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# A Brief History of EPCRA

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# Objective today -

- ▶ Background on the Emergency Planning and Community Right-to-Act as being implemented by States, Locals and Non-profits
- ▶ How EPCRA over the years evolved to be what it is today
- ▶ Steve Phillips will present on the current provisions of EPCRA following this discussion of the history



# U.S. Public Becomes Interested in Environment

- ▶ Silent Spring, published in 1962 by Rachel Carson, is a landmark environmental science book that exposed the harmful effects of pesticides, particularly DDT, on the environment and human health, sparking the modern environmental movement, leading to the ban of DDT, and prompting revolutionary changes in environmental laws.
- ▶ EPA Created – 1970
- ▶ OSHA Created– 1971
- ▶ FEMA created – 1979

# Chemical incidents in U.S. before 1980

- ▶ **Texas City Disaster (1947)**: A ship explosion at a chemical plant dock, killing hundreds and creating widespread destruction, considered one of the worst industrial chemical disasters.
- ▶ **Thiokol-Woodbine Explosion – February 3, 1971 – resulted in creation of OSHA**
- ▶ **Love Canal (1940s-1970s) – hazardous waste event - led to creation of Superfund**
- ▶ **Santa Barbara Oil Spill (1969) – 3 million gallons of oil spilled onto California coastline**
- ▶ **Argo Merchant Spill (1976)**: A tanker ran aground near Nantucket, MA, spilling 7.7 million gallons of fuel oil.

# Chemical incidents in U.S. after 1980

- ▶ Bhopal India 1984 / Institute West Virginia 1985
- ▶ **Henderson Rocket Fuel Plant Explosion – May 4, 1988** - killing two employees and wounding over 300 more.
- ▶ **Exxon Valdez Alaska- 1989** – 11 million gallons crude oil
- ▶ **The Phillips Disaster – October 23, 1989** - explosions and fires killed 23 workers, injured over 300 others, and caused almost \$750 million worth of damage
- ▶ **Deepwater Horizon Gulf of America – 2010** – 133 million gallons
- ▶ **Chevron Oil Explosion – August 2012** - More than 15,000 residents sought medical care for respiratory problems caused by toxic fumes and smoke
- ▶ **West Fertilizer Plant Explosion – April 2013** - killed 15 people and wounded at least 262
- ▶ **Elk River West Virginia – January 2014** – chemical MCHM spill into river affecting 9 counties and 300,000 residents

# Environmental Legislation before EPCRA

- ▶ Clean Air Act (1963, 1967): Initiated federal research and air quality standards.
- ▶ Wilderness Act (1964): Created the National Wilderness Preservation
- ▶ National Environmental Policy Act (NEPA) (1970): Required federal agencies to assess environmental impacts (Environmental Impact Statements).
- ▶ Environmental Protection Agency (EPA) (1970): Established by President Nixon to consolidate federal pollution control.
- ▶ Clean Air Act Amendments (1970): Set National Ambient Air Quality Standards (NAAQS).
- ▶ Clean Water Act (1972): Established the structure for regulating pollutant discharges into U.S. waters.
- ▶ Endangered Species Act (1973): Provided for the conservation of threatened and endangered plants and animals.
- ▶ Resource Conservation and Recovery Act (RCRA) (1976): Regulated hazardous waste disposal.
- ▶ Toxic Substance Control Act (1976): Created to clean up abandoned hazardous waste sites.
- ▶ Superfund (CERCLA) (1980): Created to clean up abandoned hazardous waste sites.

# Chemical laws passed in 1980s

- ▶ Emergency Planning and Community Right-to-Know Act (1986): Required industry reporting on hazardous substances. A part of the Superfund Amendments and Reauthorization Act (SARA Title III).
- ▶ Clean Air Act Amendments (1990): Addressed acid rain, urban air pollution, and ozone depletion. Included the Risk Management Program legislation (CAA Section 112r).
- ▶ Essentially, RMP was an extension of EPCRA regulations.

## IN THE US TODAY MANY OTHER PROGRAMS

- ▶ EPCRA – Emergency Planning & Community Right to Know
- ▶ DOT HAZMAT Transportation:
  - ▶ PHMSA - Placards/Routes/ERG
  - ▶ State Route Designation
- ▶ CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
- ▶ CAA 112r – Clean Air Act’s Risk Management Planning (RMP)
- ▶ Americans with Disabilities Act & Civil Rights
- ▶ Department of Homeland Security CFATS Program
- ▶ ATF; Chemical Safety Board; OSHA

# State Implementation of SERCs and LEPCs

- ▶ State implementation (SERC) was inconsistent; states adopted EPCRA through a variety of agencies, including law enforcement, fire service, health dept, civil defense, public safety.
- ▶ Unfunded mandate was not popular with state and local government; about half of SERCs implemented Tier 2 fees to fund operations
- ▶ A large majority of LEPCs nationwide were inactive, particularly in less populated jurisdictions, LEPCs were staffed (often a staff of 1) by civil defense personnel who were retired military and/or ham radio operators; there were very few “emergency management” offices
- ▶ Almost no LEPCs acquired funding of any type

# HazMat not regulated by EPCRA

- ▶ HazWaste
- ▶ Explosives
- ▶ Nuclear/Radiation
- ▶ Materials under transit; pipeline, highway, railway, etc
- ▶ Military weapons, etc
- ▶ OSHA exempts State and local facilities from the HAZ Comm Standard; states may still require these facilities to report

# Chemicals exempted from EPCRA include:

- ▶ RCRA hazardous wastes
- ▶ CERCLA substances being cleaned up
- ▶ Tobacco or tobacco products
- ▶ Wood or wood products
- ▶ Articles
- ▶ Food or alcoholic beverages
- ▶ Any drug already manufactured and covered by FDA
- ▶ Cosmetics packaged for sale
- ▶ Any consumer product
- ▶ Nuisance particulates
- ▶ Ionizing and nonionizing radiation
- ▶ Biological hazards.

# Chemicals exempted from Section 311 and 312 reporting:

- ▶ Any food, food additive, color additive, drug, or cosmetic regulated by the FDA
- ▶ Any substance present as a solid in any manufactured item to the extent exposure to the sub-stance does not occur under normal conditions of use
- ▶ 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;
- ▶ Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual
- ▶ Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.
- ▶ OSHA exempts State and local facilities from the HAZ Comm Standard; States may still require these facilities to report

# Chemical regulations affecting EPCRA post-1980s

- ▶ Clean Air Act Amendments – 1996 – included Risk Management Program elements
- ▶ Chemical Safety Board created – 1998 – modeled after National Transportation Safety Board
- ▶ Retail Gas Station Thresholds – 1999 - effectively removed nearly all convenience stores retailing gasoline from Tier 2 reporting; important note – this revision did not exempt marinas or any airports retailing fuels
- ▶ Department of Homeland Security (DHS) - 2002, included Chemical Facility Anti-Terrorism Standards
- ▶ Clean Water Act Amendments – 2018 – extended EPCRA release notification requirements to clean water facilities

# EPCRA Post-911 and Post-COVID

- ▶ Many, many changes to how SERCs and LEPCs functionally operate and to their community responsibilities; “chemical release planning” has become one facet of SERC and LEPC concerns; however, no “legal” or “legislative” initiatives directed these changes
- ▶ Civil Defense was replaced by Emergency Management; emergency management directors and staff became career rather than volunteer
- ▶ LEPCs evolved from “Chemical Planning” into “All-Hazard”
- ▶ Many SERCs have partnered with PHMSA and DHS to fund response and planning activities for “all-hazards”, including chemicals, severe weather, wildfires, terrorism, active shooter, pandemic/epidemic, etc.

# What does NASTTPO do?

- ▶ Initiated in 1988 to coordinate EPCRA between states
- ▶ Allowed states to influence and comment on EPCRA revisions and interpretations
- ▶ NASTTPO has advocated for decades on EPCRA issues such as
  - ▶ All hazards LEPCs
  - ▶ Coordination of efforts by federal government agencies
  - ▶ Regulatory consistency and data sharing by federal agencies
  - ▶ More complete guidance from EPA and other regulatory agencies
  - ▶ Better understanding of limitations on LEPCs and their resources
- ▶ Overall goal of NASTTPO is to help SERCs, LEPCs and TERCs effectively and efficiently implement EPCRA provisions as well as emergency planning and response operations

# Current EPCRA Legislation

- ▶ Steve Phillips
- ▶ SERC Executive Director
- ▶ Delaware Emergency Management Agency