



Making It Work

Title III Compliance

Hazardous chemicals are a fact of life for every community in the United States. In recognition of that hazard, the Emergency Planning and Community Right-to-Know Act (commonly known as EPCRA or Title III) was passed in 1986. Building upon EPA's Chemical Emergency Preparedness Program and existing state and local efforts, the new law required facilities to report on the presence and release of hazardous chemicals in their communities. This helps state, tribal, and local governments prepare for, respond to, and prevent chemical emergencies. It also makes state and local government officials partners with industry, working to protect public health and the environment.

Under Title III, facilities are required to provide information about on-site hazardous chemicals, to report chemical releases, and to work with local officials responsible for emergency planning (see page 6). These reporting requirements are central to Title III's goal of improving local emergency preparedness and increasing community awareness of chemical hazards.

THE PUBLIC'S RIGHT-TO-KNOW

Since Title III became law, LEPCs across the country have spent much time and energy identifying the chemical hazards in their communities. To a large extent, their work has increased the safety of emergency responders as well as others in the community. Yet many

facilities still expose emergency responders and the general public to needless risks. The reason? Facilities often don't provide the required information to local officials on chemical identity, use, and storage. The quality of local emergency planning is

compromised by this missing information.

Improving the track record of industry compliance with Title III involves three basic elements:

- Identifying facilities potentially subject to Title III;
- Informing those facilities of their legal requirements; and
- Enforcing the requirements.

The first element is to identify those facilities that must report under Title III, whether they fall under section 302 planning requirements, section 304 notification requirements, or sections 311 and 312 hazardous chemical inventory reporting requirements, or section 313 toxic chemical release reporting requirements.

After the facilities are identified, they must be made aware of their responsibilities under Title III. If the businesses don't comply voluntarily, LEPCs and SERCs, in consultation with EPA, may enforce the requirements through civil or criminal suits. ●

What's Inside....

The Making It Work bulletins are intended to provide technical assistance to those responsible for implementing the Emergency Planning and Community Right-to-Know Act of 1986, commonly known as EPCRA or Title III.

Title III Compliance, the first in the series, is intended for members of Local Emergency Planning Committees (LEPCs), State Emergency Response Commissions (SERCs), fire departments, and other agencies responsible for emergency planning and Title III compliance. Future bulletins will cover such subjects as hazards analysis, SERC operations, and funding.

Inside you'll find practical information on Title III compliance, with examples drawn from successful or unique state and local programs. If you know of other innovative Title III implementation programs, we'd like to hear about them. Contact your EPA Regional Title III office (see page 7) or the Emergency Planning and Community Right-to-Know Information Hotline at 800-535-0202 or 703-920-9877.



MAKING IT WORK

DETERMINING WHO'S COVERED

Identifying facilities subject to Emergency

Planning and Community Right-to-Know Act (commonly known as EPCRA or Title III) regulations isn't always an easy task. There's no foolproof, sure-fire method for identifying all the businesses that handle hazardous chemicals in a community, but existing databases and other information resources make the task easier (see boxes below and on page 4).

Finding out who's handling hazardous chemicals in your community can be time-consuming, but it's a critical first step that makes the task of improving compliance much simpler. And by creating a comprehensive database of chemical facilities and

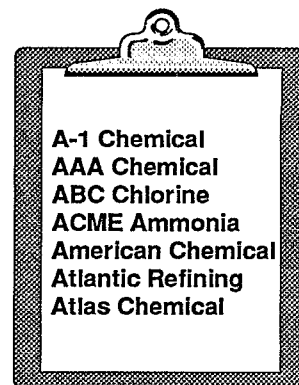
updating it regularly, you'll have a basic organizational framework in place.

LEPCs and SERCs around the country have discovered creative ways to identify facilities subject to Title III regulations. The *Washtenaw County, Michigan*, LEPC, for example, examined lists of federal permittees covered by the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act. By using these existing lists that are available from the state environmental agency, the

LEPC saved both time and resources. Other easily accessible community resources include tax records, business permits, hazardous waste permits, utility records, fire inspection records, and the collective knowledge of police, firefighters, and other LEPC members.

The *Wyandotte County, Kansas*, LEPC took a broad-based approach by placing notices in the annual business tax bills of 4,200 facilities with occupational licenses. The LEPC also made public

service announcements on radio and TV; identified potentially regulated businesses from approximately 40 categories of facilities subject to a newly adopted Uniform Fire Code; and mailed a screening survey to facilities that had requested information about the storage of hazardous chemicals.



Some SERCs and LEPCs have found that it's possible to discover violators when investigating chemical emergencies or significant releases. Always be on the lookout for new ideas. There are plenty of untapped resources within easy access, starting with the telephone book—the most accessible list of businesses in your community. ●

Who Uses What Chemicals?

To help answer this question, EPA has developed a cross-listing of Standard Industrial Classification (SIC) codes, which identifies the type of business activity occurring at a facility, and the Title III section 302 extremely hazardous substances (EHSs). This list, together with county or city information on local businesses, can help identify facilities that may be required to report. LEPCs can use this information to identify which types of facilities are likely to use hazardous substances covered under Title III.

This document, *A Guide to Chemical Use in Industry: Extremely Hazardous Chemical/Standard Industrial Classification Code Crosswalks for the Emergency Planning and Community Right-to-Know Act (EPCRA)*, (March 29, 1989) was developed by EPA's Office of Waste Programs Enforcement. To obtain a copy, please write:

Emergency Planning
& Community Right-to-Know Information Service
U.S. EPA (OS-120)
401 M Street, S.W.
Washington, DC 20460

IGNORANCE IS NO DEFENSE

audiences such as small businesses or farmers.

Kansas developed a brochure titled Guide to Community Right-to-Know Compliance under SARA and Kansas Laws, which explains how to determine whether a facility is covered under the



regulations, and how to comply if it is. *Kansas* also developed a document titled Summary of Registered Pesticides and Pharmaceutical Products in Kansas, which lists EHSs by their trade names and gives threshold planning quantities in gallons rather than pounds, in order to be more familiar to farmers. The booklet even tells how many flea collars add up to the threshold planning quantity.

The *Alexandria, Virginia*, LEPC published a comprehensive document, What Alexandria Businesses Should Know About SARA Title III, to explain Title III requirements and the role of the LEPC. The document was distributed to all businesses that had been issued a hazardous materials use permit. The Alexandria Chamber of Commerce also helped the

(continued on page 4)

For companies, as well as for individuals, ignorance is no defense when it comes to breaking the law. The 1947 Supreme Court decision, Federal Corp Insurance Corp. v. Merrill, stated that "everyone is charged with knowledge of the United States Statutes at large." This means facility operators can't claim ignorance of Emergency Planning and Community Right-to-Know Act (commonly known as EPCRA or Title III) requirements as an excuse for non-compliance.

Even so, the more information companies have, the more likely they are to comply. LEPCs have used many successful methods for reaching and educating businesses potentially subject to Title III, from publishing their own booklets to working with local media.



Target
Your
Audience

Some LEPCs have worked with local trade associations to target specific classes of businesses likely to be subject to the law. To encourage compliance in *New York City*, for example, the LEPC identified more than 100 trade associations whose

members might be subject to regulation. The LEPC worked with the New York Sanitary Suppliers, the Association of Graphic Arts, and other associations to develop mailings and presentations on community right-to-know issues. The New York City LEPC also offered compliance workshops for the numerous municipal agencies whose facilities might be subject to Title III. These presentations and workshops have resulted in significant numbers of facility submissions.

In *Racine County, Wisconsin*, the LEPC focused their efforts on farms that were using extremely hazardous substances (EHSs) listed in section 302. When the LEPC received a list of potentially covered facilities from the SERC, the LEPC realized that a number of facilities known to have EHSs above the threshold planning quantity were missing from the list. Only a few farms had reported, yet the LEPC members indicated that approximately 100 farms in the area would be covered under the emergency planning requirements of section 302.

Because list of EHSs did not readily translate into the kind of information farmers could understand (i.e., on product labels), a dedicated group of Racine County LEPC members identified 66 EHSs commonly used in agricultural products and cross-referenced them to more than 1,000 trade names. This list was then taken to agricultural dealers in the county, who identified which products were being used by the local farm community. With information supplied by the agricultural distributors, LEPC members calculated how much of each product a farmer would need to have on hand to be subject to the reporting requirements. Posters with this information were then printed and distributed throughout the county, as were cards and mailing labels that could be used by farmers to report to the LEPC and name a "facility" coordinator to the LEPC.

Develop Booklets and Brochures

To further spread the word, many states have produced booklets and brochures that explain Title III. These may be general in scope, or may be targeted to specific

MAKING IT WORK

Ignorance Is No Defense (continued from page 3)

LEPC create an exhibit for local business conventions. Title III information has been distributed at trade shows, at the state fair, and to community groups and trade organizations throughout the city.

Work With Your SERC and EPA

LEPCs should also work with their states and EPA to identify and target Title III facilities. States can help by identifying facilities from state permit lists, providing outreach materials, and providing direct technical assistance. Projects aimed at improving Title III compliance have been conducted by LEPCs with assistance from states and EPA in Alabama, Wyoming, North Dakota, and Oklahoma.

In 1988 and 1989, the *Calhoun County, Alabama*, Emergency Management Agency, worked with two state agencies—the Department of Environmental Management and the Emergency Management Agency—on a pilot compliance project with the assistance of EPA Region 4. The team used Dun & Bradstreet data, EPA's list of water and RCRA permit-holders, Title III toxic release inventory reports, county industry and business listings, the telephone directory, and

Getting Started: Resources

There are many different types of databases and other sources of information available to SERCs and LEPCs that can help identify facilities potentially covered by Title III. Some of the most promising include:

Dun & Bradstreet Database

Content: Contains information on more than 1.1 million U.S. business establishments with 10 or more employees.

Online Service: STM Systems Corp, \$125 initiation fee, system updated every 6 months.

For Further Information Contact: 800-223-1026

Toxic Release Inventory (TRI) Database

Content: Contains information on the annual estimated releases of over 300 toxic chemicals into the environment. Includes 80,000+ records containing data from about 21,000 manufacturing facilities that employ more than 10 people and manufacture, process, or use specified chemicals at or above certain threshold amounts.

Online Service: National Library of Medicine (NLM) (TRI) (as part of TOXNET), updated annually, \$18-\$25 per hour. TRI is also available from state agencies and on microfiche in many county libraries.

For Further Information Contact: 301-496-6193

Other Sources

Lists of permittees under the Resource Conservation and Recovery Act (RCRA), the Clean Air Act, and the Clean Water Act, which may be obtained by contacting your state environmental agency; lists of local facilities that report releases to the National Response Center; and lists of businesses with hazardous materials permits from the local fire department.

local contacts and interviews to add to the county's existing list of companies subject to Title III.

After identifying 47 facilities likely to be subject to regulation that hadn't yet reported, the LEPC mailed these facilities a comprehensive package of Title III materials, including an explanatory cover letter, a *Title III Fact Sheet*, the list of extremely hazardous substances, a flow chart on

reporting hazardous materials spills, and a list of Title III filing addresses.

With the assistance of EPA Region 4, teams of government officials then visited unresponsive facilities suspected of being covered by Title III. These visits produced the most significant results of the project: 12 businesses subject to section 302 and 17 entities subject to sections 311-312 were identified and informed of their reporting obligations.

Within several weeks, almost all had filed the appropriate reports.

Use the Media

Another effective way to reach and educate industry is through the media. Many LEPCs have worked with local newspapers and radio stations to inform the community, and especially potentially covered facilities, of Title III requirements.

(continued on page 7)

L EPCs and SERCs are by no means powerless when a company fails to comply with right-to-know laws. A variety of options are available to "persuade" lax facilities into compliance—including federal enforcement actions.

Under section 325 of the Emergency Planning and Community Right-to-Know Act (commonly known as EPCRA or Title III), the federal government is authorized to bring administrative and civil or criminal judicial action against violators. EPA can assess civil and administrative penalties ranging from \$10,000 per violation to \$75,000 per violation per day of violation on the owner or operator of a facility that fails to comply with emergency planning (section 302), emergency notification (section 304), community right-to-know (sections 311-312), toxic chemical release (section 313), and trade secret reporting (sections 322-323) requirements.

Criminal penalties of up to \$50,000 or five years in prison may also be levied on any person who knowingly and willfully fails to provide emergency release notification. To date, there have been more than 400 Title III complaints filed. Total proposed penalties have reached nearly \$11 million, and so far, \$1.5 million has been collected.

ENFORCING TITLE III: WHEN VOLUNTARY COMPLIANCE FAILS

State and Local Actions

Enforcement at the federal level is only one method of getting a facility to comply with the law. Section 326(a)(2) of Title III authorizes state and local suits as well. State and local governments have the authority to bring civil actions in the U.S. District court for failure to notify under section 302; failure to provide information under section 303; failure to submit MSDSs or a list of MSDSs as required under section 311; and failure to submit facility-specific information required under section 312. These actions do not require prior notification.

Title III ~~also~~ even authorizes citizens to initiate civil actions against EPA, SERCs, and/or the owner or operator of a facility for failure to meet legal requirements. Under section 326(a)(1), any person has the authority to file a civil action in the U.S. District court for failure to submit the required MSDSs or Tier I or Tier II information.

Suits and Settlements

Although EPA may go to court to enforce compliance, direct contact with a facility owner or operator may be the most effective way for LEPCs and SERCs to persuade the facility to comply. But outreach and dialogue may not always be enough. If an LEPC has attempted to work cooperatively and a facility still fails to respond to the information request, there is still another course of action: the LEPC can notify the facility owner or operator that it intends to file a civil action in the U.S. District Court, or it can assist the SERC and EPA in their enforcement efforts.

In these cases, thorough documentation of activities is essential. Establishing a record of an LEPC's efforts to encourage voluntary compliance will aid the state and EPA in taking an enforcement action. Make sure to maintain records of telephone and other contacts with facilities, letters—anything that seems relevant.

Even if the state or EPA take formal legal action, a cooperative settlement usually follows. Settlements have proven effective means of resolving Title III compliance problems. And in some cases, innovative settlements have provided badly needed funding for SERCs and LEPCs.

For example, EPA Region 1 filed a consent order in November 1990 for a settlement that will benefit local emergency planners. Champion International, a large woodmill in Hancock County, Maine, delayed notifying the National Response Center, SERC, and LEPC after an accidental release of chlorine, thus violating both CERCLA section 103 and Title III section 304. The facility admitted its negligence and arranged a mutually beneficial settlement with the community.

Ultimately, Region 1 proposed a civil penalty of \$20,000 in its administrative complaint, however, the parties settled for a penalty of \$12,000, \$6,000 of which was paid to the U.S. Treasury and \$6,000 was paid to the "Hazardous Substance Trust Fund." In addition, the company provided computer hardware and software to the Hancock County LEPC of an approximate value of

(continued on page 6)



MAKING IT WORK

Enforcing Title III (continued from page 5)

\$5,000, which allowed the county to expand its data gathering capabilities.

Other innovative settlements have called for an external firm to conduct an annual environmental audit on the facility for a

specified period; for a representative of the facility to attend regularly scheduled meetings of the LEPC; and for the facility to submit articles on Title III reporting requirements to industry journals.

State and Local Legislation

States and communities have the option of passing their own legislation to augment enforcement capabilities. As of early 1991, 27 states already had Title III legislation on the

books, and seven had plans to introduce legislation soon.

A *Wisconsin* statute authorizes the SERC to initiate enforcement actions against facilities for failure to provide notification pursuant to section 302(c), failure to respond to a request for information pursuant to section 303(d), or failure to submit a response to a request for Tier II information pursuant to section 312(e).

Illinois has passed the "Illinois Emergency Planning and Community Right to Know Act," which codifies Title III into state law. In addition, the Illinois Emergency Services and Disaster Agency became the first state agency to make referrals to EPA concerning violations of section 304 of Title III.

In *Washtenaw County, Michigan*, the County Commissioners' passage of right-to-know legislation enables the county Board of Health to require the reporting of right-to-know information, to inspect facilities, to assess penalties, and to assess inspection fees. The law is broader than Title III in that it covers chemicals on a state registry as well as the OSHA hazardous chemicals.

The New York City LEPC, which has one of the largest and most complex planning (continued on page 7)

Title III by the Numbers

Section 302 — Planning Notification Requirement. Requires the owner or operator of a facility at which an extremely hazardous substance (EHS) is present at or above a threshold amount to notify the SERC and LEPC that the facility is subject to the emergency planning provisions of Title III.

Section 303 — Emergency Response Plans. To assist LEPCs in developing local emergency response plans, this section requires the owner or operator of a facility subject to section 302 to designate a facility representative who will participate in the planning process. This section also provides authority for the LEPC to request any information from a facility that it needs for emergency planning and response.

Section 304 — Release Notification Requirement. Requires facilities to notify LEPCs and SERCs immediately if there is a release into the environment of an EHS or hazardous substance (at or above a designated reportable quantity) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act.

Section 311 — Reporting Requirements. Requires facilities that have hazardous chemicals present above certain thresholds to submit either Material Safety Data Sheets (MSDSs) or a list of MSDS chemicals to the LEPC, the SERC, and the local fire department. MSDSs typically include the identity of chemicals and their hazardous components, physical and chemical characteristics, fire and explosion hazard data, reactivity and health hazard data, and precautions for safe use and control measures.

Section 312 — Reporting Requirements. Requires facilities subject to section 311 to submit an annual inventory form on the quantities and locations of hazardous chemicals to the LEPC, SERC, and the local fire department. The facility may submit either a Tier I, Tier II, or equivalent form developed by the state. Tier I requests aggregate information on hazardous chemicals according to the type of physical and health hazards they represent. The Tier II form requests chemical-specific information.

Section 313 — Toxic Chemical Release Reporting. Requires manufacturing facilities to complete a Toxic Chemical Release Inventory Form (Form R) estimating annual releases to the environment (air, water, or land) for more than 300 specified toxic chemicals, if they manufacture, process, or otherwise use certain chemicals above specified thresholds during a calendar year. This information is reported to EPA and the state, and is made available to the public through a national database.

MAKING IT WORK

Enforcing Title III (continued from page 6)

missions in the country, is authorized by a local regulation to conduct inspections, initiate civil actions, and assess penalties for violations of its own community right-to-know law.

Setting Examples

Some LEPCs have used enforcement measures against individual offenders as a means to improve voluntary compliance among other facilities. In these cases, the LEPC might enforce Title III requirements at a particular facility within the community and then publicize the results widely. This can be a simple, cost-effective way of getting fast results, since no facility wants negative publicity in local newspapers, radio, or on TV news shows. Other facilities will be likely to respond if they are faced with a fine or another tangible example of what might happen if they fail to comply.

A large-scale enforcement initiative is another effective way to use publicity to increase compliance. In a national initiative, cases throughout all 10 EPA Regions are filed simultaneously and then publicized both in the Regions and at Headquarters. Between 1988 and 1990, EPA has conducted three such coast-

to-coast enforcement initiatives to highlight the requirements of Title III and encourage full compliance by other facilities. These "sweeps" heighten community awareness and cause many facilities to realize the need to comply or risk uninvited public scrutiny. ●

Ignorance Is No Defense (continued from page 4)

In *Butler County, Kansas*, the LEPC persuaded the local newspaper to run articles on Title III and its significance to the public. The paper ran one major article and several follow-up pieces. The LEPC also ran spots on the radio; one LEPC member was a radio disc jockey, and was able to present the spots himself.

Use Your Local Fire Department

The fire department can be another valuable ally in reaching out to your community. Under Title III, LEPCs must include local fire officials, who typically lead the response to hazardous material accidents. Also, Title III provides fire departments with access to inspect reporting facilities' storage and handling of hazardous chemicals. Fire departments also work closely with businesses on fire prevention plans and pre-fire plans. Fire fighters

are often familiar with a facility's operations and are in close contact with its management, especially if the facility has on-site hazardous or flammable materials. In some communities, during routine fire inspections or other inspections, fire departments have the responsibility for assessing

whether a facility is subject to Title III.

An *Alexandria, Virginia*, city ordinance requires all businesses that store, use, or handle hazardous chemicals to obtain a permit from the fire department. As part of the review and approval process, the fire department

(continued on page 8)

EPA Regional Title III Offices

EPA - Region 1 New England Regional Lab 60 Westview Street Lexington, MA 02173 617-860-4300 (CT, MA, ME, NH, RI, VT)	EPA - Region 6 Allied Bank Tower 1445 Ross Avenue Dallas, TX 75202-2733 214-655-2270 (AR, LA, NM, OK, TX)
EPA - Region 2 Woodbridge Avenue Edison, NJ 08837 908-321-6620 (NJ, NY, PR, VI)	EPA - Region 7 726 Minnesota Avenue Kansas City, KS 66101 913-551-7005 (IA, KS, MO, NE)
EPA - Region 3 841 Chestnut Street Philadelphia, PA 19107 215-597-1354 (DE, DC, MD, PA, VA, WV)	EPA - Region 8 One Denver Place 999 18th Street, Suite 1300 Denver, CO 80202-1723 303-293-1723 (CO, MT, ND, SD, UT, WY)
EPA - Region 4 345 Courtland Street Atlanta, GA 30365 404-347-1033 (AL, FL, GA, KY, MS, NC, SC, TN)	EPA - Region 9 75 Hawthorne Street San Francisco, CA 94105 415-744-2100 (AS, AZ, CA, HI, NP, NV, GU)
EPA - Region 5 230 South Dearborn Chicago, IL 60604 312-886-1964 (IL, IN, MI, MN, OH, WI)	EPA - Region 10 1200 6th Avenue Seattle, WA 98101 206-553-4349 (AK, ID, OR, WA)

MAKING IT WORK

Ignorance Is No Defense (continued from page 7)

conducts a facility inspection, which verifies the types and quantities of hazardous chemicals at the site. When they file for a use permit, the companies are sent a comprehensive Title III information package. Failure to comply with Title III might prevent the facility from receiving its permit and, therefore, from operating. Thanks to this permitting process, the city believes it has achieved a high rate of compliance with Title III.

In addition to routine permit inspections, the Alexandria fire department also conducts inspections to identify facilities subject to Title III regulations that haven't yet reported. The fire department targets businesses that haven't reported but which are believed, based on department personnel's knowledge and experience, to handle hazardous chemicals. ●

Read More About It

The examples used in this bulletin are drawn from EPA's series, Successful Practices in Title III Implementation, which is available from your regional Title III office (see list on page 7), or by calling the Emergency Planning and Community Right-to-Know Information Hotline at 800-535-0202. Seven bulletins are currently available in this series, covering a wide variety of Title III implementation practices successfully employed by a large number of SERCs and LEPCs.



United States
Environmental Protection Agency
(OS-120)
Washington, DC 20460

Official Business
Penalty for Private Use
\$300

FIRST CLASS MAIL
Postage and Fees Paid
EPA
G-35