

August 3, 2012

Practice Group(s):

Energy, Infrastructure
and Resources

Oil & Gas

EPA Requires Additional Hazardous-Chemical Reporting Data for Natural-Gas Operations Regulated under EPCRA

By Stephen J. Matzura and R. Timothy Weston

The U.S. Environmental Protection Agency (EPA) recently issued a final rule¹ that changes the type of information owners or operators of facilities must submit as part of their hazardous-chemical reporting obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA).² Under EPCRA, natural-gas operators may be required to report the presence of hazardous chemicals (such as hydraulic fracturing fluids) at an operation. In the past, natural-gas operators have been penalized for failing to adhere to these reporting requirements.

EPA's new rule is important for covered natural-gas operations because, effective January 1, 2014, it revises emergency and hazardous chemical inventory forms to require additional information for reporting. Operators subject to reporting requirements will need to use updated inventory forms for the 2013 reporting year (due on or by March 1, 2014).³ Because of this change at the federal level, operators subject to EPCRA reporting should monitor potential state-level responses. State agencies that currently use the federal inventory forms will either use the revised forms or adjust their requirements to keep pace with the federal standards. Likewise, other states with their own reporting forms may respond to require similar information. For example, Pennsylvania has its own forms which likely require updates to incorporate the new federal standards.⁴

EPCRA Reporting

EPCRA reporting is intended to provide emergency-response officials and the public with information about chemical hazards in their communities. To that end, EPCRA establishes hazardous-chemical reporting requirements for facilities that are required to prepare or have available material safety data sheets (MSDSs) for any "hazardous chemical" that is "present at the facility" over certain threshold amounts.

Which natural-gas operations are subject to EPCRA reporting? Whether an operation is subject to EPCRA reporting will depend on the various circumstances at the particular location. For example, drilling sites or compressor stations may have different characteristics that trigger reporting. To determine whether EPCRA reporting is applicable, an operator will need to evaluate whether MSDS requirements apply at a particular operation according to the Occupational Safety and Health Act

¹ *Hazardous Chemical Reporting: Revisions to the Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II)*, 77 Fed. Reg. 41300 (July 13, 2012).

² 42 U.S.C. §§ 11001-11050.

³ For specific reporting information, including the new inventory forms, see EPA, Emergency Management, Tier II Chemical Inventory Reports/Tier2 Submit, <http://www.epa.gov/oem/content/epcra/tier2.htm> (last visited July 31, 2012).

⁴ Pennsylvania Department of Labor & Industry, Tier II Chemical Inventory Reporting Form, <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=553052&mode=2> (last visited July 31, 2012).

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(OSHA)⁵ and the Hazard Communication Standard.⁶ Under the OSHA Hazard Communication Standard, MSDSs are required for materials that present certain “hazards” – and a wide range of chemicals present at natural-gas-development sites, including acids, surfactants, and even sand proppants (silica) may qualify. An operator needs to determine whether the operation is a “facility” and whether a “hazardous chemical” is “present at the facility” in the separate threshold quantities for hazardous chemicals or “extremely hazardous substances.”⁷

What are the reporting requirements? If an operation meets EPCRA’s threshold requirements, the operator must submit an MSDS or list of chemicals to (1) the local emergency planning committee, (2) the state emergency response commission, and (3) the fire department with jurisdiction over the facility.⁸ EPCRA requires use of emergency and hazardous chemical inventory forms to report hazardous-chemical information to these state and local entities under two reporting “tiers.” States may use their own reporting methods or adopt EPA’s standards.

- **Tier I.** Tier I requires each owner or operator to submit an emergency and hazardous chemical inventory form to the state and local entities by March 1 of each year. Tier I forms require general information, grouped according to five different hazard categories. The inventory form requires owners or operators to identify the general location of hazardous chemicals and estimated ranges of the maximum amount and average daily amount of hazardous chemicals “present at the facility at any time during the preceding calendar year.”⁹
- **Tier II.** Upon request of one of the three state or local entities, Tier II mandates submittal of an inventory form with specific information about “each hazardous chemical present at the facility.” The additional information includes the chemical name, manner of storage, location at the facility, and estimated ranges of the maximum amount and average daily amount of the chemical “present at the facility at any time during the preceding calendar year.”¹⁰
- **State-specific reporting requirements.** Reporting requirements differ in each state. States either adopt and use federal reporting procedures or develop their own inventory reporting methods. For example, Pennsylvania has its own statute that governs reporting,¹¹ and the Commonwealth encourages electronic submission through its own online system.¹² According to EPA, all states currently require the more-detailed Tier II form or a state equivalent and no longer accept the Tier I form.

Changes to Tier I and Tier II Reporting

⁵ 29 U.S.C. §§ 651-678.

⁶ 29 C.F.R. § 1910.1200.

⁷ See 40 C.F.R. § 370.10.

⁸ 42 U.S.C. § 11021(a).

⁹ *Id.* § 11022(d)(1).

¹⁰ *Id.* § 11022(d)(2), (e).

¹¹ Worker and Community Right-to-Know Act, 35 Pa. Stat. Ann. §§ 7301-7320. The implementing regulations are contained in 34 Pa. Code pt. XIII, chs. 301-323.

¹² Pennsylvania Department of Labor & Industry, Pennsylvania Tier II System (PATTS), <http://www.portal.state.pa.us/portal/server.pt?open=514&objID=553049&mode=2> (last visited July 31, 2012).

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The new EPA rule changes the types of information that covered natural-gas operators must submit for EPCRA reporting. Some important changes to both Tiers include:

- ***Latitude and longitude of the “facility.”*** Operators may already provide the latitude and longitude of well pads or other operations to agencies under certain statutory programs. But operators should be aware that specifying a particular location for purposes of EPCRA reporting may, in fact, establish or modify the boundaries of the regulated “facility.” The boundaries of the “facility” will determine the quantity of hazardous chemicals “present at the facility” and, as a result, whether the site triggers the threshold quantities for reporting. The new latitude-and-longitude requirement begs the questions: What is a “facility” and where are its boundaries? The law has not always provided clear answers on these points, particularly with respect to whether mobile equipment or certain “contiguous or adjacent sites” will be included as part of a single “facility.”¹³ Therefore, operators should monitor how EPA and states classify a facility’s boundaries for purposes of EPCRA reporting; for example, whether boundaries are limited to a single well pad or may encompass other nearby operations.
- ***Whether the location of the facility is “manned” or “unmanned.”*** The new rules classify facilities as manned or unmanned. During drilling operations, facilities would clearly be “manned” as the operator and/or contractors are present at the site. After drilling, a well tender may be present during production operations for part of the time, but likely not on a 24-7 basis. The new rule’s terms raise questions about how often a person must be present at a location for it to be “manned.” Further, consideration must be given to situations where natural-gas operators may temporarily stage and store hazardous chemicals at a location other than, for example, a well pad or compressor station. Therefore, operators should again consider the boundaries of the particular “facility” and whether it is “manned,” as interpreted by EPA or the particular state.
- ***Estimate of the maximum number of occupants.*** If a regulated operation is “manned,” an operator must estimate and report the maximum number of occupants that may be present at any one time. This includes an operator’s employees as well as contractors and other persons.
- ***Range codes for quantities of hazardous chemicals.*** The new rule narrows the scope of the “range codes” used to report the amount of hazardous chemicals present at a site. For instance, range code 02 was previously used for identifying 100 to 999 pounds of a hazardous chemical, but has been changed to 100 to 499 pounds. The narrower range codes will give the state and local entities a more accurate picture of the amount of hazardous chemicals present at a site. State-specific range codes may differ, but may not be broader than the ranges in the new rule.

¹³ EPCRA defines “facility,” in relevant part, to include “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).” 42 U.S.C. § 11049(4); *see also* 40 C.F.R. § 370.66. Definitions may differ under state laws. For example, Pennsylvania’s Hazardous Material Emergency Planning and Response Act defines “facility” as follows:

All buildings, structures and other stationary items which are located on a single site or a contiguous or adjacent site which are owned or operated by the same person and which actually manufacture, produce, use, transfer, store, supply or distribute any hazardous material. The term includes railroad yards and truck terminals but does not include individual trucks, rolling stock, water vessels, airplanes or other transportation vehicles.

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- ***Whether the facility is subject to the emergency planning notification requirement under EPCRA section 302.***¹⁴ EPCRA section 302 requires a one-time notification to the state emergency response commission and local emergency planning committee when an “extremely hazardous substance” first becomes present at the facility above threshold quantities. An operator must report whether EPCRA section 302 applies and, if so, must also report the name, title, phone number, 24-hour phone number, and email address of the facility’s emergency coordinator.
- ***Whether the facility is subject to the chemical accident prevention requirements under the Clean Air Act section 112(r) Risk Management Program.***¹⁵ Section 112(r) of the Clean Air Act requires owners or operators of stationary sources to develop risk management plans for certain toxic and flammable substances that are present above threshold quantities to prevent accidental releases of such substances and promptly respond to any releases. Operators must report whether an operation is subject to these requirements, so they may wish to reexamine the applicability of the relevant Clean Air Act provisions.
- ***Facility identification numbers assigned under the Toxic Release Inventory (TRI) and Risk Management Program. EPCRA section 313***¹⁶ requires certain covered facilities to submit a TRI report to EPA and states if such facilities use listed toxic chemicals above threshold quantities. If applicable, an operator must report the facility identification number assigned under the TRI Program and the Clean Air Act Risk Management Program. This will facilitate a local or state agency’s access to additional information about a particular facility.
- ***Additional contact information.*** The new rule requires an operator to list the name, title, phone number, and email address of the person to contact regarding the information contained in the form. Notably, the new forms require email addresses as part of the existing mandatory contact information. EPA also encourages owners and operators to submit optional information, such as contact information for the facility’s emergency coordinator (when not mandatory) and the facility’s parent company.

Clarifications for Tier II Reporting

The EPA rule clarifies how to report pure chemicals versus mixtures and the manner of storage.

- ***Reporting pure chemicals and mixtures.*** Like the previous form, the new Tier II form requires an indication of whether the chemical is a solid, liquid, or gas, whether it is an “extremely hazardous substance,” and which hazard categories are applicable. To simplify reporting, however, the rule creates separate data fields for pure chemicals and chemical mixtures. For each pure chemical, an operator must report the chemical name and Chemical Abstract Service (CAS) registry number, as indicated on the MSDS. For each mixture, the form requires the mixture name, product name, or trade name and CAS registry number, as indicated on the MSDS. The operator must provide the name of each “extremely hazardous substance” contained within the mixture, and may voluntarily provide all other components of the mixture. The form requires the estimated ranges of quantities of each individual chemical or each mixture present at the facility. In addition, for mixtures containing “extremely hazardous substances,” the operator must specify the estimated range for the maximum amount of each “extremely hazardous substance” in the mixture.

¹⁴ See 42 U.S.C. § 11002; 40 C.F.R. pt. 355.

¹⁵ See 42 U.S.C. § 7412(r)(7); 40 C.F.R. pt. 68.

¹⁶ 42 U.S.C. § 11023.

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- **Reporting the manner of storage.** The rule also eliminates “storage codes” and instead requires the operator to specify different “types” and “conditions” of storage. Operators must accurately describe the “type” of storage; for example, whether the chemical or mixture is in an above-ground tank, plastic or non-metallic drum, steel drum, cylinder, or rail car. Also required are the storage “conditions”; for instance, ambient pressure, ambient temperature, less than ambient temperature/pressure, or cryogenic conditions.

Conclusion

Natural-gas operators should determine whether EPCRA’s hazardous-chemical reporting mandates apply to each of their particular sites and operations, and plan for collecting the information necessary to fulfill the EPCRA reporting requirements. In order to maintain compliance, operators with covered sites need to consider the implications of EPA’s changes to the reporting forms and monitor any corresponding changes at the state level.

Authors:

Stephen J. Matzurastephen.matzura@klgates.com

+1.717.231.5842

R. Timothy Westontim.weston@klgates.com

+1.717.231.4504

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