
CHEMICAL EMERGENCY PREPAREDNESS AND PREVENTION ON TRIBAL LANDS

The Emergency Planning and Community Right-to-Know Act (EPCRA) and the Clean Air Act (CAA) chemical accident prevention provisions in section 112(r) require facilities to provide information on the presence of hazardous chemicals in communities. These laws have built better relationships among government at all levels, business and community leaders, environmental and other public-interest organizations, and individual citizens. The purpose of this factsheet is to familiarize Tribal leaders with EPCRA and CAA section 112(r) Risk Management Program requirements. The information available under these laws can promote an integrated approach to chemical safety on tribal lands.

HOW DO EPCRA AND CAA APPLY TO TRIBAL LANDS?

EPCRA and CAA section 112(r) Chemical Accident Prevention Program require facilities to report on hazardous chemicals they store or handle. These two laws provide an array of complementary information on:

- chemicals in the community;
- chemicals present at each location;
- potential hazards these chemicals pose;
- chemical releases that have occurred in the area; and
- steps industry is taking to prevent accidents.

Both laws give the public access to these reports. The information can be used to enhance the community emergency response plan and protect local communities from chemical hazards. Because of the importance of making this information available to all communities, EPA recognized tribal governments as the appropriate implementing authority of EPCRA in Indian Country. Through regulation, federally recognized tribes have the same role as states in the development of chemical emergency preparedness programs under EPCRA. In addition, the CAA provides that eligible federal recognized tribes may implement provisions of the CAA in the same manner as states within reservations and non-reservation areas under their jurisdiction.

WHAT ARE TRIBAL ROLES UNDER EPCRA?

Under sections 301-303 of EPCRA, the Governor of each State appoint a State Emergency Response Commission (SERC). Likewise, the Chief Executive Officer of the Tribe must appoint a Tribal Emergency Response Commission (TERC) for each Tribe to accomplish the following:

1. Designate local emergency planning districts in each Tribe;
2. Appoint a Tribal Emergency Planning Committee (TEPC) to serve each district;
3. Coordinate and supervise TEPC activities;
4. Coordinate proposals for and distribution of Federal TERCs and/or TEPCs grant funds;
5. Review TEPC plans, recommending any needed changes; and
6. Establish procedures for receiving and processing public requests for information collected under EPCRA.

Forming a TERC

Through TERCs, Tribes can ensure the development of an emergency planning and implementation structure relevant to community needs. Additionally, TERCs can provide training and technical assistance to communities so that Tribal members know what to do in the event of a chemical accident.

There are several options available in the implementation of EPCRA programs. A Tribe may choose to enter into cooperative agreements with another tribe, a consortium of Tribes, or the state within which its lands are located to develop an EPCRA program that meets specific tribal needs. Some examples of EPCRA Implementation include:

1. A tribe may directly implement the program within Indian Country.
2. Through a cooperative agreement with the SERC, a tribe may choose to implement some, but not all of the law's requirements while the state implements the remainder of the EPCRA program.
3. A tribe authorizes the SERC to perform the functions of the TERC within Indian Country and the tribe establishes a TEPC or joins an off-reservation LEPC that works directly with the SERC through a cooperative agreement.

The Chief Executive Officer of the Tribe operates as the TERC if a TERC is not established or a cooperative agreement has not been developed.

TEPC Responsibilities

TEPC responsibilities will determine how extensive a chemical safety program should be. Tribes often find that the TERC itself can accomplish the work of the TEPC. However, if a TEPC is formed, its membership must include, at a minimum, elected state and local officials, law enforcement, fire fighters, civil defense, public health, transportation; environmental professionals; industry representatives of facilities subject to the emergency planning requirements of EPCRA; community groups; and the media.

Among other things, TEPCs develop a contingency plan to prepare for and respond to emergencies involving hazardous substances in their communities. The plans should include:

- Identity and location of hazardous materials;
- Procedures for an immediate response to chemical accidents;
- Public notification of evacuation or shelter-in-place procedures;
- Industry contact names; and
- Timetables for testing and updating the plan.

Chemical facilities are required to notify TEPCs of emergency releases and to submit annual information on their hazardous chemical inventory (see the "What Information is Needed?" section of this fact sheet). This information can help the TEPC keep its plan and response procedures up to date.

WHAT ARE TRIBAL ROLES UNDER THE CAA SECTION 112(r) CHEMICAL ACCIDENT PREVENTION PROGRAM?

Under CAA section 112(r), all chemical facilities with processes exceeding a threshold quantity for 77 acutely toxic substances (such as chlorine and ammonia), and 63 highly volatile flammable substances (when not used as a fuel), must adopt a Risk Management Program. An example of such a facility subject to the Chemical Accident Prevention Program requirements would be a drinking water facility holding more than 2,500 pounds of chlorine in a process. All facilities subject to such requirements must submit a summary of the program, known as a risk management plan (RMP) to EPA. The RMP includes information about:

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- The location of the facility and contact information for key personnel;
 - Regulated substances present at the facility;
 - The facility's hazard assessment, including worst-case release and alternative release scenarios and the facility's history of chemical accidents over the past five years;
 - Facility accident prevention activities, such as use of special safety equipment, employee training programs, and process hazard analyses conducted by the facility; and
 - The facility's emergency response program.

There are special procedures for the public to access RMPs. These procedures are described in the fact sheet *Chemical Safety Information, Site Security and Fuels Regulatory Relief Act: Public Distribution of Offsite Consequence Analysis Information* at: <https://www.epa.gov/rmp/chemical-safety-information-site-security-and-fuels-regulatory-relief-act-public-distribution>.

Tribes that EPA finds eligible for treatment in the same manner as a state under the Clean Air Act Tribal Air Rule (40 CFR part 49) can apply for authorization to administer the Chemical Accident Prevention Program. If the tribe passes its own chemical safety legislation, it should ensure that its program is at least as stringent as the federal law in order to strengthen enforcement capabilities. For more information on how to receive delegation for your tribe, see *Risk Management Programs Under CAA Section 112(r) – Guidance for Implementing Agencies*: <https://www.epa.gov/rmp/risk-management-programs-under-clean-air-act-section-112r-guidance-implementing-agencies>.

WHAT INFORMATION IS NEEDED?

Regulatory requirements, by themselves, do not guarantee safety from chemical accidents. Both EPCRA and the Chemical Accident Prevention Program encourage communication between facilities and the surrounding communities about chemical safety and chemical risk. In this way, accident prevention is focused at the local level where the risk is found. For example, talking with industry about both the quantities of a chemical and a facility's prevention program allows local emergency officials and the tribe to gain a clearer picture of the chemical risks within Indian Country.

Under EPCRA, TEPCs receive information from covered facilities on the chemicals they have, the quantities of chemicals stored, the hazards associated with those chemicals, and information on storage locations and conditions. Specifically, TEPCs receive the following under EPCRA:

- Notification from facilities that have extremely hazardous substances (EHSs) in excess of a certain threshold (EPCRA sections 302 and 303).
- Notification from facilities if there is an accidental release of an EHS or any hazardous substance regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This information is reported to the TERC and TEPC community emergency coordinator (EPCRA section 304).
- Safety Data Sheets (SDSs) or lists of hazardous chemicals and Hazardous Chemical Inventory Form (Tier II). SDSs contain chemical-specific information such as the type of chemical, toxicity, hazard category, and emergency response procedures. Tier II form contains the amount of hazardous chemicals stored on site, potential hazards as well as the location of hazardous chemicals. This information is directly reported to the TERC, TEPC and the appropriate fire department (EPCRA sections 311 and 312).
- Information on planned releases of toxic chemicals from regulated facilities through Toxics Release Inventory (TRI) database (EPCRA section 313).

In addition to the RMP database information, TERCs and TEPCs can access offsite consequence analysis (OCA) information about facilities that have submitted an RMP. A TERC or TEPC member can receive the information directly from EPA for official use (e.g., to incorporate the information into

their emergency preparedness plans). For more information on how to access the OCA information, please see: <https://www.epa.gov/rmp/federal-reading-rooms-risk-management-plans-rmp>.

HOW CAN TRIBES USE THIS INFORMATION?

Combining the EPCRA and Chemical Accident Prevention Program information allows tribes to gain a better understanding of the chemical risks within Indian Country. For example, what precautions are in place to avoid a chemical release? Is a facility near a medical clinic or a highly traveled area? What procedures have been developed to notify and assist the people affected by an accidental release? Has the fire department coordinated with the facility to determine the best response procedures? If the tribe does not have a fire department, are mutual aid agreements in place with non-tribal departments? Using the chemical information available to you opens a new avenue of communication between you and the chemical facilities within Indian Country.

These programs also offer tribes an opportunity to partner with other tribes, states, and/or towns that border Indian Country. In reviewing your emergency response plan, do you see some areas that need to be updated or otherwise improved? Are there chemical risks in a locality bordering your community that need to be addressed? Some tribes have developed memorandums of agreement (MOAs) and/or mutual aid agreements with their neighbors in order to meet these needs, thereby creating better prevention and response plans.

WHAT ELSE SHOULD TRIBES CONSIDER?

Chemical Releases Due to Criminal Actions

TERCs and TEPCs should also address the possibility of deliberate chemical releases in their emergency response plans. For example, accidental releases often occur when illegal drug makers steal anhydrous ammonia to produce methamphetamines. Another possible scenario would be a terrorist incident. TERCs and TEPCs should use already established mechanisms, when applicable, to address these issues rather than creating new organizations. Several sections of a tribe's response plan, including emergency contact information, response functions, and hazards analysis, should be evaluated to consider the effect of a deliberate release. The EPA Chemical Safety Alerts *Anhydrous Ammonia Thefts* and *LEPCs and Counter-Terrorism* provide more information on this topic. <https://www.epa.gov/rmp/chemical-accident-prevention-publications#alerts>

EPCRA Section 326 Considerations

EPCRA section 326 allows citizens to initiate civil actions against EPA, TERCs, and the owner or operator of a facility for failure to meet the EPCRA requirements. The EPA rulemaking designating federally recognized Indian tribes as the EPCRA implementing authority does not preclude the use of sovereign immunity defense on legal actions against Indian tribes or tribal officials.

WHAT RESOURCES ARE AVAILABLE?

Chemical Data Sources

There are several Websites that can provide information to help TERCs implement EPCRA and the CAA Chemical Accident Prevention Program:

- EPCRA/CERCLA/CAA Section 112(r) Consolidated List of Lists: <https://www.epa.gov/epcra/epcracerclacaa-ss112r-consolidated-list-lists-march-2015-version>.
- Information on accidental releases reported under is available through the National Response Center: <http://www.nrc.uscg.mil/>.

- TRI data can be accessed through Envirofacts: <https://www3.epa.gov/enviro/>. Envirofacts also provides data on facilities that have:
 - Permits to release substances to water, in the Permit Compliance System database;
 - Permits to release hazardous pollutants to air, in the air release database;
 - Permits to store and treat hazardous wastes, in the RCRA database.

Guidance

To help officials as they develop their emergency plans, the National Response Team (NRT) has published the *Hazardous Materials Emergency Planning Guide* (NRT-1), which is available at <https://www.nrt.org/>. In addition, the Federal Emergency Management Agency (FEMA) has published the *State and Local Guide (SLG) 101: Guide for All-Hazard Emergency Operations Planning*, which tells emergency planners how to identify hazards in the planning district, determine vulnerable zones for each hazard, assess risk, and then set priorities among hazards and begin to develop an emergency plan. This publication is available at: <http://www.fema.gov/pdf/plan/slg101.pdf> or by calling FEMA's Printing and Publications Branch at 1-800-480-2520.

EPA has also published documents to help industry comply with the reporting provisions of EPCRA and to help Tribal and local officials manage and analyze the information submitted. One of these documents is a fact sheet entitled *The Emergency Planning and Community Right-to-Know Act* available at: <https://www.epa.gov/epcra/epcra-fact-sheet>.

In addition, EPA has also published a factsheet for States, Tribal and Local Agencies which is entitled *How to Prepare Your Community for a Chemical Emergency*, available at: <https://www.epa.gov/epcra/how-better-prepare-your-community-chemical-emergency-guide-state-tribal-and-local-agencies>.

We also developed an online training on EPCRA for States, Tribes, LEPCs and Local Planners and Responders which can be accessed through our website at: <https://www.epa.gov/epcra/epcra-training-states-tribes-lepcs-local-planners-and-responders-non-section-313>.

EPA and FEMA staff also help TERCs administer EPCRA and understand RMP by sponsoring workshops, speaking at TERC and LEPC meetings, providing guidance for developing and testing local emergency plans, and managing, understanding, and communicating the information submitted under EPCRA.

OEM has published guidance documents that may assist TERCs and LEPCs with the Chemical Accident Prevention Program requirements. Examples include:

- *Risk Management Programs Under CAA Section 112(r) - Guidance for Implementing Agencies* at: <https://www.epa.gov/rmp/risk-management-programs-under-clean-air-act-section-112r-guidance-implementing-agencies>
- *Guidance for Auditing Risk Management Plans/Programs under Clean Air Act Section 112(r)* at: <https://www.epa.gov/rmp/guidance-auditing-risk-management-plansprograms-under-clean-air-act-section-112r>

OEM has also published a *Chemical Safety Network series*, which shares successful practices in RMP implementation, risk communication, and use of the data. These documents are available electronically on the RMP website: <https://www.epa.gov/rmp>.

Software

Computer Aided Management of Emergency Operations (CAMEO) is a software program that can assist TERCs and TEPCs in using and managing information collected under EPCRA. It also assists in conducting a community hazards analysis. It includes response information for over 3,000

chemicals commonly transported in the U.S. Visit the EPA/NOAA website for more information:

<https://www.epa.gov/cameo>.

*RMP*Comp* helps users complete the offsite consequence analysis required under the Risk Management Program. You can also use *RMP*Comp* to verify data submitted by industry. When you use *RMP*Comp*, (a) you don't need to make any calculations by hand, and (b) the program guides you through the process of making an analysis. <https://www.epa.gov/rmp/rmpcomp>

Financial Assistance

One comprehensive source of financial assistance information is the Tribal Environmental and Natural Resource Assistance Handbook produced by the Domestic Policy Council Working Group on American Indians and Alaska Natives. This handbook provides a central location for federal sources of technical and financial assistance available to tribes for environmental management. The handbook is available at: <https://www.epa.gov/tribal>.

The Department of Transportation's Hazardous Materials Emergency Preparedness (HMEP) grant program is intended to provide financial and technical assistance to enhance state, territorial, tribal, and local hazardous materials emergency planning and training. The HMEP Grant Program distributes fees collected from shippers and carriers of hazardous materials to emergency responders for hazmat training and LEPCs for hazmat planning. For more information, visit <http://www.phmsa.dot.gov/hazmat/grants> or call 202-366-0001.

FEMA has a grant program to fund six major firefighting preparedness categories: training, wellness and fitness programs, vehicles, firefighting equipment, personal protective equipment, and fire prevention programs. Visit FEMA's website at: <http://www.fema.gov/>.

EPA Regional Contact Information

EPA has regional representatives that can provide you with more information on the subjects discussed in this fact sheet. Please see the EPCRA or RMP websites to find the appropriate EPA regional point of contact: <https://www.epa.gov/epcra/epa-regional-epcra-rmp-contacts>.

EPA Headquarters Contact Information

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WHERE CAN MORE INFORMATION BE FOUND?

Visit EPA's EPCRA website at:

<https://www.epa.gov/epcra>

Visit EPA RMP website at:

<https://www.epa.gov/rmp>

Contact the Superfund, TRI, EPCRA, RMP, & Oil Information Center (Call Center):
800-424-9346
703-412-9810 in the Washington, D.C. area
Monday – Friday, 10:00 a.m. – 5:00 p.m. EST