

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY

CASE NOS. 24-5201, 24-5202, 24-5203 and 24-5204

**APPEALS OF SANTA FE COUNTY PLANNING COMMISSION ORDER APPROVING
RANCHO VIEJO SOLAR, LLC CONDITIONAL USE PERMIT (CUP)**

**ASHLEY C. SCHANNAUER (Case No. 24-5201), SAN MARCOS ASSOCIATION (Case
No. 24-5202), NEW MEXICANS FOR RESPONSIBLE RENEWABLE ENERGY (Case
No. 24-5203), CLEAN ENERGY COALITION FOR SANTA FE COUNTY, (Case No. 24-
5204), APPELLANTS**

**RANCHO VIEJO LIMITED PARTNERSHIP, RANCHO VIEJO SOLAR, LLC,
AES CLEAN ENERGY DEVELOPMENT, LLC, APPLICANTS**

MOTION REQUESTING BCC TO DEMAND CERTAIN INFORMATION
FROM THE APPLICANTS

This motion supports the motion filed today by Mr. A. Schannauer. On behalf of the RO New Mexicans for Responsible Renewable Energy, I submit this separate motion.

On October 17, 1986, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA). EPCRA established requirements for federal, state and local governments, Indian tribes and industrial facilities regarding emergency planning and “community right-to-know” reporting on hazardous and toxic chemicals.

Lithium-Ion batteries storages (BESS) are subject to the Emergency Planning and Community Right-to-Know act. (Exhibits 1,2 and 3). According to EPCRA regulations:

“Although these batteries are sealed, they have the potential to leak, spill, or break during normal conditions of use and in foreseeable emergencies, causing exposure to chemicals.”

Section 304 of EPCRA requires facilities to notify state, tribal and local authorities (i.e. their SERC (or TERC) and LEPC (or TEPC) of accidental chemical releases. Facilities are also required to submit a written follow-up report of these releases to these officials. Many states mandate that the written report to be submitted within 30 days.

These documents are public records and should be made available to the public, - not only to first responders.

In April 2022, there was a fire in an AES BESS facility, in Chandler, Arizona. Despite extensive efforts, I have been unable to locate any report or technical analysis explaining the cause of that fire. Since 2022, I have repeatedly asked AES for information. The standard response has been that the fire is “still under investigation.”

In November 2022, I contacted Arcangel Barragan, Emergency Response Unit Manager and Arizona SERC contact. He confirmed that lithium-ion batteries have their own EPA information sheet and that such facilities are required to comply with EPCRA reporting requirements. He further informed me that the AES Chandler facility had submitted an emergency release notification. He also disclosed that in both the Surprise and Chandler fires, the fire departments were not informed of the presence of a BESS—a clear violation of EPCRA. However, when I requested a copy of the emergency release notification, he declined to provide it.

Efforts to obtain this information through the Santa Fe Fire Department were equally fruitless. The department stated that it wished to remain “neutral.”

On June 24, 2024, I attempted to involve the New Mexico SERC in obtaining answers. I copied Arcangel Barragan, who then informed me that AES had completed a report but that it was not in his possession. Given his earlier confirmation that AES submitted an emergency response notification, there should now be at least two reports available to the public, including the 30-day follow-up report. Yet, the SERC declined to pursue these reports.

The public has a right to know the contents of these reports. That is the intent of the federal law, aptly named the “Community Right-to-Know Act.” You, as County Officials, also have a stake in this. You must determine whether this project poses risks to the health, safety, and general welfare of the area or creates a potential hazard for fire, panic, or other dangers. Information about prior incidents is crucial for identifying risk factors in future installations and management.

The Applicants have shown a lack of transparency, redacted documents containing vital, dangerous information, and forced the public to seek court intervention for access to records that should be disclosed voluntarily. Therefore, I respectfully ask the BCC to issue an order requiring AES to disclose all information surrounding the events and circumstances that led to the Chandler fire and to include these disclosures in the Applicants’ filings due on July 21, 2025.

SELF AFFIRMATION

I, Selma Eikelenboom-Schieveld MD, PhD, president of the RO New Mexicans for Responsible Renewable Energy, upon penalty of perjury under the laws of the State of New Mexico, affirm and state that the facts in the foregoing Motion are true and correct based on my personal knowledge and belief.

DATED: July __7__, 2025



Dr. Selma Eikelenboom-Schieveld MD PhD
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion to the following by email on this date:

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Warren Thompson
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Lee Zlotoff
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Search EPA.gov

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

CONTACT US <<https://epa.gov/epcra/forms/contact-us-about-emergency-planning-and-community-right-know-act-epcra>>

Lithium - Ion Batteries and EPCRA 311-312 Reporting Requirements



When are lithium - ion batteries subject to the EPCRA Sections 311 and 312 Hazardous Chemical Inventory Reporting requirements?

The reporting requirements of EPCRA sections 311 and 312, *Hazardous Chemical Inventory Reporting*, [40 CFR part 370 [↗](https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-370) <<https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-370>> apply to owners and operators of facilities that are required to prepare or have a Safety Data Sheet (SDS) [formerly known as Material Safety Data Sheet (MSDS)] for any hazardous chemical as defined under the Occupational Safety and Health Administration's (OSHA) Hazardous Communication Standards (HCS) [29 CFR 1910.1200(c) [↗](https://www.osha.gov/laws-) <

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

CONTACT US <https://epa.gov/epcra/forms/contact-us-about-emergency-planning-and-community-right-know-act-epcra>

Hazardous Chemical Inventory Reporting

Emergency Planning and Community Right-to-Know Act Sections 311–312

For any hazardous chemical used or stored in the workplace, facilities must maintain a safety data sheet (SDS) (formerly known as material safety data sheet, MSDS). Facilities must submit the safety data sheet (SDS) or a list of hazardous chemicals to their State or Tribal Emergency Response Commission (SERC or TERC), Local or Tribal Emergency Planning Committee (LEPC or TEPC), and local fire department.

Facilities must also submit an annual inventory of these chemicals by March 1 of each year to their State or Tribal Emergency Response Commission (SERC or TERC), Local or Tribal Emergency Planning Committee (LEPC or TEPC), and local fire department. The information submitted by facilities must be made available to the public.

- What facilities are covered?
- What is a hazardous chemical?
- What are facilities required to do?
- How do I submit a Tier I or Tier II Inventory Report?
- Where can I find more information on these requirements?



What facilities are covered?

Any facility that is required to maintain SDSs under the Occupational Safety and Health Administration (OSHA) regulations for hazardous chemicals stored or used in the workplace.

Facilities with chemicals in quantities that equal or exceed the following thresholds must report:

- For Extremely Hazardous Substances (EHSs) (40 CFR part 355 Appendix A [↗](https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-355#appendix-a-to-part-355) [<https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-355#appendix-a-to-part-355>](https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-355#appendix-a-to-part-355) and Appendix B [↗](https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-355#appendix-b-to-part-355) [<https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-355#appendix-b-to-part-355>](https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-355#appendix-b-to-part-355)), either 500 pounds or the Threshold Planning Quantity (TPQ), whichever is lower.
- For gasoline (all grades combined) at a retail gas station, the threshold level is 75,000 gallons (or approximately 283,900 liters), if the tank(s) was stored entirely underground and was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements at 40 CFR part 280 or requirements of the State UST program approved by the Agency under 40 CFR part 281.
- For diesel fuel (all grades combined) at a retail gas station, the threshold level is 100,000 gallons (or approximately 378,500 liters), if the tank(s) was stored entirely underground and the tank(s) was in compliance at all times during the preceding calendar year with all applicable UST requirements at 40 CFR part 280 or requirements of the State UST program approved by the Agency under 40 CFR part 281.
- For all other hazardous chemicals: 10,000 pounds.

What is a hazardous chemical?

Hazardous chemicals are substances for which a facility must maintain a SDS under the OSHA (Occupational Safety and Health Administration) Hazard Communication Standard [↗](https://www.osha.gov/dsg/hazcom/standards.html) [<https://www.osha.gov/dsg/hazcom/standards.html>](https://www.osha.gov/dsg/hazcom/standards.html), which lists the criteria used to identify a hazardous chemical. SDSs are detailed information sheets that provide data on health hazards and physical hazards of chemicals along with associated protective measures. Over 500,000 products have SDSs which are normally obtained from the chemical manufacturer.

What are facilities required to do?

- Under Section 311 of the Emergency Planning and Community Right-to-Know Act (EPCRA), facilities must submit the SDSs of hazardous chemicals present on-site at or above the reporting threshold to their State or Tribal Emergency Response Commission (SERC or TERC), Local or Tribal Emergency Planning Committee (LEPC or TEPC), and local fire department. Facilities may choose to submit a list of the hazardous chemicals grouped into hazard categories instead. This is a one-time submittal. New facilities have three months after becoming subject to the OSHA regulations to submit their SDSs or the list of the hazardous chemicals to their State or Tribal Emergency Response Commission (SERC or TERC), Local or Tribal Emergency Planning Committee (LEPC or TEPC), and the fire department.
- Facilities that need to submit SDSs or the list of hazardous chemicals under Section 311, also need to submit an annual inventory report for the same chemicals (EPCRA (Emergency Planning and Community Right-to-Know Act) Section 312). This inventory report must be submitted to the State or Tribal Emergency Response Commission (SERC or TERC), Local or Tribal Emergency Planning Committee (LEPC or TEPC), and the local fire department by March 1 of each year.

Please check with your state, tribe, or territory <<https://epa.gov/epcra/state-tier-ii-reporting-requirements-and-procedures>> for any additional reporting requirements.

How do I submit a Tier I or Tier II Inventory Report?

Facilities covered by these requirements must submit an emergency and hazardous chemical inventory form to their State or Tribal Emergency Response Commission (SERC or TERC), Local or Tribal Emergency Planning Committee (LEPC or TEPC), and the local fire department annually. Facilities provide either a Tier I or Tier II form. Most States require the Tier II form. Tier II forms require basic facility identification information, employee contact information for both emergencies and non-emergencies, information about chemicals stored or used at the facility, and additional data elements which would be useful to local planners and responders.

The following is a list of some of the information required on the inventory form:

- The chemical name or the common name as indicated on the SDS
- An estimate of the maximum amount of the chemical present at any time during the preceding calendar year and the average daily amount
- A brief description of the manner of storage of the chemical
- The location of the chemical at the facility

- An indication of whether the owner of the facility elects to withhold location information from disclosure to the public

Tier I Forms and Instructions <<https://epa.gov/epcra/tier-i-forms-and-instructions>>

Tier II Forms and Instructions <<https://epa.gov/epcra/tier-ii-forms-and-instructions>>

Tier II Reporting Requirements by State <<https://epa.gov/epcra/state-tier-ii-reporting-requirements-and-procedures>> and Tier2 Submit Software <<https://epa.gov/epcra/tier2-submit-software>>

Where can I find more information on these requirements?

For more information, see 40 CFR part 370 [🔗](https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-370) <<https://www.ecfr.gov/current/title-40/chapter-i/subchapter-j/part-370>> and EPCRA Amendments <<https://epa.gov/epcra/emergency-planning-and-community-right-know-act-non-section-313-regulations-and-amendments>> and EPCRA Guidance Documents and Fact Sheets <<https://epa.gov/epcra/epcra-guidance-documents-and-fact-sheets>>.

[EPCRA Home](https://epa.gov/epcra) <<https://epa.gov/epcra>>

[About EPCRA](https://epa.gov/epcra/what-epcra) <<https://epa.gov/epcra/what-epcra>>

[Emergency Planning](https://epa.gov/epcra/emergency-planning) <<https://epa.gov/epcra/emergency-planning>>

[Emergency Release Notifications](https://epa.gov/epcra/emergency-release-notifications) <<https://epa.gov/epcra/emergency-release-notifications>>

Hazardous Chemical Inventory Reporting

[State Reporting Requirements](https://epa.gov/epcra/state-tier-ii-reporting-requirements-and-procedures) <<https://epa.gov/epcra/state-tier-ii-reporting-requirements-and-procedures>>

[Tier II Forms](https://epa.gov/epcra/tier-ii-forms-and-instructions) <<https://epa.gov/epcra/tier-ii-forms-and-instructions>>

[Tier2 Submit Software](https://epa.gov/epcra/tier2-submit-software) <<https://epa.gov/epcra/tier2-submit-software>>

[EPCRA Trade Secrets](https://epa.gov/epcra/epcra-trade-secret-forms-and-instructions) <<https://epa.gov/epcra/epcra-trade-secret-forms-and-instructions>>

[EPCRA Site Map](https://epa.gov/epcra/epcra-site-map) <<https://epa.gov/epcra/epcra-site-map>>

[Contact Us](https://epa.gov/epcra/forms/contact-us-about-emergency-planning-and-community-right-know-act-epcra) <<https://epa.gov/epcra/forms/contact-us-about-emergency-planning-and-community-right-know-act-epcra>> to ask a question, provide feedback, or report a problem.

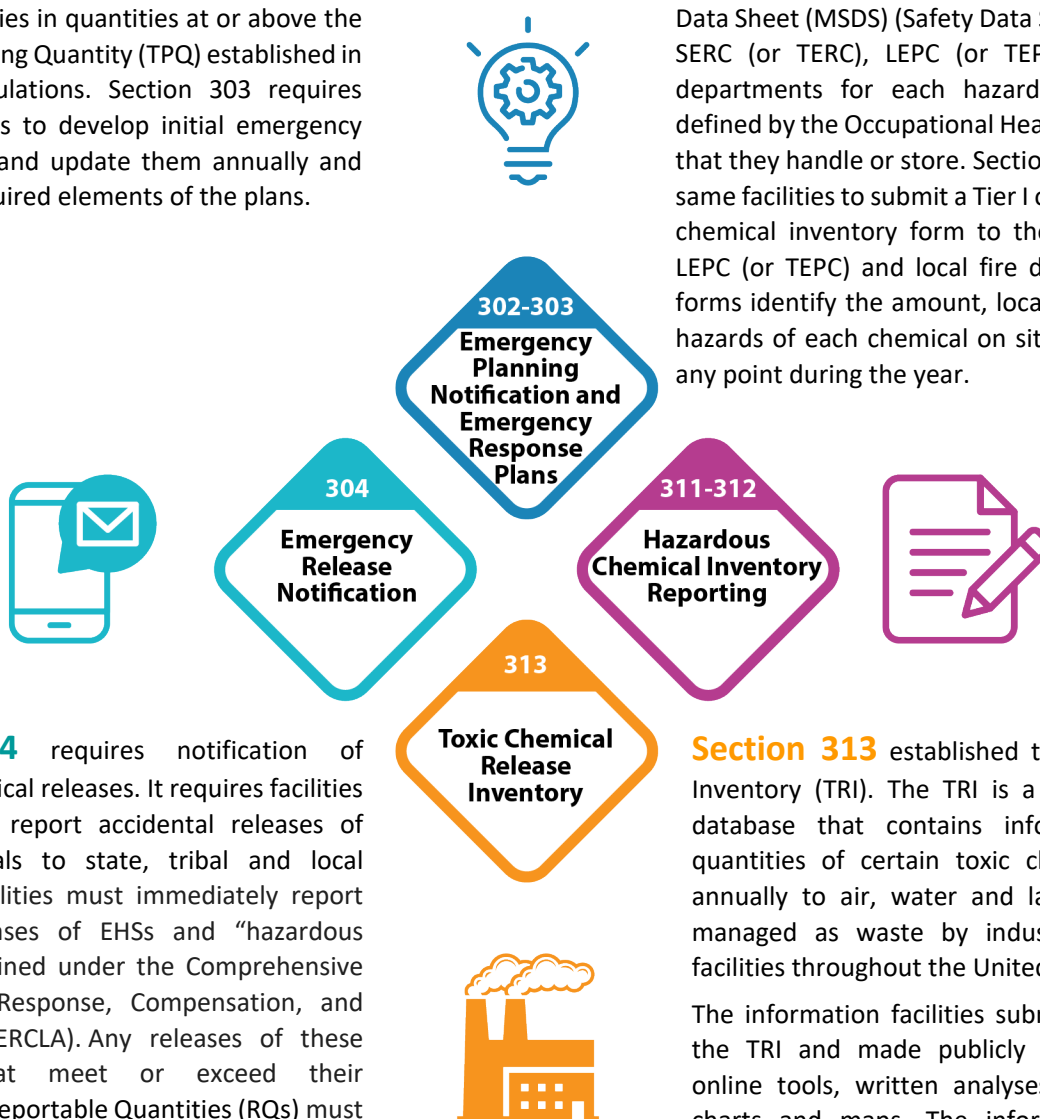
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Emergency Planning and Community Right-to-Know Act

The goal of the 1986 [Emergency Planning and Community Right-to-Know Act \(EPCRA\)](#) is to prepare communities for and protect communities from chemical accidents. To ensure these goals are achieved, Section 301 of EPCRA required the creation of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Tribal Emergency Planning Committees (TEPCs), and Local Emergency Planning Committees (LEPCs). These groups share responsibility for developing and implementing emergency response plans and providing residents with information on the presence and releases of hazardous chemicals reported by facilities in each community. EPCRA has four major focus areas:

Sections 302 to 303 focus on emergency planning. Section 302 requires notification when Extremely Hazardous Substances (EHSs) are present at facilities in quantities at or above the Threshold Planning Quantity (TPQ) established in the EPCRA regulations. Section 303 requires LEPCs and TEPCs to develop initial emergency response plans and update them annually and outlines the required elements of the plans.

Sections 311 and 312 focus on hazardous chemical storage reporting requirements. Section 311 requires facilities to submit a Material Safety Data Sheet (MSDS) (Safety Data Sheet (SDS)) to the SERC (or TERC), LEPC (or TEPC) and local fire departments for each hazardous chemical (as defined by the Occupational Health and Safety Act) that they handle or store. Section 312 requires the same facilities to submit a Tier I or Tier II hazardous chemical inventory form to the SERC (or TERC), LEPC (or TEPC) and local fire department. These forms identify the amount, location and potential hazards of each chemical on site at the facility at any point during the year.



Section 304 requires notification of accidental chemical releases. It requires facilities to immediately report accidental releases of certain chemicals to state, tribal and local authorities. Facilities must immediately report accidental releases of EHSs and “hazardous substances” defined under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Any releases of these substances that meet or exceed their corresponding Reportable Quantities (RQs) must be reported to their SERC (or TERC) and LEPC (or TEPC). Facilities are also required to submit a written follow-up report of these releases to these officials.

Section 313 established the Toxics Release Inventory (TRI). The TRI is a publicly available database that contains information on the quantities of certain toxic chemicals released annually to air, water and land, or otherwise managed as waste by industrial and federal facilities throughout the United States.

The information facilities submit is compiled in the TRI and made publicly available through online tools, written analyses, and interactive charts and maps. The information is always available and always free, and helps support informed decision-making by communities, government agencies, companies, and others.