

# Chapter 118-40 WAC

## HAZARDOUS CHEMICAL EMERGENCY RESPONSE PLANNING AND COMMUNITY RIGHT-TO-KNOW REPORTING

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

118-40-090	Hazardous materials advisory committee—Establishment, membership. [Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-090, filed 9/12/88.] Repealed by 98-07-028, filed 3/11/98, effective 4/11/98. Statutory Authority: Chapter 38.52 RCW and Public Law 99-499.
118-40-100	Hazardous materials advisory committee—Purpose, responsibilities. [ Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-100, filed 9/12/88.] Repealed by 98-07-028, filed 3/11/98, effective 4/11/98. Statutory Authority: Chapter 38.52 RCW and Public Law 99-499.
118-40-190	Emergency response training. [Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-190, filed 9/12/88.] Repealed by 98-07-028, filed 3/11/98, effective 4/11/98. Statutory Authority: Chapter 38.52 RCW and Public Law 99-499.

**WAC 118-40-010 Introduction.** On October 17, 1986, the Superfund Amendments and Reauthorization Act of 1986 (SARA) was signed into law (P.L. 99-499). One part of the SARA provisions is Title III: "The Emergency Planning and Community Right-to-Know Act of 1986" hereafter referred to as "EPCRA." EPCRA establishes requirements for federal, state, and local governments, and industry regarding emergency response planning and community right-to-know on hazardous chemicals.

The emergency planning provisions of EPCRA (Sections 301-305) are designed to develop state and local government hazardous chemical emergency preparedness and response capabilities through better coordination and planning, especially at the local level.

Other community right-to-know provisions of EPCRA require the owners and/or operators of facilities to provide information about the nature, quantity, and location of report-

able chemicals manufactured, processed, stored, or used at their facility sites. The purpose of these provisions is to increase public knowledge of the presence of hazardous chemicals in communities and to better prepare for potential emergencies.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-010, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-010, filed 9/12/88.]

**WAC 118-40-020 Purpose and scope.** It is the purpose of this chapter to implement the provisions of EPCRA in the state of Washington to establish a mechanism for compliance by state and local governmental agencies and industry. This chapter is promulgated under the general policy and rule-making authority of the military department as established by RCW 38.52.030(2); 38.52.050 (1) and (3); and 43.63A.-060.

Compliance with the requirements of EPCRA, as recognized by the United States Environmental Protection Agency, is regarded as compliance with the provisions of this chapter. Where federal regulations are duplicated or referred to in this chapter, EPCRA citations are provided. This chapter is not intended to mandate any new compliance requirements beyond those required by EPCRA.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-020, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-020, filed 9/12/88.]

**WAC 118-40-030 Definitions.** "Administrator" means the administrator of the Environmental Protection Agency (EPA).

"CERCLA" means the Comprehensive Emergency Response, Compensation and Liability Act of 1980, as adopted.

"EMC" means the emergency management council for Washington state. (RCW 38.52.040(1).)

"Environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

"EPCRA" means Emergency Planning and Community Right-to-Know Act of 1986 as adopted, which is synonymous with SARA Title III.

"Extremely hazardous substances" means a substance described in Section 302 (a)(2) of EPCRA as now authorized or hereafter adopted.

"Facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which con-

trols, is controlled by, or under common control with such person). For the purpose of Section 304, EPCRA, the term includes motor vehicles, rolling stock and aircraft, shipping, and pipelines.

"First responder" means firefighters, law enforcement and emergency medical personnel as defined in chapter 296-62 WAC, Part P.

"Hazardous chemical" means any chemical which is a physical hazard or a health hazard as defined by OSHA Hazard Communication Standard (29 CFR 1910.1200). Exceptions to the definition of "hazardous chemical" in EPCRA and in 29 CFR 1910.1200 shall also apply in this chapter.

"Health hazard" means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed individuals. The term health hazard includes chemicals which are carcinogens, toxic or highly toxic agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membrane.

"LEPC" means the local emergency planning committee established for each state emergency planning district established by the state emergency response commission (P.L. 99-499).

"Material safety data sheet (MSDS)" means the sheet required to be developed under Section 1910.1200(g) of Title 29 CFR, as that section may be adopted from time to time.

"NRT-1 guidebook" means the *Hazardous Materials Emergency Planning Guide* published by the National Response Team, March 1987.

"NRT-1A guidelines" means the criteria for review of hazardous materials emergency plans.

"OSHA" means Occupational Safety and Health Act of 1970.

"Person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of state, or interstate body.

"Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, or organic peroxide, an oxidizer, pyrophoric, unstable (reactive), or water reactive.

"Release" means any spill, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing to the environment of any hazardous chemical, extremely hazardous substance, or toxic chemical.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986, as adopted.

"SERC" means the state emergency response commission for Washington state. (RCW 38.52.040(2) and P.L. 99-499.)

"TERC" means tribal emergency response commission.

"Title III" means Title III of the Superfund Amendments and Reauthorization Act of 1986; also titled the Emergency Planning and Community Right-to-Know Act of 1986, as amended.

"Toxic chemical" means a substance described in Section 313(c) of EPCRA, as now authorized or hereafter adopted.

"WISHA" means Washington Industrial Safety and Health Act of 1973.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-030, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-030, filed 9/12/88.]

**WAC 118-40-040 State emergency response commission—Establishment, membership, chairperson.** (1) In keeping with the provisions of Section 301(a) of EPCRA the EMC appoints the state emergency response commission membership composed of a representative from the following agencies and organizations:

- (a) Military department.
- (b) Department of ecology.
- (c) Washington state patrol.
- (d) Department of transportation.
- (e) Department of health.
- (f) Department of labor and industries.
- (g) Local emergency manager.
- (h) Washington state association of fire chiefs.
- (i) Private industry.
- (j) Local emergency planning committee (eastern Washington representative).
- (k) Local emergency planning committee (western Washington representative).
- (l) Transportation industry.
- (2) The chairperson and vice-chairperson for the state emergency response commission members shall be appointed by the emergency management council.
- (3) The state emergency response commission shall seek the attendance and active participation of representatives of the following agencies and organizations at all commission meetings:
  - (a) Tribal Emergency Response Commission(s).
  - (b) Federal Emergency Management Agency.
  - (c) Environmental Protection Agency.
  - (d) U.S. Department of Transportation.
  - (e) Washington state attorney general.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-040, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-040, filed 9/12/88.]

**WAC 118-40-050 Commission—Purpose, responsibilities.** The purpose of the state emergency response commission is to coordinate hazardous material issues and carry out the mandate of EPCRA (P.L. 99-499), as now authorized or hereafter adopted.

The state emergency response commission shall be responsible for the establishment of a state hazardous materials emergency preparedness, response, and community right-to-know program as required by EPCRA. Specific responsibilities of the commission include, but are not limited to the following duties:

- (1) Appointment of such ad hoc committees and working groups as required.
- (2) Designation of local emergency planning districts.
- (3) Receive and record initial appointment of and subsequent revisions to local emergency planning committee membership.

(4) Review and evaluation of local emergency response plans.

(5) Administer and coordinate responsibilities for representative state emergency response commission members for implementing the EPCRA program in Washington state.

(6) Establishment of procedures for the receipt of, management and access to all notifications, reports, plans and all other information required by EPCRA.

(7) Coordination with the Environmental Protection Agency on EPCRA implementation.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-050, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-050, filed 9/12/88.]

**WAC 118-40-060 Military department—EPCRA responsibilities.** Specific responsibilities of the military department include, but are not limited to, the following duties:

(1) Receive and record verbal emergency toxic chemical release reports through the twenty-four-hour duty officer system and make appropriate notifications. Track and maintain records of such notifications.

(2) Develop emergency planning guidance and provide assistance to LEPCs in the development of an emergency response plan for their district.

(3) Coordinate the review of each LEPC emergency plan as it is submitted.

(4) Serve as repository agency for LEPC emergency response plans.

(5) Set up community EPCRA education and training program addressing mitigation, emergency preparedness, disaster response, and long-term disaster recovery.

(6) Provide adequate staff support for the state emergency response commission to develop agendas, prepare minutes, coordinate meeting places, draft policy letters, and carry out other support functions as needed.

(7) Prepare and respond to correspondence for signature by the chairperson of the state emergency response commission.

(8) Receive and coordinate the distribution of correspondence, information, and written reports to offices of representative state emergency response commission agencies and organizations, TERC's and LEPC's, as well as other governmental and nongovernmental agencies when appropriate or as requested.

(9) Develop, apply for and administer training, exercise, and planning grants, as authorized and provided under Section 305 of EPCRA.

(10) Provide nonfirst responder training and maintain related records for the state hazardous materials training, exercise, and planning programs as authorized and funded through Section 305 of EPCRA.

(a) Training may be attended by emergency first responders, including firefighters, law enforcement, environmental, and emergency medical personnel. Other constituencies to be trained include federal, state, and local governmental employees who may directly or indirectly involve themselves in a hazardous materials incident. Such personnel may include health officials, public works personnel, elected offi-

cial, emergency and city managers, and personnel employed by private industry.

(b) Emergency training programs for nonfirst responders shall be designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies and responsibilities associated with hazardous materials and EPCRA.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-060, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-060, filed 9/12/88.]

**WAC 118-40-070 Department of ecology—EPCRA responsibilities.** Specific responsibilities of the department of ecology include, but are not limited to, the following duties:

(1) Serve as advisor to the commission on emergency spill response and environmental restoration issues.

(2) Serve as advisor for emergency responder equipment and training needs at the state and local levels.

(3) Serve as advisor for on-scene spill response and environmental needs at the state and local levels.

(4) Serve as advisor to the commission on community right-to-know issues.

(5) As required under subsection 301(a) of EPCRA, coordinate development, implementation, and maintenance of an EPCRA Community Right-to-Know Program which may include, but is not limited to:

(a) Data management of reports and notifications submitted by businesses. Such reports and notifications shall be retained for a minimum of three years.

(b) Technical assistance to businesses regarding compliance with EPCRA.

(c) Accessing and communicating information to the public.

(d) Outreach to businesses and the public about EPCRA.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-070, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-070, filed 9/12/88.]

**WAC 118-40-080 Washington state patrol—EPCRA responsibilities.** Specific responsibilities of the Washington state patrol include, but are not limited to, the following duties:

(1) Serve as advisor to the state emergency response commission on emergency response and coordination of on-scene activities on state and interstate highways and other areas where it has been designated incident command agency.

(2) Provide first responder training and maintain related records for state hazardous materials training as authorized through Section 305 of EPCRA.

(a) Training may be attended by emergency first responders, including firefighters, law enforcement, environmental, and emergency medical personnel. Other constituencies to be trained include federal, state, and local governmental employees who may directly or indirectly involve themselves in a hazardous materials incident. Such personnel may include health officials, public works personnel, elected offi-

cial, emergency and city managers, and personnel employed by private industry.

(b) Emergency training programs for first responders shall be designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies and responsibilities associated with hazardous materials and EPCRA.

(3) Serve as advisor for emergency responder equipment and training needs at the state and local levels.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499, 98-07-028, § 118-40-080, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-080, filed 9/12/88.]

**WAC 118-40-150 Emergency planning districts—Designation.** (1) The chief elected official of the local emergency planning district shall appoint the local emergency planning committee.

(2) Cities and towns that do not have active emergency management organizations as required by chapter 38.52 RCW are considered part of the county planning district in which they are located for the purposes of EPCRA emergency response planning.

(3) Any town, city or political jurisdiction identified in RCW 38.52.070 may petition the state emergency response commission to be designated as a local emergency planning district. Prior to the approval of such designation the proposed local emergency planning district must have selected the membership of the proposed local emergency planning committee and be in full compliance with the requirements of EPCRA.

(4) Any local emergency planning district and the respective local emergency planning committee existing prior to the effective date of this rule change shall be recognized.

(5) An existing local emergency planning district may petition the state emergency response commission to dissolve its independent status and either join the jurisdiction of the county in which it is included or join with an adjacent local emergency planning committee.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499, 98-07-028, § 118-40-150, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-150, filed 9/12/88.]

**WAC 118-40-160 Local emergency planning committee—Organization, membership.** (1) Each local committee shall include, at a minimum, representation from each of the following groups or types of organizations as specified by Section 301(c) of EPCRA:

- (a) State and local officials.
- (b) Law enforcement.
- (c) Emergency management.
- (d) Firefighting.
- (e) First aid.
- (f) Health profession.
- (g) Local environmental.
- (h) Hospital.
- (i) Transportation personnel.
- (j) Broadcast and print media.

(k) Community groups.

(1) Owners and operators of facilities subject to the requirements of Section 302(b) of EPCRA.

(2) Each local emergency planning committee shall appoint a chairperson and establish rules by which the committee shall operate.

(3) Committee rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of emergency response plans to the general public.

(4) Each local emergency planning committee shall submit annually, to the state emergency response commission, a list of their membership and the organizations they represent.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499, 98-07-028, § 118-40-160, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-160, filed 9/12/88.]

**WAC 118-40-170 Local emergency planning committee—Responsibilities.** (1) Each local emergency planning committee shall complete the preparation of a hazardous materials emergency response plan. In the development of the plan, as specified by Sections 303 (a), (b), (c) and 324 (a), (b), EPCRA, committee duties include, but are not limited to:

- (a) Forming a local planning team.
- (b) Designating a team leader.
- (c) Evaluating the resources needed to develop, implement, and exercise the emergency plan.
- (d) Identifying existing emergency response equipment and personnel.
- (e) Conducting a needs assessment of emergency response equipment and personnel requirements.
- (f) Providing oversight for preparation of the plan by the local planning team.

(2) Each local committee shall establish procedures for receiving and processing requests from the general public for information under Section 324 (including Tier II information under Section 312) EPCRA. Such procedures shall include the designation of an official to serve as committee coordinator for all information requests.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499, 98-07-028, § 118-40-170, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-170, filed 9/12/88.]

**WAC 118-40-180 Hazardous material emergency response plan—Content, guidelines, evaluation process.** (1) Each local emergency planning committee shall complete a hazardous materials emergency response plan as required by Section 303 (a), (b), (c), EPCRA.

(2) The local emergency planning committee shall transmit three copies of the completed plan to:

Washington State Emergency Response  
Commission  
Washington Military Department  
Emergency Management Division

(3) At a minimum, the plan shall include the requirements of EPCRA, the standards of the NRT-1 guidelines, and

the concepts of the Washington state comprehensive emergency management plan as it is written.

(4) Upon receipt of a local emergency planning committee hazardous material emergency response plan, the state emergency response commission shall:

(a) Send a letter to the local emergency planning committee formally acknowledging the receipt of the plan and informing them of the review process.

(b) Copies of the plan will then be reviewed for comment within ninety days of receipt as required by EPCRA.

(d) Upon completion of this review the state emergency response commission shall, as appropriate, send a letter to the submitting local emergency planning committee acknowledging receipt and providing reviewer's comments as appropriate in meeting the intent of EPCRA.

(5) The local emergency planning committees shall review and update, as appropriate, their plans annually. Changes to the plan shall be submitted to the state emergency response commission. If there are no changes to the local plan, the local emergency planning committee shall provide written notification to the state emergency response commission within thirty days of the review's completion.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-180, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-180, filed 9/12/88.]

#### **WAC 118-40-300 EPCRA—Facilities compliance.**

The owner or operator of a facility shall meet all of the applicable requirements of EPCRA, or of rules adopted by the administrator to implement EPCRA, as now authorized or hereafter amended, including the planning, notification, reporting, access, and information availability requirements as specified by Sections 301, 302, 303, 304, 311, 312, 313, and 324 of EPCRA.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-300, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-300, filed 9/12/88.]

#### **WAC 118-40-400 EPCRA—Enforcement, penalties.**

Enforcement of all EPCRA provisions and the administration of penalties for violations of the provisions shall be pursuant to Section 325 of EPCRA, as now authorized or hereafter amended.

[Statutory Authority: Chapter 38.52 RCW and Public Law 99-499. 98-07-028, § 118-40-400, filed 3/11/98, effective 4/11/98. Statutory Authority: RCW 38.52.030(2), 38.52.050 (1), (3) and 43.63A.060. 88-19-025 (Order 88-05), § 118-40-400, filed 9/12/88.]