

# America's Water Infrastructure Act, Section 2018

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

### A Guide for Community Water Systems and State Drinking Water Primacy Agencies

#### Abbreviations

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| AWIA       | America's Water Infrastructure Act   |
| CERCLA     | Comprehensive Environmental Response, Compensation, and Liability Act                              |
| CERCLA HSs | Hazardous substances defined under CERCLA section 102 (40 CFR 302.4)                               |
| CFR        | Code of Federal Regulations  |
| EPA        | United States Environmental Protection Agency  |
| EPCRA      | Emergency Planning and Community Right-to-Know Act   |
| EPCRA EHSs | Extremely Hazardous Substances defined under EPCRA section 302 (40 CFR part 355, Appendix A and B) |
| ERP        | Emergency Response Plan  |
| LEPC       | Local Emergency Planning Committee   |
| MSDS/SDS   | Materials Safety Data Sheet/Safety Data Sheet  |
| NRC        | National Response Center   |
| OSHA       | Occupational Safety and Health Administration  |
| RQ         | Reportable Quantity  |
| SDWA       | Safe Drinking Water Act  |
| SERC       | State Emergency Response Commission  |
| TEPC       | Tribal Emergency Planning Committee  |
| TERC       | Tribal Emergency Response Commission   |

On October 23, 2018, America's Water Infrastructure Act (AWIA) was signed into law, amending numerous provisions of the Safe Drinking Water Act (SDWA). AWIA also amended the Emergency Planning and Community Right-to-Know Act (EPCRA). The revisions to EPCRA require that [community water systems](#) (1) receive prompt notification of any reportable release of an EPCRA extremely hazardous substance (EHS) or a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) hazardous substance (HS) that potentially affects their source water, and (2) have access to EPCRA Tier II information (i.e., hazardous chemical inventory data). These requirements went into effect immediately upon signing the law.

#### Why are the EPCRA amendments important to community water systems?

- Release of a hazardous substance into a source of drinking water or to the land in a source water area could compromise the ability of a community water system to deliver safe and reliable drinking water to their customers and 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 (i.e., EPCRA Tier II information) in their source water area. EPCRA Tier II information, 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 on EPCRA

Congress passed EPCRA 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;
- Prepare and protect the community from chemical accidents; and
- Provide the public with information on chemical risks in their community.

To achieve these goals, the law assigned responsibilities to state and local agencies. Accordingly, the Governor of each state designated a [State Emergency Response Commission \(SERC\)](#) to implement the EPCRA provisions within the state. SERC duties include:

- Designating local emergency planning districts;
- Appointing a [Local Emergency Planning Committee \(LEPC\)](#) for each district;
- Reviewing local emergency response plans;
- Supervising the activities of the LEPC; and
- Establishing procedures for receiving and processing public requests for information collected under EPCRA.

In tribal regions, Tribal Emergency Response Commissions (TERCs), designated by the chief executive officer of a federally recognized Tribe, have the same responsibilities as SERCs and Tribal Emergency Planning Committees (TEPCs) have the same responsibilities as LEPCs.

LEPCs and TEPCs are responsible for working within their communities to ensure that emergency response plans are created and providing information about chemicals in the community to citizens.

LEPC (or TEPC) membership is intended to broadly involve all community members such as elected local and state officials; police, fire, civil defense, and public health professionals; environment, transportation, and hospital officials; facility representatives; and representatives from community groups and the media. Community water systems should consider joining the LEPC in their area to integrate their emergency response planning efforts with those of the surrounding community.

Facilities are required to notify or submit reports on reportable chemical releases and on the presence of hazardous chemicals to their SERC (or TERC) and LEPC (or TEPC). These agencies are required to provide public access to information collected under EPCRA except information claimed as confidential. For more information, see the U.S. Environmental Protection Agency's (EPA's) [EPCRA factsheet](#).

## 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 EPCRA *Extremely Hazardous Substances* and CERCLA *hazardous substances* at or above their Reportable Quantities (RQs). The list of EPCRA EHSs and their RQs can be found in [appendices A](#) and [B](#) of 40 Code of Federal Regulations (CFR) part 355 and the list of CERCLA HSs and their RQs can be found in [40 CFR 302.4](#).

Section 304(b)(2) 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 EPCRA 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.

For transportation related releases, facilities are permitted to call 911 or the operator, in lieu of calling the SERC (or TERC) and LEPC (or TEPC).

Section 304(c) requires facilities to provide a follow-up written report 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.

A follow-up written report is not required for transportation related releases.

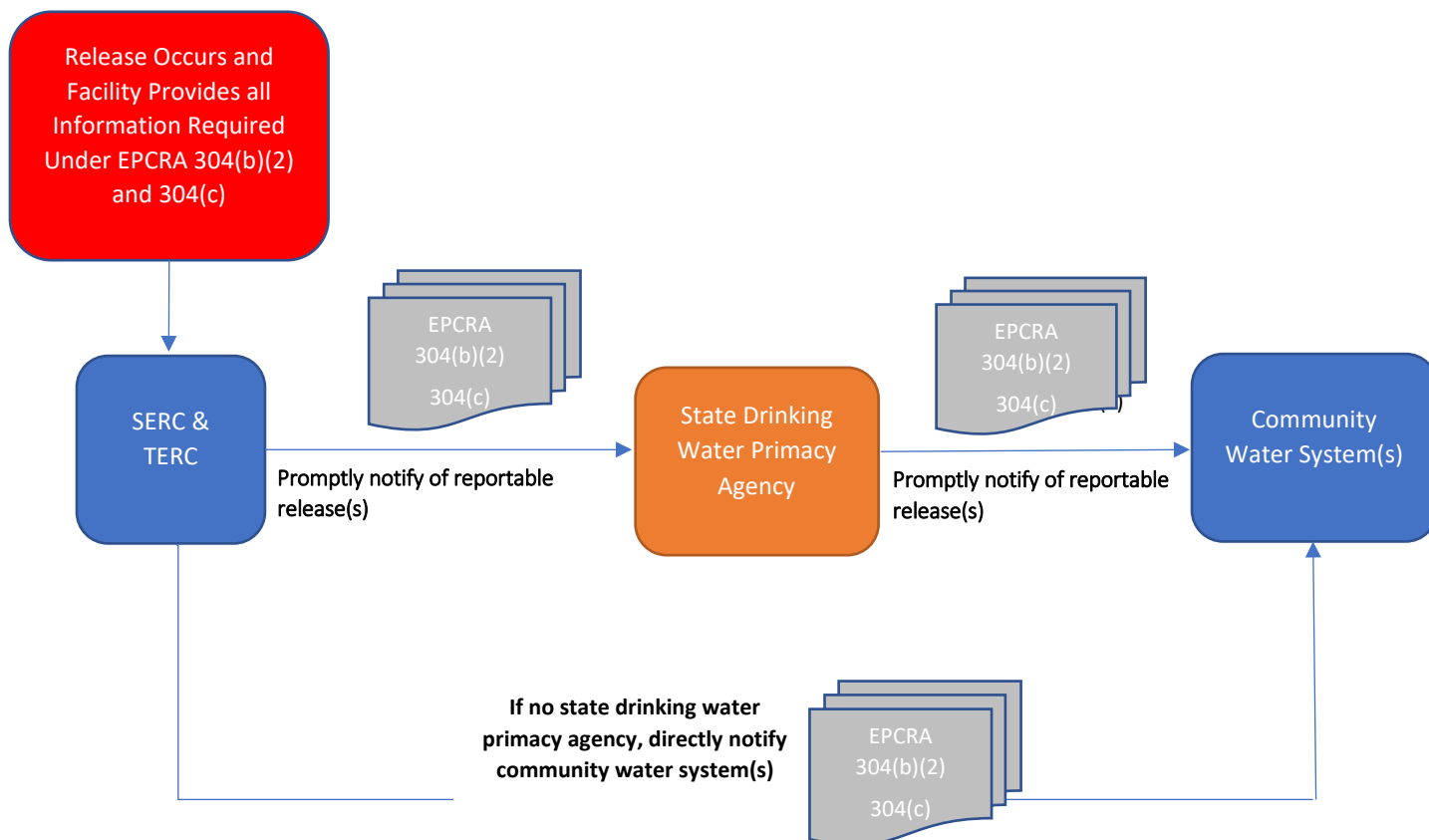
In addition to the requirements above, under CERCLA section 103, facilities must report releases above the RQ to the National Response Center (NRC).

## 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 [state drinking water primacy agency](#) (i.e., applicable state agency) of any reportable release and provide this agency with:

- The information collected under section 304(b)(2) 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 potentially 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. If there is no state drinking water primacy agency, the SERC (or TERC) is required to directly notify the potentially affected community water systems.



**Figure 1. AWIA Section 2018(a) Release Notification Flow**

Community water systems should use the information provided by the state drinking water primacy agency, SERC, or TERC to evaluate and respond to possible impacts to their systems resulting from the release. Furthermore, lessons learned from releases that occur should be integrated into emergency response planning.

### 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 (OSHA) 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 annually by March 1<sup>st</sup>. The MSDSs or list of chemicals and chemical inventory 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](#).

The chemical inventory contains 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; and
- An indication of whether the owner elects to withhold the identity of a specific hazardous chemical (as a trade secret) or the specific location of a hazardous chemical within a facility (as confidential information) from disclosure to the public.<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.

### 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 Tier II information for all facilities within their source water area, upon request. Source water areas may span jurisdictional boundaries at the local and state levels, potentially requiring access to Tier II information from multiple SERCs (or TERCs) and LEPCs (or TEPCs). If the SERC, TERC, LEPC, or TEPC does not have Tier II information for a specific facility identified in the request, these entities should request the information from the specified facilities and make such information available to the affected community water systems. This includes requests for Tier II information below the reporting thresholds.

As LEPCs have authority under EPCRA to ask for Tier II information at levels below the reporting thresholds, they may request Tier II information from facilities that have not submitted this information. In pursuing such a request, community water systems and LEPCs should work together to ensure that the request has the potential to yield meaningful information to inform source water protection and emergency response planning. For example, it may be more useful to focus on hazardous chemicals that are easily dispersed in water and/or difficult to treat when requesting hazardous chemical inventory data at quantities below reporting thresholds.

Tier II information 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 Tier II information.

### How do the AWIA section 2018 EPCRA amendments relate to AWIA section 2013?

AWIA section 2013 requires community water systems serving more than 3,300 people to develop or update risk assessments and emergency response plans (ERPs). The law specifies the components the risk assessments and ERPs must address. One of these components is source water. The provisions of AWIA section 2018 can play a key role in meeting the requirements of AWIA section 2013, specifically:

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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. States may request access to trade secret claims as provided in 40 CFR 350.19. In addition, facilities can claim hazardous chemical storage location information as 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).*

- The spill notifications required under the amendments to EPCRA section 304 can be incorporated into ERPs to improve the ability of a community water system to prepare for and respond to release of a hazardous substance into its source water.
- Tier II information made available to community water systems under the amendments to EPCRA section 312 can inform the risk assessment and help systems identify potential source water contamination threats in their source water area or upstream of their intakes.

Additionally, AWIA section 2013 requires community water systems to coordinate, to the extent possible, with LEPCs or TEPCs. If a community water system does not have a Facility Emergency Coordinator<sup>2</sup> participating as a member of the LEPC, it should consider joining the LEPC in its area. This can help to integrate community water systems into community emergency response planning efforts undertaken by the LEPC or TEPC and develop pre-incident relationships that are critical during response to a release. Membership in the LEPC will also facilitate access to hazardous chemical inventories maintained by the LEPC, including Tier II information, but also potentially including inventories from other sources. Finally, membership in the LEPC highlights the services of a community water system as a vital component of the community.

Likewise, state drinking water primacy agency representatives should consider opportunities to more fully participate in their SERC (or TERC). While many of these agencies are already SERC members, more formal arrangements may be appropriate for those that are not. As SERCs are organized in different ways across the United States, this could involve requests that the Governor amend executive orders or that statutory changes be pursued. As these sorts of actions can be complicated and take time, at the least the state drinking water primacy agencies should establish clear communication with the SERC (or TERC) and attend meetings.

## Key definitions

The following definitions apply to the terms used in this factsheet:

- **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 area, delineated under SDWA section 1453, in which a facility that is required to prepare and submit Tier II information is located.
- **Community Water System** – 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)).
- **Facility** – Under EPCRA, the term “facility” means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). EPA expanded this definition of “facility” to include manmade structures, as well as natural structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. For purposes of section 304, the term “facility” includes motor vehicles, rolling stock, and aircraft.

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<sup>2</sup> EPCRA section 302 requires facility notification of the presence of any extremely hazardous substance in excess of the substance’s threshold planning quantity and EPCRA section 303 requires the facility to appoint a Facility Emergency Coordinator who will participate in the local emergency planning process.

- **Local or Tribal Emergency Planning Committee** – An entity designated by the SERC of each state or TERC of a federally recognized Tribe that is responsible for preparing chemical emergency response plans; coordinating the response to releases; serving as a nexus of information about chemical risks in the community; and establishing procedures for processing public information requests.
- **State Drinking Water Primacy Agency (i.e., the applicable state agency)** – The agency that has primary responsibility to enforce the requirements of the Safe Drinking Water Act (SDWA) in the state. *(Note: Under “Resources,” the website listed for the Association of State Drinking Water Administrators (ASDWA) provides a link to the website for each state drinking water primacy agency.)*
- **State or Tribal Emergency Response Commission (SERC)** – an entity designated by the Governor of each state or chief executive officer of a federally recognized Tribe that is responsible for establishing LEPCs (or TEPCs); reviewing local emergency plans; supervising LEPC (or TEPC) activities; establishing mechanisms for collecting hazardous chemical inventories and information on releases of chemicals from facilities; and establishing procedures for processing public information requests.

## Resources

- [America’s Water Infrastructure Act: Section 2018 Statutory Language](#)
- [America’s Water Infrastructure Act: Section 2018 Frequently Asked Questions](#)
- [America’s Water Infrastructure Act: Section 2013 Risk Assessments and Emergency Response Plans](#)
- [Association of State Drinking Water Administrators/Resources/Links](#)
- [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](#)
- [Local Emergency Planning Committees](#) – contact the SERC for your state (or TERC for your tribal area) to obtain contact information for the LEPC (or TEPC) in your area
- [Source Water Collaborative](#)
- [State Emergency Response Commissions Contacts](#)
- [State Phone Number and Addresses for Facilities to Comply with EPCRA Section 304 – Emergency Notifications](#)
- [State Tier II Reporting Requirements and Procedures](#)