

An Information Guide

**EMERGENCY PLANNING
AND COMMUNITY RIGHT-TO-KNOW ACT
Wisconsin Statute sec. 323.60**

Deadly and tragic chemical releases in the United States and around the world have demonstrated the need to conduct emergency planning and preparedness for accidental chemical releases. The Emergency Planning and Community Right-to-Know Act (EPCRA) was created in 1986 by Congress to initiate local emergency planning for accidental chemical releases. It is also known as Title III of SARA (Superfund Amendments and Reauthorization Act).

The emergency planning aspect requires communities to prepare for hazardous chemical releases through emergency planning. This provides essential information for emergency responders and creates a database of hazardous chemical storage information.

In Wisconsin, each county has a Local Emergency Planning Committee (LEPC) consisting of local elected officials, emergency response personnel (fire, police, EMS, etc.), the media, the public, and industry. These

1987 WI Act 342 (the Hazardous Substances Information and Emergency Planning Act) became state law in April 1988, and implemented EPCRA in Wisconsin. The requirements are codified in s. 323.60, Wis. Stats.

volunteers participate in emergency response planning, training and exercises. The emergency planning addresses chemical hazards present at permanent facilities and on transportation routes.

The community right-to-know aspect increases the public's awareness of chemical hazards in their community and allows the public and local governments to obtain information about chemical hazards in their community.



The Emergency Planning and Community Right-to-Know Act (EPCRA) has four main requirements which affect facilities:

- Section 302 Emergency Planning for accidental chemical releases;
- Section 304 Emergency Notification of Release;
- Sections 311/312 Hazardous Chemical Inventory Reporting; and
- Section 313 Toxic Chemical Release Inventory (TRI) - Form R.

DEFINITIONS:

CAA: Clean Air Act

CAS #: Chemical Abstract Service number, an identification #, often on a Safety Data Sheet (SDS), formerly known as a Material Safety Data Sheet, (MSDS).

Dun & Bradstreet #: An identifying number Dun & Bradstreet, Inc. uses to license information on businesses and corporations for use in credit decisions, business-to-business marketing and supply chain management (often referred to as the D&B #).

EIN #: (Federal Employer Identification Number), used to identify a tax-paying or tax-exempt entity which owns or operates a facility. See IRS form W-9.

EPA: Environmental Protection Agency of the United States.

Extremely Hazardous Substance (EHS):

The EHS list and their threshold planning quantity (TPQ) are identified at 40 CFR Part 355. OSHA's definition of hazardous chemicals includes EHS's - they are a subset.



Facility: Defined at s. 323.60(1)(c), Wis. Stats., and 42 USC 11049(4). It includes 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 who controls, is controlled by, or under common control with such person) or used for conducting the activities of a public or private agency. It includes man-made structures as well as all natural structures in which chemicals are purposefully placed or removed through human means. (A public right-of-way does not separate into two facilities, two sites owned or operated by the same person.)



For more information or assistance, please contact the Facility Reporting/ Compliance Section staff at 608-242-3224 or 608-242-3225 or write to:

**EPCRA Program
Wisconsin Emergency Management
P.O. Box 7865
Madison, WI 53707-7865**



Assistance is also available from
the EPA EPCRA Hotline at 800-424-9346



Blank forms are available on the
Wisconsin Emergency Management Web Page at:

<http://emergencymanagement.wi.gov>

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WHOPRS website for data entry:

<https://WHOPRS.wisconsin.gov>

educational institution or public body, corporate or politic, created by constitution, law, ordinance, rule or order, or a governmental or quasi-governmental corporation.

The requirement for facilities in SIC Code 10 to 13 and public and private agencies is a Wisconsin requirement but not an EPA requirement. If you are in SIC Code 10 to 13 or are a public or private agency, you are required to submit a paper copy of Form R/A to DNR only. Please do not send a copy to the EPA.

Toxic Release Inventory (TRI) reporting forms can be downloaded here:
<http://www.epa.gov/tri/report/>.

Additional TRI information is available online at:
<http://www.epa.gov/tri/>

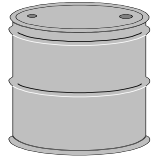
Wisconsin's TRI Program contact is:

TRI Program Coordinator
Wisconsin Department of Natural Resources - SS/7
101 South Webster Street
Madison, WI 53703
Office: 608-267-9564
Fax: 608-266-5226



FTE: Full-Time Equivalent employee, a term used to identify individual(s) employed and receiving wages for 2080 hours per calendar year.

Hazardous Chemical: For EPCRA (SARA Title III) it is "any chemical which is a physical hazard or a health hazard" [defined at 29 CFR1910.1200(c)] It is any substance for which OSHA requires a facility to maintain a Safety Data Sheet (SDS). There is no list of hazardous chemicals.



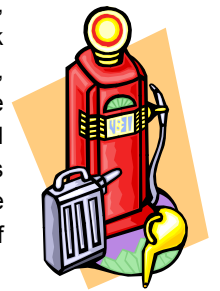
LEPC: Local Emergency Planning Committee, as created under s. 59.54(8), Wis. Stats. Each county in Wisconsin has a LEPC.

NAICS: North American Industry Classification System, is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. It was developed to allow for a high level of comparability in business statistics among the North American counties. For assistance: <http://www.naics.com/search.htm>

Operator: The person(s) who participate(s) in the operation of a facility, to include every person, firm, corporation, state, county, town, village, and public or private agency, or quasi-public corporations, as well as, any agent, manager, representative, officer, or other person having ownership, direction and control or custody of a facility(ies).

Owner: Every person(s), firm, corporation, state, county, town, village, and public or private agency, or quasi-public corporations, as well as, any agent, manager, representative, officer, or other person having ownership, direction and control or custody of a facility(ies), and is responsible for maintaining the SDSs for the chemicals stored at that site.

Petroleum Marketing Facility: A facility where petroleum products are stored for retail or resale, and are received by tank vessels, tank car or tank vehicle, and are stored or blended in bulk for the purpose of distributing such liquids by tank vessels, tank car, tank vehicle, or portable tank, and where petroleum products used as fuels are stored and dispensed from fixed equipment into vehicle fuel tanks. Retail applies to all instances of resale as defined in the law. Resale facilities include every person engaged in the business of making sales to the general public at retail within this State.



Private Agency: Defined as a privately owned and operated research facility or educational institution.

Public Agency: Defined as a state or local office, agency, board, commission, council, department, research facility, educational institution or public body corporate or politic created by constitution, law, ordinance, rule or order, or a governmental or quasi governmental corporation.

Release: Any spilling, leaking, pumping, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including abandonment or discarding of barrels, containers, and other receptacles) of a hazardous substance, extremely hazardous substance, hazardous material and/or hazardous chemical.

Retail Gas Station: Defined by the EPA as a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land. EPA added the phrase “for motor vehicle use on land” to the definition to clarify that gas stations in marinas and airports that sell fuel for boats or airplanes are not intended to be included in the definition of “retail gas station” for purposes of this rule at this time.

RMP: Risk Management Plan (40 CFR Part 68) lists the regulated substances and thresholds, the process for adding or deleting substances, the requirements for owners or operators of stationary sources concerning the prevention of accidental releases, and the state accidental release prevention programs approved under Section 112(r) of the Clean Air Act. (CAA). This number is established when a facility registers an initial RMP with the EPA.

RQ: Reportable quantity, triggers the Section 304 Emergency Notification of Release requirements for listed hazardous substances and Section 302 EHSs.

SDS: Safety Data Sheet, provides information on the chemical composition of a substance and its hazards, formerly known as a Material Safety Data Sheet.

SIC Code: Standard Industrial Classification Code, See **NAICS** Code. EPA now requires use of a NAICS Code.

Toxic Chemical: These are chemicals listed under 40 CFR 372 which are subject to Section 313 Toxic Chemical Inventory (TRI) - Form R.

Section 313: Toxic Chemical Release (TRI) Reports

Section 323.60(5)(d), Wis. Stats., and Administrative Rule Chapter WEM 3, require reports to be filed with the DNR by owner/operators of facilities that meet all the following criteria:

1. The facility has 10 or more full-time employees (equivalent of 20,000 hours per year), **AND**
2. Your facility's primary North American Industry Classification System (NAICS) code is included on the EPCRA Sec. 313 list of covered codes, **OR** your facility is a federal facility, **AND**
3. The facility manufactures, or processes, or otherwise uses any EPCRA Sec. 313 chemicals, in excess of established thresholds during the course of the calendar year.

EPA offers an online threshold determination tool at:
<http://www.epa.gov/tri/threshold>

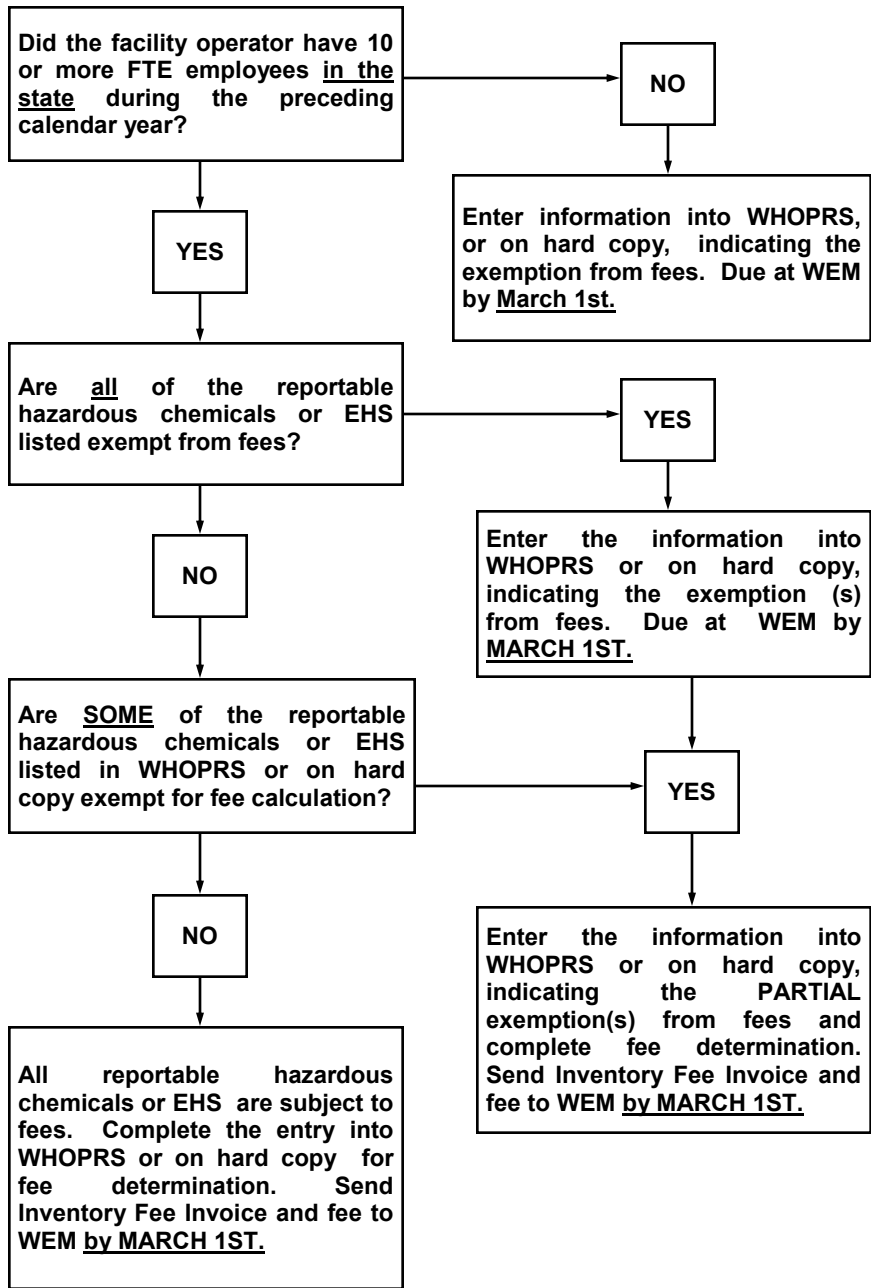
The preferred method for **submitting to EPA and DNR** is to use TRI-MEweb. Using this online application allows facilities to submit to the EPA and DNR simultaneously. TRI-MEweb can be accessed online at:
<http://www.epa.gov/tri/report/software/>.

Additional Reporting Requirements for Wisconsin

For facilities that meet the following additional requirements, owners and operators are required to submit Toxic Chemical Release reports to the **DNR only**:

1. The facility is included in any of the following categories:
 - a. Standard Industrial Classification (SIC) Codes 10 to 13 (except that reporting is not required for the placement of a toxic chemical in a storage or disposal site or facility that is located at a facility with a permit under Chapter 293 if the toxic chemical consists of or is contained in merchantable by-products as defined in s. 293.01 (7), minerals as defined in s. 293.01 (8), or refuse as defined in s. 293.01 (25) **OR**
 - b. Public and Private agencies
 - i. Private agency means a privately owned and operated research Facility or educational institution.
 - ii. Public Agency means a state or local office, agency, board, commission, committee, council, department, research facility,

Annual Inventory Fee under s. 323.60(7), Wis. Stats. and Wisconsin Administrative Rule Chapter WEM 1



TRI Facility ID #: Toxic Release Inventory Facility ID # is established when a facility owner or operator first submits a TRI Form R or Form A for a particular location. The facility retains this ID number even if the facility changes ownership, name production processes, or NAICS codes. This requirement falls under EPCRA Section 313 (40 CFR Part 372) and requires facilities to report releases and waste management activities associated with listed toxic chemicals that they manufacture, process, or otherwise use above applicable threshold quantities.

TPQ: Threshold planning quantity, triggers the Section 302 Emergency Planning Notification requirements for EHS. See the EHS list for chemical specific TPQ's.

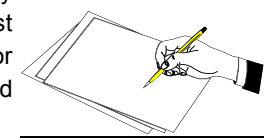
WEM: Wisconsin Emergency Management, created under s. 15.313(1), Wis. Stats.

WHOPRS: Wisconsin Haz-Mat Online Planning & Reporting System.

REQUIREMENTS OF EPCRA AND S. 323.60 WIS. STATS.

Section 302 (42 USC §11002): Emergency Planning Notification (EPN) for Extremely Hazardous Substances (EHS). Sec. 323.60(5)(a), Wis. Stats., requires the owner or operator of a facility:

- that has present at any one-time, an extremely hazardous substance (EHS) from the EHS list at 40 CFR Part 355, in amounts that equal or exceed the chemical-specific threshold planning quantity (TPQ),
- to provide Emergency Planning Notification to Wisconsin Emergency Management (WEM) within sixty (60) days after an EHS is present at the facility at or above the TPQ.
- There are no exemptions or exceptions to this requirement.
- Additionally, WEM requires facilities to submit an Amended EPN when there is a change in the amount of an EHS even if it is already above the TPQ.



There are two options for a facility owner/operator to submit an original or amended Emergency Planning Notification:

1. **Submit** the required data in WHOPRS (EPCRA online system). **OR**
2. **Submit** a completed DMA Form 1003, Emergency Planning Notification Fee Statement. Blank forms are available on the Wisconsin Emergency Management Web Page at:
<http://emergencymanagement.wi.gov>

To request a hardcopy of this form please contact the Facility Reporting/ Compliance Section staff at 608-242-3224 or 608-242-3225 or write to:

EPCRA Program
Wisconsin Emergency Management
P.O. Box 7865
Madison, WI 53707-7865

If a facility has an Extremely Hazardous Substance (EHS) present at or above the Threshold Planning Quantity (TPQ) at any one-time (including an EHS in a mixture at a concentration of greater than 1%) Sec. 302 applies. There are no exemptions. Sec. 302 does not apply to transportation.

NOTE: All reporting of chemicals must be done in pounds.

Emergency Planning Notification Fee, s. 323.60(7)(a)1, Wis. Stats. The operator of a facility with 10 FTE (Full-time Equivalent) employees or greater in Wisconsin (20,800 hrs. or greater annually) must submit to WEM an Emergency Planning Notification Fee Statement and one-time **\$1,080.00** Emergency Planning Fee within 60 days of having an EHS present at the facility at or above the TPQ. If the fee is submitted after the 60 days, a 20% late payment surcharge (**\$216.00**) must be included with the one-time planning fee.

If the operator of a facility has less than 10 FTE employees in the State, he/she is exempt from the one-time planning fee payment. An Emergency Planning Notification Fee Statement indicating fee exemption must be submitted to WEM via paper or in WHOPRS.

The number of FTE employees is determined by totaling the hours worked during the calendar year by all the operator's employees in the State and dividing that total by 2080 hours.

Annual Inventory Reporting and Inventory Fee submission. Section 323.60(7), Wis. Stats., and Wisconsin Administrative Rule Chapter WEM 1, requires the submission of an Inventory Fee Statement, which is incorporated directly into WHOPRS, and an Inventory Fee, if applicable, by March 1st annually. There is a 20% late payment surcharge due on the balance of the fee received after the March 1st due date.

The Inventory Fee is calculated based on the number of hazardous chemicals reported on the Tier II which are subject to fees. **NOTE:** If the cumulative actual maximum daily amount of all chemicals listed on the Tier II which are subject to inventory fee calculation is at or above 100,000 pounds, the high volume fee (schedule b) is used to determine the inventory fee.

Employee Fee Exemption. Section 323.60 (7)(d), Wis. Stats., states that if the operator of a facility employs fewer than 10 FTE (Full-Time Equivalent) employees in the State (fewer than 20,800 hrs. annually), they are exempt from fee payment.

The number of FTE employees is determined by totaling the hours worked during the calendar year by all the operator's employees in the state and dividing that total by 2080 hours. This number is entered into WHOPRS.

NOTE: If a facility is exempt from the annual inventory fee payment, that information must be entered directly into WHOPRS or on a DMA 1004, indicating the appropriate Inventory Fee exemption (s).

Fee Exemptions for Specific Substances. Wisconsin Administrative Rule Chapter WEM 1 and s. 323.60 Wis. Stats. provides for fee exemptions for the following:

- (1) Reportable amounts of sand or gravel are exempt from the inventory fee calculation,
- (2) Reportable amounts of gasoline or diesel motor fuel, which are held for resale by a petroleum marketing facility (see definition), are exempt from the inventory fee calculation.
- (3) Reportable amounts of calcium chloride, or sodium chloride, or calcium magnesium acetate, **when used as road deicing agents**, are exempt from inventory fee calculation.



All Chemical reporting must be entered in pounds.

Conversion of gallons to pounds: Consult the SDS for specific gravity and convert gallons to pounds accordingly (specific gravity X 8.33 = lbs. per gallon).

Facility response to written request for information

According to s. 323.60 (5m), Wis. Stats., *Furnishing Information*, if WEM or an LEPC requests information in writing, relating to the Federal Act [EPCRA] or this section [s. 323.60, Wis. Stats.] a facility shall furnish the information in the manner requested.

If a facility receives a Tier II form and Inventory Fee Statement (IFS), it is required to complete and return the forms or to submit the same in WHOPRS. If a facility determines they are exempt from Tier II reporting, **they may enter this information directly into WHOPRS or complete a Tier II report indicating the appropriate Tier II reporting exemption (s) and return the form to WEM.**

Tier II Hazardous Chemical Inventory Reporting for past years. If a facility needs to submit a Tier II Report for past years and pay appropriate Inventory Fees, they would complete the data entry into WHOPRS (or complete a "Past Years' Inventory Fee Statement" and Tier II Report Form, & submit to WEM) as applicable..

Temporary Construction Facility Reporting. As unique & temporary sites, WHOPRS provides for data entry directly into the system, or may be submitted using DMA Form 1125A, if a project meets the definition of a temporary construction facility.

Batch Plant Reporting. Concrete and asphalt batch plant sites have alternative reporting; the information would be entered directly into **WHOPRS or submitted on DMA Form 1125B.**

TO OBTAIN BLANK EPCRA FORMS:

EPCRA forms can be downloaded from the EPCRA website at:
<http://emergencymanagement.wi.gov> Click on EPCRA and then Forms & Resources.

Extremely Hazardous Substances (EHS) in mixtures. To determine if an EHS is present at or above the TPQ, the total amount of the EHS present at a facility, regardless of the number or type of container or method of storage, must be aggregated across all mixtures where the EHS is present in excess of 1%. This should include examination of such process components as reaction vessels, piping, etc., where formation of an EHS as a by-product may occur. If an EHS is present in a mixture at a concentration of less than 1%, it would not be included in the TPQ determination.

Section 303 (42 USC §11003): Planning facilities providing information. Section 323.60(5)(a), Wis. Stats.: requires an owner or operator of a facility subject to Section 302 to provide the LEPC with the name, address, and telephone number of a facility representative "who will participate in the emergency planning process as the facility emergency coordinator" within 60 days of having an EHS present at or above the TPQ at the facility. Correspondence on business letterhead is acceptable.

Section 303 requires planning facilities to provide any information which is necessary for the LEPC to develop and implement the off-site emergency plan. The facility emergency coordinator must inform the LEPC of changes occurring at the facility which may be relevant to emergency planning (i.e., changes in the identity or quantity of EHS present, and changes in the operations or production).

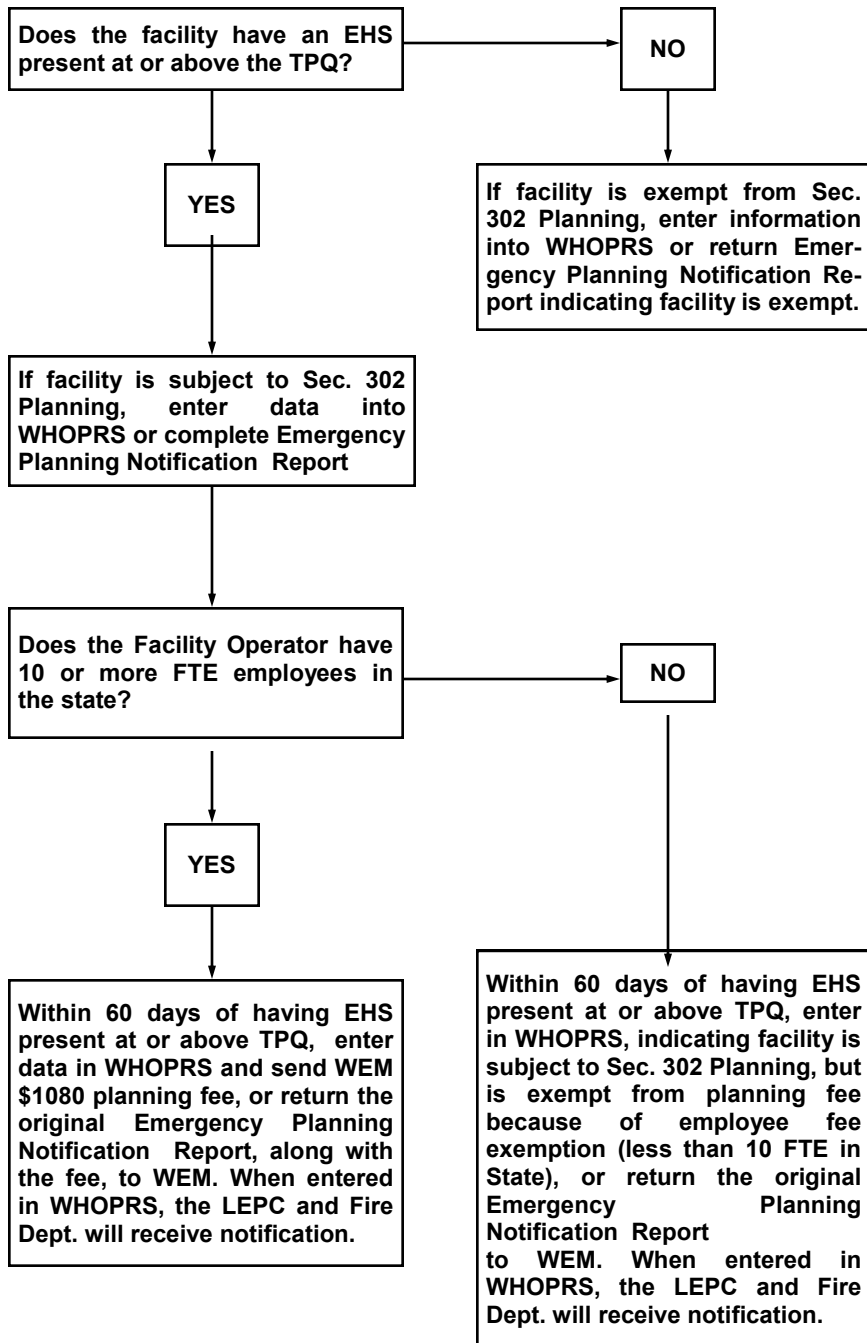
The LEPC will work with the facility emergency planning coordinator and complete the off-site emergency response plan for the facility. Once the initial plan is completed, the LEPC will work with the facility emergency planning coordinator and update the plan, as necessary.

Also, Section 323.60(5m), Wis. Stats., *Furnishing Information*, states if WEM or Local Emergency Planning Committee (LEPC) requests, in writing, information relating to the federal act [EPCRA] or to this section [s. 323.60, Wis. Stats.], a facility shall furnish the information in the manner requested. Failure to respond to a request for information may result in a forfeiture of not more than \$20,000.



NOTE: All reporting of chemicals must be done in pounds.

Section 302: Emergency Planning Notification



Reporting for Section 311 (SDS/Chemical List) and Section 312 (annual Tier II Reporting).

Reporting an Extremely Hazardous Substance (EHS) present in more than one mixture and/or in pure form

If an EHS is a hazardous component of more than one mixture or in pure form, the quantity of the EHS in each mixture shall be aggregated to determine if a reportable amount of the EHS is present at the facility.

The total amount of the EHS present at a facility, regardless of the number or type of container or method of storage, must be aggregated across all mixtures where the EHS is present in excess of 1%. This should include examination of such process components as reaction vessels, piping, etc., where formation of an EHS as a by-product may occur.

If the SDS for the mixture gives a range of concentration for the EHS, the facility should use the upper range of concentration when determining the weight of the EHS in each mixture. Under Sections 311 and 312, you may report the EHS component or the mixture (s) with the reportable amount of an EHS in it, even if the amount of the mixture (s) is below the reporting threshold.

Reporting hazardous chemical mixtures (by component vs. mixture)

The facility may meet the requirements of Sections 311 and 312 by choosing one of the two options below. Whichever option the owner or operator of the facility decides to use, the reporting of mixtures must be consistent for BOTH Sections 311 and 312.

- (1) Providing the required information on each component that is a hazardous chemical within the mixture. The concentration of the hazardous chemical in weight percent must be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture.

Hazardous components in a mixture with quantities in concentrations under .1% for carcinogens and 1% for all other hazardous components of the total weight of the mixture, do not have to be considered for reporting purposes.
- (2) Providing the required information on the mixture as a whole, using the total quantity of the mixture, provided the facility has an SDS for the mixture as a whole. When the composition of a mixture is unknown, the facility should report on the mixture as a whole, using the total quantity of the mixture.

- e. Food, drugs, cosmetics, or alcoholic beverages in a retail establishment that are packaged for sale to consumers.
- f. Food, drugs, or cosmetics intended for personal consumption by employees while in the work place.
- g. Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 USC 2051, *et seq.*) and Federal Hazardous Substances Act (15 USC 1261, *et seq.*) respectively, where the employer can demonstrate it is used in the workplace in the same manner as normal consumer use and which results in a duration and frequency of exposure which is not greater than exposures experienced by consumers.
- h. Any drug as that term is defined in the Federal Food, Drug and Cosmetic Act (21 USC 301, *et seq.*), when it is in solid, final form for direct administration to the patient (i.e., tablets or pills).

Retail Gas Station Reporting Exemption for Section 312 (annual Tier II Reporting).

Gasoline and Diesel Fuel are exempt from hazardous chemical (Tier II) reporting if this is a retail gas station and all of the following apply:

- 1) gasoline and/or diesel fuel was stored in a tank(s) entirely underground, and
- 2) the facility was in compliance with all applicable Underground Storage Tank program requirements at all times during the preceding calendar year, and
- 3) less than 75,000 gallons of gasoline and/or 100,000 gallons of diesel fuel were present at any one time, and
- 4) The facility engaged in selling gasoline and/or diesel principally to the public for motor vehicle use on land.

The facility would be exempt from Tier II reporting if no other substances at or above EPCRA reporting thresholds were present at any one time in the preceding calendar year.

IMPORTANT NOTE:
The Section 311(e) or OSHA [29 CFR 1910.1200(b)] reporting exemptions DO NOT APPLY to the Section 302-303 Emergency Planning requirements. If a reporting exemption can be claimed for an extremely hazardous substance (EHS) for Section 311-312 reporting requirements, the owner/operator is still required to determine if the facility has an EHS which is present at or above the threshold planning quantity (TPQ) and must comply with the Section 302/303 Planning requirements, as appropriate.

Section 304 (42 USC §11004): Emergency Notification of Release. Sec. 323.60(5)(b), Wis. Stats., requires the owner or operator of a facility to immediately provide verbal notice to the National Response Center (800-424-8802), WEM (800-943-0003, menu option #1) and to the LEPC for a Section 304 release of a:



- CERCLA (Comprehensive Environmental Response Compensation and Liability Act) hazardous substance **OR** a Section 302 extremely hazardous substance (EHS), which meets or exceeds the reportable quantity (RQ) for release, and is released off-site. [NOTE: EPA has written that a release need not result in actual exposure to persons off-site to require Sec. 304 Notification; the **potential** for exposure off-site is sufficient.]

To obtain the phone numbers for Sec. 304 Emergency Notification of Release to LEPCs in Wisconsin, contact your county Emergency Management Office.

Transportation related releases are not exempt from Section 304, Emergency Notification of Releases. EPA has written that a transportation operator may call 911 or other locally designated emergency number, in order to satisfy Section 304 notification requirements when a transportation-related release occurs, because transportation operators most likely will not know the telephone numbers of all relevant state and local entities on their routes.

EPA defines a "transportation-related release" to mean a release during transportation, or storage incident to transportation if the substance is under active shipping papers and has not reached the ultimate consignee.

Exemptions for Sec. 304 Emergency Notification of Release:

- Federally permitted releases and "continuous releases" as defined under CERCLA Section 103(e), except for initial reporting of the release and statistically significant releases, and
- A release which results in the exposure to persons solely within the site boundary on which a facility is located.

NOTE: Some releases occurring at a facility which are exempt from Sec. 304 notification may still be reportable releases under CERCLA 103(a) and, if so, must be reported to the National Response Center (NRC). Contact the EPA Hotline at 800-424-9346 for more information on CERCLA 103(a) notification requirements.

Section 304 Verbal Notification: The verbal notification shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):

1. The time, location, cause and duration of the release;
2. The chemical name or identity of substance(s) involved in the release;
3. An indication of whether the substance is on the Section 302 EHS list;
4. An estimate of the quantity that was released into the environment;
5. The medium into which the release occurred (air, water, soil, or combination);
6. Any known or anticipated acute or chronic health risks associated with the emergency;
7. Where appropriate, advice regarding medical attention necessary for exposed individuals;
8. Proper precautions to take as a result of the release, including evacuation; and
9. The name and telephone number of the person or persons to be contacted for further information.

Section 304 Written Follow-up Notice: The owner or operator must provide a written follow-up notice to WEM and appropriate LEPC(s) as soon as practicable after the release, and should include the following:



1. Additional information available since the initial verbal notification;
2. Actions taken to respond to or contain the release;
3. Who responded to release;
4. Known or anticipated acute or chronic health risks; and
5. Where appropriate, advice regarding medical attention.

Exemptions From Reporting for Section 311 (SDS/Chemical List) and Section 312 (annual Tier II Reporting).

EPCRA lists **five reporting exemptions under Section 311(e):**

- a. Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;
- b. Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;
- c. Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;
- d. Any substance to the extent it is used in a hospital or other medical facility under the direct supervision of a technically qualified individual;
- e. Any substance to the extent it is used in routine agricultural operations **[by the end user]** OR Is a fertilizer held for sale by a retailer to the ultimate customer.

In addition to the five EPCRA Section 311(e) reporting exemptions for a hazardous chemical, there are **eight reporting exemptions under OSHA**. These are found under 29 CFR 1910.1200(b):

- a. Any hazardous waste, as such term is defined by the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 as amended (42 USC 6901, *et seq.*), when subject to regulations issued under that Act by the EPA. Questions regarding whether a substance is a hazardous waste, should be directed to a DNR hazardous waste specialist at 608-266-2111.
- b. Tobacco or tobacco products.
- c. Wood or wood products.
- d. "Article" means a manufactured item, other than a fluid or a particle:
 - (i) Which is formed to a specific shape or design during manufacture;
 - (ii) Whose end use function(s) is dependent in whole or in part upon its shape or design during end use; and
 - (iii) Which under normal conditions of use does not release more than very small quantities, e.g., minute or trace amounts, of a hazardous chemical (as determined under paragraph (d) of this section) and
 - (iv) does not pose a physical or health risk to employees. (See 2/9/94, Federal Register Vol. 59, No. 27, pg. 6146.)

Wisconsin Spill Reporting Requirements.

The State requirements are under s. 292.11(2)(a), Wis. Stats., *Notice of Discharge*, and are further specified under WI Administrative Rule NR 706. A hazardous substance is defined under s. 292.01(5), Wis. Stats. A discharge is defined under s. 292.01(3), Wis. Stats.

The DNR (Department of Natural Resources) must be immediately notified of all discharges of hazardous substances that adversely impact or threaten to adversely impact public health, welfare or the environment. Call **800-943-0003, option #1**, to notify DNR. The verbal notification to DNR should include the following, to the extent known at the time of the notification:



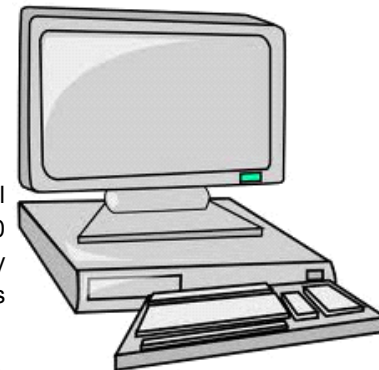
- Name, address and telephone number of the responsible party;
- Location, time, and duration of the discharge;
- Name, quantity, physical state, and chemical characteristics of the discharged substance;
- Cause and destination of the discharged substance;
- Actions taken to stop the discharge/ minimize impact to environment; and
- Actual or potential impacts to human health and safety or the environment, and identity of responders at the scene, if any.

Responsible parties shall determine whether a discharged substance is hazardous by its quantity, concentration, and physical, chemical and infectious characteristics. For many substances this will depend on the quantity and location of the discharge.

If a discharge is completely contained and recovered, such as a discharge into a secondary containment structure, and there is no discharge to the environment, it is not "discharged" as that term is used in s. 292.11, Wis. Stats. Only discharges "to the environment" require notification to the DNR under s. 292.11(2)(a), Wis. Stats.

Section 312 (42 USC §11022) : Annual Tier II Emergency and Hazardous Chemical Inventory Report Submission.

Section 323.60(5)(c), Wis. Stats., provides that the owner or operator of a facility:



- that is required under the Occupational Safety and Health Act (OSHA) of 1970 to prepare or have available a Safety Data Sheet (SDS) for a hazardous chemical, **OR**
- that is a public or private agency as defined by s. 323.60(1)(h) or (i), Wis. Stats.,

must submit by March 1st annually, to WEM, a completed Wisconsin Tier II Emergency and Hazardous Chemical Inventory report via **WHOPRS** (an on-line system), or hard copy (Form DMA 1004 and 1005), for the facility listing, as applicable (The appropriate LEPC, and the local fire department with jurisdiction over the facility, will access the reports on-line.):

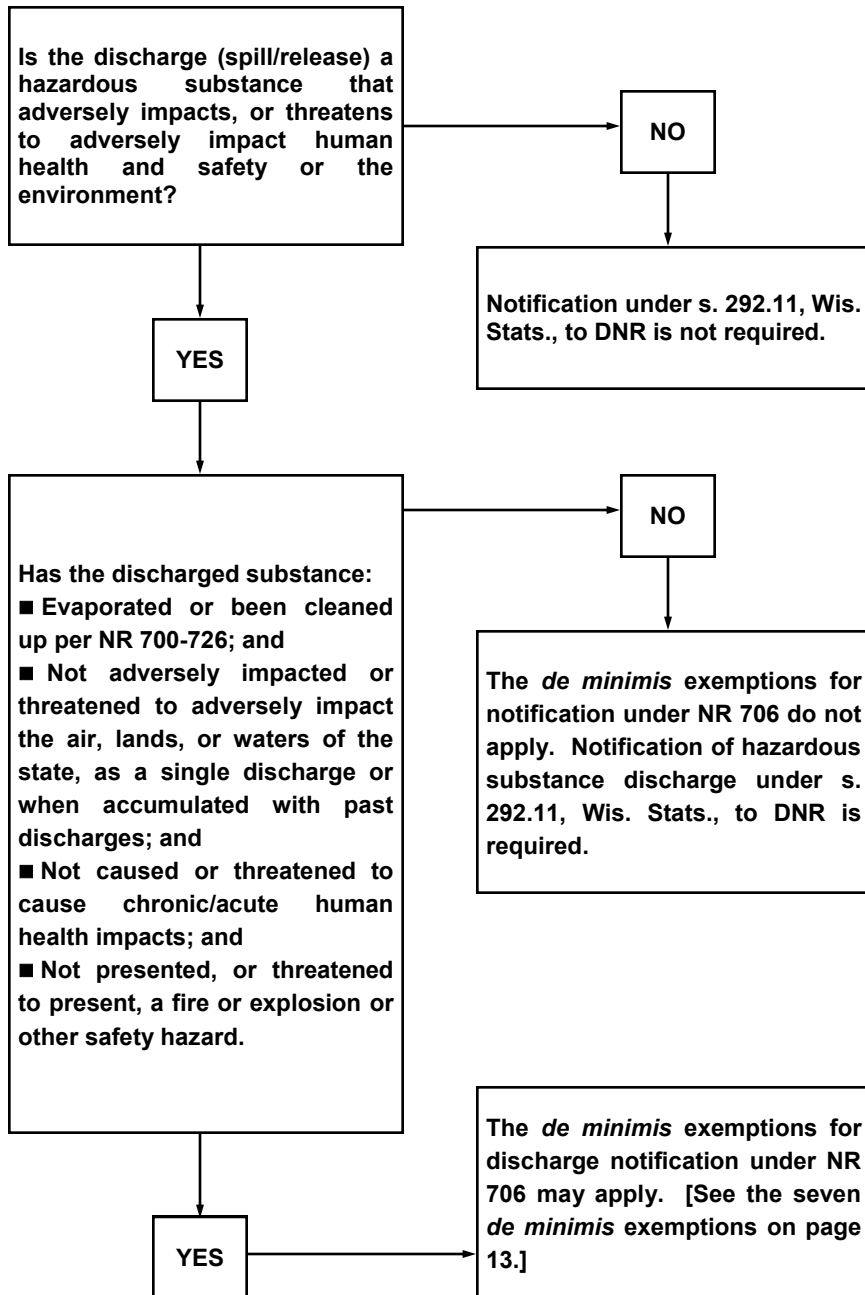
- (1) for each hazardous chemical present during the preceding calendar year, at the facility, at or above 10,000 pounds at any one time, and/or
- (2) for each EHS present during the preceding calendar year, at the facility at or above 500 pounds, or the TPQ, whichever is less, at any one time,

unless exempt under one or more of the reporting exemptions under Section 311(e), OSHA [29 CFR 1910.1200(b), or the Petroleum Marketing Facility Exemption. These reporting exemptions are outlined on pages 19 and 20 of this pamphlet.

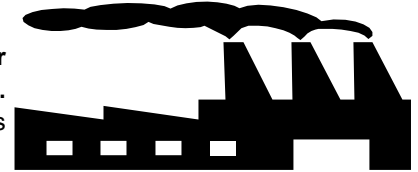
The Inventory Fee Invoice must be received by WEM to meet the same deadline as the Tier II Report submission: by March 1st annually. The Inventory Fee is based on the number of reportable hazardous chemical(s), listed in the Tier II submission, which are subject to fee calculation. See page 23 for more information on the annual Inventory Fee and fee exemptions. If submitting a hard-copy, the original form with original signature is sent along with Inventory Fee Invoice and check to WEM, Fee Processing Service, Drawer 988, Milwaukee, WI 53293-0988.

A paper Tier II Form may be submitted only if it contains the same information and uses the same format now required in WHOPRS. WEM now requires additional information in WHOPRS.

WI DISCHARGE NOTIFICATION LAW, Section 292.11, Wis. Stats., Commonly known as the state spill reporting law.



Section 311 (42 USC § 11021) : Safety Data Sheet (SDS) or SDS Chemical List Submission. Section 323.60(5)(c), Wis. Stats., states that the owner or operator of a facility:



- that is required under the Occupational Safety and Health Act (OSHA) of 1970 to prepare or have available a Safety Data Sheet (SDS) for a hazardous chemical, **Or**
- that is a public or private agency as defined by s. 323.60(1)(h) or (i), Wis. Stats.,

within 90 days, must enter into WHOPRS, **or submit** to WEM, an SDS or SDS chemical list (with hazard categories) for the following, as applicable:

- (1) for each hazardous chemical present at a facility at or above 10,000 pounds at any one time or
- (2) for each extremely hazardous substance (EHS) present at a facility at or above 500 pounds or the threshold planning quantity (TPQ), whichever is less, at any one time,

unless exempt under one or more of the reporting exemptions under Section 311(e), OSHA [29 CFR 1910.1200(b), or the Retail Gas Station Exemption. These reporting exemptions are outlined on pages 18 and 19. (Hard copy submissions provided to WEM will be entered by staff in the order received.)

NOTE: When entered into WHOPRS, the info will be available to LEPCs and local Fire Depts.; this will meet the requirement to provide the information to those two entities.

Section 311 SDS Chemical list option: Instead of submitting an SDS for each chemical, the owner or operator of the facility may submit a list of the hazardous chemicals for which an SDS is required. This SDS chemical list must identify the hazard categories (acute health hazard, chronic health hazard, fire hazard, sudden release of pressure hazard, and reactivity hazard) associated with each reportable chemical and must include the chemical or common name of each hazardous chemical as provided on the SDS. This requirement can be met by 312 Tier Two reporting.

Section 311 is not an annual reporting requirement and there is no fee. However, revised SDSs or updated SDS Chemical Lists must be provided to WEM within 90 days of obtaining significant new information regarding a reportable hazardous chemical or when a new reportable hazardous chemical becomes present at the facility.