



Ohio EPA/Emergency Planning and Community Right-to-Know
c/o Lazarus Government Center
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Columbus, Ohio 43216-1049

John Kasich
Governor

MEMORANDUM

TO: Oil and Gas Well Owners and Operators

FROM: The State Emergency Response Commission

DATE: September 11, 2013

SUBJECT: Reporting Requirements under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA)

The purpose of this memorandum is to provide information to all oil and gas well owners and operators in the State of Ohio who may be required to file certain information pursuant to the federal Emergency Planning and Community Right-to-Know Act (EPCRA). SERC is responsible for administering the requirements of EPCRA, but is sending this memorandum to oil and gas well owners and operators who appear in the Ohio Department of Natural Resources Division of Oil and Gas Resources Management (Division) database.

In 2001, the Ohio General Assembly adopted Ohio Revised Code (R.C.) 3750.081, Compliance by Oil & Gas Facilities; Use of Electronic Database, which provided an alternate reporting mechanism for oil and gas facilities in an effort to address potentially overlapping requirements under R.C. Chapter 3750, Emergency Planning, and R.C. Chapter 1509, Division of Oil & Gas Resources Management - Oil and Gas. This reporting mechanism, found in R.C. 1509.11, requires the Chief of the Division of Oil and Gas Resources Management to include the information required by EPCRA on the form used for annual reporting. Upon creation of that form, R.C. 1509.11 allows well owners to satisfy the EPCRA reporting requirements by including the information in these annual statements of production. While R.C. 3750.081 allows compliance with initial and annual reporting requirements through R.C. 1509.11, it also requires compliance with the release reporting requirements set forth in R.C. 3750.06. In addition, the well owner or operator needs to comply with the filing fee requirements set forth in R.C. 3750.13(A)(4).

In April 2013, a petition was filed with the U.S. Environmental Protection Agency (US EPA), requesting that US EPA determine if the reporting requirements set forth in R.C. 3750.081 and R.C. 1509.11 were inconsistent with federal law. **In an April 26, 2013 response to the petition, US EPA determined that the alternative reporting in R.C. 3750.081 does not supersede the reporting requirements of EPCRA. As a result, U.S. EPA concluded that Ohio oil and gas well owners or operators must separately meet the reporting obligations of EPCRA to insure compliance with federal law.**



There are three key provisions of EPCRA applicable to oil and gas well owners and operators:

1. Emergency Response Planning and Notification Requirements (Initial Reporting Requirements)

EPCRA reporting requirements apply to hazardous chemicals stored onsite at a facility (or, in this case, an oil and gas well). Hazardous chemicals are any substances for which a facility must maintain a Material Safety Data Sheet (MSDS) under the Occupational Safety & Health Administration (OSHA) Hazard Communication Standard, which lists the criteria used to identify and define a hazardous chemical. Over 500,000 products have MSDSs, which are normally obtained from the chemical manufacturer. Unfortunately, there is no specific list under EPCRA that identifies a hazardous chemical. OSHA uses definitions such as, but not limited to, corrosive, irritant, flammable, combustible, carcinogen, oxidizer, etc. to identify a chemical as hazardous. Please contact SERC if you have any questions about whether a product is a "hazardous chemical" for purposes of EPCRA reporting requirements.

If a well owner or operator maintains one or more hazardous chemicals at or above the 10,000 pound threshold planning quantity at a well site, EPCRA reporting requires a well owner or operator to provide written notification to the SERC, the Local Emergency Planning Committee (LEPC), and the local fire department within 90 days after receiving a shipment or producing the substance on site. This is a one-time initial notification reporting requirement. However, EPCRA reporting requires a well owner or operator to update this information if there are any significant changes that affect the information that was previously submitted, such as an additional reportable chemical that is stored onsite after the report is initially submitted.

The EPCRA reporting statute also contains an additional reporting requirement if any "Extremely Hazardous Substances" (EHS) are stored at the well site. For a facility having one or more EHS that exceed the threshold planning quantity, the initial notification is due within 60 days. The list of extremely hazardous substances has been defined by US EPA and can be found in US EPA's list of lists at:

http://www.epa.gov/osweroc1/docs/chem/list_of_lists_revised_7_26_2011.pdf.

If an oil well owner or operator has a hazardous chemical or EHS on site in excess of the reporting threshold, EPCRA requires oil well owners and operators to notify the SERC, the LEPC and local fire department of that fact in writing.

2. Tier II Chemical Inventory Reporting (Annual Reporting Requirements)

In addition to the initial reporting requirements, EPCRA also mandates that facilities submit a detailed report on March 1 of each year any hazardous chemicals or EHS that

meet or exceed the reporting thresholds. EPCRA also requires facilities with hazardous chemicals and/or extremely hazardous substances at or above the reporting thresholds at any time during the calendar year to **REPORT ANNUALLY**, by the following March 1st, a more detailed chemical inventory report. The applicable reporting thresholds are:

- (a) For a hazardous chemical: 10,000 pounds or more
- (b) For an EHS: 1 to 500 pounds (depending on the particular EHS on site).

Traditionally, owners of producing oil and gas wells commonly report crude oil or liquid hydrocarbons as a hazardous chemical. If an owner or operator of an oil or gas well in Ohio stored crude oil or other liquid hydrocarbons that may qualify as a hazardous chemical in amounts equal to or greater than 10,000 pounds (approximately 33 barrels), at any one time during the past year, EPCRA reporting requires a Tier II annual chemical inventory report for that well on March 1st of the following year.

In previous years, it was not common that owners or operators of oil and gas wells in the drilling and completion phase stored large enough quantities of hazardous chemicals or EHS at the drilling site to trigger EPCRA reporting requirements. However, the larger operations resulting from the drilling and completion of horizontal wells may now trigger EPCRA reporting for both the initial and annual reporting requirements, depending on the amount of chemicals stored at the drilling site. For example, if a well owner or operator stores approximately 10,000 pounds (approximately 1,450 gallons) or more of gasoline or diesel fuel on site for more than one day, EPCRA reporting requires a facility with that amount of gasoline or diesel fuel to file an annual report under the Tier II chemical inventory reporting program. In addition, any chemical(s) stored onsite should be evaluated to determine if the chemical qualifies as a hazardous chemical or EHS, and if it exceeds the reporting threshold quantity.

EPCRA reporting requires the Tier II report to be submitted to three different locations:

1. Ohio State Emergency Response Commission (SERC);
2. Local Emergency Planning Committee (LEPC) in which the facility is located; and
3. Local fire department with jurisdiction over the facility.

Reports submitted to the Ohio SERC should be mailed to:

State Emergency Response Commission c/o Ohio EPA,
Lazarus Government Center, 50 West Town St., Suite 700
P. O. Box 1049
Columbus, Ohio 43216-1049
Attn: RTK

The LEPCs' information coordinators and mailing addresses can be found at:
http://epa.ohio.gov/Portals/27/serc/SERC_LEPCList2013.pdf.

Please contact the SERC if you have any questions about where to send the reports. The SERC is asking facilities to utilize US EPA's Tier II Submit program to file electronically by CD or email. You may download the program at <http://www.epa.gov/emergencies/content/epcra/tier2.htm>. If you choose to submit electronically, you must submit a signed certification statement and attach a site map that indicates the storage location of the chemicals being reported.

If you are not reporting electronically, the Tier II forms can be found on our website at:
<http://epa.ohio.gov/dapc/serc/invforms.aspx>.

If you are unable to download the forms or do not have computer access, please contact SERC at (614) 644-2260 to request the reporting manual.

If an oil and gas well owner or operator determines that chemical storage at a well site triggered EPCRA reporting requirements, but does not file a report by March 1, 2013, U.S. EPA would expect that a Tier II report should be filed. When filing, please submit all necessary forms to the SERC, the LEPC and the local fire department by **November 15, 2013**. The list of LEPCs can be found at:
http://www.epa.state.oh.us/portals/27/serc/LEPC_List.pdf.

Please be aware that failure to follow EPCRA requirements may result in enforcement action by U.S. EPA. Federal law subjects violators of the Tier II chemical reporting requirements to civil penalties of up to \$32,500 per day for non-compliance for failure to provide this information.

3. Trade Secret Claims

The SERC is aware that some well owners or operators may not want to identify certain chemicals at a well site for proprietary reasons. EPCRA reporting requirements set forth a process for claiming that a reportable chemical is a "trade secret." Please note that this process is different from the trade secret designation under R.C. 1509.10 or other Ohio statutes or rules. Under the EPCRA requirements, a specific chemical identity required to be disclosed by sections 303, 311, and 312 of EPCRA may be claimed to be a trade secret on the submittal itself. **Facilities desiring to claim a chemical identity or identities as a trade secret should follow US EPA's procedures for submitting trade secrets.** The trade secret substantiation form and instructions can be found at: <http://www.epa.gov/osweroe1/content/epcra/tier2.htm>.

If a well owner or operator claims a "trade secret" for a chemical identity, the well owner or operator must also comply with SERC's trade secret requirements set forth in Ohio Adm.Code Rules 3750-60-05 and 3750-60-10 (for trade secret claims pending before

USEPA) and 3750-60-07, 3750-60-09, 3750-60-10, 3750-60-20, 3750-60-23, 3750-60-25, and 3750-60-27 (for trade secret claims pending before SERC).

A well owner or operator may also claim location confidentiality under EPCRA section 312(d)(2)(F). To claim the location as confidential, simply check the box on the reporting form, indicating that the facility location is confidential. Owners and operators are not required to submit a substantiation form to US EPA for confidential locations.

If you have any questions or need assistance filling out the reports, please contact SERC at (614) 644-2260.