

Procedures for Obtaining Tier I or Tier II Hazardous Chemical Information from the State Emergency Response Commission

I. GENERAL POLICY

The State Emergency Response Commission (SERC) will make the fullest possible disclosure of records to the public consistent with the provisions of and the provisions of the “Emergency Planning and Community Right to Know Act (EPCRA)(42 U.S.C. §11022 et. seq.),” also known as the “Superfund Amendments and Reauthorization Act of 1986” (SARA), and the “North Carolina Public Records Law (N.C.G.S. §132-1 et. seq.).”

For public safety reasons any blanket public record requests to the SERC for Tier II chemical information may be denied pursuant to N.C.G.S. §132-1.7(b). N.C.G.S. § 132-1.7(b) states in pertinent part that: “Public records as defined in G.S. 132-1 do not include plans to prevent or respond to terrorist activity, to the extent such records set forth *vulnerability and risk assessments, potential targets*, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of any governmental facility, building, structure, or information storage system” (*emphasis added*). Records requests will be evaluated to determine if N.C.G.S. §132-1.7 applies.

If N.C.G.S. §132-1.7 does not apply, EPCRA Tier II regulations will apply and “[a]ny such request shall be *in writing* and shall be with *respect to a specific facility*.” 42 U.S.C. § 11022(e)(3)(A) (*emphasis added*). If the public record request meets the threshold requirements under federal law, then the requester will be allowed to inspect Tier II information at a designated location specified by the State or the LEPC.

II. WHAT INFORMATION CAN BE REQUESTED?

Individuals have a statutory right to inspect certain information pursuant to N.C.G.S. §132-1 and EPCRA. Under EPCRA, accessibility to Tier II information is limited to the preceding calendar year with respect to a specific facility. 42 U.S.C. § 11022(e)(3)(A).

A. Section 302: Substances and Facilities Covered and Notification

The information available under this section of EPCRA includes the names, addresses, and other identifying information of the facilities that are required by this section to report to the SERC. This does not include specific information about the actual chemicals present at the facility or the amount of the chemicals used.

What information is available to the public?

1. Names of facilities reporting themselves to be covered by Section 302;
2. Addresses of the facilities; and

3. Name of contact person and telephone number.

B. Section 303: Comprehensive Emergency Response Plans

Section 303 requires each LEPC to develop an “emergency plan” which will include information such as names of facilities and transportation routes, and methods to be followed in responding to a release of a hazardous substance. In North Carolina, most of these plans may be part of an overall county’s hazardous materials emergency response, multi-hazard, or emergency operations plan. The law also requires regulated facilities to submit point-of-contact information to the LEPC in the event of an emergency. This information is submitted the LEPCs, and not to the SERC; however, some facilities may send their plan and points-of-contact to the SERC as a courtesy. Please first check with the respective LEPC before contacting the SERC. The county plan may also be found at the public library.

What information is available to the public?

1. The emergency plan;
2. Any document, record, or list referred to in the emergency plan, including, for example, the multi-hazard plan and standard operating procedures of emergency response organizations; and
3. Point-of -contact information provided by facilities.

C. Section 304: Emergency Notification

Section 304 of EPCRA requires that the emergency releases of certain amounts of listed chemicals be reported to the LEPC(s), the SERC, other affected states, or the National Response Center depending on the chemical released. The first reports usually are made by telephone, but can be given by radio or in person, and the individual who receives the report will fill out a written report. The facility or transporter must also send a written follow-up report to the same organizations that the first call went to.

What information is available to the public?

1. Names of persons, facilities, and transporters who filed Section 304 reports;
2. Dates of reports;
3. Copies of incident report forms based on initial telephonic report of an incident;
4. Written follow-up report(s) which include everything listed below and updates that information:
 - a. Chemical name or identity of any substance released;

- b. An indication regarding whether substance is an extremely hazardous substance;
- c. Estimate of quantity released;
- d. Time and duration of the release;
- e. Medium (i.e., soil, water, air) into which the release occurred;
- f. Any known or anticipated acute or chronic health risks associated with the emergency; and where appropriate, advice on medical attention necessary for exposed individuals;
- g. Proper precautions to take as a result of release (e.g., evacuation);
- h. Name and phone number to contact for more information; and
- i. Actions taken to respond to, and contain the releases (follow-up report only).

D. Section 311: Safety Data Sheets (SDS)

Section 311 of EPCRA requires that facilities submit either a list of all extremely hazardous substances chemicals above 500 pounds or the threshold planning quantity, and/or hazardous substances above 10,000 pounds, grouped by hazard class; or a SDS for each covered hazardous chemical. This submission is only required when a facility first reaches or exceeds the above threshold. A SDS is a document created for the purpose of informing employers and employees about the hazards of chemicals to which they are exposed. The SDS contains 16 sections of information about the hazards of a chemical. When filing SDSs, facilities may file many sheets. The entities which receive this information are the local fire department, the LEPC, and the SERC.

Under the North Carolina Hazardous Chemicals Right-to-Know Act you may be able to get some information directly from a facility. For more information about rights under this Act, call the NC Department of Labor at 1-800-NC-LABOR (625-2267).

What information is available to the public?

1. The names (and other identifying information) of reporting facilities;
2. For each facility, the list of hazardous chemicals.

E. Section 312: Chemical Inventory Reports

Section 312 of EPCRA, requires covered employers to file a form (Tier I or II) identifying the inventory of extremely hazardous substances above 500 pounds or the threshold planning quantity, and/or hazardous substances above 10,000 pounds. The form is filed with

three agencies (fire department, LEPC, SERC) by March 1 of each year beginning in 1988. The Tier I form is mandatory, but a facility can choose to file a Tier II form instead of a Tier I form. Because the Tier II form provides detailed information on the chemical and inventory amounts, the SERC has stated a preference for the Tier II form; Tier I forms generally are not available. The requester can get access to the information from either the LEPC or the SERC, but not from the fire department.

The Tier I form provides summary information about hazardous chemicals present at the facility. The form should be read carefully. It has the potential to be misleading, because it lumps together all chemicals posing a particular hazard.

The Tier II form provides specific information about hazardous chemicals present at the covered facility. A single Tier II form may have information about several chemicals, including such information as physical and health hazards and average and maximum amounts on site.

If a facility has filed a Tier I form and an individual wants to see more specific information, the SERC or the LEPC can be asked to provide the opportunity to inspect the Tier II form. The request for a Tier II form MUST name a specific facility and MUST be in writing. If the SERC (or the LEPC) already has a Tier I form for that facility, and the facility has more than 10,000 pounds of the chemical, SERC (or the LEPC) must request that the facility provide it with a Tier II form to allow inspection. If the facility does not have 10,000 pounds of a chemical, the request for a Tier II form MUST include a statement of general need for the information. If the request is for a Tier II form from a facility with less than 10,000 pounds of a chemical, the SERC can exercise discretion and choose not to request the information from the facility.

What information is available to the public?

Inspection of Tier I or Tier II forms for a specific facility.

I. Section 313: Toxic Chemical Release Forms

Section 313 requires that certain industries report each year on the quantity of certain “toxic” chemicals which their facilities are releasing into the air, water, and soil. These reports are not necessarily based on actual measurements, but may be based on estimates. There are several hundred toxic chemicals on which a facility must report if it meets certain requirements. Facilities file reports titled “Form R” (long report), or “Form A” (short report), and covers the preceding calendar year. If a facility has the amount specified of more than one chemical, it will have a form for each chemical.

What information is available to the public?

“Form R” or “Form A” for each facility.

III. HOW TO MAKE A PUBLIC RECORDS REQUESTS

All requests for Tier I and Tier II Hazardous Chemical records must be made in writing by mail, fax, or email. The request will be reviewed by the Emergency Management Public

Information Officer (PIO). All SERC responses to written requests will be returned in writing. Response to requests made under Section 312(e)(3)(D) of EPCRA (42 U.S.C. §11022(e)(3)(D)) will be made within 45 days, all other documents are to be provided “as promptly as possible” (N.C.G.S. §132-6(a)). Accordingly, the PIO will provide one of the following responses:

- A. Refer the requester to a LEPC;
- B. Coordinate a time to come to the Division of Emergency Management to inspect information related to the specific facility designated in the request for information;
- C. Inform the requester that more information or specificity is needed to process the request; *or*
- D. Deny the request and state the reasons for the denial.

Denials may be made if:

- 1. The record requested is not known to exist and the SERC is not required to create it;
- 2. SERC is not the custodian of the requested information;
- 3. The record is exempted from disclosure by law.

Most common exemptions include:

- a. *Trade Secrets*: Under Section 322 of EPCRA (42 U.S.C. §11042(a)), facilities reporting a product registered with EPA as a trade secret may withhold information on the specific chemical identity. Any person may petition the EPA Administrator for the disclosure of the specific identity of a hazardous chemical, extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under the above-cited section.
- b. *Sensitive public security information*: Information deemed confidential pursuant to N.C.G.S. §132-1.7(b) “to the extent such records set forth vulnerability and risk assessments, potential targets, specific tactics, or specific security or emergency procedures, the disclosure of which would jeopardize the safety of governmental personnel or the general public or the security of any government facility, building, structure, or information storage system.”

- c. *Information withheld by the facility:* Under Section 324(a) of EPCRA (42 U.S.C. §11044(a)), facilities may withhold from disclosure the location of any specific chemical required to be contained in an inventory form as Tier II information.

EPCRA records are maintained by the Division of Emergency Management at 1636 Gold Star Drive, Raleigh, N.C. 27607-3371. The official designated to be responsible for the records is the EPCRA Coordinator. Access to the records will be provided between 8:00 a.m. and 5:00 p.m., Monday through Friday (except holidays). There will be a DPS employee present while records are inspected. A log of all requesters of records will be maintained and will, itself, be a public record.

Records provided during inspection may be redacted to protect confidential and privileged information in accordance with North Carolina Public Records Laws and EPCRA. After conducting the inspection, the requester may ask for a copy of the information. Copies will be provided at a fee as explained below.

IV. FEES

N.C.G.S. §132-6.2(b) relating to fees will apply if a requester asks for a copy of the record after inspection is complete. Fees charged by the Division of Emergency Management will be sufficient to pay the costs associated with reproducing the requested information. Accordingly, the fees to be charged by the Division of Emergency Management will be sufficient to pay the actual costs of reproducing the requested information. "Actual cost" is limited to direct, chargeable costs related to the reproduction of a public record (i.e., paper, photocopying), but does not include costs that would have been incurred by the agency if the public record had not been made (i.e., labor costs for a normal work day). If the search and/or reproduction requires extensive use of information technology resources, extensive clerical or supervisory assistance, or if producing the record requested in a medium than that normally produced, in addition to the actual cost of duplication, a special service charge, based on the actual costs (i.e., labor, computer processing time) for such extensive use, may be charged by the agency. (N.C.G.S. §132-6.2(b)).

If the requester wants copies after inspecting records, the requester **MUST** agree in writing to pay for the copies. An invoice for the total amount of fees will be sent to the requester. Payments shall be made by check or money order made payable to the Division of Emergency Management. Total payment is required prior to release of the copies. Any requestor who cannot afford to pay the fee(s) established by the Division of Emergency Management under this section may file an affidavit with the Division of Emergency Management stating that the requestor is financially unable to pay such fee(s). Upon the filing of any such affidavit, the Division of Emergency Management may process the request in accordance with these guidelines as if the fee(s) had been paid. Certification of copies, indicating the copies are true and accurate representations of the original documents, and not verifying the data on the originals, is available on request. An additional fee for certification may be required, as prescribed by law.