

LEPC ORGANIZATION

I. LEPC STRUCTURE

A. MEMBERSHIP AND OFFICERS

1. LIST OF REQUIRED REPRESENTATIVES

The LEPC should include, at a minimum, representatives from the following groups or organizations:

- public officials
- facility owners and operators
- environmental groups
- hospitals
- transportation personnel
- emergency medical
- broadcast and print media
- fire service
- community groups
- health
- law enforcement
- emergency management

LEPC membership should be representative of the community and include those who will use the emergency plan referred to under the *Duties and Responsibilities* section of this handbook. The plan is more likely to be successful and credible if the people who implement it during disasters, emergencies, or exercises were part of the planning process. Those not involved in emergency response should also be part of the planning process because they add a different perspective and bring new ideas to the process. They are likely to ask the simple questions that need to be asked.

In some cases one person could represent more than one group. Because state emergency response commissions (SERCs) review the affiliations of nominees to the LEPC to assure legal requirements for membership are met, some LEPCs have nominated representatives by job titles, rather than individual names. This helps to assure continuity of LEPC membership and makes the appointment of replacement members easier.

2. OFFICERS

LEPC officers should consist of a chairperson, vice chairperson, and secretary. A treasurer or others would be optional. Important factors to consider in choosing officers are leadership abilities, availability, credibility, management skills, and commitment to the LEPC process.

B. SUBCOMMITTEES

Dividing the work among subcommittees can facilitate planning and data management. Subcommittees allow members to specialize and help the process move forward quickly

because you can work on several areas at one time. The number of subcommittees can be adjusted to fit the size of the planning district and may include:

- gathering and reviewing existing community and facility plans;
- checking existing response equipment in the community;
- identifying financial resources;
- coordinating with other LEPCs and the SERC;
- conducting a hazard analysis;
- annual revision of the emergency response plan;
- managing information and providing information for citizens;
- providing information to facilities;
- promoting public awareness of EPCRA; and
- training and exercising.

C. VOLUNTEERS AND MEMBERS AT LARGE

The LEPC membership list above is a starting point for potential volunteers. Meet with active members of each of these groups and make sure they are well informed on EPCRA and the purpose of the LEPC. It is easier to get a volunteer from an informed group rather than an uninformed group.

Involving individuals who have expertise in areas of LEPC concern is also effective. Adding non-LEPC members to subcommittees can expand the knowledge base significantly.

D. BY-LAWS

LEPCs shall write by-laws or rules by which the committee will function. The by-laws should contain information regarding the committee's formation, responsibilities, election of officers, terms of service for general members and officers, frequency of meetings, and any other information the committee deems pertinent. Examples of LEPC by-laws are included in this handbook on pages 1-9 to 1-18.

Things that should be in the by-laws to be eligible for federal and state hazardous materials grant funds:

- Provision for quarterly meetings;
- Method for giving public notice for meetings and annual notice that Title III information is available;
- Information management procedure;
- How will the LEPC be notified in case of a release; and
- How members and officers are selected.

II. LEPC DUTIES AND RESPONSIBILITIES

The LEPC has two primary roles. It prepares and implements the emergency response plan and it also manages the paperwork submissions from industry and their disclosure in response to requests. This involves handling, filing and tracking reports, and preparing

data for delivery to the public. Some LEPCs play a broader role by conducting educational programs to help the public understand safety risks and community rights.

The LEPC must establish an information coordinator to respond to public requests. The report of the congressional conference committee on Title III states that a government official able to respond to requests should fill this role. In many cases the LEPC may meet infrequently and would otherwise be unable to respond to requests for information. The LEPC must also designate a location for the public to review information and must publish an annual notice in local newspapers announcing the availability of the emergency plan, material safety data sheets (MSDSs), and inventory forms.

A. EMERGENCY RESPONSE PLAN DEVELOPMENT

1. MINIMUM REQUIREMENTS FOR THE PLAN

Under federal law each LEPC must develop an emergency response plan (it was due October, 1988) and review it annually. In developing the plan the LEPC should evaluate available resources for preparing for and responding to a potential chemical accident. To assist LEPCs in writing the plan the National Response Team (NRT) published a hazardous materials planning guide.

By statute - the plan must:

- Identify facilities and transportation routes of hazardous substances;
- Describe emergency response procedures, on-site and off-site;
- List a community emergency coordinator and facility coordinators to implement the plan;
- Outline emergency notification procedures;
- Describe methods for determining the likelihood of a release and the probable affected population and area;
- Describe community and industry emergency equipment and the persons responsible for it;
- Outline evacuation plans;
- Describe a training program for emergency response personnel;
- Present methods and schedules for exercising emergency response plans to emergency medical personnel, fire service, and law enforcement agencies.

The first step in the Title III emergency plan, the identification of potential hazards, is the largest planning task with which the LEPC will be confronted. To complete a community hazard assessment the LEPC must integrate individual facility hazard assessments into the community plan. A complete analysis of community hazards is a survey of risks posed not only by facilities, but by trucks or rail-cars transporting hazardous materials passing through the district. Additionally, it identifies local facilities that may contribute to a hazard, such as a natural gas facility, and lists local institutions, such as hospitals, nursing homes, and schools that may be at risk during an emergency.

LEPCs are required to review the plan at least once a year.

B. COMMUNITY RIGHT-TO-KNOW

1. WHAT THE LAW REQUIRES

Section 324 of EPCRA provide for public access to information gathered under the law. The section requires all lists of MSDS chemicals, hazardous chemical inventory forms, toxic release inventories (TRIs), follow up spill notices, and the emergency response plan be made available to the public during normal working hours. This applies to the LEPCs as well as the SERC. The LEPC must publish a notice annually to inform the public of the availability and location of the information.

As the local recipient of Title III information the LEPC is required to make that information readily available. The LEPC should be an active provider of information to the community and should also take an active role in educating the community on Title III.

2. INFORMATION MANAGEMENT

Because EPCRA refers to several different lists of chemicals, managing the information reported under the act can be confusing. The following is a summary of the four kinds of hazardous chemical information your LEPC is responsible for:

- a. Under Section 302 you must plan for facilities that have one or more of the extremely hazardous substances (EHS) on the Section 302 list, if the chemical is present in a quantity greater than the threshold planning quantity (TPQ). The list is maintained by EPA and made available at the Department of Environment and Natural Resources (DENR). Facilities that store an EHS must designate a facility coordinator. A list of these coordinators must be in the plan.
- b. Under Section 304 you will receive emergency information about accidental releases of chemicals on either the Section 302 list or the Comprehensive Emergency Response, Compensation, and Liability Act, 1980 (CERCLA) list.
- c. Under Sections 311 and 312 you will receive information about extremely hazardous substances and chemicals defined as hazardous under Occupational Safety and Health Administration (OSHA) regulations. The list of chemicals is not a fixed list because thousands of chemicals could meet the OSHA criteria. Facilities are required to submit lists of such chemicals and complete inventory forms detailing the location and amount of each chemical present above a set quantity.
- d. Under Section 313 you may receive information about releases of toxic chemicals that are on the Section 313 list. This information is provided to the SERC by the facility. A LEPC can also request a copy.

EPCRA requires local facilities to provide LEPCs information on a variety of substances and releases. As you address information management strategies remember the following:

- you must be able to find information quickly
- you have to make the material accessible to the public.

LEPCs use a number of approaches to organize EPCRA materials. Some have staff members assigned specifically to the task. Many LEPCs use computers to manage the data.

3. EMERGENCY SPILL NOTIFICATION

Title III and the State of South Dakota requires the notification of the Department of Environment and Natural Resources, the Division of Emergency Management, the SERC, and the LEPC. Counties may have additional reporting requirements.

C. FACILITY COMPLIANCE

There are probably facilities in your community that have not yet supplied the LEPC with the required facility reporting information. As an LEPC you have many options for promoting compliance.

What is the role of the LEPC in obtaining compliance? This question can only be answered by the LEPC itself. EPCRA provides enforcement mechanisms, but the degree by which you choose to pursue full compliance through law enforcement will depend on your situation. As you implement your program you will find some facilities have not complied with the law. The reasons will likely be that either the facility was unaware of the law or hoped it would not be discovered. It may be partly the fault of the LEPC that all facilities are not in compliance. It may also be that some facilities simply do not wish to cooperate. As LEPCs you may have to take legal action to overcome the lack of cooperation from some facilities.

What is the role of the SERC? Under SARA Title III, the SERC is the focal point for chemical emergency planning at the state level. You should look upon the SERC as a support resource. The administrative arms of the South Dakota Emergency Response Commission are the Department of Environment and Natural Resources and the Division of Emergency Management.

Why does facility noncompliance matter? Facility compliance with reporting requirements are central to what EPCRA is all about. Since the enactment of SARA Title III in 1986, South Dakota LEPCs have spent considerable time and energy assessing the chemical hazards in their communities. To a great degree the planning has enhanced the safety of the emergency responders and citizens of the community. Many facilities still remain unnecessary risks to first responders and to the community by not providing the required information on chemical use and storage. The quality of your plan may be compromised by missing information. The safety of your local firefighters may be in jeopardy because a facility has not complied. A facility that refuses to cooperate or fails to report denies you and the citizens in your community your legal right to have that information.

How can compliance be achieved? Encouraging compliance can include many types of activities. LEPCs can work with local organizations, such as chambers of commerce, to gain compliance from small businesses and large companies. Site visits and community meetings may also be helpful. State government is also working to educate facility's subject to Title III by conducting seminars and compliance workshops. Knowledge of your authorities under the law will help you in your efforts to gain the cooperation you need.

1. OUTREACH

The process of improving facility compliance may involve an outreach program to inform facilities of requirements and identify facilities required to report.

Compliance depends, in part, on the education of facility owners about EPCRA, it's reporting requirements, and how the information collected can benefit the community. Educating the local news media, fire departments, chamber of commerce, local service organizations, and other business groups will spread the word about EPCRA. Some LEPCs have conducted extensive letter writing campaigns while others have visited facilities and spoken directly to owners about reporting requirements. Once owners learn their reporting obligations most will provide the necessary information quickly and accurately.

Sources of information to find non-compliance are water permits and air permits. Working with local fire departments will also help identify facilities that store large quantities of chemicals.

When you identify a facility that is out of compliance, what are your options? Direct contact with the facility owner or operator may be the easiest and most effective way to persuade the facility to comply. If the facility complies, and the LEPC receives the information it needs, no further action may be necessary. However, if the LEPC is unsatisfied with the results of its efforts or the facility refuses to comply, the LEPC may want to take further action.

2. ENFORCEMENT

What tools does the law provide to help the LEPC obtain information from a facility? Two provisions in SARA Title III authorize the LEPC to obtain information from facilities. If the LEPC needs additional information from a facility, the authority of SARA Title III, Section 303(d)(3) may be used. Section 303(d)(3) requires facilities to provide information the LEPC deems necessary for developing and implementing its emergency response plan. You may use the authority of this section to obtain a variety of information about the identity and location of extremely hazardous substances, existence of facility emergency plans, and additional information needed to develop the LEPC plan.

Section 303(d)(3) is an enforceable provision. An LEPC should document the information request in a letter to the company. Send the request letter to the owner or operator of the facility. Be sure to cite the authority the LEPC has to request information (Section 303(d)(3) of Title III). Be as specific as possible when requesting information. Allow the facility reasonable time to reply and inform the owner or operator that failure to comply with the request is a violation of the law and could result in a federal penalty. LEPCs should consider the use of certified mail for such requests.

Many facilities required to report under the planning provisions are also covered by SARA Title III, Section 312. Under Section 312 facilities must report their inventories of hazardous chemicals to the SERC, LEPC, and fire departments annually. Section 312

also authorizes the SERC, LEPC, or a fire department to request information from a facility.

If a company has filed a report under Section 312, SARA Title III authorizes local fire departments to inspect the facility to determine the specific location of hazardous chemicals. Try to give the owner or operator advance notice in planning inspections. Contact your SERC if you encounter problems gaining access to the facility.

Section 312(e) can be a powerful tool to get information from facilities that have not been cooperating with the LEPC. This section of the law is an enforceable provision the same as Section 303(d)(3). If the owner or operator fails to provide the facility's information, he or she may be liable for a penalty of up to \$25,000 per violation per day.

As with other requests made of a facility, the LEPC, SERC, or fire departments should formally request the information in a letter, cite the proper authorities, give ample time for the facility to reply, and cite the potential penalty for failure to comply. Use of certified mail may again be appropriate.

The enforcement tools may never be needed if a facility cooperates. However, they are available to the SERC, LEPCs, and fire departments should a specific facility be unwilling to provide necessary information.

What if the facility fails to comply with your information request? If your attempts to obtain information is disregarded, federal laws provide for enforcement actions. The law permits civil penalties of up to \$25,000 per day for most violations and up to \$75,000 per day for repeat violators. An action against a facility can be initiated by filing suit in Federal District Court or by referring the facility to EPA.

D. TRAINING AND CERTIFICATION

NRT 1 describes the role of the LEPC in identifying the training needs of local emergency planners and responders. The Environmental Protection Agency's (EPA) HAZWOPER regulations, 40 CFR Part 311, and OSHA's training requirements under 49 CFR Part 1910.120 establish training requirements for emergency responders. The LEPC is not responsible for certification of training. That is a responsibility of the employer of an emergency responder under the OSHA/EPA regulations. The LEPC is also responsible for implementing and delivering training to local planners and response personnel.