



STATE OF DELAWARE

State Emergency Response Commission

Established under Title 29, Chapter 82 of the Delaware Code in compliance with Title III of the Federal Superfund Amendments & Reauthorization Act of 1986 (42 U.S.C. §11001)

Procedures for Receiving and Processing Requests from the Public for Emergency Planning and Community Right-to-know Act (EPCRA) Information in Delaware

Adopted December 10, 2008

Revised September 11, 2024

1. Local Emergency Planning Committee (LEPC) Emergency Response Plans
 - a. Under the Federal Emergency Planning and Community Right-to-know Act (EPCRA), emergency response plans developed by LEPCs shall be made available for review during normal working hours at the location or locations designated by the State Emergency Response Commission (SERC) or LEPC. Emergency response plans developed by Delaware LEPCs are available for review at the individual LEPC offices.
 - b. Certain items contained within LEPC emergency response plans are exempt from the definition of public record under the Delaware Freedom of Information Act (FOIA) (29 Del. C. § 10002 (o)(17)(a)). As such, any further public distribution beyond review at the LEPC locations specified above shall be restricted. If paper or electronic copies of the plans are created and provided in response to requests, information exempted from the definition of public record under the State FOIA shall be withheld by excluding the information in the copies.
 - c. Any person requesting to review an LEPC emergency response plan must submit a written request to the appropriate LEPC or call-in advance to make arrangements to review the plan. If copies are requested, a written request will be required.
 - d. LEPCs may charge for copying, based on their specific County/City procedures.
2. EPCRA Submissions from Facilities
 - a. Under the Federal EPCRA, safety data sheets (SDS), list of chemical hazards, inventory forms, toxic chemical release forms, and follow-up emergency notices submitted by facilities shall be made available to the general public during normal working hours at the location or locations designated by the SERC or LEPC. In Delaware, these submissions are available for review at the office of the EPCRA Reporting Program located within the Department of Natural Resources and Environmental Control (DNREC).
 - b. In accordance with the State FOIA (29 Del. C. § 10003(b)), DNREC has established a FOIA regulation specifying procedures for accessing DNREC

information. The regulation requires submission of a request by mail, fax, or electronically completing a request form on the Internet. Requested records may be viewed on site, or copies may be sent to the requestor. Requests to review any of the above mentioned EPCRA reports, requests for copies, or requests for specific data searches must follow the DNREC FOIA request procedures.

- c. Certain items submitted with the Annual Hazardous Chemical Inventory (Tier II) forms by facilities are exempt from the definition of public record under the State FOIA (29 Del. C. §10002 (o)(17)(a)). As such, any further public distribution beyond review at the DNREC location specified above shall be restricted. If paper or electronic copies of Tier II forms are provided in response to a request, the following items shall be withheld from disclosure:
 - i. Tier II forms provide emergency contact information for facilities, including 24-hour phone numbers, pager numbers, etc. Emergency contact information will only be available for public review on the Tier II forms at the DNREC location noted above, as required under Federal EPCRA requirements. No copying of information or removal of these documents during on-site review shall be permitted. If Tier II data is disseminated off-site to fulfill an information request, the emergency contact information shall not be included. Specific requests for this data shall not be fulfilled.
 - ii. Tier II forms provide descriptions of storage location information for each chemical reported. Storage location descriptions, including container type, pressure, and temperature conditions, as well as storage amount information, shall be available for public review at the DNREC location noted above, as required under Federal EPCRA requirements. No copying or removal of these documents during on-site review shall be permitted. If Tier II data is disseminated off-site to fulfill an information request, the storage location descriptions, including container type, pressure, and temperature conditions, as well as storage amount information, shall not be included. Specific requests for this data shall not be fulfilled.
 - iii. Site plans are submitted along with Tier II forms. Site plans shall be available for public review along with Tier II forms at the DNREC location noted above, as required under Federal EPCRA requirements. No copying or removal of these documents during on-site review shall be permitted. If Tier II data is disseminated off-site to fulfill an information request, the site plans shall not be included. Specific requests for this data shall not be fulfilled.
- d. Any information claimed confidential or trade secret in accordance with provisions of the Federal or State EPCRA requirements shall be withheld from disclosure.

- e. All fees associated with the formulation of data to fulfill a FOIA request shall be calculated in accordance with the DNREC FOIA Regulation.

3. General Provisions

- a. While multiple agencies and organizations will have access to various facility information submitted under EPCRA for use in planning and response activities, any party requesting to review, copy, receive a copy, or requesting specific information concerning EPCRA submissions from facilities, shall be referred to the EPCRA Reporting Program within the Division of Waste and Hazardous Substances of DNREC.
- b. Nothing in these procedures is intended to restrict or deny the public the right to meet and discuss local concerns and issues with the staff of an LEPC. Local discussions of emergency response procedures or possible approaches for minimizing potential risks are encouraged. These local discussions may include the review of information concerning chemicals used and stored at facilities. However, no data covered by the procedures noted above shall be distributed outside of the LEPC. Any hardcopy or computerized data used during local discussions shall remain in possession of LEPC staff. All public requests for copies of facility data or specific data searches shall be handled in accordance with the procedures outlined above.
- c. As the opportunity arises, citizens should be reminded of information that is freely available on the Internet. These sources may provide the desired information without submission of a FOIA request. The availability of such EPCRA information is described here:
 - i. SERC Webpage: <https://www.dema.delaware.gov/serc/index.shtml>
 - ii. DNREC EPCRA Webpage: <https://dnrec.delaware.gov/waste-hazardous/emergency-response/community-right-to-know/> (de.gov/epcra)
- d. The public may view limited EPCRA Section 312 information at the EPCRA Public Portal by registering for an account here: <https://tierii.dnrec.delaware.gov/Account/Login.aspx> (de.gov/chemicalportal). The public portal allows access to EPCRA data such as facility name and location, chemical name, and physical and health hazards. It can also be accessed through the DNREC Community Right-to-Know page.