



INFORMATION IS POWER:

Using the *Emergency Planning and Community Right to Know Act* to learn about chemical risks and releases from so-called “chemical recycling” facilities



Eve Gartner, Director, Crosscutting Toxics Strategies
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What is Earthjustice

We are the “litigation arm” of the environmental movement with 200+ lawyers working on 630+ active legal proceedings.

We have 15 regional offices -- Anchorage, Chicago, Juneau, Los Angeles, Miami, San Francisco, Tallahassee, Honolulu, Houston, New York, Philadelphia, Denver, Seattle, Bozeman, and Washington, DC.

We have 9 specialized programs including Biodiversity, Clean Energy, International, Oceans, Sustainable Food & Farming, Toxic Exposure & Health, and Tribal Partnerships.

We use public interest litigation to hold government and special interests accountable in the courts.

Buckets of Information Mandated By the Emergency Planning and Community Right to Know Act (EPCRA)

1. Annual chemical inventory reports – a.k.a. Tier 2 reports

2. Emergency reports of releases of hazardous substances

3. Chemical emergency response plans

4. Annual toxic chemical release forms – used to create “toxics release inventory” database

SERCs and LEPCs play a key role

Every state has a State Emergency Response Commission (SERC)

The SERC:

- Designates “emergency planning districts”
- Creates Local Emergency Planning Committees (LEPCs) for each district.
 - More than 3,000 in US.
- Receives emergency notice of releases

The LEPCs:

- Collect Tier 2 forms
- Develop the chemical emergency plan for their district
- Receive emergency notice of releases

Bucket 1: Tier 2 Reports

Facilities must submit a Tier 2/inventory report annually to the LEPC, SERC and local fire department for all hazardous chemicals used, stored, or released

Information in the Tier 2 report includes:

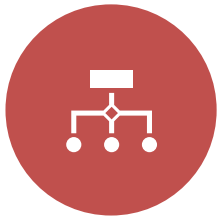
- Maximum and average daily amount of each hazardous chemical at the facility during the preceding year
- Physical and health hazards
- Storage location and manner

Applies to any chemical for which a SDS is required

~463,000 facilities in the US must report

“Hazardous chemicals” includes all chemicals that require an SDS
= 500,000+ products

Obtaining Tier 2 Reports



Tier 2 reports are available via public records request. Go to this link – <https://www.epa.gov/epcra/state-tier-ii-reporting-requirements-and-procedures> – and click on your state and follow the directions for submitting a public records request.



Tier 2 reports for 11 states and some counties are available online via Tier2 E-PLAN Reporting System- <https://tier2.erplan.net/onlinefiling/filingLogin.htm>

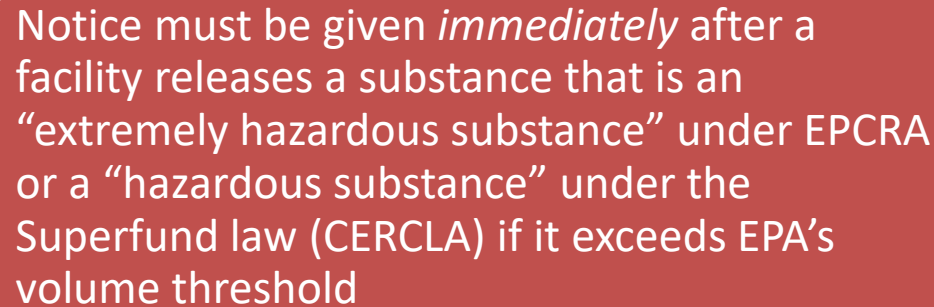
Bucket 2: Emergency notification after an unplanned release

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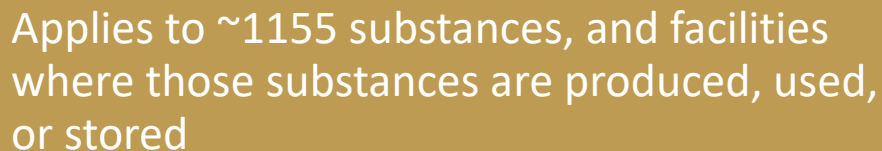
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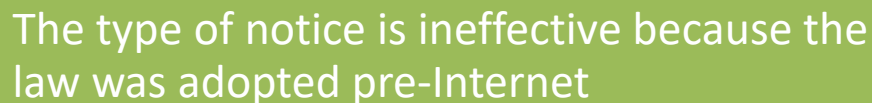
Notice must be given *immediately* after a facility releases a substance that is an “extremely hazardous substance” under EPCRA or a “hazardous substance” under the Superfund law (CERCLA) if it exceeds EPA’s volume threshold



Applies to ~1155 substances, and facilities where those substances are produced, used, or stored



The type of notice is ineffective because the law was adopted pre-Internet



Bucket 3: Emergency response plans

42 USC 11003



LEPCs must develop emergency response plans based on information from Tier 2 reports.



LEPCs must review their plan at least annually.



The LEPC must also provide information to the public about the plan.



Obtaining emergency response plans

To view the emergency response plan, submit a public records request to the LEPC.

To find the LEPC for a particular area, contact the SERC for that state, using this link: <https://www.epa.gov/epcra/state-emergency-response-commissions-contacts>

Emergency response plans “shall be made available to the general public during normal working hours at the location or locations designated by SERC or LEPC. 42 USC 11044.

Bucket 4: Toxics Release Inventory (TRI) Database



Facilities must submit toxic chemical release forms to EPA if they “manufacture, process or otherwise use” a listed chemical at a volume exceeding EPA’s threshold in a year.



Facilities must disclose all environmental releases of TRI-listed chemicals over the last year from that facility (with a *de minimis* concentration exemption for most mixtures).



TRI reporting applies only to certain industrial sectors. **So-called chemical recycling facilities are not covered.**

Potential expansion of the TRI to include pyrolysis and gasification

In December 2024, EPA [partially granted a petition](#) to add some incineration facilities to the TRI, and the petition drafters have said that this will include pyrolysis and gasification units.

This expansion will not go into effect until a final rule is issued.....

The rule does not appear on the most recent Unified Regulatory Agenda.



Accessing TRI data

The TRI database can be searched by: facility, zip code, industrial sector, chemical, or other parameters.

Searchable TRI database:

https://enviro.epa.gov/triexplorer/tri_release.chemical

Annual forms submitted by each facility:

https://enviro.epa.gov/facts/tri/form_ra_download.html



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