

# America's Water Infrastructure Act,

## Amendments to the Emergency Planning and Community Right-to-Know Act

### A Guide for SERCs, TERCs, and LEPCs

Section 2018 of the America's Water Infrastructure Act, enacted on October 23, 2018, amended the emergency release notification and the hazardous chemical inventory reporting requirements of the Emergency Planning and Community Right-to-Know Act (EPCRA). This new legislation requires state and tribal emergency response commissions to notify the [applicable State agency](#) (i.e., the drinking water primacy agency) of any reportable releases and provide [community water systems](#) with hazardous chemical inventory data. These requirements went into effect immediately upon signing the law.

## Why are these revisions to EPCRA important to community water systems?

- Release of a hazardous substance into a source of drinking water or to the land in a source water protection area could compromise the ability of a community water system to deliver safe and reliable drinking water to their customers and could pose a risk to public health.
- Under some scenarios, contaminants from a release could reach the drinking water intake for a community water system in less than an hour.
- Thus, it is critical that a community water system receives prompt notification so it can take actions to prevent contaminated water from entering its system or otherwise minimize the consequences of the release to the system and its customers.
- Finally, a community water system can proactively plan for potential releases if they have access to hazardous chemical inventories in their source water protection area. A hazardous chemical inventory, combined with other relevant information, allows a water system to characterize the risk of source water contamination threats and prioritize source water protection activities.

## Background

EPCRA was passed by Congress in 1986 in response to concerns raised about community preparedness for chemical emergencies and the availability of information on hazardous chemicals. The purpose of EPCRA is to:

- Encourage and support emergency planning efforts at the state, tribal and local levels;
- Provide local governments and first responders with information concerning potential chemical hazards present in their community;
- Prevent, prepare for, and mitigate the effects of a chemical incident; and
- Provide the public with information on chemical risks in their community and information on what to do if a chemical accident occurs.

To achieve these goals, the law assigned responsibilities to state and local agencies to implement EPCRA. Accordingly, the Governor of each state designated a State Emergency Response Commission (SERC) to assist and supervise Local Emergency Planning Committees (LEPCs), who are responsible for developing emergency response plans for their communities. In tribal regions, Tribal Emergency Response

Commissions (TERCs), have the same responsibilities as SERCs and Tribal Emergency Planning Committees (TEPCs) have the same responsibilities as LEPCs.

## What are the EPCRA amendments that are important to community drinking water systems?

AWIA Section 2018 amended the Emergency Release Notification (EPCRA section 304) and Hazardous Chemical Inventory Reporting (EPCRA section 312) sections of EPCRA.

### Overview of EPCRA emergency release notification (section 304)

Under EPCRA section 304, facilities are required to provide immediate notification to the appropriate SERC (or TERC) and LEPC (or TEPC) of any releases of Extremely Hazardous Substances (EHSs) and hazardous substances (HSs) listed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) at or above their Reportable Quantities. The list of EHSs and their Reportable Quantities can be found in appendices A and B of 40 Code of Federal Regulations (CFR) part 355 and the list of CERCLA HSs can be found in 40 CFR 302.4.).

Section 304(b) requires the following information to be provided in the initial release notification:

- The chemical name or identity of any substance involved in the release;
- An indication of whether the substance is an EHS;
- An estimate of the quantity of any such substance that was released into the environment;
- The time and duration of the release;
- The medium or media into which the release occurred;
- Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals;
- Proper precautions to take, including evacuation (unless such information is readily available to the community; and
- The name(s) and telephone number(s) of the person or persons to be contacted for further information.

Section 304(c) requires facilities to provide a follow-up written report with additional information as soon as practicable after the release that updates information included in the initial release notification and provides additional information including:

- Actions taken to respond to and contain the release;
- Any known or anticipated acute or chronic health risks associated with the release; and
- Where appropriate, advice regarding medical attention necessary for exposed individuals.

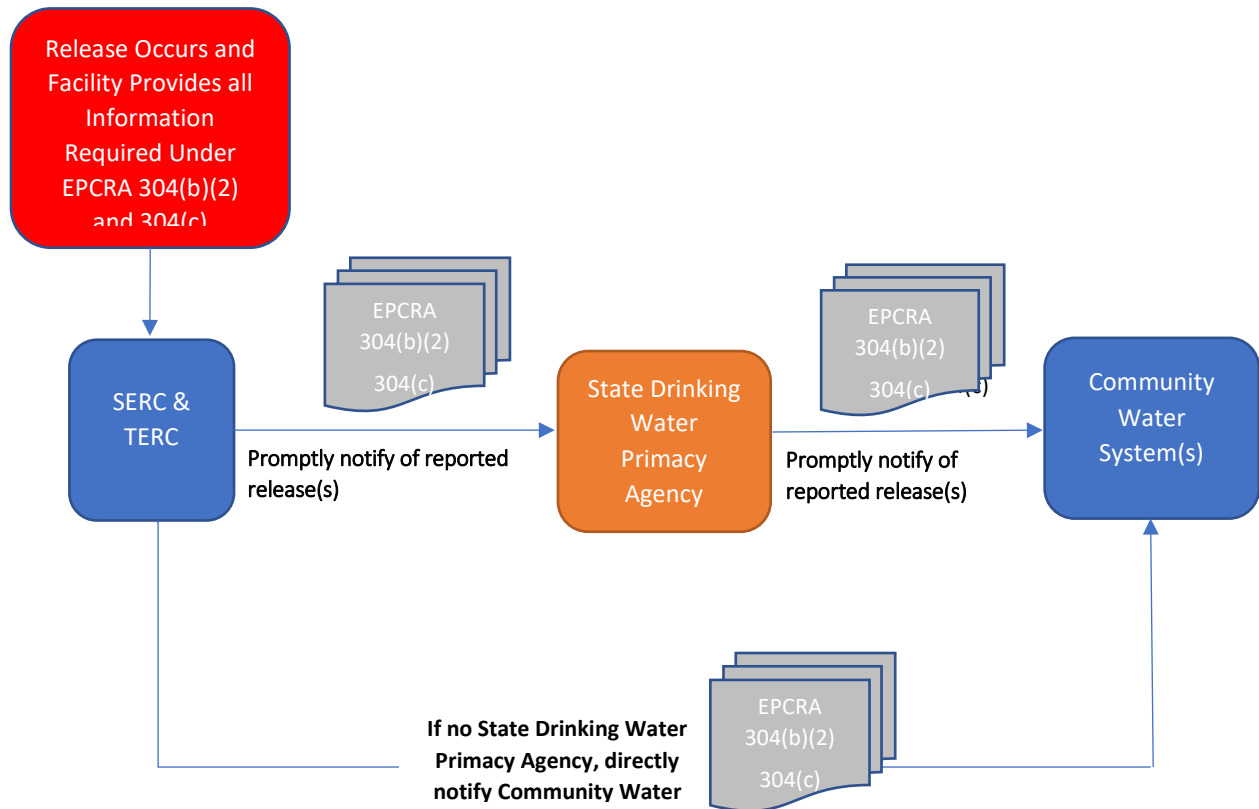
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### AWIA amendment to EPCRA section 304

AWIA section 2018(a) amends EPCRA section 304 to add a new sub-section, section 304(e), *Addressing Source Water used for Drinking Water*. This new sub-section requires SERCs and TERCs to promptly notify the applicable state agency (i.e., state drinking water primacy agency) of any reportable release and provide this agency with:

- The information collected under section 304(b) from the initial release notification; and
- The follow-up written report received under section 304(c).

The state drinking water primacy agency is then required to promptly provide all the information regarding the release to any community water systems whose source water is affected by the release. The source water for a community water system is potentially affected if the release occurs in that system’s source water area (also known as a source water protection area) or upstream of the system’s water intake. Drinking water primacy agencies and community water systems can provide the boundaries for source water protection areas. If there is no state drinking water primacy agency, the SERC (or TERC) is required to directly notify the potentially [affected community water systems](#).



LEPCs should work with community water systems to include potential releases that affect community water systems into the LEPC emergency response plan

### Overview of hazardous chemical inventory reporting (sections 311 & 312)

Sections 311 and 312 of EPCRA contain provisions for hazardous chemical inventory reporting, also known as community right-to-know reporting. Facilities that handle hazardous chemicals, defined under the Occupational Safety and Health Act and its implementing regulations, above set threshold amounts are required to provide information on the chemicals, quantities, locations, and potential hazards. Section 311 requires facilities to submit a Material Safety Data Sheet, MSDS (or Safety Data Sheet, SDS) for each hazardous chemical, or a list of hazardous chemicals, present at or above the reporting thresholds specified in the implementing regulations. Section 312 requires that facilities submit an inventory of these hazardous chemicals (Tier II form) annually by March 1st. The MSDSs or list of chemicals and Tier II form are submitted to the SERC (or TERC), LEPC (or TEPC), and the local fire department. The implementing regulations, which include reporting thresholds can be found in [40 CFR part 370](#).

Tier II forms contain the following information:

- The chemical name or the common name of the chemical as provided on the MSDS.

- An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.
- An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.
- A brief description of the manner of storage of the hazardous chemical.
- The location at the facility of the hazardous chemical.
- An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public as a trade secret.<sup>1</sup>

Some states require submission of more information than is required by the Federal program. Furthermore, SERCs, TERCs, LEPCs, and TEPCs have authority to request Tier II information from facilities for any hazardous chemical that is below the reporting thresholds established in the regulations.

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## AWIA amendment to EPCRA section 312

AWIA Section 2018(b) amends Section 312 to require SERCs (or TERCs) and LEPCs (or TEPCs) to provide affected community water systems with chemical inventory data (i.e. Tier II information) for facilities within their source water protection area upon request. Source water protection areas may span multiple jurisdictional boundaries at the local and state levels, potentially requiring access to Tier II data from multiple SERCs or TERCs, LEPCs or TEPCs. If the SERC, TERC, LEPC, or TEPC do not have Tier II information, these entities should request the information from facilities and make such information available to the affected community water systems. This includes requests for Tier II information below the reporting thresholds.

This data is collected at the state level, so how a community water system gets access to this information for their community will vary from state to state, as well as the required security and protection controls for potentially sensitive information. Further, some states require more information than the Federal program. Additionally, community water systems should be involved in larger planning efforts undertaken by the LEPC or TEPC, as section 2013 of AWIA requires community water systems to coordinate, to the extent possible with LEPCs or TEPCs since drinking water is a vital component of any community.

## Key definitions

The following definitions are important to keep in mind while using this Guide:

- **Applicable State Agency** – the drinking water primacy agency that has primary responsibility to enforce the requirements of the Safe Drinking Water Act (SDWA) in the State. *(Note: The website below for the Association of State Drinking Water Administrators (ASDWA) provides a link to the website for each drinking water primacy agency)*

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<sup>1</sup> Facilities are allowed to claim specific chemical identity as trade secret on their Tier II form, or state equivalent, provided that they submit trade secret claim package to EPA according to the regulations at 40 CFR part 350. State may request access to trade secret claims as provided in 40 CFR 350.19. Facilities are also allowed to claim hazardous chemical storage location information confidential, if they submit the confidential location information sheet along with their Tier II form to the SERC, LEPC and the fire department. *(Note: Facilities are not allowed to claim trade secrets under EPCRA section 304 release reporting).*

- **Community Water Systems** – a system that provides water for human consumption through pipes or other constructed conveyances and has at least fifteen service connections or regularly serves at least twenty-five individuals, and which serves the same population year-round (as defined in SDWA section 1401(15)).
- **Affected Community Water System(s)** – One or more community water systems (as defined in SDWA section 1401(15)) that receives supplies of drinking water from a source water protection area, delineated under SDWA section 1453, in which a facility that is required to prepare and submit an inventory form is located.

## Resources

[EPA EPCRA Regional Contacts](#)

[EPA EPCRA, RMP & Oil Information Center](#)

[EPCRA Factsheet](#)

[EPCRA Training for States, Tribes, LEPCs, Local Planners and Responders \(Non-Section 313\)](#)

[How to Better Prepare Your Community for a Chemical Emergency: A Guide for State, Tribal and Local Agencies](#)

[List of State Drinking Water Primacy Agencies](#)

[State Drinking Water Information System](#)