days of EHS exceeding TPQ</td>
<td>DNREC &amp; LEPC (TierIIManager™)</td>
</tr>
<tr>
<td>304</td>
<td>Each time a release above a reportable quantity occurs</td>
<td>DNREC, NRC &amp; LEPC</td>
</tr>
<tr>
<td>311</td>
<td>Initial Submission; And updates within 3 months for chemicals first exceeding threshold</td>
<td>DNREC (TierIIManager™)</td>
</tr>
<tr>
<td>312</td>
<td>Annually by March 1</td>
<td>DNREC (TierIIManager™)</td>
</tr>
<tr>
<td>313</td>
<td>Annually by July 1 (**Delaware has an agreement with EPA. Facilities report on-line to EPA only and EPA sends data copy to the State)</td>
<td>EPA &amp; DNREC**</td>
</tr>
</tbody>
</table>
Contacts
EPCRA Reporting Program, DNREC
P O Box 838
Dover, DE 19901

Bill Davis
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Fax: (302) 739-2466

Christie Ray
Cristie.Ray@state.de.us
Call or visit the website:
www.dnrec.delaware.gov/SERC

*Contact info for LEPCs on Web site