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The Community "Right To Know" Law: What It Is and How to Use It to Obtain Information About Hazardous Chemicals in Local Use

by

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A recent Federal law entitles each of us to information about how hazardous chemicals are used, stored and discharged by industrial and other facilities in our communities. In particular, businesses must (1) identify the chemicals they use, produce or store in significant amounts; (2) report how much of each is present on their premises annually; (3) estimate and report the quantities of certain toxic chemicals they release into the environment, including waste streams, each year; and (4) describe associated environmental and public health hazards. These data, which are reported to local, State and Federal agencies, are readily available in several formats to anyone wishing to examine them.

Introduction

Before the 1984 methyl isocyanate disaster in Bhopal, India, America's complex of environmental laws provided no mechanism for communities to learn about or even identify "hazardous chemicals" routinely present in their midst. Congress has since provided such a mechanism in Title III of the Superfund Amendment and Reauthorization Act (SARA), also known as the Emergency Planning and Community Right to Know Act of 1986 [1]. "Hazardous

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chemical" is broadly defined under SARA as any substance which may pose a risk to health or property, and presently describes approximately 50,000 chemicals.

SARA requires State Emergency Response Commissions to aid Local Emergency Planning Committees in every community where designated "extremely hazardous substances" (a list compiled by Congress, for emergency planning purposes, of 420 hazardous chemicals typically found at industrial sites) are significantly present to adopt plans to ensure community safety in the event of chemical release emergencies. It also obliges owners of any building or plant where hazardous chemicals are significantly present to file chemical use data sheets and reports with agents of local, State and/or Federal authorities.

Reporting requirements vary for different categories of such facilities, and even within single categories, alternate reporting formats (made optional for the reporting companies) produce markedly different kinds of information. Moreover, different kinds of reports are filed with different sets of agencies. Nevertheless, the total of all data reported or reportable under SARA can provide significant insights into the chemical handling practices of individual facilities, as well as clues about the potential impacts of those practices in the community.

This Bulletin describes the kinds of information (including formats) obtainable through SARA, and the procedures by which anyone can access any of these data [2].

Reporting Requirements

SARA establishes three kinds of chemical reporting requirements that apply to different (although overlapping) sets of facilities and chemicals [3].

Reporting of Spills

The first reporting requirement, and the broadest in terms of facilities covered, relates to episodic spills such as that which occurred in Bhopal. SARA §304 requires virtually universal reporting of any "significant" (defined as a quantity exceeding a threshold determined by the U.S. Environmental Protection Agency (EPA) [4]) off-site release of a listed hazardous substance. If the release is governed by a pollution control permit, it is exempt from this requirement [5].

A written report filed "as soon as practicable" after the release must describe it in detail, including (1) the identity and amounts of the chemicals involved; (2) the time, location and duration of the spill; (3) the media affected; (4) health risks posed; (5) response actions taken; and (6) appropriate medical advice. There is no particular format for this report, which must be filed both locally and with the State.

Inventories of Hazardous Chemicals

SARA's second set of requirements elicits inventory information about hazardous chemicals from employers who use or produce them. Under preexisting law, employers are required to maintain a material safety data sheet (MSDS) for every hazardous chemical to which employees are exposed, describing its chemical, physical and toxicological characteristics [6]. SARA now obligates these employers to furnish local and State officials with copies of MSDS's for each hazardous chemical that they annually produce or use beyond specified thresholds [7]. Alternatively, an employer may provide a list of its reportable hazardous chemicals grouped according to the nature of physical or health hazards they pose [8]. Those electing to provide lists, however, may later be compelled to submit MSDS's for specified chemicals.

Those required to file MSDS's or lists must also report annually how much of each hazardous chemical they had on hand during the prior calendar year. This must include daily averages, the maximum amounts on the premises at one time, and the principal locations of storage or use. This report may consist of either aggregate data for chemicals posing similar types of hazards (Tier I form) or specific data for individual chemicals (Tier II form) [9]. Facilities choosing to report chemical use in the aggregate under Tier I, however, may later be compelled by the Local Committee to submit Tier II forms for particular chemicals.

Use, Disposal and Environmental Release of Toxic Chemicals

SARA's third and most innovative reporting obligation requires manufacturers with ten or more employees (S.I.C. Codes 20-39) to disclose information about how they use, dispose of and release into the environment any of more than 300 specified toxic chemicals (designated by EPA) to both their host state and the EPA [10]. This obligation, first effective in July, 1988, requires submittal of a completed "uniform toxic chemical release form" (EPA Form R) for each toxic chemical used or produced above a specified threshold in the preceding calendar year [11].

EPA Form R requires disclosure of how each toxic chemical was used and the maximum amount that was on hand at any one time the the preceding calendar year. It also calls for detailed information about how, and at what efficiency, such chemicals were treated when discarded. Further, it requires for each chemical an estimate (to two significant figures) of the amount released during the prior year into the air, land and water, with receiving waters identified. Disposal efficiencies and release estimates need not be based upon direct measurements, but the report must provide a reasonable basis for the calculated values [12].

One permitted means for estimating annual releases, known as "mass balance" analysis, involves a comparison of the amount of a chemical that is brought into or produced at a facility with the amount that goes out in products or the waste stream. The difference presumably provides a measure of non-waste stream emissions into the environment. The EPA is required by

SARA to evaluate the utility of this approach by accumulating mass balance data from selected facilities over the next few years, and to report its findings to Congress by 1991. This data, too, must be shared with the public upon request [13].

Public Access to Information

Receiving agencies must provide virtually all data reported under SARA to interested persons upon request. Reporting facilities may withhold a limited class of "trade secret" information [14] and decline to specify exact locations within the facility where hazardous chemicals are used and stored. Otherwise, SARA requires each State Emergency Response Commission, each Local Emergency Planning Committee and the EPA to implement a process for public access to all information they receive. The information available from each agency differs, however.

Local Emergency Planning Committee

Local Emergency Planning Committees should be the first resort for obtaining emergency spill reports and chemical inventory information, including MSDS's or hazardous chemical lists, filed by local facilities. They can also provide a list of all facilities within the district that are required to report under SARA. Moreover, the Local Committee must, upon request, obtain MSDS's on particular chemicals and specific Tier II reports from area facilities that have chosen to file only hazardous chemical lists and the more general Tier I forms [15].

Record keeping for Monroe County's Local Emergency Planning Committee is presently handled by the County's Office of Emergency Preparedness, under the supervision of Public Safety Director Douglas Call. Requests for information may be directed to the following address:

Monroe County Local Emergency Planning Committee
Room 11
111 Westfall Road
Rochester, New York 14620
(716) 473-0710

The Local Committee presently can provide only hard copies of what it obtains. It is neither required nor presently able to provide composite reports of the data contained in the filings it receives [16]. Moreover, inquirers may be charged 25 cents per page for copies, although this charge may be waived upon request.

Emergency Response Commission

The Emergency Response Commission (in New York, care of the Department of Environmental Conservation (DEC)) receives copies of all SARA compliance disclosures made

by facilities in the State. Copies of any SARA submittal on file is obtainable under the State Freedom of Information Act (FOIA) upon a written request to:

Environmental Emergency Coordinator
N.Y.S. Department of Environmental Conservation
50 Wolf Rd.
Albany, NY. 12205-2665

Care should be taken to clearly identify the specific SARA submittals sought. The DEC may charge 25 cents per page, but frequently waives this charge if a request is reasonably focused [17].

Whether under SARA or FOIA, an agency is obliged only to provide hard copies of records it possesses. It cannot be required to abstract, analyze or supplement these records. However, DEC has computerized its Form R data base and will condense any such five-page report in its files into a single page upon request [18]. The DEC will also soon be preparing summaries for the major facilities in the State.

Environmental Protection Agency

The EPA receives the Form R's that are also filed annually with the various State Emergency Response Commissions. Hard copies of these documents, if not available from the Emergency Response Commissions, may be obtained from the EPA by directing inquiries to:

U.S. Environmental Protection Agency
P.O. Box 70266, Washington, D.C. 20024-0166,
Attn.: TRI Public Inquiry
(202) 488-1501.

Also available from the EPA, and of potentially more use to researchers, are computerized summaries of all Form R data received, organized on facility-, region- or chemical-specific bases. As of May 1, 1989, EPA's entire toxic release data base became accessible through the National Library of Medicine's TOXNET system. Additionally, EPA expects to distribute its data base to libraries throughout the nation on microfiche by mid-summer, 1989 [19].

Finally, EPA's mass balance study has been commenced by the National Academy of Sciences. An interim report is due from the Academy early this year and will be available upon request [20]. Further information may be requested of EPA at (202) 382-3609.

Conclusion

SARA provides Americans with powerful means by which we can gather information about the hazardous chemicals which are produced, used and disposed of in our communities, understand how these operations may affect us, and initiate improvement in existing policies. The data which will be generated by this new legislation, if accurately reported and carefully analyzed, will also tell us much about the effectiveness of current environmental control

measures and waste treatment strategies. Availing ourselves of these data, and using them to formulate better methods for curbing pollution, are SARA's challenges not only to industries and scientists but also to the public at large.

References

1. P.L. 99-499, 42 USC §§11001 *et seq.*
2. Discussion is limited to access procedures available to the public generally. Additional avenues open to health care professionals and public safety officials are beyond the scope of this Bulletin.
3. A useful compendium of the specific chemicals covered by SARA's different provisions, called the "Title III List of Lists," is available from EPA's Office of Toxic Substances by calling (800) 535-0202.
4. 42 USC §11004 (a).
5. EPA has proposed limiting this exemption to emissions in compliance with an existing permit, and requiring excesses to be reported under SARA. (*Federal Register* 54:131, 11 July 1989). Permit conditions generally require that excesses be reported in some fashion and this information is often available from the agency with oversight responsibility. Making these incidents reportable under SARA as well would improve public access and hence SARA's usefulness.
6. 29 CFR Part 1910.
7. 42 USC §11021. For certain designated "extremely hazardous substances" the threshold is 500 lbs. per year (approximately a 55-gallon drum for liquids) or less. For all others it is 10,000 lbs. per year. 40 CFR §370.30.
8. 42 USC §11021. The hazard categories are: (1) immediate (acute) health hazard; (2) delayed (chronic) health hazard; (3) fire hazard; (4) sudden release of pressure hazard; and (5) reactive hazard. 40 CFR §370.2.
9. 42 USC §11022.
10. 42 USC §11023.
11. *Id.* The threshold for manufacturers and processors of toxic chemicals was 75,000 lbs. per year in 1987, 50,000 lbs. per year in 1988 and will be 25,000 lbs. per year in 1989. For all other users of such chemicals, the threshold is 10,000 lbs. per year. 40 CFR §372.25.
12. EPA's Instructions for Completing Form R, §5.5(A.2).
13. 42 USC §11023 (1).
14. 42 USC §11042.
15. To obtain an unfiled MSDS, one need only write to the Local Committee and request that it be obtained. The Committee must then obtain it from the relevant facility and provide

it to the requester. 42 USC §11021(c). Unfiled Tier II forms are available on the same basis provided the facility in issue has more than 10,000 lbs. of the specified chemical on hand at any one time. If this threshold is not met, the Committee may still obtain the form if the requester establishes a reasonable need for the data. 42 USC §11022(e).

16. January 26, 1989, telephone interview with Douglas Call.
17. January 26, 1989, telephone interview with William Minor, DEC Environmental Emergency Coordinator. Mr. Minor advises that while written data requests are preferred, DEC will respond on a limited basis to highly focused requests made by telephone to (518) 457-4107.
18. *Id.*
19. January 27, 1989, telephone interview with Douglas Sellers, U.S. EPA Office of Toxic Substances.
20. U.S. EPA, "Toxic Chemical Releases and Your 'Right-to-Know.'" (7/88).

