

EPCRA THROUGH TIME
(What Should Be Our Expectations of LEPCs)
October 7, 2010

BACKGROUND

EPA provides us with a lovely narrative on the genesis of EPCRA:

The Emergency Planning and Community Right-to-Know Act (EPCRA) was enacted by Congress on October 17, 1986, as a stand-alone Act, Title III, within the Superfund Amendments and Reauthorization Act of 1986 (SARA). It grew out of a grassroots right-to-know movement at the state and local level, with labor unions and citizen activities working together towards a common goal: greater protection of the public from chemical emergencies and dangers through public disclosure by business and industry of the chemicals they store, use, and release. The grassroots right-to-know movement took on new urgency -- and received increased attention from lawmakers -- in December of 1984, when the release of a highly toxic chemical cloud from a U.S.- owned plant in Bhopal, India killed 3,000 people and injured many more. That incident was followed less than a year later by a toxic release from a West Virginia chemical plant. Enactment of EPCRA, in the wake of those tragedies, represents a significant step where the federal government has taken an important role in areas which had previously been left for control by state and local governments when they say the need.

The dual legislative purposes of EPCRA are reflected in its name: emergency planning and community right-to-know. One part of the law requires businesses to report on emissions of certain toxic chemicals, and that information is then placed into the Toxics Release Inventory, a publicly-accessible data bank. Another part of the law requires certain businesses to report releases of extremely hazardous chemicals to state and local authorities, and to disclose to those same authorities the quantities and types of toxic chemicals stored on site.

The Act, which affects both the facilities and the states where they are located, provides for emergency planning and notification that enables states and communities to prepare and respond to emergency releases of hazardous substances in Subtitle A; imposes the reporting requirements in Subtitle B; and, along with other provisions, imposes civil, criminal, and administrative penalties for reporting violations. Enforcement actions may be brought by EPA, the states, concerned citizens, and other emergency planning and response entities.

Over the intervening years, emergency planning has become more sophisticated and institutionalized. Community emergency managers exist where once there may have only been a part-time civil defense director. All-hazards planning is now the norm rather than planning focused on only one type of hazard. It is also brutally clear that community-based emergency planning must be community-wide. The days of stovepiped planning functions looking only at one suite of technological or natural hazards is over.

Shortly after 9/11 the National Response Team (consisting of all federal agencies but lead by EPA, DOT and FEMA) issued guidance (NRT-1) that pushed communities to the all-hazards emergency operations plan (EOP) approach. NRT-1 is currently undergoing amendment to become consistent with newly issued documents such as CPG-101, discussed below, but it's fundamental tenants remain unchanged. It provides:

The first responders (e.g., police, fire, emergency medical team) at the scene of an incident are generally the same whatever the hazard. Moreover, many emergency functions (e.g., direction and control, communications, and evacuation) vary only slightly from hazard to hazard. Procedures to be followed for warning the public of a hazardous materials incident, for example, are not that different from procedures followed in warning the public about other incidents such as a flash flood. It is possible, therefore, to avoid a great deal of unnecessary redundancy and confusion by planning for all hazards at the same time. A multi hazard EOP avoids developing separate structures, resources, and plans to deal with each type of hazard.

In describing LEPCs and how they should participate in community-wide planning NRT-1 noted that:

LEPCs formed according to EPCRA develop their own rules.

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LEPCs are specifically entitled to any information from facility owners and operators deemed necessary for developing and implementing the emergency plan. The EPA Administrator can order facilities to comply with a local committee's requests for necessary information; LEPCs can bring a civil suit against a facility that refuses to provide requested information.

EPA even pushed LEPCs towards counter-terrorism activities in an early post-9/11 guidance.

Many LEPCs are already addressing CT, even if they do not use the word "terrorism." If you have developed a plan for possible accidental releases of chemicals in your community, you can use the same general planning principles for deliberate releases caused by terrorists. You may need to spend some time considering biological agents. This factsheet includes some suggestions for how you can modify your current activities to include deliberate chemical and biological releases.

As it should be, these post-9/11 developments are a very long way from the early vision of EPCRA where LEPCs would be the focus of the community plan for releases of hazardous chemicals listed by EPA prepared in isolation from other community planning. The new vision is perfectly consistent with the modern federal programs for community-wide, all-hazards planning.

For more of a feel for this modern approach we can look to the new FEMA publication "Community Planning Guide (CPG) 101", which tells us:

CPG 101 is the foundation for State and local planning in the United States.

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When threatened by natural-, technological-, or human-caused emergencies or disasters, people expect elected or appointed leaders to take immediate action to deal with the problems. They expect the government to marshal its resources, channel the efforts of voluntary organizations and private enterprises in the community, and solicit assistance from outside the jurisdiction if necessary.

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CPG 101 provides general guidelines on developing emergency operations plans. It promotes a common understanding of the fundamentals of planning and decision making to help operations planners examine a hazard or threat and produce integrated, coordinated, and synchronized plans. This Guide helps emergency and homeland security managers in State, Territorial, Tribal, and Local governments (hereafter, State and Local governments) in their efforts to develop and maintain viable all-hazard, all-threat emergency plans. Each jurisdiction's plans must reflect what that community will do to protect itself from its unique hazards and threats with the unique resources it has or can obtain.

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*Planning must involve all partners. Just as coordinated emergency operations depend on teamwork, good planning requires a team effort. The most realistic and complete plans are prepared by a team that includes representatives of the departments and agencies, as well as the private sector and NGOs that can contribute critical perspectives or that will have a role in executing the plan. This principle is so important that the first step of the planning process is forming a planning team. When the plan considers and incorporates the views of the individuals and organizations assigned tasks within it, they are more likely to accept and use the plan. **(LEPCs are specifically mentioned as participants and resources.)***

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Emergency operations planning addresses all hazards and threats. The causes of emergencies can vary greatly, but many of the effects do not. Planners can address common operational functions in the basic plan instead of having unique plans for every type of hazard or threat. For example, floods, wildfires, hazardous materials releases, and radiological dispersion devices (RDDs) may lead a jurisdiction to issue an evacuation order and open shelters. Even though each hazard's characteristics (e.g., speed of onset, size of the affected area) are different, the general tasks for conducting an evacuation and shelter operations are the same. While differences in the speed of onset may affect when

the order to evacuate or to open and operate shelters is given, the process of determining the need for evacuation or shelters and issuing the order does not change. All hazards and all-threats planning ensures that, when addressing emergency functions, planners identify common tasks and who is responsible for accomplishing those tasks.

In recognition of this changing focus, in 2004 the CEPC issued “advice” to LEPCs - see attached. This document made it clear that the CEPC’s attitude at the time was to encourage LEPCs to become part of the community-wide planning effort with special focus on the community right-to-know aspects of EPCRA. The CEPC recognized that LEPCs has specific authorities regarding facilities that could be useful in supporting the community planning effort.

In 2007 the National Association of SARA Title III Program Officials (the national group representing State Emergency Response Commissions like the CEPC and LEPCs) issued a White Paper on the expected aspects of local community planning and the role of LEPCs. This document was reviewed by EPA and DOT/PHMSA prior to it being issued and both agencies link to it from their web pages. Again, the emphasis was on LEPCs becoming part of the community-wide, all-hazards planning effort.

CONCLUSION

As the CEPC performs its mission to “supervise” LEPCs it should be mindful of what our federal partners expect from community-based planning efforts. The CEPC must be enlightened enough to understand that the emergency planning aspects of EPCRA are now only one small part of what is expected from the community planning effort that includes LEPCs. In order to be relevant to their communities, garner support and broaden membership LEPCs must be part of this broader effort.

Melding these concepts with EPCRA, the CEPC should expect LEPCs to practice the “Golden Rules” stated at the end of the NASTTPO White Paper and specifically to be able to demonstrate these outcomes:

- LEPCs will be part of a community-wide, all-hazards planning effort producing a community emergency operations plan that includes hazardous materials. This community EOP needs to incorporate the EPCRA planning elements. Depending upon the needs and assets of the community, the LEPC may be the focus of this effort or support it using the information acquisition resources available to LEPCs under EPCRA.
- LEPCs will actively promote or conduct community right-to-know efforts so that members of the public are (1) better aware of hazards in the community and (2) better understand their own preparedness obligations and opportunities.
- LEPCs will use programs such as the hazardous materials emergency planning grant program to conduct programs that identify risks, especially from transportation, improve planning, and evaluate planning and training through exercises.
- LEPCs should evaluate other programs to address specific risks in their community such as school chemical cleanup and meth labs.