

ATTACHMENTS

SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986

OCTOBER 3, 1986.—Ordered to be printed

Mr. ECKART, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2005]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 2005) to amend title II of the Social Security Act and related provisions of law to make minor improvements and necessary technical changes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Superfund Amendments and Reauthorization Act of 1986".

TABLE OF CONTENTS

- Sec. 1. Short title and table of contents.
- Sec. 2. CERCLA and Administrator.
- Sec. 3. Limitation on contract and borrowing authority.
- Sec. 4. Effective date.

TITLE I—PROVISIONS RELATING PRIMARILY TO RESPONSE AND LIABILITY

- Sec. 101. Amendments to definitions.
- Sec. 102. Reportable quantities.
- Sec. 103. Notices; penalties.
- Sec. 104. Response authorities.
- Sec. 105. National contingency plan.
- Sec. 106. Reimbursement.
- Sec. 107. Liability.
- Sec. 108. Financial responsibility.
- Sec. 109. Penalties.
- Sec. 110. Health-related authorities.

SECTION 304—EMERGENCY NOTIFICATION

Senate amendment—The Senate amendment requires that, in addition to any notice required to be provided to EPA, local emergency committees and the Governor of any affected State be notified in the event of a release which requires reporting under section 103 of CERCLA. The amendment specifies the nature of the notice and establishes a requirement for follow-up notification as appropriate.

House amendment—The House amendment applies the notice requirement to releases from a covered facility which constitute a "hazardous substance emergency." This includes accidental or abnormal releases of a hazardous substance, as defined in CERCLA, that constitute an imminent and substantial endangerment to the public health or the environment, or a release that is subject to reporting to EPA under section 103 of CERCLA which, according to EPA regulations to be promulgated, constitutes a substantial threat to public health and the environment. The House amendment includes provisions similar to the Senate bill regarding the content of the notice and the requirement to provide follow-up notice as appropriate.

Conference substitute—The conference substitute establishes the requirement that emergency notice in the event of a release be provided to local emergency committees and the State in three specific instances. First, notice is required where the release is of an extremely hazardous substance, as referred to in section 302, and the release requires notice to EPA under section 103(a) of CERCLA. Second, notice is required where it is a release of an extremely hazardous substance that is not subject to notice under CERCLA, but the release is (a) not Federally permitted, as defined in section 101(10) of CERCLA, (b) is in excess of an amount set by EPA (or, if no amount has been set, in excess of 1 pound), and (c) the release occurs in a manner which would require notice under section 103(a) of CERCLA. This requires notification where there is a release of an extremely hazardous substance that would require notice under section 103(a) of CERCLA but for the fact that the substance is not specifically listed under CERCLA as requiring such notice. Third, the substitute requires notice in specified instances where the substance released is not an extremely hazardous substance, as referred to in section 302, but the release must be reported to EPA under section 103(a) of CERCLA. In the case of such a release, notification under this section must be provided to local and State emergency response organizations if it exceeds a reportable quantity that has been established by EPA under section 102(a) of CERCLA or, if the release occurs after April 30, 1988, exceeds the fallback threshold under CERCLA of 1 pound. April 30, 1988, is the date by which EPA is required by amendments to CERCLA elsewhere in the conference substitute to publish reportable quantity thresholds for all substances listed under CERCLA. Prior to April 30, 1988, for a release reportable under CERCLA but for which no threshold has been set, the facility must give notice to the local emergency planning committee in the same form and at the same time as such notice is required by CERCLA to be provided to EPA. The conference substitute provides that for a release to be reportable under this section it must extend beyond the site on which the

facility is located. On-site releases that do not extend off-site are exempt from the requirements. In addition, releases which are continuous or frequently recurring and do not require reporting under CERCLA are not required to be reported under this section. Such release, if of an appropriate substance, would be reported under section 313.

The conference substitute includes a special provision for how notice is to be provided where there is a release with respect to transportation or storage incident to transportation, which under section 327 is exempt from all other provisions of this title. For such a release, the notice requirements of the section shall be fully satisfied by dialing 911, or in the absence of a 911 emergency telephone number, calling the operator and reporting the release.

The conference substitute adopts the Senate bill provisions regarding the content of an emergency notice and follow-up requirements, modified to incorporate provisions in the House amendment. The substitute requires that the notification indicate whether the substance is on the list of substances for which emergency planning is required, as provided in section 302(a). The specific chemical identity of the substance released must be provided on the notice, and is not provided trade secret protection under section 322.

SECTION 305—EMERGENCY TRAINING AND REVIEW OF EMERGENCY SYSTEMS

Senate amendment—The Senate amendment contains no comparable provision.

House amendment—The House amendment includes provisions authorizing the Federal Emergency Management Agency (FEMA) to carry out certain programs related to hazardous substances. This includes programs for the training of local emergency response and other personnel, and grants of \$5 million for each of years 1987 through 1990 in support of university-sponsored programs and programs of State and local governments designed to improve emergency planning and related capabilities.

The House amendment also includes a requirement that the EPA Administrator review and report to the Congress within 18 months of enactment on various emergency systems.

Conference substitute—The conference substitute adopts the House provision.

SUBTITLE B—REPORTING REQUIREMENTS

SECTION 311—MATERIAL SAFETY DATA SHEETS

Senate amendment—The Senate amendment directs, within 180 days of enactment, any facility at which a hazardous chemical is produced, used or stored to, to provide to the local emergency planning committee, the Governor of the State and to EPA a copy of a Material Safety Data Sheet (MSDS) for each hazardous chemical at that facility. In addition, a copy of such MSDS is to be provided within 90 days of any revision made to that form. EPA may set threshold amounts, with facilities which have less than that



United States
Environmental Protection
Agency

Office of Solid Waste
and
Emergency Response

EPA 550-B-15-001
March 2015
www.epa.gov/emergencies

LIST OF LISTS

Consolidated List of Chemicals
Subject to the Emergency
Planning and Community Right-
To-Know Act (EPCRA),
Comprehensive Environmental
Response, Compensation and
Liability Act (CERCLA) and
Section 112(r) of the Clean Air Act

- EPCRA Section 302 Extremely Hazardous Substances
- CERCLA Hazardous Substances
- EPCRA Section 313 Toxic Chemicals
- CAA 112(r) Regulated Chemicals for Accidental Release Prevention

NAME	CAS/313 Category Codes	Section 302 (EHS) TPQ	Section 304 EHS RQ	CERCLA RQ	Section 313	RCRA CODE	CAA 112(r) TQ
2-Aminoanthraquinone	117-79-3				313		
4-Aminoazobenzene	60-09-3				313		
4-Aminobiphenyl	92-67-1			1	313		
1-Amino-2,4-dibromoanthraquinone	81-49-2				313		
1-Amino-2-methylantraquinone	82-28-0				313		
5-(Aminomethyl)-3-isoxazolol	2763-96-4	500/10,000	1,000	1,000		P007	
Aminopterin	54-62-6	500/10,000	500				
4-Aminopyridine	504-24-5	500/10,000	1,000	1,000		P008	
Amiton	78-53-5	500	500				
Amiton oxalate	3734-97-2	100/10,000	100				
Amitraz	33089-61-1				313		
Amitrole	61-82-5			10	313	U011	
Ammonia	7664-41-7	500	100	100			
Ammonia (anhydrous)	7664-41-7	500	100	100	X		10,000
Ammonia (conc 20% or greater)	7664-41-7			See ammonium hydroxide	X		20,000
Ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing)	7664-41-7				313		
Ammonium acetate	631-61-8			5,000			
Ammonium benzoate	1863-63-4			5,000			
Ammonium bicarbonate	1066-33-7			5,000			
Ammonium bichromate	7789-09-5			10	313c		
Ammonium bifluoride	1341-49-7			100			
Ammonium bisulfite	10192-30-0			5,000			
Ammonium carbamate	1111-78-0			5,000			
Ammonium carbonate	506-87-6			5,000			
Ammonium chloride	12125-02-9			5,000			
Ammonium chromate	7788-98-9			10	313c		
Ammonium citrate, dibasic	3012-65-5			5,000			
Ammonium fluoborate	13826-83-0			5,000			
Ammonium fluoride	12125-01-8			100			
Ammonium hydroxide	1336-21-6			1,000	X		
Ammonium oxalate	5972-73-6			5,000			
Ammonium oxalate	6009-70-7			5,000			
Ammonium oxalate	14258-49-2			5,000			
Ammonium picrate	131-74-8			10		P009	
Ammonium silicofluoride	16919-19-0			1,000			
Ammonium sulfamate	7773-06-0			5,000			
Ammonium sulfide	12135-76-1			100			
Ammonium sulfite	10196-04-0			5,000			
Ammonium tartrate	3164-29-2			5,000			
Ammonium tartrate	14307-43-8			5,000			
Ammonium thiocyanate	1762-95-4			5,000			
Ammonium vanadate	7803-55-6			1,000	313c	P119	
Amphetamine	300-62-9	1,000	1,000				
Amyl acetate	628-63-7			5,000			
iso-Amyl acetate	123-92-2			5,000			
sec-Amyl acetate	626-38-0			5,000			
tert-Amyl acetate	625-16-1			5,000			

NAME	CAS/313 Category Codes	Section 302 (EHS) TPQ	Section 304 EHS RQ	CERCLA RQ	Section 313	RCRA CODE	CAA 112(r) TQ
Hexane	110-54-3			5,000	X		
n-Hexane	110-54-3			5,000	313		
Hexazinone	51235-04-2				313		
Hydramethylnon	67485-29-4				313		
Hydrazine	302-01-2	1,000	1	1	313	U133	15,000
Hydrazine, 1,2-diethyl-	1615-80-1			10		U086	
Hydrazine, 1,1-dimethyl-	57-14-7	1,000	10	10	X	U098	15,000
Hydrazine, 1,2-dimethyl-	540-73-8			1		U099	
Hydrazine, 1,2-diphenyl-	122-66-7			10	X	U109	
Hydrazine, methyl-	60-34-4	500	10	10	X	P068	15,000
Hydrazine sulfate	10034-93-2				313		
Hydrazobenzene	122-66-7			10	X	U109	
Hydrochloric acid	7647-01-0			5,000			
Hydrochloric acid (conc 37% or greater)	7647-01-0			5,000			15,000
Hydrochloric acid (aerosol forms only)	7647-01-0			5,000	313		
Hydrocyanic acid	74-90-8	100	10	10	X	P063	2,500
Hydrofluoric acid	7664-39-3	100	100	100	X	U134	
Hydrofluoric acid (conc. 50% or greater)	7664-39-3	100	100	100	X	U134	1,000
Hydrogen	1333-74-0						10,000
Hydrogen chloride (anhydrous)	7647-01-0	500	5,000	5,000	X		5,000
Hydrogen chloride (gas only)	7647-01-0	500	5,000	5,000	X		5,000
Hydrogen cyanide	74-90-8	100	10	10	313	P063	2,500
Hydrogen fluoride	7664-39-3	100	100	100	313	U134	
Hydrogen fluoride (anhydrous)	7664-39-3	100	100	100	X	U134	1,000
Hydrogen peroxide (Conc. > 52%)	7722-84-1	1,000	1,000				
Hydrogen selenide	7783-07-5	10	10		313c		500
Hydrogen sulfide	7783-06-4	500	100	100	313	U135	10,000
Hydroperoxide, 1-methyl-1- phenylethyl-	80-15-9			10	X	U096	
Hydroquinone	123-31-9	500/10,000	100	100	313		
Imazalil	35554-44-0				313		
Indeno(1,2,3-cd)pyrene	193-39-5			100	313+	U137	
3-Iodo-2-propynyl butylcarbamate	55406-53-6				313		
Iron carbonyl (Fe(CO) ₅), (TB-5-11)-	13463-40-6	100	100		X		2,500
Iron, pentacarbonyl-	13463-40-6	100	100		313		2,500
Isobenzan	297-78-9	100/10,000	100				
Isobutane	75-28-5						10,000
Isobutyl alcohol	78-83-1			5,000		U140	
Isobutyraldehyde	78-84-2				313		
Isobutyronitrile	78-82-0	1,000	1,000				20,000
Isocyanic acid, 3,4-dichlorophenyl ester	102-36-3	500/10,000	500				
Isodrin	465-73-6	100/10,000	1	1	313	P060	
Isofenphos	25311-71-1				313		
Isofluorophate	55-91-4	100	100	100		P043	
1H-Isoindole-1,3(2H)-dione, 3a,4,7,7a-tetrahydro-2- [(trichloromethyl)thio]-	133-06-2			10	X		
Isononylphenol	11066-49-2				313\$		
4-Isononylphenol	26543-97-5				313\$		



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MEMORANDUM

March 13, 2018

To: Senate Committee on Environment and Public Works
Attention: Kusai Merchant

Honorable Cory A. Booker, Ranking Member
Subcommittee on Superfund, Waste Management, and Regulatory Oversight
Attention: Adam Zipkin

From: David M. Bearden, Specialist in Environmental Policy, dbearden@crs.loc.gov, 7-2390

Subject: **Supplemental Analysis: Fair Agricultural Reporting Method Act/FARM Act (S. 2421)**

This memorandum responds to your request for a more detailed discussion of the analysis presented in a CRS memorandum provided on March 7, 2018. CRS prepared this earlier memorandum to respond to your initial request for an analysis of amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in the Fair Agricultural Reporting Method Act or “FARM Act” (S. 2421), as introduced on February 13, 2018. As discussed in the March 7th CRS memorandum, S. 2421 would exempt air releases of hazardous substances emitted by animal waste at farms from reporting requirements under CERCLA, and would have a bearing on the applicability of reporting requirements under Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

This supplemental memorandum elaborates upon the analysis presented in the March 7th CRS memorandum to outline circumstances in which the emergency notification requirements in Section 304 of EPCRA would apply under current law, and the bearing of S. 2421 on the applicability of these requirements to air releases emitted by animal waste. The March 7th CRS memorandum provides additional background information in support of this analysis, and offers a broader examination of how S. 2421 would define the terms “animal waste” and “farm” for purposes of the bill. I hope that this supplemental memorandum is helpful to address your questions about circumstances in which EPCRA may continue to apply if S. 2421 were enacted. If you need further assistance from CRS in consideration of this legislation or related issues, please do not hesitate to contact me.

Section 304 of EPCRA

As explained in the March 7th CRS memorandum, Section 304 of EPCRA outlines three situations in which the reporting of releases of extremely hazardous substances or hazardous substances into the environment is required.¹ In each situation, the person responsible for the release must notify the State Emergency Response Commission (SERC) and the appropriate Local Emergency Planning Committee

¹ 42 U.S.C. §11004.

(LEPC) that covers the local jurisdiction where the release occurs. Two of these situations are contingent upon the release being subject to notification under Section 103 of CERCLA for reporting to the National Response Center.² The third situation is not contingent upon reporting under CERCLA. The three situations covered in Section 304 of EPCRA are as follows.

- Section 304(a)(1) requires notification of releases of extremely hazardous substances listed under EPCRA, if the release would require notification for hazardous substances under Section 103 of CERCLA.³
- Section 304(a)(3) requires notification of releases of other hazardous substances that are not separately listed as extremely hazardous substances under EPCRA, if the release would require notification under Section 103 of CERCLA.⁴
- Section 304(a)(2) requires notification of releases of extremely hazardous substances listed under EPCRA (but that are not subject to notification under CERCLA), if three criteria are met.⁵

In this third situation, releases of extremely hazardous substances listed under EPCRA would require notification under Section 304(a)(2), if the release:

- (A) is not a federally permitted release as defined in Section 101(10) of CERCLA;⁶
- (B) is in an amount in excess of a reportable quantity that the U.S. Environmental Protection Agency (EPA) designated under Section 302 of EPCRA;⁷ and
- (C) “occurs in a manner” that would require notification under Section 103 of CERCLA.

S. 2421

S. 2421 would amend Section 103(e) of CERCLA to exempt “air emissions from animal waste (including decomposing animal waste) at a farm” from reporting to the National Response Center regardless of the quantity of the release of hazardous substances in air emissions. The bill would not amend Section 304 or any other provisions of EPCRA. Although S. 2421 would not amend this statute, the bill would have the effect of eliminating reporting requirements under Section 304(a)(1) and Section 304(a)(3) of EPCRA for air releases of hazardous substances emitted by animal waste at farms, in so far as the terms “animal waste” and “farm” are defined in the bill.

Both Section 304(a)(1) and Section 304(a)(3) of EPCRA are contingent upon reporting required under Section 103 of CERCLA. Exempting a release from reporting under Section 103 of CERCLA thereby would have the effect of exempting the same release from reporting under Section 304(a)(1) and Section 304(a)(3) of EPCRA. The April 2017 court decision referenced in the March 7th CRS memorandum (*Waterkeeper Alliance, et al., v. EPA*) described this statutory relationship in terms of “a release that triggers the CERCLA duty also automatically trips the EPCRA reporting requirements in subsections (1) and (3)” of Section 304.⁸

² 42 U.S.C. §9603.

³ 42 U.S.C. §11004(a)(1).

⁴ 42 U.S.C. §11004(a)(3).

⁵ 42 U.S.C. §11004(a)(2).

⁶ 42 U.S.C. §9601(10).

⁷ 42 U.S.C. §11002.

⁸ *Waterkeeper Alliance v. Env'tl. Prot. Agency*, 853 F.3d 527, 537-38 (D.C. Cir. 2017).

S. 2421 would not have a bearing on the reporting of releases of extremely hazardous substances under Section 304(a)(2) of EPCRA though, as this provision is not contingent upon reporting required under Section 103 of CERCLA. If the exemption from CERCLA in S. 2421 were enacted, the applicability of Section 304(a)(2) therefore would remain the same as in current law. An air release of an extremely hazardous substance emitted by animal waste at a farm would be subject to Section 304(a)(2) if all three statutory criteria for reporting were met.

An air release of an extremely hazardous substance emitted by animal waste would satisfy the first criterion in Section 304(a)(2)(A) if it were not a federally permitted release. Section 101(10) of CERCLA defines the term “federally permitted release” to mean releases regulated under other specific laws. Section 101(10)(H) authorizes a federally permitted release for “any emission into the air” subject to a permit, regulation, or State Implementation Plan, pursuant to the Clean Air Act.⁹ CRS is not aware of the use of these authorities to regulate air releases emitted by animal waste upon which a federally permitted release presently could be based. If such air releases were permitted under the Clean Air Act, the releases would be exempt from reporting and liability under CERCLA as a federally permitted release, and thereby exempt from reporting to state and local officials under Section 304 of EPCRA.

An air release of an extremely hazardous substance emitted by animal waste would satisfy the second criterion in Section 304(a)(2)(B) if the quantity of the release were to exceed the quantitative threshold for reporting that EPA designated in federal regulation pursuant to Section 302 of EPCRA.¹⁰ For example, EPA separately listed ammonia and hydrogen sulfide (substances commonly emitted by animal waste) as extremely hazardous substances, and designated 100 pounds released during a 24-hour period as the threshold for reporting under Section 302 of EPCRA. Air releases of ammonia or hydrogen sulfide emitted by animal waste in excess of 100 pounds during a 24-hour period therefore would satisfy this second criterion in Section 304(a)(2)(B).

An air release of an extremely hazardous substance emitted by animal waste (e.g., ammonia or hydrogen sulfide) would satisfy the third criterion of Section 304(a)(2)(C) of EPCRA, if the release were to occur in the same *manner* as a “release” that would require reporting under CERCLA. As outlined in the March 7th CRS memorandum, the term “release” in CERCLA is relatively broad with respect to the manner in which a hazardous substance may enter the environment, including spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.¹¹ The term “environment” is defined in Section 101(8) of CERCLA to include surface water, groundwater, a drinking water supply, surface soils, sub-surface soils, or ambient air.¹² Section 329 of EPCRA defines the terms “release” and “environment” similar in scope to CERCLA.¹³ The federal regulations promulgated under Section 304 of EPCRA reflect these statutory definitions.¹⁴ Both CERCLA and EPCRA generally treat emissions into the ambient air as releases into the environment.

In implementation, EPA has treated the phrase “occurs in a manner” in EPCRA Section 304(a)(2)(C) to mean the nature of the release in terms of how a substance enters the environment, not that reporting *is* required under Section 103 of CERCLA. Otherwise, Section 304(a)(2) would be rendered meaningless in

⁹ 42 U.S.C. §9601(10)(H).

¹⁰ Reportable quantities for extremely hazardous substances subject to emergency release notification under Section 304 of EPCRA are codified in federal regulation at 40 C.F.R. Part 355, Appendix A.

¹¹ 42 U.S.C. §9601(22).

¹² 42 U.S.C. §9601(8).

¹³ 42 U.S.C. §11049. The definition of the term “release” in EPCRA is nearly identical to that in CERCLA. The definition of the term “environment” in EPCRA is similar to CERCLA, but is more generally worded in its description to encompass “water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.”

¹⁴ 40 C.F.R. §355.61.

covering releases of extremely hazardous substances that do not require reporting as hazardous substances under CERCLA, while requiring reporting under CERCLA at the same time.

The March 7th CRS memorandum observed that the exemption from reporting under Section 103 of CERCLA in S. 2421 may not necessarily exempt releases of separately listed extremely hazardous substances from reporting under Section 304(a)(2) of EPCRA. The applicability of this provision to a particular release would depend on whether all three statutory criteria outlined above are met. Regardless of these criteria though, Section 304 in its entirety may not apply to air releases from animal waste at farms if the Trump Administration's interpretation of the exemption for substances used in routine agricultural operations is not challenged.¹⁵ S. 2421 would not have a bearing on this exemption.

Also as noted in the March 7th CRS memorandum, potential reporting requirements under state or local laws may continue to apply regardless of an exemption in federal law, as neither CERCLA nor EPCRA would preempt such state or local requirements.

¹⁵ The March 7th CRS memorandum provides further discussion of the Trump Administration's interpretation of the exemption in Section 311(e) of EPCRA for substances used in routine agricultural operations. This interpretation is outlined in the following agency guidance: EPA, Office of Land and Emergency Management, *Does EPA Interpret EPCRA Section 304 to require farms to report releases from animal waste?*, October 25, 2017, available at: <https://www.epa.gov/epcra/question-and-answer-epcra-reporting-requirements-air-releases-hazardous-substances-animal>.