

# RELEASE REPORTING BASICS

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# SCOPE

- The basic requirements for reporting accidental releases of chemicals:
  - Clean Water Act § 311
  - CERCLA § 103
  - EPCRA § 304
  - Other Federal Environmental Statutes
  - Minnesota Statute 115.061

# CLEAN WATER ACT § 311

## OVERVIEW

- Federal Water Pollution Control Act of 1972
- Section 311 - Oil and hazardous substance liability. 33 U.S.C. §1321
- Foundation for CERCLA reporting and emergency response requirements.

# CLEAN WATER ACT § 311

## Section 311(b)(3) prohibits

- the discharge of oil or hazardous substances
- to the navigable waters of the U.S., adjoining shorelines, the waters of the contiguous zone, and certain other waters
- in such quantities as may be harmful to the public health or welfare or the environment of the United States

# CLEAN WATER ACT § 311

## Section 311(b)(5) requires

- any person in charge of a vessel or of an onshore or offshore facility
- to immediately notify the appropriate agency of the U.S.
- as soon as he has knowledge of any discharge of oil or a hazardous substance in violation of Section 311(b)(3).

# CLEAN WATER ACT § 311

## REPORTING TRIGGER

- a discharge;
- from a vessel or facility;
- to navigable waters or other specified waters;
- of hazardous substances or oil;
- in quantities which may be harmful.

# CLEAN WATER ACT § 311

## DISCHARGE

- any spilling, leaking, pumping, pouring, emitting, emptying or dumping. 33 U.S.C. §1321(a)(2).
- statutory exclusion for NPDES permitted discharges.
- regulatory exclusion for federally permitted releases of hazardous substances. 40 C.F.R. §117.11.

# CLEAN WATER ACT § 311

## HAZARDOUS SUBSTANCES

- Designation of Hazardous Substances: 40 C.F.R. Part 116
  - list of hazardous substances at 40 C.F.R. §116.4, Tables 116.4A and B
- Determination of Reportable Quantities of Hazardous Substances 40 C.F.R. Part 117
  - list of RQs at 40 C.F.R. §117.3, Table 117.3
  - RQs of 1, 10, 100 500 pounds
- Notification of releases equal to or exceeding the RQ in any 24-hour period : 40 C.F.R. §117.21

# CLEAN WATER ACT § 311

## OIL

- Oil includes both petroleum and non-petroleum based oils (e.g., vegetable oils). See 33 U.S.C. §1321(a)(1)
- Discharge of oil: 40 C.F.R. Part 110.
- 40 C.F.R. §110.3 (“sheen rule”) - report discharges of oil that:
  - cause a film or sheen or discoloration on the surface;
  - violate applicable water quality standards; or
  - cause a sludge or emulsion to be deposited beneath the surface of the water or on adjoining shorelines

# CLEAN WATER ACT § 311

## DISCHARGE REPORTING

- **When:** immediately after knowledge of discharge.
- **To Whom:** the NRC, or if not practicable, to the Coast Guard or EPA pre-designated On-Scene Coordinator (OSC) for the geographic area where the discharge occurs.

# CLEAN WATER ACT § 311

## LIABILITY

- Discharge oil or hazardous substances in harmful quantities prohibited. The discharge itself is a violation.
- Untimely reporting is also violation.

# CERCLA § 103

## OVERVIEW

- CERCLA (Superfund) is the 1980 federal law designed to clean up abandoned hazardous waste sites. 42 U.S.C. §9601 et seq.
- Section 103 of CERCLA imposes release notification requirements intended to help EPA identify sites that potentially warrant a response action.

# CERCLA § 103

Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or greater than those determined pursuant to [CERCLA §102], immediately notify the [NRC] of such release. 42 U.S.C. §9603(a).

# CERCLA § 103

## REPORTING TRIGGER

- a release;
- into the environment;
- from a vessel or facility;
- of a hazardous substance;
- equal to or exceeding an RQ; and
- within a 24-hour period

# EPCRA § 304

## OVERVIEW

- Title III of the Superfund Amendments and Reauthorization Act of 1986, or the Emergency Planning and Community Right to Know Act (EPCRA) 42 U.S.C. §11001 et seq.
- Purpose: to improve community access to information about chemical hazards and to facilitate the development of chemical emergency response plans by state/tribe and local governments.

# EPCRA § 304

## STATE AND LOCAL AUTHORITIES

- State emergency response commissions (SERCs) responsible for coordinating emergency response activities. EPCRA §301
  - Minnesota SERC - Department of Public Safety, Division of Homeland Security and Emergency Management (HSEM).
- Local emergency planning committees (LEPCs).
  - Seven Regional Review Committees (RRCs) serve as the LEPCs .

# EPCRA § 304

- Facilities at which a hazardous chemical is produced, used, or stored must immediately report releases of extremely hazardous substances established under EPCRA §302 and CERCLA hazardous substances in quantities equal to or greater than corresponding RQs to the NRC, SERC and LEPC. 42 U.S.C. §11004(a)-(b)

# EPCRA § 304

## REPORTING TRIGGER

- a release with potential to affect off-site persons;
- into the environment;
- from a facility at which a hazardous substance or EHS is produced, used, or stored;
- of a hazardous substance or EHS;
- that equals or exceeds a reportable quantity; and
- within a 24-hour period

EPCRA/CERCLA

IS THERE A RELEASE?

# EPCRA/CERCLA

## RELEASE

- any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles. 42 U.S.C. §9601(22); 42 U.S.C. §11029(8)

# EPCRA/CERCLA

## RELEASES EXCLUDED BY STATUTE

- CERCLA statutory definition of release excludes:
  - workplace releases;
  - engine exhaust emissions;
  - releases of nuclear materials; and
  - normal application of fertilizer.
- EPCRA regulations adopted these exclusions

# CERCLA/EPCRA

## FEDERALLY PERMITTED RELEASES

- CERCLA §103 exempts federally permitted releases defined at 42 U.S.C. § 9601(10)
- EPCRA regulations adopt these exemptions

# CERCLA/EPCRA

## FEDERALLY PERMITTED RELEASES

- CWA: NPDES permits; dredge and fill permits; POTW discharges;
- RCRA: hazardous waste treatment, storage and disposal permits;
- SDWA: Underground Injection Control permits;
- Ocean dumping permits;
- CAA: air permits and control regulations;
- State permits for injection of fluids to develop crude oil or natural gas;
- AEA regulated releases of source, special nuclear, or byproduct materials

# CERCLA/EPCRA

## FIFRA EXEMPTION

- CERCLA exempts the application of pesticide products registered under FIFRA. 42 U.S.C. §9603(e).
  - includes the handling and storage of a pesticide product by an agricultural producer
  - a pesticide spill is not exempt
- EPCRA regulations adopt FIFRA exemption.

# CERCLA/EPCRA

## ADMINISTRATIVELY EXEMPT RELEASES

- Radionuclides
- Massive forms of metals
- Nitrogen oxide and dioxide from combustion sources
- Animal wastes – releases to the air from farms
- 40 C.F.R. §302.6; 40 C.F.R. §355.31

CERCLA/EPRCA

A RELEASE TO?

# CERCLA/EPCRA

## RELEASE INTO THE ENVIRONMENT

- The CERCLA and EPCRA definitions of release includes the phrase “into the environment.”
- Both CERCLA and EPCRA define environment expansively.
- No definite EPA guidance.
- Whether a release is into the environment is determined on a case by case basis.

# CERCLA/EPCRA

## RELEASE INTO THE ENVIRONMENT

- Releases that are wholly contained inside a closed containment structure, such as a building or an enclosed vehicle are not reportable.
- Fertilizer Institute v. EPA, 935 F.2d 1303 (D.C. Cir. 1991) - the placement of a hazardous substance into an unenclosed containment structure wherein the hazardous substance is exposed to the environment is not considered a release.

# CERCLA/EPCRA

## RELEASE INTO THE ENVIRONMENT

- EPCRA concerns only releases that have the potential to affect persons beyond the facility boundaries are reportable. 40 C.F.R. §355.40.
- A reportable release under CERCLA may not be reportable under EPCRA.
- EPA encourages facilities to report on-site releases under EPCRA §304 if there is any potential for the release to migrate off-site.

# CERCLA/EPCRA

## RELEASE – CASE STUDY

- Spill of 5250# of HCl from container onto concrete bermed and lined spill containment area.
- HCl is hazardous substance and EHS with RQ of 5000#.
- Is it reportable?
- What if concrete is cracked and no liner?
- What if HCl is released into the air?

# CERCLA/EPCRA

**A RELEASE FROM WHAT?**

# CERCLA/EPCRA

## CERCLA - FACILITY OR VESSEL

- CERCLA: releases from vessels or facilities. 42 U.S.C. §9603

# CERCLA/EPCRA

## CERCLA - FACILITY

- Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel. 42 U.S.C. §9601(9)

# CERCLA/EPCRA

## CERCLA - FACILITY

- *Sierra Club v. Seaboard Farms*, 387 F. 3d 1167 (10<sup>th</sup> Circ. 2004)
- *Sierra Club v. Tyson*, 299 F. Supp. 2nd 693 (W.D. KY 2003)

# CERCLA/EPCRA

## EPCRA - FACILITY

- 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. 42 U.S.C. §11049(4)
- EPCRA specifies that a facility must also produce, use, or store a hazardous chemical to trigger notification. 42 §U.S.C. 110004(a)

# CERCLA/EPCRA

**WHAT SUBSTANCES ARE COVERED?**

# CERCLA/EPCRA

## COVERED SUBSTANCES

- CERCLA: hazardous substances
- EPCRA: CERCLA hazardous substance and extremely hazardous substances

# CERCLA/EPCRA

## CERCLA HAZARDOUS SUBSTANCES

- Substances designated under other environmental statutes.
  - Clean Water Act §311 hazardous substances;
  - Clean Water Act §307(a) toxic pollutants;
  - RCRA §301 hazardous wastes;
  - Clean Air Act §112 hazardous air pollutants; and
  - TSCA §7 imminently hazardous chemical substances
- Chemicals designated under CERCLA §102(a)

# CERCLA/EPCRA

## EXTREMELY HAZARDOUS SUBSTANCES

- EHS means “a substance on the list described in [EPCRA section 302(a)(2)].” 42 U.S.C. §11049(3).
- EPCRA §302(a)(2) references EPA’s 1985 Chemical Emergency Preparedness Program Interim Guidance.
- Chemical that could cause serious health problems if it were accidentally released into the environment.

# CERCLA/EPCRA

## COVERED SUBSTANCES

- Over 700 CERCLA hazardous substances listed at 40 C.F.R. §302.4, Table 302.4
- Over 360 EHS listed at 40 C.F.R. Part 355, Appendices A and B.
- About one-third of hazardous substances are also EHS.

# CERCLA/EPCRA

## COVERED SUBSTANCES

- EHS that are also hazardous substances  
e.g., ammonia
- EHS that are not hazardous substances  
e.g., bromine
- Hazardous substances that are not EHS  
e.g., PCBs

# CERCLA/EPCRA

## COVERED SUBSTANCES EXCLUSIONS

- CERCLA exclusions for petroleum, including crude oil or any fraction thereof (petroleum exclusion)
- CERCLA exclusion for natural and synthetic gases, or mixtures of thereof.
- These exclusion do not apply to EPCRA EHS, even if indigenous.

# CERCLA/EPCRA

**WHAT QUANTITY MUST BE  
RELEASED?**

# CERCLA/EPCRA

## CERCLA REPORTABLE QUANTITY

- Hazardous substance RQs at 40 C.F.R. §302.4 Table 302.4.
- Statutory RQs at 1 pound.
- Final/adjusted RQs at 1, 10, 100, 1000 or 5000 pounds.
- RQs based on toxicity and environmental fate.

# CERCLA/EPCRA

## EPCRA REPORTABLE QUANTITY

- RQ for CERCLA hazardous substance at 40 C.F.R. §302.4 Table 302.4.
- RQ for EHS at 40 C.F.R. Part 355, Appendices A and B.

# CERCLA/EPCRA

## EPCRA REPORTABLE QUANTITY

- Statutory RQs for EHS at 1 pound.
- If the EHS is also a CERCLA RQ, the final RQ is the CERCLA RQ.
- If the EHS is not a CERCLA hazardous substance, the final RQ is the same as the EPCRA threshold planning quantity set under EPCRA §302.

# CERCLA/EPCRA

## REPORTABLE QUANTITY ISSUES

- Release aggregation
- Mixture rule
- Federally permitted releases
- RCRA characteristic wastes
- Generic wastes

# CERCLA/EPCRA

## RQ AGGREGATION CASE STUDY

- Chemical with RQ of 1000#
- Air release of 700#
- Spill to ground 300#
- Reportable under CERCLA?
- Reportable under EPCRA?

# CERCLA/EPCRA

## RQ MIXTURE CASE STUDY #1

- 4000 # D001 waste to soil
- 3100 # of acetone with 5000# RQ
- 900 # of tert-butylamine with 1000# RQ
- Reportable?

# CERCLA/EPCRA

## RQ MIXTURE CASE STUDY #2

- 4000 # D001 waste to soil
- 3000 # of acetone with 5000# RQ
- 1000 # of tert-butylamine with 1000# RQ
- Reportable?

# CERCLA/EPCRA

## RQ MIXTURE CASE STUDY #3

- 4000 # D001 waste to soil
- 400 # of acetone with 5000# RQ
- 3600 # of tert-butylamine and kerosene
  - tert-butylamine 1000 # RQ
  - kerosene – not listed
  - individual amounts of kerosene and tert-butylamine are not known.
- Reportable?

# CERCLA/EPCRA

## FEDERALLY PERMITTED RELEASE RQ CASE STUDY

- Facility with Clean Air Act permit.
- Permit limits chromium emissions to 3 # per day.
- Chromium RQ is 10#.
- Facility emits 10 # in one day.
- Reportable?

# CERCLA/EPCRA

**WHAT IS THE TIME PERIOD FOR  
MEASURING A RELEASE?**

# CERCLA/EPCRA

## WITHIN 24 HOURS

- Release exceeding the RQ over 24-hours.
  - CERCLA 40 C.F.R. §302.6(a)
  - EPCRA 40 C.F.R. §355.33
- 24-hours refers to the release time period, not the time one has to report the release

# CERCLA/EPCRA

**WHO MUST REPORT?**

# CERCLA/EPCRA

## WHO MUST REPORT?

- CERCLA - “person in charge” of the vessel or facility. 42 U.S.C. §9603(a).
  - *U.S. v Carr*, 880 F.2d 155 (2<sup>nd</sup> Cir. 1989)
- EPCRA - “owner or operator” of the facility. 42 U.S.C. §11004(a).

# CERCLA/EPCRA

**WHEN TO REPORT?**

# CERCLA/EPCRA

WHEN TO REPORT?

**IMMEDIATELY!!!!!!!!!!!!!!!!!!!!**

**IMMEDIATELY!!!!!!!!!!!!!!!!!!!!**

**IMMEDIATELY!!!!!!!!!!!!!!!!!!!!**

# CERCLA/EPCRA

## WHEN TO REPORT - CERCLA

- 40 C.F.R. § 302.6(a) “... as soon as he or she has knowledge of any release ... in a quantity equal to or exceeding the reportable quantity ... *immediately* notify ...”

# CERCLA/EPCRA

## WHEN TO REPORT - EPCRA

- 40 C.F.R. § 355.43 ” When must I submit the information? (a) You must provide the required emergency release notification information described under §355.40(a), *immediately.*”

# CERCLA/EPCRA

WHO DO YOU REPORT TO?

# CERCLA/EPCRA

## REPORT TO

- CERCLA: the National Response Center (800) 424–8802;
- EPRCA: notification to the NRC (if a CERCLA hazardous substance), the SERC and the LEPC, and as soon as practicable thereafter, a written follow-up emergency notification

# CERCLA/EPCRA

**WHAT INFORMATION IS TO  
BE REPORTED?**

# CERCLA/EPCRA

## INFORMATION - CERCLA

- Not specified
- NRC will prompt for information

# CERCLA/EPCRA

## INFORMATION - EPCRA

- Initial notification: chemical identity; quantity released; time and duration of the release; media into which the release occurred; possible health risks; precautions; and contact information.
- Written follow-up: update the information in the immediate notification; actions taken to respond and contain the release; known or anticipated health risks; and advice regarding medical attention necessary for exposed individuals.

# CERCLA/EPCRA

## OTHER ISSUES?

- Continuous releases - reduced reporting requirements for releases that are routine, anticipated and intermittent and incidental to normal operations.
- Substances that change in the environment after release.
- Historical releases.

# CERCLA/EPCRA

## PENALTIES- CERCLA

- **Criminal**
  - Individuals up to \$250,000 per offense and prison sentences of up to three years (or up to five years for subsequent convictions).
  - organizations up to \$500,000 if a felony
- **Civil Penalties**
  - Class I administrative penalties of up to \$37,500
  - Class II administrative penalties up to \$37,500 per day for a continuing violation and \$107,500 per day for subsequent violations
  - EPA may also impose Class II penalties by bringing action in U.S. District Court

# CERCLA/EPCRA

## RELEASE LIABILITY

- No penalty for the release.
- Penalty only for untimely reporting.
- Timely reporting does not preclude liability for cleanup costs, natural resource damages or costs of any necessary health studies.

# OTHER FEDERAL STATUTES

## CLEAN WATER ACT

- §311 oil and hazardous substance liability
- NPDES permits - 24 hours notification of any noncompliance with permit that may endanger health or the environment. 40 C.F.R. §122.41
- Discharges to POTWs – industrial discharges subject to pretreatment must notify immediately notify a POTW of all discharges that could cause upset at the POTW. 40 C.F.R. §403.12

# OTHER FEDERAL STATUTES

## TSCA PCB SPILL CLEANUP POLICY

- Report PCB spills
  - of more than 50 ppm that exceeds 10 pounds; or
  - that directly contaminates surface water, sewers, or drinking water supplies; or
  - that directly contaminates grazing lands or vegetable gardens, supplies.
- Report to EPA region within 24 hours

# OTHER FEDERAL STATUTES

## RCRA - EXAMPLES

- Permitted TSD facilities must report:
  - release, fire, or explosion which could threaten human health, or the environment, outside the facility
  - imminent or actual emergency situation
- Hazardous substance and petroleum owners or operators must UST report:
  - spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds RQ
  - discovery of released regulated substances at the UST site or in the surrounding area

# OTHER FEDERAL STATUTES

## CLEAN AIR ACT

- NESHAP sources – report within 2 days of startups, shutdowns or malfunctions not consistent with procedures in source's O&M plans.
- Title V permit holder – report within 2 days any emergency causing exceedance of emission limitations in the permit.

# MINNESOTA STATUTE 115.061

## STATUTORY DUTY TO REPORT

- It is the duty of every person to notify the agency immediately of the discharge, accidental or otherwise, of any substance or material under its control which, if not recovered, may cause pollution of waters of the state ... Minn. Stat. §115.061(a).

# MINNESOTA STATUTE 115.061

## STATUTORY DUTY TO ABATE

- and the responsible person shall recover as rapidly and thoroughly as possible such substance or material and take immediately such other action as may be reasonably possible to minimize or abate pollution of waters of the state caused thereby. Minn. Stat. §115.061(a).

# MINNESOTA STATUTE 115.061

## WATERS OF THE STATE

- streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water surface or underground;
- natural or artificial;
- public or private; and
- which are contained within, flow through, or border upon the state or any portion thereof. - Minn. Stat. §115.01(22)

# MINNESOTA STATUTE 115.061

## MAY CAUSE WATER POLLUTION

- No actual water pollution required.
- Spill of acid onto land sufficient to trigger obligation. *In re Dougherty for Metal Coating Company*

# MINNESOTA STATUTE 115.061

## WHO HAS DUTY TO NOTIFY?

- It is the duty of every person to notify the agency immediately of the discharge ... of any substance or material under its control

# MINNESOTA STATUTE 115.061

## REPORTING THRESHOLDS

- Petroleum: greater than five-gallons for petroleum spills. Minn. Stat. §115.061(b).
- Other substances: MPCA position is that spills of any quantity of all other chemicals or materials should be reported

# MINNESOTA STATUTE 115.061

## WHERE TO REPORT

- The Minnesota Department of Public Safety, Bureau of Criminal Apprehension, operates a 24-hour service, establishing a one-call system for all state reporting requirements.
- Reportable spills should be directed to the Minnesota Duty Office

# MINNESOTA STATUTE 115.061

## WHEN TO REPORT?

- Immediately. Minn. Stat. §115.061(a).
- A delay of more than one hour between the discovery of a spill and its reporting does not constitute immediately reporting and is a violation.

*In re Dahlen*

# MINNESOTA STATUTE 115.061

## PENALTIES

- Penalties of up to \$10,000 per day for violations