



National Association of SARA Title III Program Officials

Concerned with the Emergency Planning and Community Right-to-Know Act

December 18, 2015

Electronically Submitted

Re: Hazardous Waste Generator Improvements
Docket No. EPA-HQ-RCRA-2012-0121

The National Association of SARA Title III Program Officials (NASTTPO) is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), various federal agencies, and private industry. Members include state, tribal, or local government employees as well as private sector representatives with Emergency Planning and Community Right to Know Act (EPCRA) program responsibilities, such as health, occupational safety, first response, environmental, and emergency management. The membership is dedicated to working together to prepare for possible emergencies and disasters involving hazardous materials.

Our interest in this Proposed Rule is limited to the emergency planning provisions. We express no opinion on the other provisions of the Proposed Rule.

Summary

We appreciate EPA's stated intention of following the spirit of EO 13650 in making many of these proposals. Unfortunately, they are fundamentally unworkable to a large degree. Some conflict with the provisions of existing State statutes regarding emergency management. Many will conflict with the provisions of fire codes adopted by local jurisdictions. Others simply don't reflect the reality of modern relationships between local emergency planning committees, first responders and emergency management. We oppose these changes and recommend that they be abandoned.

It is extremely distressing to us that EPA is now suggesting a degree of LEPC control over facility operations that does not exist in any other emergency planning program. This level of control does not exist in the Clean Air Act's Risk Management Plan Program. This level of control most certainly does not exist under EPCRA. In our view there are typically many facilities in communities that present much greater risks than large quantity generators. It is inappropriate to create a program that will divert the limited resources of LEPCs, which are normally volunteer organizations, from higher hazard facilities.

EPA uses the terms "agreement" and "arrangement" in a fairly interchangeable fashion when comparing the preamble to the text of the proposed regulation. Unfortunately, EPA

does not define what it means by these terms. We are, therefore, left to their common meanings. In our view the use of these terms gives large quantity generators some degree of control over community preparedness and emergency planning. Whether the "agreement" or "arrangement" is with an LEPC, fire department, hospital or law enforcement, this is not how the real world works. Facilities with hazardous materials do not define or control community plans or hazardous materials response operational procedures. This is an enormous defect in the Proposed Regulation.

Please understand that we view this as much different from the authority of LEPCs to gain information necessary for preparedness or emergency planning under §303(d)(3) of EPCRA. EPA would better aid the LEPCs and emergency responder community by simply adopting the proposed §§262.260 and 262.261 with the additional requirement that a large quantity generator provide such additional information to LEPCs or first responders. This is, of course, exactly how LEPCs deal with all other facilities under EPCRA.

Application of emergency procedures within facilities

EPA has asked for comment on its decision that the emergency preparedness and emergency procedures regulations only apply to those areas in a facility where hazardous waste is generated and accumulated. In part, EPA justifies this decision on the basis that there is considerable overlap in the various regulatory programs that might apply to a facility. EPA also notes that it has encouraged facilities to utilize an integrated contingency plan approach.

Accident prevention and the safe handling of chemicals and wastes is the responsibility of facilities. They will typically have more expertise with these chemicals and wastes than will LEPCs, first responders or the community in general.

LEPCs and first responders evaluate the risks presented to communities by facilities with a broad view on the chemical and waste handling activities of the facility. First responders do not typically have the luxury of knowing exactly what chemicals or wastes are involved in an incident until they arrive and perform an assessment. As a result, they respond to facilities and deal with fires, explosions and releases regardless of the source.

It strikes us as inefficient and unrealistic for EPA to suggest that effective emergency planning is only necessary for the hazardous waste generation and storage portions of a facility. It is not unusual for other chemical handling and storage portions of a facility to present much greater risks to the community and first responders. The limited application of this proposal to just those portions of the facility is so limiting as to render the actions to be taken under the proposal worthless to LEPCs and first responders attempting to assess the risk of the entire facility.

We believe that EPA should require integrated contingency planning for the entire facility operated by a large quantity hazardous waste generator if EPA is going to do anything at all.

Changes to 40 CFR 262.34(a)(4) and 262.34(d)(4 and (5)

The preamble discussion of these changes talks about generators making an "agreement" with the LEPCs and that if this effort is unsuccessful then an "arrangement" with the local fire department and other emergency responders. This is misguided at best as it's totally unworkable.

The text of the actual proposed regulation drops the term "agreement" and instead talks about an "arrangement". The scope of this "arrangement" is vague, but apparently includes the various items listed in proposed §262.256(a)(2) all of which are information items that are already provided as part of generator emergency plans now required under existing §265.52(b) and the regulations of many States with RCRA delegation.

None of this is actually an "arrangement" or an "agreement". It's simply information that would typically be shared with LEPCs and first responders under the existing regulation. For this reason the Proposed Rule creates confusion where none now exists. LEPCs and first responders looking at the Proposed Rule are forced to assume that the term "arrangement" means something more than receiving information from generators. As the preamble uses the term "agreement" we assume that EPA intends some much more active control over emergency responses at generator facilities. This is unworkable.

LEPCs are community planning groups. They are not responders, nor do they define or control the response procedures used by community first responders. Likewise, LEPCs should not be regulating the operations of large quantity generators. LEPCs lack the personnel, time and budget necessary to undertake such a task.

All EPA need do is look at FEMA publications such as Community Preparedness Guide – 101 and Whole of Community Planning to understand how far behind the times its view of LEPCs has become. The guidance documents of this organization, available at www.nasttpo.com, make it clear that LEPCs are part of community preparedness rather than directing or controlling emergency response practices. Very few LEPCs prepare a plan under the provisions of EPCRA for the simple reason that it would be an unnecessary and inappropriate duplication of effort. It is inappropriate to place requirements on LEPCs and large quantity generators that are out of step with how communities plan for accidents at other facilities with hazardous materials.

We frankly see no advantage to LEPCs or communities from this proposed change and recommend that the existing approach be retained as proposed in §262.261 with the additional language we noted above. Also, in this regard the text of proposed §262.250 is acceptable. The proposals of §262.256(a)(1) and (2) should be abandoned.

Changes to CFR 262.256(a)(3) and 262.16(b)(8)(vi)

It is utterly irresponsible for EPA to suggest that a large quantity generator control incident command and other emergency response operational procedures by "agreement".

These procedures are typically the subject of State statute along with extensive local emergency plans and operational practices. We assume that EPA does not intend to preempt existing State statutes in these matters, and likewise we assume that EPA does not want local response agencies and LEPCs to create inconsistent programs applicable only to large quantity generators. In addition, it is reckless to presume that a large quantity generator has the expertise necessary to define incident command or operational practices for agencies responding to hazardous materials incidents.

EPA fails to explain why the existing local emergency response plans, including their mutual aid provisions, incident command arrangements and operational requirements should be different for large quantity generator facilities than the rest of the community. Because it creates inconsistency, we entirely disagree with the approach suggested by EPA. Consistent approaches, unified and practiced incident command procedures, is the norm in communities and EPA's proposal does not reflect any understanding of the reality or current practices of community preparedness planning, emergency planning or existing best practices.

Please understand that our alarm regarding this proposal is based upon a desire to protect first responders who are largely volunteers. They need uniform, consistent and predictable procedures to respond to hazardous materials incidents at facilities and during transportation. This is true regardless of the nature of the facility. Large quantity generators are but one quite small part of the universe of potential scenarios. It is dangerous to require "agreements" where the large quantity generator gains control over response procedures, especially incident command, and potentially creates inconsistent response approaches.

This proposal must be abandoned.

Changes to CFR 262.262

We appreciate that large quantity generators are required to submit their plans to LEPCs. Most States with RCRA delegation that have existing regulations on this topic require that the plan be given to the local first response agencies and LEPCs. We believe that EPA should also require that these plans be given to the local first responders such as fire departments.

An executive summary is essentially worthless to active LEPCs. We see no reason for large quantity generators to be required to create an executive summary when active LEPCs are likely to simply ask for the entire plan. Inactive LEPCs will not be harmed by only receiving the full plan.

Other Issues

1. LEPCs and first responders routinely use CAMEO and Tier2Submit to manage information regarding hazardous materials facilities. It would be most useful to these groups if any electronic data management program was compatible.

2. Many States maintain their own facility reporting systems that are designed to capture information relevant to their regulatory systems and collection of any fees imposed by these States. Any programs EPA puts in place cannot preempt or interfere with these programs.
3. There are significant financial impacts on small governments from these proposals to the degree that small governments support LEPCs and first responders. If adopted, these proposals will require the local government employees that participate in LEPCs or serve on emergency response agencies to cope with the demands of large quantity generators for "agreements" and "arrangements". It really is preposterous for EPA to suggest there is no financial impact on small governments from these proposals unless they are hazardous waste generators.

Thank you.



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