

Material Safety Data Sheets:
One Possible Source of Information About Chemicals
Used in Hydraulic Fracturing

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Identifying chemicals used in the process of hydraulic fracturing of a gas well is a concern of many surface owners and people concerned with the environment generally. Drillers do not release this information. This leaves surface owners, adjacent landowners, and others fearful of the harmful environmental and health effects of the unknown chemicals.

According to the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986¹, “facilities” that use certain chemicals labeled “extremely hazardous” by the Environmental Protection Agency (EPA) and chemicals labeled “extremely hazardous substances” by the Occupational Safety and Health Administration (OSHA) must submit reports about the chemicals. The “facilities” must report their use and

¹ Emergency Planning and Community Right-To-Know, 42 U.S.C. 116 (1986).

storage of the chemicals to the State Emergency Response Commission (SERC) and the Local Emergency Planning Commission (LEPC) using annual data sheets (Tier I or II reports) and material safety data sheets (MSDS). The EPA explains that MSDS reports are: “A compilation of information required under the OSHA Communication Standard on the identity of hazardous chemicals, health, and physical hazards, exposure limits, and precautions. Section 311 of SARA requires facilities to submit MSDS reports under certain circumstances².” MSDS reports contain general information about the chemical, whereas the annual reports contain more detail.

The EPCRA federal code section has three subchapters:

1. Emergency Planning and Notification.³(See attachments 1-5)
2. Reporting Requirements.⁴(See attachments 6-8)
3. General Provisions.⁵(See attachments 9-15)

The EPCRA regulations contain four major provisions:

1. Emergency Planning – This section concerns the reporting of extremely hazardous chemicals.⁶ (See attachment 16)
2. Emergency Release Notification- This section concerns accidental releases of chemicals.⁷ (See attachment 16)
3. Community Right-to-Know Requirements – This section concerns MSDS reports and the annual inventory of chemicals.⁸ (See attachment 17)

² EPA, <http://www.epa.gov/OCEPAt/terms/mterms.html>

³ 42 U.S.C. §§ 11001 -11005 (1986).

⁴ 42 U.S.C. §§ 11021-11023.

⁵ 42 U.S.C. §§ 11041-11050.

⁶ 40 C.F.R. § 355 (1986).

⁷ 40 C.F.R. § 355.

4. Toxics Release Inventory. This section requires facilities to report the use of toxic chemical releases and waste management.⁹ (See attachment 18)

MSDS's are required for any facility that has an amount equal to or greater than the threshold planning quantity (TPQ) of certain chemicals in its possession. The EPA determines the TPQ.

There is a hierarchy of authority. The EPA and OSHA designed regulations to enforce EPCRA and each state is required to establish a State Emergency Response Commission (SERC). The SERC then splits the state into districts and establishes a Local Emergency Planning Commission (LEPC) for each district. Facilities must also give a MSDS report to a fire department with jurisdiction over the facility, in addition to the LEPC.

Although MSDS reports are generally available to the public at the SERC and the LEPC, there are exceptions. One exception is company trade secrets. If a "facility" claims that the chemicals are trade secrets, then it is still required to report the chemicals to the authorities listed above, but does not have to make their reports publicly available. Facilities claiming the exception do not have to report the specific chemical, but do have to "include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical."¹⁰

Facilities must meet certain requirements in order to be fall under the exception. There

⁸ 40 C.F.R. §§ 370.

⁹ 40 C.F.R. § 313.

¹⁰ 42 U.S.C § 11042.

are four requirements:¹¹

- (1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.
- (2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.
- (3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.
- (4) The chemical identity is not readily discoverable through reverse engineering.

To obtain a copy of a MSDS report and annual report (Tier II), contact your local LEPC. You must know the name of the drilling company. (See attachment 19).

If the LEPC does not comply with the request, contact the state SERC:

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1900 Kanawha Boulevard East

¹¹ 42 U.S.C. 11042.

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