State of Delaware
Department of Natural Resources and Environmental Control
EPCRA Reporting Program

An Overview of the *Emergency Planning & Community Right to Know Act, it's* Regulatory Background, & What's New

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Disclaimer

This is a training aid and not a compliance document. It presents a ***general overview*** of EPCRA in Delaware, and introduces ***what*** EPCRA covers rather than ***how*** to comply with it. Specific instructions are available online.

What's Ahead
Presentation Contents

1. What is EPCRA & Backstory
2. Key Terms & Concepts
3. Emergency Planning
4. Right to Know (R2K)
5. Two FYI
6. New for Reporting Year 2023
7. Common Reasons for Corrections

A Piece of the Regulatory Puzzle

EPCRA
CERCLA
OSHA HazCom
DOT HazMat
CFATS Homeland Security
OSHA HazWoper
TSCA
RCRA Hazardous Waste

What is EPCRA?

The Emergency Planning and Community Right to know Act
Title III of the 1986 Superfund Amendment and Reauthorization Act

Emergency Planning

For local emergency planners & responders to prepare for chemicals that may become mobile and are hazardous to people.

&

Community Right-to-know

For the public to become knowledgeable of the chemical hazards at facilities within their communities.

EPCRA Sections

Comply Via Online Reporting Platform: *TierIIManager*™

302/303*: Emergency Planning

311/312: Initial Notification and Annual Inventory Reporting

Executed through other systems:

304: Emergency Release Notification

313: Toxic Release Inventory (TRI) Reporting

*** Ongoing LEPC communication required**

Elements of EPCRA

Emergency Planning *and* **Community Right to Know**

- List of (**EHS**) Extremely Hazardous Substances
- Threshold Planning Quantity (**TPQ**)
- Within 60 days
- Coordination with LEPC
- EPCRA Section 302

- Hazards listed on Safety Data Sheet
- Threshold 500 lbs. / 55-gal.
- ***Initial Notification*** – 3 months (Section 311)
- ***Chemical Inventory*** – March 1st (Section 312)
- ***Release Reporting*** (304)
- ***T***oxic ***R***elease ***I***nventory (Section 313)

Backstory

- 12/3/84 Bhopal, Union Carbide, Methyl Isocyanate

- 8/11/85 Institute, West Virginia

The New York Times

VIOLENCE ERUPTS AT BLACK'S RITES IN A 'HOMELAND'

TOXIC CLOUD LEAKS AT CARBIDE PLANT IN WEST VIRGINIA

Reagan to Seek 'Future Agenda' At Summit Talk

Study Predicts Sustained Growth For New York Region's Economy

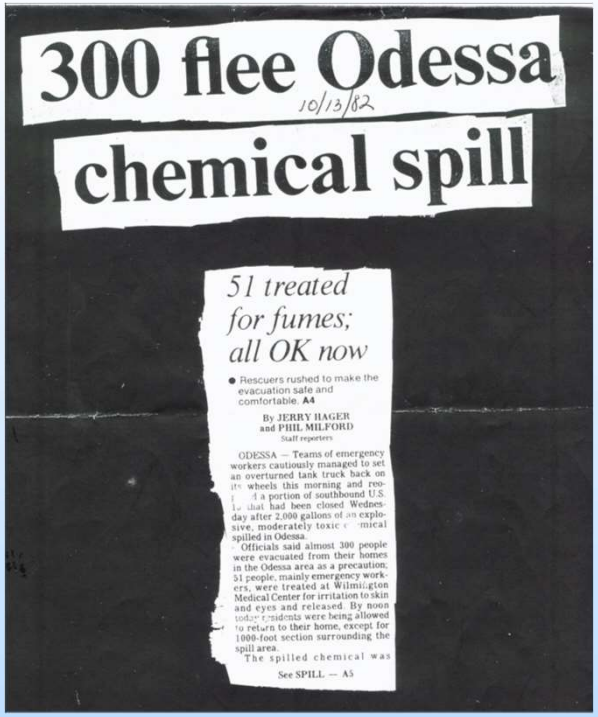
NO STORM WARNING FOR DOOMED JET

New Nerve Gas Plan Leaves Tests and Storage Undecided

Soviet Drive on Drinking Gets Quick Results

Backstory - Delaware

- **History of Chemical Manufacturing**
  - 1802 Brandywine River
  - Corporate HQ's
- **Volunteer Fire Companies**
- **10/13/82 near Odessa**
  - tank truck rollover
  - 5,600 gals divinylbenzene
  - 55 First Responders sent to hospital
  - Governor Pete DuPont ordered creation of forerunner of SERC



300 flee Odessa chemical spill

10/13/82

51 treated for fumes; all OK now

● Rescuers rushed to make the evacuation safe and comfortable. A4

By JERRY HAGER and PHIL MILFORD
Staff reporters

ODESSA — Teams of emergency workers cautiously managed to set an overturned tank truck back on its wheels this morning and reopen a portion of southbound U.S. 13 that had been closed Wednesday after 2,000 gallons of an explosive, moderately toxic chemical spilled in Odessa.

Officials said almost 300 people were evacuated from their homes in the Odessa area as a precaution. 51 people, mainly emergency workers, were treated at Wilmington Medical Center for irritation to skin and eyes and released. By noon today residents were being allowed to return to their home, except for 1000-foot section surrounding the spill area.

The spilled chemical was

See SPILL — A5

Source: Department of Public Health / Emergency Medical Services
Chemical Medial Surge Workshop 11/8/23, Joe Leonetti

Title III of the

Superfund

Amendments and

Reauthorization

Act

(SARA Title III)

1986

U.S. EPA Regulations in 40 CFR
Parts 355, 370, and 372

Delaware Code

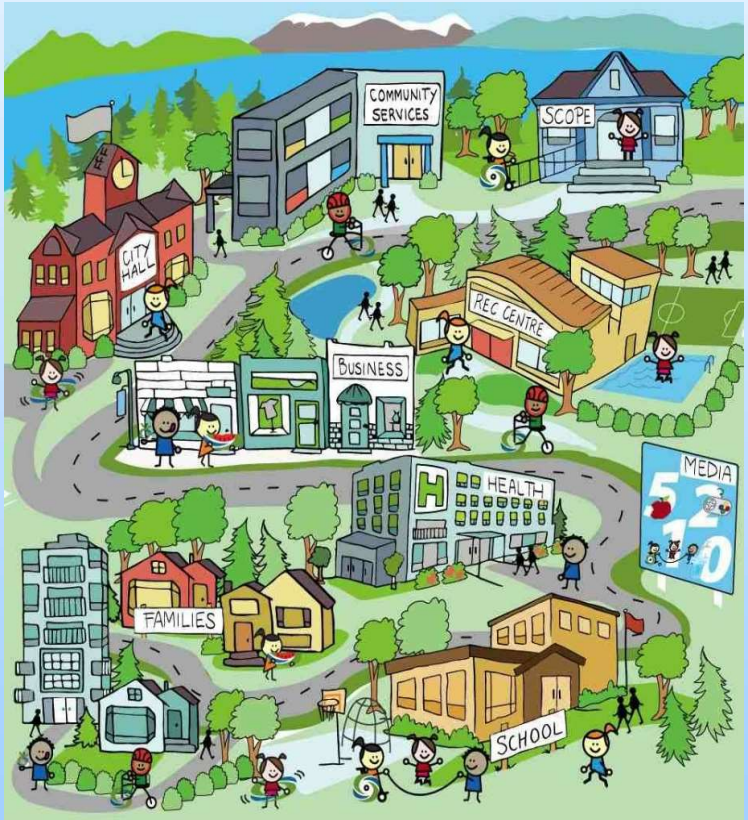
Title 16

Chapter 63

1991

Delaware Code Online: https://delcode.delaware.gov/title16/c063/index.html

EPCRA connects those with hazardous materials with those who need to know.



Know your chemical neighbors.

Things You Need to Understand

Key Terms

- Facility
- Hazardous Chemical
- Extremely Hazardous Substance
- Threshold

Tools & Work

- Safety Data Sheet
- EHS list
- Threshold Determination
- Online reporting
- Release Calls & Written Reports

FACILITIES

All buildings, equipment, structures and other ***stationary*** items that are

- located on a ***single site*** or
- on contiguous or adjacent sites *and*
- which are ***owned or operated by the same person***.

Owners & Operators

- A contractor could be considered an operator of the facility or of a portion of the facility depending on if they have enough authority.

- For **302**, public warehouse **owners** may make notification if ***tenants*** exceed TPQ.
  - Subtle but important nuance vs. 311/312

Facility Deactivation

If a facility is no longer subject to Tier II Reporting, please notify DNREC EPCRA Reporting program. Provide the ***Facility ID Number*** and relevant date to either:

william.bdavis@delaware.gov

nicholas.butler@delaware.gov

Deactivated facilities can be reactivated at a later date.

CHEMICALS

- **Hazardous Chemicals**
  - Defined by OSHA (29 CFR 1910.1200) to mean any chemical (element, chemical compound or mixture of elements and/or compounds) which is a ***physical hazard*** or a ***health hazard***
  - There is **no specific list** of these chemicals

- **Extremely Hazardous Substances (EHSs)** –
  - A **specific list** of substances designated by the U.S. EPA in 40 CFR Part 355. Can also be found in EPA's general reference document, ***List of Lists***

Exemptions – 311/312

- OHSA Hazard Communication Standard, definition of *Hazardous Chemical*, twelve exemptions listed in 29 CFR 1200(b)(b)
- EPCRA exemptions (six)
- Transportation, in including pipelines
- Caution – confirm exemption claims with DNREC
- There are no EHS/302 Exemptions

THRESHOLDS

Both chemicals in ***storage*** and ***in use*** must be considered.

Emergency Planning Thresholds

(Section 302)

An ***Extremely Hazardous Substance*** **(EHS)** is reportable if present at the facility at any time during the calendar year at levels that equal or exceed the ***Threshold Planning Quantity*** **(TPQ)**.

Delaware Thresholds = Federal

Aggregation

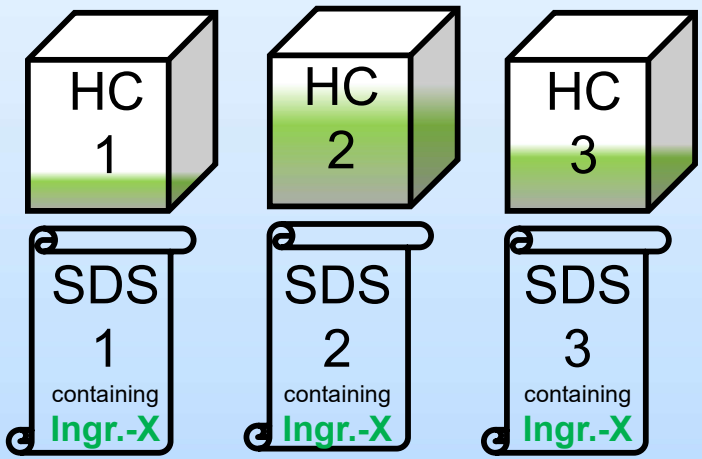
All sources of an ***Extremely Hazardous Substance*** from across the facility must be added together. This in includes both ***pure*** versions and ***mixtures*** that contain the EHS.

Note: often one source will exceed threshold, so a thorough calculation is not always necessary.

EHS Threshold Determination Example

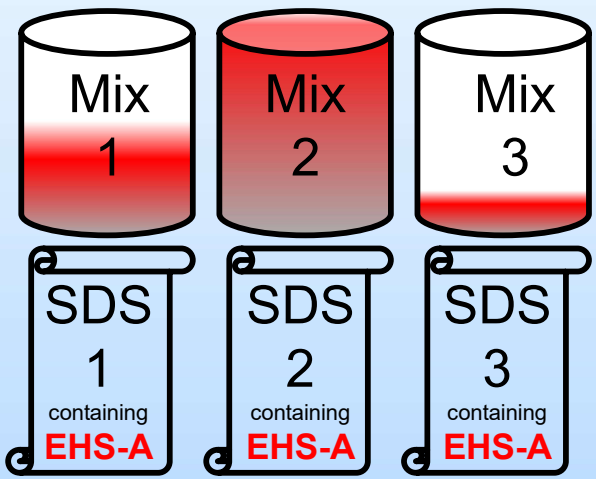
Scenario 1:

- **no EHS involved**
- 3 different *hazardous chemicals*
- with individual SDS's
- common ingredient **X**



Scenario 2:

- **Mixture Contains a EHS**
- 3 different materials
- with individual SDS's
- shared **EHS** constituent



Consider each SDS separately
Do not combine constituents

Sum EHS "**A**" across mixtures
vs. TPQ & Threshold (whichever is lower)
Report Mixture_{EHS} or EHS

Inventory Thresholds (Section 312)

Delaware Thresholds are lower than Federal

A substance may be reportable if present at the facility at any time during the calendar year at levels that equal or exceed the following thresholds:

- **Hazardous Chemical**
  - **55 gallons** or **500 pounds**, whichever is lower
- **Extremely Hazardous Substances (EHSs)**
  - 55 gallons, 500 pounds or the Threshold Planning Quantity (**TPQ**), whichever is lower. (~**170** listed chemicals have TPQs < 500 lbs.)
- Substances used solely for **building heating** purposes (at the site)
  - **10,000** pounds

Intermittent Below Threshold

If a report is not required for a given year because the chemical is below threshold, you may elect to submit a report ***voluntarily***. **No fees will be assessed**. Simply select "Voluntary" in the Chemical Fee Classification in Step 2 (see next presentation).

Voluntary reporting allows a more complete view for emergency responders, and a continuous history for facilities.

Other Thresholds

Toxic Release Inventory

TRI (Section **313**)

Federal thresholds for ***Manufacture*** (25K pounds), ***Process*** (25K lbs.), or ***Otherwise Use*** (10K lbs.).

Release Thresholds (Section **304**)

Any release of a substance listed in Delaware Regulation 1203 (6028) above ***Reporting Quantity***.

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Emergency Planning

- **State Organization Structure**
  - LEPCs, SERC
  - https://dema.delaware.gov/serc
- **Extremely Hazardous Substances**
  - ***Listed*** by EPA
  - https://www.epa.gov/epcra/what-are-extremely-hazardous-substances-ehss
- **Threshold Planning Quantities**

SERC and LEPCs

State Emergency Planning Commission

- Appointed by / Report to the Governor
- Commissioners represent State Agencies, Planners/Responders, Hazardous Materials

Local Emergency Planning Committees (4)

- Each County and Wilmington
- Promote public involvement in managing chemical risks in their community

The organization of emergency planning

Sections **302/303**

Emergency Planning and Notification

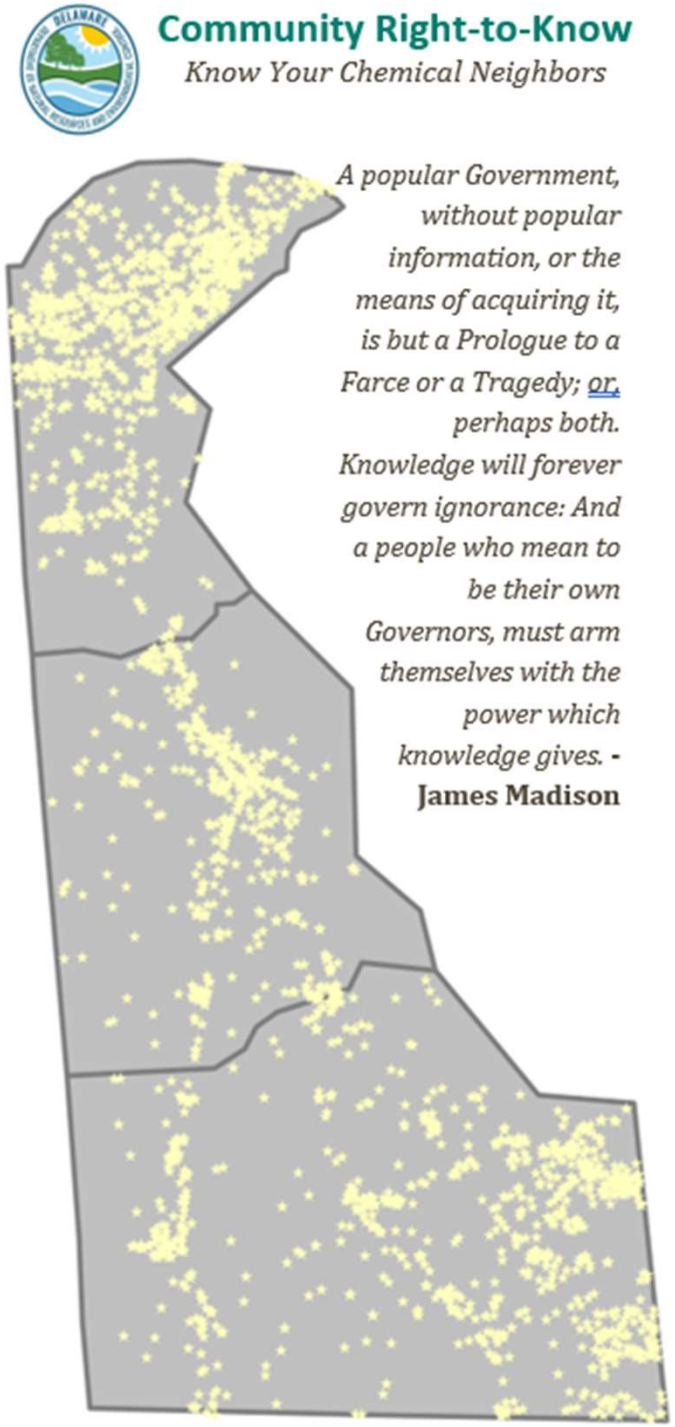
- Facilities with ***Extremely Hazardous Substances*** (**EHS**s) above ***Threshold Planning Quantities*** (**TPQ**s)
- Provide initial notification within **60** days to LEPC & EPCRA Reporting Program
- Identify Facility Emergency Coordinator
- Provide info for planning and notice of changes
- Exemptions for 311/312 do not apply

R2K

U.S. Constitution – Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- **Employee R2K**
  - Older regulation
- **Chemical Inventory**
  - Facility, SDS, 500-lbs / 55-gal
  - DE Lower Thresholds
- **Releases**
  - ➢TRI
  - – Incidents



Initial Notification (311) & Annual Inventory(312)

The Same:

- Chemicals
- Facilities
- Thresholds
- Exemptions

311 & 312 Differences

Section 311	Section 312
• Initial submission and updates within 3 months	• **Annually by March 1st for the previous calendar year**
• **Only:** Chemical Name & Hazard Class	• **Plus: Inventory, Location, Contacts, Site Plan**
• No Fees	• **Reporting Fees**
• May use 312 in lieu of	

EPCRA Section **313**
Toxic Release Inventory (**TRI**)

- Specific facilities – based on # of employees and industrial classification codes
- List of TRI chemicals
- Threshold quantities – ***manufacture*** or ***process*** 25,000 lbs/yr or ***otherwise use*** 10,000 lbs/yr
- PBT Substances – significantly lower thresholds
- Forms due July 1 for previous calendar year
- Annual report
- Administered & managed by the Federal EPA

Section **304**
Emergency Release Notification

- Facilities and transporters
- List of substances & reportable quantities (**RQ**)
- Immediate initial notification (within 15 minutes) to
  - **1-800-662-8802**: SERC/DNREC, ***and***
  - **1-800-424-8802**: National Response Center, ***and***
  - **1-866-274-0884**: affected LEPC(s)
- **Written follow-up report**
- **Regulation 1203, Title 7** of Delaware Administrative Code

FYI

Additional Information

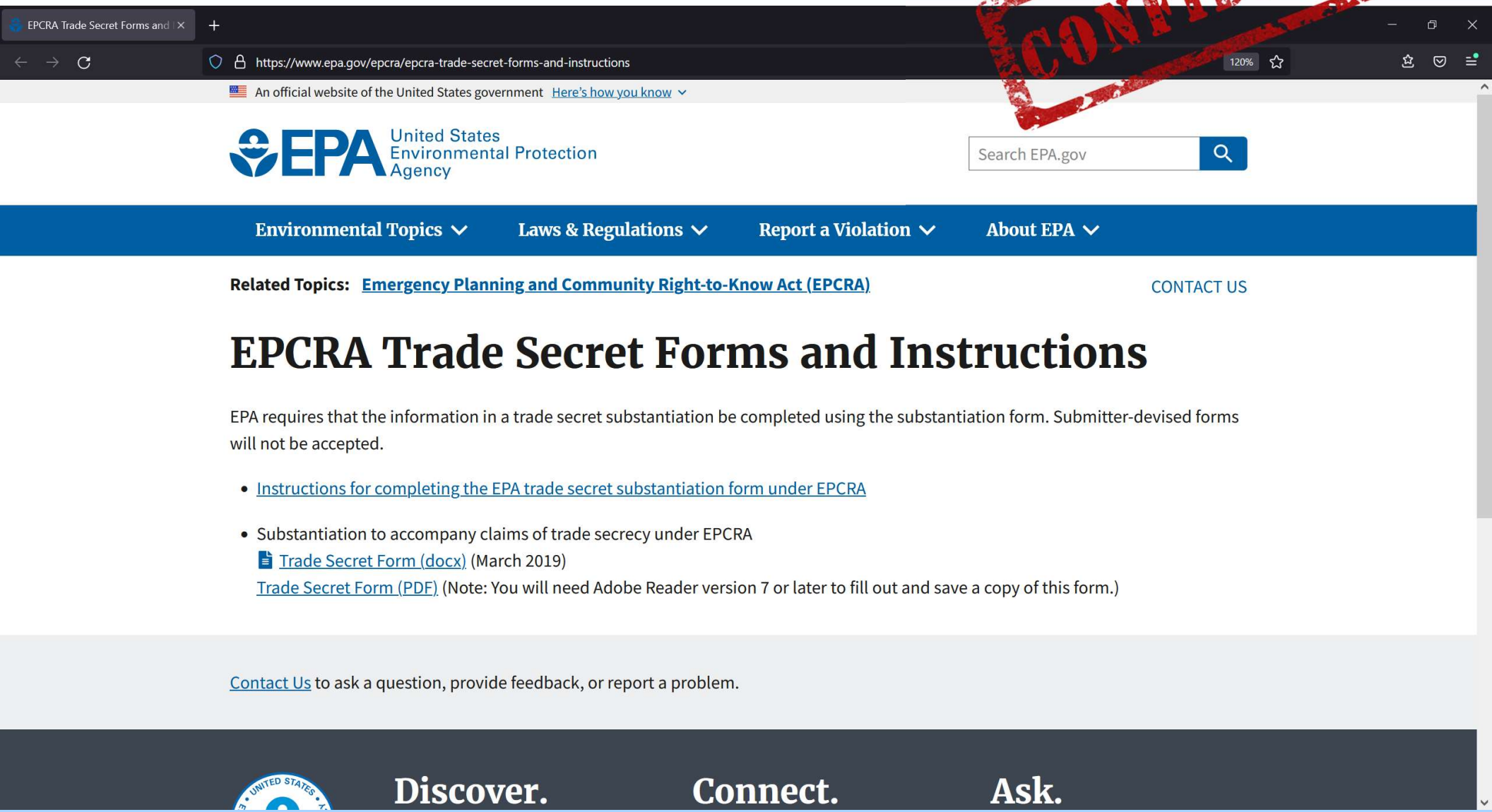
That you probably want to know

Trade Secrets

Facilities that wish to claim trade secrets for chemicals reported under the Emergency Planning and Community Right-to-Know Act (EPCRA) are required to submit a substantiation to justify the claim of trade secrecy as specified in the regulations at 40 CFR part 350.

At the time an EPCRA report is submitted, the submitter is required to provide responses to the six questions on the substantiation form, as well as certify the assertions made in the claim.

Trade Secrets



… this is the EPA webpage for Trade Secrets

… the link is available through *TierIIManager*™

Tier II Reporting Fees

Fees are as follows:

- **$60** per ***hazardous chemical***
- **$100** per ***extremely hazardous substance***
- Fees for ***mixtures*** depend on concentration of EHSs:
- Cap of **$5000** per facility per year
- Government & Non Profit Exempt
- Retail Motor Vehicle Fuel for Sale is exempt
- **$0 per *voluntary* chemicals** (below threshold or otherwise exempt)

Tier II Reporting Fees

Over $450K collected annually

Where does the money go?

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REGULATORY CHANGES

for the 2023 Reporting Year

None[312]

Other News

- See next slide…

PUBLIC ACCESS

Release of EPCRA data is subject to SERC policy

FOIA Request

(Freedom of Information Act)

- Traditional method
- More formal, comprehensive
- https://dnrec.delaware.gov/foia

Public Portal

- New software feature
- Under development
- Online portal to access limited information
  - Facility Name
  - Location
  - Chemical Name
  - Hazards

Common Corrections

- Fee Classification
- Site Plan
- LEPC jurisdiction
- Lat/Long
- Overlooked Chemicals
- Maximum Mistakes
- Email Address
- Facility Name

This presentation is available online…

Online TIER II MANAGER™ - | Online Reporting - DNR

https://dnrec.alpha.delaware.gov/waste-hazardous/emergency-response/community-right-to-know/online-reporting/

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Online Reporting

Listen

Div. of Waste & Hazardous Substances

- Home
- Contact Us
- Managing Waste
- Recycling
- Site Remediation
- Emergencies
- Storage Tanks
- Boiler Safety

To report a release, call 1-800-662-8802

Community Right-to-Know Menu

Delaware facilities submit their annual Tier II reports (often referred to as EPCRA Section 312 reports) online using the Tier II Manager™ system. EPCRA Section 302 and 311 reports are submitted online as well.

The system is accessible through the Internet using typical Web browsers, and no special software is necessary. Facilities that have previously reported will not need to re-enter all their data. Instead, they can update and submit using their previous data already loaded in the system. The Tier II Manager™ also offers the option to pay fees on-line by a variety of methods.

With the Tier II Manager™ system, updated information submitted by facilities can be viewed immediately by emergency planners and responders, avoiding delays associated with processing of paper forms. In addition, the system has built in edit checks, to help avoid common errors.

Tier II Reports are due annually by the first day of March each year.

- Contact Us
- Tier II Manager
- Training Materials
  - Regulatory Overview
  - On-Line Reporting
  - OSHA HazCom

Click on the "**Training Materials**" button.

Contacts

EPCRA Reporting Program, DNREC
155 Commerce Way, Suite B Dover, DE 19904

Phone: (302) **739-9405**

https://dnrec.delaware.gov/waste-hazardous/emergency-response/community-right-to-know

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Thank You

EPCRA Reporting Program

State of Delaware

Department of Natural Resources and Environmental Control (DNREC)

Waste & Hazardous Substances Division