

# The Dell Group, Inc.

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## Complying With....

### **The Emergency Planning and Community Right-to-Know Act (EPCRA)**

**Also known as Superfund Act Reauthorization and Amendments  
(SARA Title III)**

In 1980, The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "SUPERFUND") was passed. Among other things, it authorized funds to clean up areas that were ecologically devastated as a result of hazardous waste dumping, spills and general environmental neglect.

It doesn't take a major disaster like Bhopal or The Love Canal to put your company in the news. Your neighbors do not expect your business to make a living at the expense of public health or the environment. A breach of that public trust, however slight, can do irreparable harm to your company's reputation in the community. How would you respond to the Fire Chief, or a reporter, after a spill, explosion or fire, when asked why you didn't file these required reports?

If those aren't reason enough to comply, then consider that NOT FILING THESE REPORTS CAN RESULT IN FINES OF \$25,000 PER DAY AND/OR JAIL TERMS.

The following pages give a general explanation of the various reporting requirements of this law. Keep in mind that many of the chemicals on the "toxic" and "extremely hazardous" lists are common substances found in many workplaces. Some of these reports represent an ongoing annual requirement to file each year. It will benefit you to simplify compliance by doing it right the first time.

#### Sections 301-303 Emergency Planning and Extremely Hazardous Chemicals

SARA Title III requires emergency planning for over 360 "extremely hazardous substances" when they are present at "threshold planning quantities." The list of substances, originally designated by Congress, may be expanded by EPA. The threshold quantities are set by EPA.

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Facilities that handle any of the substances over the threshold amounts had to inform state and local officials by May 17, 1987; they also must participate in preparation of community contingency plans for hazardous materials accidents. By September 17, 1987, facilities must tell the local committee the name of a designated "facility emergency coordinator" who will work with the local committee in developing emergency plans. These plans must be complete by October 17, 1988.

### Penalties

If a facility is required to give notice of its extremely hazardous chemicals but fails to do so, EPA can order the facility to comply and to make the report. Violation of the EPA order can carry a penalty of up to \$25,000 per day. Subsequent offenses can be punished at \$75,000 per day. EPA could even bring a criminal case if there was proof that the facility owner acted "knowingly and willfully."

### SARA, Section 304 and CERCLA Section 103

Section 304 of SARA Title III and section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires emergency notification of leaks, spills and other releases of specified chemicals into the environment. Under CERCLA, those in charge of a facility, including transporters, must report to the National Response Center (NRC) any spill or release of a specified "hazardous substance" in an amount equal to or greater than the reportable quantity (RQ) specified by EPA.

The regulations promulgated by EPA under section 304 of Title III significantly expand the CERCLA notification requirement. Reporting is mandatory for releases of any chemical on the CERCLA list of hazardous substances, or on the Title III list of "extremely hazardous substances." In addition, Title III requires that releases be reported immediately to the appropriate state commission and local committee (established under section 301 of Title III), as well as to the National Response Center.

### Inventories, Quantities, and Locations

Section 311 of Title III requires facilities that must prepare or have available an MSDS for a "hazardous chemical" under the Occupational Safety and Health Act to submit a list of hazardous chemicals to the state, county and city agencies.

The reporting is limited by thresholds. EPA has established an initial threshold of 10,000 pounds for hazardous chemicals, and 500 pounds (or 55 gallons) or the threshold planning quantity (TPQ), whichever is lower, for substances on the extremely hazardous substances list.

Under Section 312, the facility must provide information annually on the quantity, container type and location of these hazardous chemicals at the facility, identifying categories of physical and health hazards. Ohio has combined sections 302, 311 & 312

reports onto one set of forms including facility identifier, chemical inventory and fee worksheets. Coded facility maps must also accompany the filing.

### Section 313 - Toxic Release Inventory

This section applies to manufacturers (SIC codes 20 through 39) with 10 or more full-time employees that "manufacture, process, or otherwise use" toxic chemicals. Toxic chemicals are identified on a special list of 366 substances. This section requires submission of a Form R for each such chemical by July 1, when the facility's through-put for the prior calendar year exceeds thresholds. Currently the thresholds are 10,000 pounds of "use", and 25,000 pounds of manufacturing or processing of a listed chemical.

The T.R.I. reports normal permitted emissions, as well as accidental or unplanned releases, and waste generation. The Form R shows the annual estimated amount released to a body of water, incinerator, landfill or to the atmosphere. The estimation process must follow approved methods or specific guidelines issued for some industries. Frequently the task requires complex mass balance calculations that take into account the weight of raw materials purchased, efficiency of various processes and actual measurements of releases, when possible.

### Access to Information

SARA Title III gives the public and selected professionals new rights to information on hazardous chemicals. Firefighters can review material safety data sheets, doctors may request trade secret information, and members of the local community may study chemical inventory forms.

Emergency response plans, materials safety data sheets and lists, inventory forms, toxic chemical release forms and follow-up emergency notices are available to the general public under Title III. The law requires state commissions, local committees or the Environmental Protection Agency to set up locations for public review of the information. Facilities may request the state commission and local committee to withhold from disclosure the specific location of a chemical in the facility. Local committees must publish an annual newspaper notice announcing the availability of the material.

### Civil and Criminal Penalties

SARA Title III authorizes relatively severe civil and criminal penalties for violations of the law or the regulations. In addition, section 326 of Title III authorizes citizen suits against facilities that fail to comply with the notification and reporting requirements.

## Creative Solutions' Compliance Procedures

1. Review all MSDS for ingredients to determine reportable chemicals
  - Under Section 302: Extremely Hazardous Substance Notification and facility identification
  - Under Section 304: Chemicals found on both the CERCLA List and the 302 E.H.S. List, reportable if spilled or released above triggering amounts.
  - Under Section 311: "Extremely hazardous substances" above threshold planning quantity or 500#. "Hazardous chemicals" are those for which you have an MSDS under OSHA. They are reportable above 10,000 pounds.
  - Under Section 312: Same requirements as Section 311
  - Under Section 313: Toxic chemical list, if at reporting quantity. (Manufacturers only)
2. Perform physical inventory to determine if all chemical products are represented in MSDS file. Provide list of products missing from the MSDS file, so you may request them from vendors.
3. Reject MSDS that are insufficient for lack of necessary data, such as ingredients and EPA hazard categories. Perform documentation of these efforts, if unsuccessful.
4. Determine whether to report all chemicals or just those over reportable quantities, based on cost effectiveness. Determine whether to file by product or by ingredient based on cost effectiveness.
5. Timely filing of required reports as necessary.
6. Develop procedure for reporting requirements for chemical leaks and spills for CERCLA and Section 302 Extremely Hazardous Chemicals. This will include reporting profile for all extremely hazardous chemicals.
7. If you manufacture or import chemical products:

MSDS Sheets - As of 1/1/89, EPA requires all MSDS that contain any Section 313 chemical must identify and given percentage of formula. This information may be in the form of an additional sheet attached to the MSDS or incorporated into the MSDS. Further future changes by EPA and present state laws require greater disclosure of information and result in most MSDS written prior to 1/1/89 in being obsolete.

8. If you are a manufacturer subject to Section 313, a number of steps are involved, towards the filing of a Form R (Toxic Release Inventory), for each listed substance. Data from MSDSheets, inventory records, and purchasing records is merged with instrumentation monitoring records, process control information, and hazardous waste generation data. Flow charts are developed to serve as a guide to the accompanying calculations and help verify the accuracy of the estimates developed for reporting purposes.

This summary is provided only as an initial awareness of some key intentions of the law. It is not a conclusive guide to the law and individual business circumstances will dictate variations for compliance.

FOR MORE INFORMATION, PLEASE CONTACT US @

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