



May 15, 2017

Via Electronic Submittal to <http://www.regulations.gov>

Sarah Rees, Director, Office of Regulatory Policy and Management
Office of Policy
Mail Code 1803A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Docket ID Number EPA-HQ-OA-2017-0190

The Environmental, Health & Safety Communications Panel response to the Environmental Protection Agency's request for 'input on regulations that may be appropriate for repeal, replacement, or modification.'

- 1. Standardization and simplification across all EPA regulations: Electronic vs paper records*
- 2. National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (40 CFR, Part 63, Subpart ZZZZ)*
- 3. Refrigerant Management Rule (40 CFR, Part 82, Section 608): Repeal current ruling regarding loss rates, and relief for comfort cooling*
- 4. Spill Prevention, Control and Countermeasure Plans (40 CFR, Part 112): Inspection and portable container modification*
- 5. Hazardous Waste Rule (40 CFR, Part 262): Modification of generator improvement rule*
- 6. Underground Storage Tanks (40 CFR, Part 280): Emergency Generator UST rule modification*
- 7. Emergency Planning and Notification (40 CFR, Part 355) and Hazardous Chemical Reporting (40 CFR, Part 370): Various modification requests*

To Whom It May Concern:

The Environmental Health & Safety Communications Panel (EHSCP or "we")¹ is pleased to participate in EPA's *Evaluation of Existing Regulations* initiative and provide comments in response to Presidential Executive Order 13777, and the Environmental Protection Agency's ("EPA" or "Agency") request for 'input on regulations that may be appropriate for repeal, replacement, or modification,' as published on April 13, 2017 (82 Fed. Reg. 17793); comments must be received by EPA on or before May 15, 2017.

President Trump issued Executive Order 13777 on February 24, 2017, in order to lower regulatory burdens by implementing and enforcing regulatory reform. Executive Order 13777 calls on each agency to create a Regulatory Reform Task Force to evaluate existing regulations and make recommendations

¹The EHSCP member companies include Alcatel-Lucent, AT&T, Bell, CenturyLink, Comcast, Crown Castle, Cincinnati Bell, Ericsson, Leducor Technical Services, Level 3 Communications, Shenandoah Telecommunications, Sprint, T-Mobile, Verizon, and Windstream Communications.

regarding their repeal, replacement, or modification consistent with applicable law. Each Task Force, through seeking input from entities affected by federal regulations, shall attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) are inconsistent with the requirements of Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision; in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

The EHSCP is a consortium of communications environmental, health, and safety (EH&S) professionals dedicated to promoting employee safety and health, and environmental responsibility throughout the communications industry. The EHSCP strives to provide constructive input to the development and implementation of environmental, health, and safety standards and guidelines that affect the varied businesses within the communications industry. As such, the panel maintains an active advocacy role, providing comments and recommendations to federal and state agencies where issues concern the communications industry.

As EH&S professionals, the EHSCP recognizes the environmental improvements gained over past decades due to the implementation and enforcement of EPA's regulatory programs and we are not advocating reducing environmental protections. However, we do think that there are opportunities to remove duplicative requirements, update requirements to allow for use of widely available recordkeeping technologies that enhance the ability of the regulated community to comply and improve data management and access to information for agencies, first responders and other interested parties. We are not suggesting the removal of requirements simply because of compliance challenges, but because there are better ways to achieve comparable results without loss of environmental benefit.

The EHSCP views both Executive Order 13777 and the Regulatory Reform Task Force as valuable tools in creating and maintaining effective and efficient federal regulatory programs, and hopes that this represents a long-term commitment by the Agency to ensure that its regulations are appropriate and up-to-date.

Apart from expressing our general support for this review, we urge EPA to consider the following opportunities to streamline requirements and provide less burdensome, more flexible approaches to

compliance. Attachments to this response, identified below, are provided to allow the appropriate EPA Office for each regulatory program to easily extract EHSCP's comments specific to the scope of their authority.

On behalf of the EHSCP member companies, thank you again for undertaking this important regulatory review initiative. EHSCP appreciates EPA's efforts to identify regulations for repeal, replacement, or modification and the opportunity to provide comments. We would be happy to work with EPA as you further identify and prioritize the regulations for action under the Regulatory Reform Agenda. Please contact me if you need additional information or would like to discuss our comments further.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian K. Stolte". The signature is fluid and cursive, with a large initial "B" and "S".

Brian Stolte
Nokia
Chair, Environmental, Health & Safety Communications Panel
Tel: (972) 447-8562

Attachments (7)

Attachment 1

STANDARDIZATION AND SIMPLIFICATION ACROSS ALL EPA REGULATIONS

I. EPA should clarify requirements to maintain records on-site, so as to allow alternatives to paper copies.

Many EPA rules regarding recordkeeping could be read to require maintaining paper copies of records at the facility that the records concern. The EHSCP requests that EPA clarify, through either interpretive guidance or rulemaking, that such recordkeeping requirements may be satisfied by any method that makes the records readily available at the facility, including by accessing electronic documents stored remotely, receiving a fax, or otherwise, for the reasons summarized below.

Recordkeeping requirements that raise this issue include, for example, the requirement that each “generator” of hazardous waste “must keep a copy of each manifest signed [by the generator] or until he receives a signed copy from the designated facility which received the waste”. (40 CFR 262.40.) The references to “signed” copies could be read to imply paper copies. Because “generator” is defined in part as “any person, *by site*, whose act or process produces hazardous waste” (40 CFR 260.10; emphasis added), these provisions could be read to require keeping hard copies of such documents at the waste-generating facility.

Similarly, the federal rules regarding Spill Prevention, Control and Countermeasures (“SPCC”) state that the owner or operator of a facility who is required to prepare an SPCC plan (“Plan”) must “(1) Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or at the nearest field office if the facility is not so attended, and (2) Have the Plan available to the Regional Administrator for on-site review during normal working hours.” Although the phrase “copy of the Plan” does not necessarily mean a hard copy, as opposed to an easily-accessible electronic copy with similar functionality, the rule could be read that way.

Today’s technology offers many options for how records can be created, maintained, retrieved, and transmitted. Unlike when many EPA regulations were originally adopted, today records can easily be accessed electronically or sent by facsimile when quick access is needed. Many companies have implemented processes for centralized recordkeeping, in order to more easily manage required records, improve access to them, and better ensure that only the latest, correct version is accessed by the facility. Indeed, the EPA has recognized the advantages of allowing for centralized record maintenance under other rules promulgated under the authority of the Clean Air Act (CAA) such as the final NESHAP for Reciprocating Internal Combustion Engines Rule; Rule; the Clean Water Act, National Pollution Discharge Elimination System; reporting under the Toxic Substance Control Act; and the Federal Insecticide, Fungicide, and Rodenticide Act.¹

¹75 FR 9648 - 9690 (March 3, 2010), 80 FR 64063 (December 21, 2015), 78 FR 72818 (December 4, 2013), <https://www.epa.gov/compliance/pesticide-establishment-registration-and-reporting>

Consistent with the above, many inspectors are satisfied if, upon performing a site inspection and seeking to review records, the facility can promptly produce the records requested by printing out a copy available from a central database, receiving a copy by fax, or showing an image of the document on a screen.

However, some inspectors reportedly want to see a paper copy already maintained at the facility. Such a requirement would preclude the advantages of efficiency and accuracy described above for centralized electronic recordkeeping. Such requirements can be especially burdensome for communication companies that have hundreds of unmanned and often remote facilities supporting critical communications infrastructure. In addition to being unmanned, these remote facilities are often small and lack space for onsite storage. Keeping an accurate, up-to-date set of paper records onsite is especially difficult for such facilities, but they could easily access records stored remotely.

Centralized management of required documentation allows companies to use current technology to better manage compliance requirements without diminishing the environmental benefit of the applicable rules. Onsite maintenance is no longer necessary to ensure that documents can be made available to EPA promptly. Today's technology can provide EPA and company personnel on-site with the same access and functionality as paper records, and in some cases better.

The EHSCP therefore requests that EPA clarify, through either interpretive guidance or rulemaking, that such recordkeeping requirements may be satisfied by any method that makes the records readily available at the facility. This might be accomplished by interpretative guidance with language such as the following:

“A number of EPA regulations include documentation or recordkeeping requirements that specify where the record or other document must be kept, such as at the physical facility to which the document relates. These include, for example, requirements to keep a copy of a permit, response plan, operating record, or shipping record. Unless the regulation in effect expressly mandates that such a record must be kept at the location in paper form, EPA interprets all such requirements to be satisfied by any method that makes the record accessible at the facility in a form and within a time that reasonably serves the purpose of the relevant requirement. That may include, for example and not by way of limitation, methods by which someone at the facility can promptly view an image of the document through the internet or a private intranet, print a copy of such document, and/or obtain a hard copy via facsimile (fax). EPA encourages states implementing federally delegated or authorized programs to do the same.”

Attachment 2

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR STATIONARY RECIPROCATING INTERNAL COMBUSTION ENGINES (40 CFR, PART 63, SUBPART ZZZZ).

I. EPA should clarify that exceeding the annual runtime limit for an emergency stationary RICE causes a temporary rather than permanent change in its regulatory status.

When revised in 2013, 40 CFR 63 § 63.6640(f) was adopted by the EPA with unreasonably strict rules for operators of emergency stationary reciprocating internal combustion engines (“RICE”) (as defined by 40 CFR 63 § 63.6675). These rules hinder job creation by adding unnecessary costs to businesses, which are then passed on to the consumers of the affected industries and may result in resources that could be allocated for business expansion to be allocated toward the unnecessary replacement of good, functional equipment. These rules increase costs that exceed benefits, and are unnecessary and ineffective. In some cases, these rules discourage the deployment of emergency generators in remote areas.

In general, the Agency has taken a reasonable approach to air emission regulations for emergency RICE. By allowing unrestricted use for emergency situations and allowing 100 hours for maintenance and exercise, the Agency gives the regulated community discretion to balance these uses as emergencies, local environmental runtime restrictions, and as operational needs change.

However, when the EPA finalized the following statement in 40 CFR 63 § 63.6640(f), it appears that it inadvertently created a situation that does not allow for equipment failures, acts of God (*e.g.*, the effects of weather, earthquakes, etc.), or other un-controllable circumstances that could create a situation in which an emergency RICE would accidentally operate beyond 100 hours in a year.

“If you do not operate the engine according to the requirements in paragraphs (f)(1) through (4) of this section, the engine will not be considered an emergency engine under this subpart and must meet all requirements for non-emergency engines.”

The above language does not on its face specify that the resulting loss of “emergency engine” status would be permanent. However, the language could be interpreted that way by EPA, and it is the impression of EHSCP member companies that EPA has in fact done so.

It is unnecessary and inappropriate to codify a one-size-fits-all approach for engines that exceed calendar year limitations on non-emergency operations, and doing so has led to unnecessarily harsh consequences with no or little corresponding environmental benefit. This rigid approach may cause a company, in order to preclude a change in status of the engine, to take the engine off-line for the remainder of the year or fail to perform standard exercising of the engine, either of which could result in no backup power being available in the event of an emergency.

In 2012, EHSCP voiced its members' concerns about the effects of this rule on emergency generators, especially those located at remote, unmanned locations (response to Docket ID No. EPA-HQ-OAR-2008-0708). Transfer between commercial power and generator power at many of these locations is done by means of automatic controls. Experience has demonstrated that even the best automatic controls can malfunction, causing a generator to inadvertently start or to fail to shut down on command. In addition, access to a location can be prevented by earthquake, flood, snow, volcanic activity, or extreme weather conditions, making it temporarily unsafe or impossible to reach a site. Therefore, were such equipment failure could occur and go undetected or uncorrected several days, and the unit could exceed the 100 hour annual runtime limit before personnel could be dispatched to transfer back to commercial power and shut down the generator. EHSCP believes inadvertent failure of transfer circuitry and/or act of God should have no bearing on the regulatory status of a generator, and certainly should not cause a permanent change in its status.

If the rule is interpreted to cause a permanent change in status, then the owner/operator of an engine that inadvertently exceeded 100 hours of non-emergency operation has only two alternatives: either comply with the more stringent standards for non-emergency units or replace the generator with a new one. Standards for non-emergency engines are considerably more stringent, being designed for engines that may run 24 x 7 x 365, as opposed to infrequent short duration runs of emergency engines. As discussed in our June 3, 2009, comments to the same docket, it is unfeasible to apply these numerical standards to emergency engines. In addition, operation as a non-emergency engine may not be possible for a new NSPS-regulated CI emergency engine that is permanently labeled for stationary emergency use only. (See 40 CFR 60.4210(f).) Therefore, under the "permanent change" interpretation, even a single inadvertent exceedance of the runtime limit could in effect force removal of the emergency generator. That result would be economically hugely wasteful, with little justification in terms of environmental benefit.

EHSCP therefore suggests amending 40 CFR 63 § 63.6640(f) as follows (text to remove is ~~stricken~~; additional text is **bold and underscored**):

*“(f) If you own or operate an emergency stationary RICE, you must operate the emergency stationary RICE according to the requirements in paragraphs (f)(1) through (4) of this section. In order for the engine to be considered an emergency stationary RICE under this subpart, any operation other than emergency operation, maintenance and testing, emergency demand response, and operation in non-emergency situations for 50 hours per year, as described in paragraphs (f)(1) through (4) of this section, is prohibited. ~~If~~ **During any period when** you do not operate the engine according to the requirements in paragraphs (f)(1) through (4) of this section, the engine will not be considered an emergency engine under this subpart and must meet all requirements for non-emergency engines, **unless you can show that deviation from those requirements was caused by equipment failure, accident, or act of God.**”*

Attachment 3

PROTECTION OF STRATOSPHERIC OZONE: UPDATE TO THE REFRIGERANT MANAGEMENT REQUIREMENTS UNDER THE CLEAN AIR ACT RULE (40 CFR, PART 82, SUBPART F)

EHSCP members utilize refrigeration equipment for comfort cooling and are subject to applicable portions of the Refrigerant Management Requirements. We appreciate EPA's efforts to update and improve its Refrigerant Management Requirements relative to Stratospheric Ozone Protection.

While we support many aspects of the new rule, we recommend revisions to a few aspects to prevent unnecessarily increasing operational and administrative burdens to operators of comfort cooling systems without providing a commensurate environmental benefit. These comments are provided below.

I. The allowable leak threshold for comfort cooling units should not be reduced from 15% to 10% (current effective date of 01/01/2019)

A. Data used to estimate the cost of the rule did not adequately represent similarly regulated comfort cooling units nationwide and significantly underestimates costs.

The pre-2016 rule, which set a permissible annual leak rate of 15% for comfort cooling systems, is more than adequate to prevent loss of refrigerant from equipment that is consistently leaking. Exceedance of this threshold triggers the requirement for repair and retesting of the system within the prescribed time frame. EPA reportedly believes that this threshold is too high, based upon data collected from three regulatory programs currently in practice. The three programs cited by EPA to support its cost estimate of a suggested decrease in the acceptable leak rate to 10% include:

- EPA's "Green Chill" Partnership, a partnership with food retailers to reduce refrigerant emissions and decrease their impact on the ozone layer and climate change;
- California Air Resources Control Board's (CARB's) Refrigerant Management Program (RMP), a program to reduce refrigerant leaks from large commercial and industrial refrigeration systems to reduce the emissions of high global warming potential refrigerants; and
- South Coast Air Quality Management District's (SCAMQD's) Rule 1415 program to reduce ozone-depleting refrigerant emissions from stationary, non-residential air conditioning (comfort cooling) and refrigeration systems with full charge capacity of greater than 50 pounds, and using Class I and Class II refrigerants.

Data referenced in the first two bullets above are limited to large commercial refrigeration equipment, which are very different from comfort cooling systems. Comfort cooling systems

have extensive distribution loops which may contribute to small losses of refrigerant over time. Comfort cooling systems also tend to cycle less frequently and are designed to different standards than large commercial refrigeration systems.

Data collected from SCAMQD's Rule 1415 Program (2700 units per EPA), while including comfort cooling within its jurisdiction, represents a very limited geographical area. As this program has been in place since 1991, its rules, regulations, guidance and enforcement has had the effect of improving maintenance routines and driving equipment replacement thus creating a population of better maintained and/or newer equipment which by design have reduced leak rates and are not representative of systems necessarily used in other geographical areas.

As a consequence, the application of leak test results and related cost analysis from these three sources as the basis for a more stringent leak rate is inappropriate. These studies cannot be used as suggested by EPA as a sound basis for determining that the financial impact of lowering the leak rate threshold will not be significant.

B. Current annual leak thresholds and related repair requirements are effectively reducing emissions of Ozone Depleting Substances ("ODSs")

The scientific consensus is that current commitments and controls are on target and are effectively reducing tropospheric ODC concentrations. The most comprehensive scientific information on ozone depletion comes from the World Meteorological Organization's ("WMO") Global Ozone Research and Monitoring Project. This effort is jointly sponsored by the World Meteorological Organization, United Nations Environment Programme ("UNEP"), the National Oceanic and Atmospheric Administration, The National Aeronautics and Space Administration, and the European Commission.

Findings of the WMO/UNEP's most recent Scientific Assessment for Decision-Makers (2014)¹ included:

- *"Actions taken under the Montreal Protocol have led to decreases in the atmospheric abundance of controlled ozone-depleting substances (ODSs), and are enabling the return of the ozone layer toward 1980 levels."*
- *"The sum of the measured tropospheric abundances of substances controlled under the Montreal Protocol continues to decrease. **Most of the major controlled ODSs are decreasing largely as projected....**"*

¹ <http://www.esrl.noaa.gov/csd/assessments/ozone/>

- “Total column ozone will recover toward the 1980 benchmark levels over most of the globe under full compliance with the Montreal Protocol. This **recovery is expected to occur before midcentury in mid-latitudes** and the Arctic, and somewhat later for the Antarctic ozone hole.”
- “The cumulative effect of [total] elimination of emissions from all banks and production [of ODSs would] advance this return by [only] 11 years.” (i.e., **even total elimination of these substances would only accelerate recovery by 1/3.**)

EPA examined the costs and benefits of various regulatory options that would revise current leak repair “trigger rates.”² For the recent rulemaking, EPA examined various other scenarios ranging from trigger repairs at levels of 5% and 10% to triggering repairs at 10% to 30%. All scenarios examined showed that the calculated benefits from the reduction in emissions were outweighed by the costs of such reductions. In the example provided by the EPA in its proposal, annual costs are estimated at \$38.2 million, while annual monetized benefits were estimated at only \$1.6 million, using a 3% discounted rate.

EPA’s strengthening of current rules would merely expend efforts fighting a battle that has already been won. Unless EPA can document a need for further reductions, we see no reason to add unnecessary costs associated with increased regulation. To that end, EHSCP believes that the leak rate threshold for comfort cooling systems should remain at 15%.

EHSCP requests the following modification to § 82.157 Appliance maintenance and leak repair, (c)(2) Leak Rates (text to remove is **stricken**):

*(iii) ~~10~~ **15** percent leak rate for comfort cooling appliances or other appliances with a full charge of 50 or more pounds of refrigerant not covered by (c)(2)(i) or (ii) of this section.*

II. EPA should modify the triggers for when a system must be replaced

The new rule added a requirement that, if “more than 75 percent of the full charge” of any appliance is released “in each of two consecutive twelve month periods,” the appliance must be taken out of service and retired. In 2016, the EPA requested comments on the appropriate periods in which such leaks might occur and the advisability of an allowance for unavoidable catastrophic releases. We agree that these are both important questions and that the answers dictate that time frames be clearly defined and that reasonable allowances be made for catastrophic events. Our suggestions are provided below.

² 75 Fed. Reg. at 78, 569-70.

A. Time frames

The selected time frames must establish clearly definable start and end dates. They must also be sufficiently long such that they do not inadvertently capture a leak repair attempt that passed the initial verification test but failed the second verification test shortly thereafter, if the period between initial and follow-up happened to span two timeframes. Calendar years are inappropriate because such a system can lead to inappropriate results. For example, leaks on December 31 and January 1, one day apart, would be in consecutive calendar years while leaks on January 1 and December 31, 364 days apart, would not.

Moreover, calendar years are not aligned with leak rate calculations which, by definition at §82.152 are “*measured between refrigerant charges.*” This begs the question whether a leak of 75% that occurs at some point between July of 2016 and June of 2017 occurred in calendar year 2016 or 2017.

We recommend that the time frame should be a defined period starting on the date the first leak is discovered and that the concept of calendar years not be used for determining appropriate actions.

B. Catastrophic releases

While we believe such cases will be rare, the rules should make some allowance for catastrophic releases. There are numerous potential causes of such a release and appropriate responses to each may vary. As just a few examples:

- for damage caused by earthquake, storm or other natural disaster, the appropriate response may be to inspect the system to assure that it has no residual damage;
- for damage caused inadvertently during equipment servicing, the appropriate response may be to reassess the reasons for the release and retain a qualified vendor with additional expertise; and
- for damage caused by impacts upon equipment (e.g. condenser coils, compressor or piping) such as from vehicle accidents or other unanticipated onsite conditions, the appropriate response may be to provide additional physical protection, including devices such as bollards or pylons.

Additionally, a system could have two large volume leaks from unrelated components, each of which can be effectively repaired or individually replaced. It is unnecessary and detrimental from both an economic and environmental perspective to require the retirement and

replacement of units that can, following repair, continue functioning efficiently and in compliance with the rule for many years to come.

We believe that such issues would be best managed on a case-by-case basis. Appropriate notification to the EPA would include:

- a description of the nature and cause of the releases;
- a description of any repairs made; and
- identification of any changes made to avoid such releases in the future.

This would allow the Agency to ensure that failing systems are retired but avoid excessive cost in replacing expensive compliant systems that are still in good operating condition but experience unexpected or unanticipated events for which corrective action has been taken and the system restored to compliance. In other words, a true repair was made to the system, not a shot-term solution implemented to extend inevitable repair or replacement.

III. EPA should apply these regulations consistently to all parties

We appreciate EPA's efforts to update and improve its Refrigerant Management Requirements relative to Stratospheric Ozone Protection. However; throughout the current rule, EPA has provided many concessions and reduced compliance requirements; including extensions to repair, retrofit, and upgrade timelines, for "*... owners and operators of federally-owned appliances...*"

According to the United States Department of Labor, Bureau of Labor Statistics³, the Government sector employs approximately 18% of the workforce in the United States. The exact number of commercial refrigerant and comfort-cooling systems in service at government owned facilities could not be found, but it could be approximated at 18% of the total number of such systems in the United States.

If the EPA is truly committed to attaining its goals of reducing the harmful effects to Stratospheric Ozone, and believes this approach is based on sound science and is the most effective way to do so, why then are federal owned appliances not required to comply with same rules?

³ <https://www.bls.gov/home.htm>

Attachment 4

REVISIONS TO SPCC RULEMAKING (40 CFR 112)

Communications companies have tens of thousands of small petroleum storage tanks that support emergency engines used to provide backup power to life-safety and critical data and voice communication services (e.g., wireline, wireless, and 911 service to the public, first responders and other authorities), in the event of commercial power outages. These emergency engines with associated tanks are strategically located at facilities across the United States. Because of the infrequent nature of commercial outages, many of the emergency engines and tanks have very low through-put and can go years without refueling. A significant number of communication facilities are subject to Federal Spill Prevention, Control and Countermeasure (SPCC) Plans, and owners are required to develop and maintain SPCC Plans because onsite aboveground storage capacity for oil-related products is greater than 1320 gallons. The onsite fixed storage capacity at other locations is below the SPCC triggering threshold, but could occasionally increase above that threshold, temporarily, due to the addition of portable tanks and/or portable emergency generator systems with associated tank capacity of 55 gallons or greater.

While we recognize the value of robust SPCC planning, there are some parts of the SPCC rule that impose an unnecessary financial and regulatory impact on the communications industry. This is due to the sheer number of small remote communication sites subject to the SPCC requirements, and the extensive national network footprint across which communications companies are legally bound to prevent failure of communication services. The requirements that negatively impact our industry are the rigid inspection and containment requirements for portable emergency generator and tank systems. Among other drawbacks, these requirements incent companies not to deploy critical back-up systems, which can be crucial in times of disasters and other emergencies. Our comments and suggested revisions to this rule are provided below.

We are requesting a revision of the current rule related to: 1) periodic visual inspections at Tier I SPCC sites; and 2) the portable tank requirements.

I. A quarterly frequency for visual inspections should be allowed for Tier I SPCC sites with continuously monitored leak detection

The 2002 SPCC rule requires periodic inspections of bulk storage container consistent with industry standards. While the EPA does not specify the inspection frequency, it does refer to certain industry standards, such as those from the Storage Tank Institute (STI) and American Petroleum Institute (API). (See 40 CFR 112.6(a)(iv).) Each of these standards specifies a monthly inspection of all tank systems. (See, e.g., STI SP001.) However, while a monthly inspection requirement may be justified for a retail gas station or other common types of tank systems, the EHSCP believes it is unnecessary and excessive

for remote facilities that are unstaffed, infrequently visited, and equipped with leak detection systems that are continuously monitored remotely. The EHSCP therefore asks that EPA amend the language in the rule as suggested below.

Many emergency generator/tank systems used by the communications industry are associated with remote and small sites qualified for Tier I SPCC Plans. Remote communication sites typically have small single-tank systems, use and do not dispense fuel, have very few fuel transfers over the life of the tank, and therefore are considered low-risk. Most of these tanks have remote alarms with notifications to call centers that are manned 24 hours per day, seven days per week; and many of the tanks are double-walled. These tanks systems are equipped with alarmed sensors for high/low fuel and interstitial spaces between double walled tanks, and some also have an automatic tank gauge (ATG) system that can provide additional remote monitoring of the generator/tank system. Typical tank failures that could result in a fuel release would be identified by these probes and an alarm to the call center. We believe these control and alarm devices provide equivalent environmental protection and modification of the requirement to allow less frequent operator site visits is justified.

The inspection of remote facilities involves increased travel times and distances for field personnel, along with a resulting increase of carbon emissions. The additive effects can be quite large, when considering the thousands of communication facilities scattered around the United States that require SPCC monthly inspections. Reducing 11 monthly inspections and one annual inspection to once per quarter (a net savings of eight trips per site per year) will greatly reduce the burden associated with these stringent requirements. Each hour of such travel distance avoided (i.e., one hour each way round trip) represents about 970 lbs. of CO₂ emissions avoided (estimated based on a light duty truck traveling 120 miles round trip, with fuel efficiency of 19.4 mpg, with CO₂ emissions estimated at 19.59 lbs. per gallon), and many sites require much more than one hour travel. If you extrapolate these numbers out to the thousands of small remote communications sites, the amount of fuel saved and greenhouse gas emissions reduced is significant.

We request a modification to 40 CFR 112.6(a) and corresponding modifications of the 2013 SPCC Guidance Document to clearly allow quarterly visual inspections for Tier I SPCC sites that have remote monitoring for releases from bulk storage containers.

Specifically, EHSCP requests the addition of the language (additions in **bold and underlined text**) below to 112.6 (a)(iv):

*(iv) You have established procedures for required inspections and testing in accordance with industry inspection and testing standards or recommended practices; **at sites with sized secondary containment and a means of continuous leak detection for bulk storage that is remotely monitored, on-site visual inspections may be performed quarterly.***

The EHSCP also requests that Table G-17 in Attachment 3.2 to 40 CFR 112 Appendix G be revised by adding one line as follows.

Table G-17 Bulk Storage Container Inspection Schedule	
Container Size and Design Specification	Inspection requirement
Portable containers (including drums, totes, and intermodal bulk containers (IBC))	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas
55 to 1,100 gallons with sized secondary containment	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas plus any annual inspection elements per industry inspection standards
1,101 to 5,000 gallons with sized secondary containment and a means of leak detection ^a	
<u>55 to 5,000 gallons at facilities with sized secondary containment and a means of continuous leak detection for bulk storage that is remotely monitored. .</u>	<u>Visually inspect quarterly for signs of deterioration, discharges or accumulation of oil inside diked areas, plus any annual inspection elements per industry inspection standards</u>
1, 101 to 5,000 gallons with sized secondary containment and no method of leak detection ^a	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas, plus any annual inspection elements and other specific integrity tests that may be required per industry inspection standards

^a Examples of leak detection include, but are not limited to, double-walled tanks and elevated containers where a leak can be visually identified.

II. Portable emergency generator fuel tanks, while stored empty prior to dispatch, should be subject to only the general, not the “sized”, secondary release requirements

Most communication facilities have emergency backup power to ensure service continuity in the event of a commercial power outage. This emergency power is mostly provided from stationary emergency generators with associated fuel tanks onsite. If, during an emergency event (e.g., a hurricane), a problem arises with the site’s stationary generator or additional fuel is required, offsite portable tanks, often with attached associated generators, are brought onsite to help maintain power. Therefore, maintaining a sufficient inventory of portable tanks is critical for maintaining connectivity within the communications network. Prior to dispatch to sites where they are needed, such portable tanks typically are stored or staged at a different site, and not filled with fuel until after they leave the staging site. However, the burden for maintaining sized secondary containment for staged tanks instead of general secondary containment is excessively burdensome. Therefore, the EHSCP asks the EPA to provide such portable tanks the same exemptions granted by the EPA to mobile refuelers in 2006.

In the current rule, portable tanks are considered bulk storage and are regulated by 40 CFR 112.6(a)(3)(ii). Subsequently, they are subject to sized secondary containment requirements outlined in 40 CFR 112.8 (c) (11), in the same manner as large stationary tanks. 40 CFR Part 112.7(c) outlines the general secondary containment requirements, which are intended to address the

“typical failure mode” and the “most likely quantity of oil that would be discharged.” In the communications industry, most portable containers used for emergencies are portable gensets (combined generator with belly tank) or standalone fuel tanks that are: a) moved from site to site; and b) normally filled during deployment; and c) typically under 500 gallons. Currently, costly secondary containment is required for storage tanks even if the tanks have relatively small capacity and are used only offsite in emergency events. The EHSCP believes that applying sized secondary containment requirements to such portable emergency generator fuel tanks is an unnecessary and burdensome requirement.

The likelihood of one of these portable tanks having a spill while stored at a staging site is very low, since they are normally filled during deployment. The requirement to construct stationary secondary containment structures for these tanks, which often include concrete berms and intricate storm water drainage structures, is costly, requires extensive engineering, permitting and approvals, and may not be feasible for some sites.

The EHSCP asks the EPA to include portable tanks under the mobile refuelers designation granted by EPA in 2006 for exemption from Section 112.8(c)(2) and (11) for petroleum oils. The EHSCP committee, on behalf of the communications industry, believes that it is sufficient for the most likely spill scenario to be addressed for our portable containers by the general spill response procedures in the SPCC Plan where the portable tank has been deployed. Allowing portable emergency fuel tanks to adhere to general secondary containment requirements instead of sized secondary containment will greatly streamline this regulation.

EHSCP therefore requests the following change to the SPCC rule adding “portable tanks” (additions in **bold and underscored text**).

*“40 CFR 112.2 -Definitions - Mobile refueler - means a bulk storage container onboard a vehicle or towed, that is designed or used solely to store and transport fuel for transfer into or from an aircraft, motor vehicle, locomotive, vessel, ground service equipment, or other oil storage container, **and any mobile/portable storage container used to support emergency engines.**”*

Attachment 5

HAZARDOUS WASTE MANAGEMENT (40 CFR, PART 262)

I. EPA should not require applying hazardous waste numbers to containers

The EHSCP Committee strongly recommends that EPA reconsider its decision to require Small Quantity Generators (SQGs) and Large Quantity Generators (LQGs) to mark the hazardous waste number(s) on a container prior to transporting hazardous waste offsite. The hazardous waste generator improvements rule added a requirement for SQGs and LQGs to mark the hazardous waste number(s) on a container prior to transporting hazardous waste offsite. This new requirement was codified at §262.32(b)(5), (c) and (d). The intent was that Treatment Storage and Disposal Facilities (TSDFs) could readily identify the contents of hazardous waste containers they are receiving and effectively treat the wastes to meet the applicable Land Disposal Restrictions (LDR) treatment standards. The Agency went on to say *“the overall burden would be decreased because the TSDF would avoid the need to identify the hazardous waste or send the waste back to the generator for proper identification.”* (81 FR 85762) In reality, this requirement is unjustified, overly burdensome, and should be withdrawn from Part 262.

The agency’s sole reason for establishing this requirement was to facilitate proper waste treatment under the Part 268 standards. (81 FR 85762) What the agency forgets is the fact that waste numbers alone are not, nor have ever been, sufficient for proper treatment and disposal of hazardous waste.

To satisfy the Part 268 standards for a typical hazardous waste, the following information usually will be found on an LDR document accompanying the manifest:

- EPA hazardous waste number(s).
- Manifest number of first shipment.
- The constituents of concern and/or any underlying hazardous constituents.
- The applicable wastewater or non-wastewater category.
- Any subdivisions within a waste code.
- Waste analysis data (when available).

With this information conveniently located on an LDR document the receiving TSDF can treat and subsequently dispose of the waste in a compliant fashion. As one can see, the waste number alone on the side of a container will not allow for proper treatment and disposal of a hazardous waste.

Some hazardous wastes (e.g., soil, lab packs, debris) are managed under alternative LDR treatment standards which require a signed certification statement on the LDR document. Again, a waste number alone on the side of a container will not allow for proper treatment and disposal.

Furthermore, prior to a TSDF receiving a hazardous waste, the TSDF must have an accurate, valid, and TSDF-approved waste profile on file from the generator. The waste profile is a thorough, detailed description of the waste generated by the client. This document is used for pricing, shipping, storage, reporting, treatment, and disposal. The waste profile can also be utilized in the event of an emergency (e.g., exposure, spill, fire). TSDFs usually require the waste profile number to be written on the top or side of the container prior to shipment from the generator's site. In some instances, a bar code will be applied to the container prior to shipment from the generator's site. When the container arrives at the TSDF, facility personnel will only need to check the profile number (or bar code) in their data system to access the relevant information (e.g., LDR requirements, waste numbers, Department of Transportation (DOT) shipping description).

In conclusion, because waste numbers alone do not convey sufficient information for the proper treatment or disposal of a hazardous waste, the requirements of §262.32(b)(5), (c) and (d) are unjustified, overly burdensome, and should be withdrawn from Part 262 (text to remove is ~~stricken~~).

“(b) Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator must mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

(1) HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

(2) Generator's Name and Address _____.

(3) Generator's EPA Identification Number _____.

(4) Manifest Tracking Number _____.

~~*(5) EPA Hazardous Waste Number(s) _____.*~~

~~*(c) A generator may use a nationally recognized electronic system, such as bar coding, to identify the EPA Hazardous Waste Number(s), as required by paragraph (b)(5) or paragraph (d).*~~

~~*(d) Lab packs that will be incinerated in compliance with § 268.42(c) are not required to be marked with EPA Hazardous Waste Number(s), except D004, D005, D006, D007, D008, D010, and D011, where applicable”*~~

II. EPA should clarify applicability of the Subpart M standards

The EHSCP recommends that EPA clarify the new Part 262 Subpart M standards. Recent revisions make it needlessly difficult for companies with dispersed facilities to comply with this part. It seems

the applicability of the Subpart M standard is different than the intent of the rule as discussed in the November 28, 2016 preamble.

The Agency did not intend for Subpart M to apply to the entire facility. (81 FR 85792). The preamble to the final rule says the Subpart M standards will apply to LQG Central Accumulation Areas (CAAs) and points of generation with associated Satellite Accumulation Areas (SAAs). (81 FR 85792) However, the text of §262.250 says “*The regulations of this subpart apply to those areas of a large quantity generator where hazardous waste is generated or accumulated on site.*” The concern is with the wording “*...where hazardous waste is generated...*” Small amounts of hazardous waste can be generated all across an LQG site. Upon generation those wastes are taken to the CAA, or in some cases to the SAA (e.g., waste aerosols generated during facility-wide maintenance operations). A LQG site could have hundreds of points of generation from maintenance activities, small spills from product handling, expired chemicals discovered in the product warehouse, cleanout of janitorial closets, etc. Oftentimes, these points of generation do not have an SAA associated with them. The wastes are usually taken directly to a CAA. If one were to follow the text of §252.250, every location where a hazardous waste is generated would need to follow the overly burdensome Subpart M standards.

The text of Part 262, Subpart M should be amended as follows. The words “*generated or*” should be removed from §262.250 to clarify the Subpart M standards do not apply to all points of generation (text to remove is ~~stricken~~).

“§ 262.250 Applicability.

The regulations of this subpart apply to those areas of a large quantity generator where hazardous waste is ~~generated or~~ accumulated on site.”

Attachment 6

UNDERGROUND STORAGE TANKS (40 CFR, PART 280)

The EHSCP recommends that EPA modify a number of requirements, relating to underground fuel storage tanks (“USTs”), that are particularly burdensome for companies with large numbers of USTs, and which do not provide a proportional benefit to environmental protection. EHSCP member companies own and operate approximately 3000 - 4000 USTs throughout the United States; many are at unmanned, remote locations. Some of these tanks support boilers and other building systems, but most support emergency power generators that provide backup power to maintain critical infrastructure during power outages, natural disasters, and other emergencies. These UST systems typically experience very low product usage and are therefore refueled infrequently. In fact, some facilities may go two or three years between fuel additions and it is common for fuel to be added no more than once per year. Additionally, USTs supporting emergency power generators do not have dispensers. Also, these systems are typically monitored continuously via automatic tank gauging (“ATG”) equipment to detect leaks from USTs and their piping.

The EHSCP recognizes the value of properly operating and maintaining equipment and using the appropriate enhancements available due to technology advances over the past 20 years. The EHSCP also supports EPA’s goal of improving environmental protection. However, the EHSCP believes that some portions of the current UST regulations create considerable burdens upon the communications industry without any accompanying environmental benefit.

The EHSCP offers the following comments to existing UST requirements, and suggests alternate approaches where appropriate.

I. Testing of USTs should be phased in

The 2015 EPA requirements require completion of testing and inspections for all USTs by October 13, 2018. It is important to note that after EPA promulgated their UST rules in 2015, many of the delegated states were delayed in finalizing their own regulations. (*E.g.*, New Jersey has yet to finalize its UST rules). In doing so, many of those states also added additional inspection and testing requirements, making it nearly impossible for UST owners to begin testing immediately following the effective date of EPA’s regulations. EHSCP members are pursuing compliance, but UST vendors are strained to keep up with the demand of so many systems trying to meet the new regulations. From the perspective of EHSCP members, the requirement for 100% of USTs to follow the EPA’s testing and inspection timetable is unduly burdensome, due to competition for the vendor resources across the country. Vendors and manufacturers involved in UST systems testing and inspections will continue to be taxed to meet the demand; both from a manpower perspective, and logistically due to the widespread dispersion of UST systems nationwide.

EHSCP asks the EPA to consider a phased approach to achieve the required testing at 100% of UST sites by 10/13/2020. A suggested approach would be to require companies to complete a percentage of UST systems each year; 34% in the first year (by 10/13/2018), 33% in the second year (by 10/13/2019), and the final 33% in year 3 (by 10/13/2020). This will allow for a more uniform supply of vendors to meet the demand.

II. Three-year integrity testing for spill buckets and piping sumps should not be required where certain other processes are place.

The current rule requires integrity testing every three years of spill buckets and of piping containment sumps. EHSCP believes that integrity testing is appropriate prior to placing a new sump or spill bucket into service and when replacing sump or spill bucket containment components. However, three-year testing requirements for and spill buckets and for containment sumps used for interstitial monitoring of piping should not be required where (1) these spill buckets and sumps are continuously monitored, (2) release detection equipment operability testing is conducted annually, and (3) walkthrough inspections are completed regularly to ensure visually that the equipment is tight and functioning properly.

Visual inspections are effective at discovering integrity problems, by observing cracked or torn boots or penetrations or water infiltration. Additionally, continuous electronic monitoring will identify any failure of the primary containment, which then is investigated and addressed by appropriate personnel. EHSCP believes that the combination of continuous electronic monitoring plus the periodic and annual inspections are sufficient to ensure that containment sumps are functioning properly.

EHSCP therefore requests the following changes to 40 CFR §280.35 (additions are in **bold and underscored** text).

“280.35(a) - Owners and operators of UST systems with spill and overflow prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

280.35(a)(1) - Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

280.35(a)(1)(i) - The equipment is double walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough

inspections described in § 280.36. Owners and operators must begin meeting paragraph (a)(1)(ii) of this section and conduct a test within 30 days of discontinuing periodic monitoring of this equipment;

280.35(a)(1)(ii) - The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

280.35(a)(1)(ii)(a) - Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements);

280.35(a)(1)(ii)(b) - Code of practice developed by a nationally recognized association or independent testing laboratory; or

*280.35(a)(1)(ii)(c) - Requirements determined by the implementing agency to be no less protective of human health and the environment than the requirements listed in paragraphs (a)(1)(ii)(A) and (B) of this section. **Exception: 3-year testing is not required for spill buckets or piping containment sumps where (1) these spill buckets and sumps are continuously monitored; (2) release detection equipment operability testing is conducted annually; and (3) the spill buckets and sumps are subject to periodic and annual walkthrough inspections per §280.36.***

III. Walkthrough inspections at unmanned sites with remote monitoring of release detection equipment should not be required more often than quarterly

The current rule requires walkthrough inspections of spill prevention and release detection equipment every 30 days. (40 CFR 280.36(a)(1)(i).) The current rule is unduly burdensome for UST systems that employ release detection systems that are continuously monitored remotely, and lacks a corresponding environmental benefit. The monitoring systems at these facilities will notify the owner/operator remotely in alarm situations such as fuel loss, liquid ingress, and operational situations. Alarms are monitored 24/7, and upon receipt of an alarm the appropriate personnel are alerted to investigate as appropriate.

EHSCP proposes an exception for these unmanned locations, from monthly to quarterly inspections at unmanned facilities where the UST system is associated with an emergency power generator, and the UST system is continuously monitored remotely for alarm conditions.

EHSCP therefore requests the following changes to 40 CFR §280.36 (additions are in **bold and underscored** text).

“§280.36 Periodic operation and maintenance walkthrough inspections.

(a) To properly operate and maintain UST systems, not later than October 13, 2018 owners and operators must meet one of the following:

(1) Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:

*(i) Every 30 days (Exceptions: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery; **at unmanned sites where UST systems have continuous leak detection that is remotely monitored, conduct a walkthrough inspection at a minimum every 90 days**):”*

Attachment 7

EMERGENCY PLANNING AND NOTIFICATION (40 CFR, PART 355) AND HAZARDOUS CHEMICAL REPORTING (40 CFR, PART 370)

The EHSCP suggests that modifications be made to the Emergency Planning and Community Right-to-Know Act (EPCRA) remove requirements that add cost, without adding comparable environmental benefit or protection. Each year, the EHSCP member companies collectively submit EPCRA Tier II reports for more than 40,000 facilities and pay roughly \$4,000,000 in associated fees to cover local and state administrative costs. The associated effort requires more than 17,500 man-hours each year. The great majority of communication facilities subject to reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) are small, unmanned sites. In most cases, the reason for filing EPCRA reports is the presence of lead-acid batteries, which are used as emergency power backup for the nationwide communication system. Dilute sulfuric acid is used as electrolyte in these batteries. EPCRA Tier II reporting is typically triggered only because the sulfuric acid (which is listed on the EPCRA list of extremely hazardous substances (EHS)) in the electrolyte mixture exceeds the minimum threshold level of 500 pounds. Reporting under EPCRA Section 302 and related Emergency Planning activities are required where the quantity of sulfuric acid exceeds the Threshold Planning Quantity (TPQ) of 1,000 pounds.

I. Revise EHS status for sulfuric acid contained in lead-acid batteries

Electrolyte used in batteries does not belong on the list of extremely hazardous chemicals.

For the reasons discussed below, we are asking that you exclude battery electrolyte from the EPCRA list of extremely hazardous substances.

A. Electrolyte (dilute sulfuric acid) in lead-acid batteries should not be listed as an extremely hazardous substance because it has no potential to impact communities offsite

The minimum threshold level and the TPQ for sulfuric acid are based on EPA's assessment of the hazards of concentrated sulfuric acid, not of the dilute sulfuric acid found in the typical lead-acid battery. A release of concentrated sulfuric acid creates a risk of acid fumes, and therefore fits within the intent of an extremely hazardous substance listing under EPCRA. In contrast, dilute sulfuric acid does not have the same risk, and is very unlikely, in quantities under 10,000 lbs., to pose an offsite human health threat. That is because diluted sulfuric acid solution used as the electrolyte does not produce any vapor or mist that could migrate offsite, and quantities present are not large enough for a spill to migrate offsite where the public could be impacted. Therefore, storage and UPS batteries used in the communications industry pose no threat to the public outside the facility.

The above distinction between concentrated sulfuric acid and lead-acid batteries is recognized by the U.S. Department of Transportation (“DOT”) regulations in several ways. First, those regulations exempt lead-acid batteries from hazard communication requirements under most conditions of transportation. (See 49 CFR 173.159.)

Second, the Hazardous Materials Table in 49 CFR 172.101 differentiates between “Sulfuric acid with more than 51 percent acid” (UN 1830) and “Sulfuric acid with not more than 51% acid” (UN 2796). According to the DOT Emergency Response Guidebook (“ERG”):

- UN 1830 (as well as UN 1831, for fuming sulfuric acid) requires use of guide # 137.
- UN 2796 (as well as UN 2796 for “Battery fluid, acid”) requires use of guide #157.

Guide 137 and 157 are considerably different. For spills, Guide 137 recommends “*Fully encapsulating, vapor protective clothing **should** be worn for spills or leaks with no fire.*” [emphasis added] In contrast, Guide 157 does not suggest any personal protective equipment (PPE) for protection against vapors, and says only “*A vapor suppressing foam **may** be used to reduce vapors*” and “*Use water spray to reduce vapors or divert vapor cloud drift.*” [emphasis added] In other words, the DOT rules recognize that sulfuric acid with not more than 51% acid does not present a sufficient risk of vapors to necessitate respiratory protection even for a person on the scene of a spill, regardless of the volume spilled. This supports the EHSCP’s assertion that sulfuric acid with not more than 51% acid does not present any risk of airborne offsite impacts.

Third, the ERG also identifies materials that may pose hazards to the surrounding community by highlighting the related entry in green and referring to “*Isolation and Protective Action distance tables in the back of the guidebook.*” “Sulfuric acid, fuming” is highlighted in this manner, but the other materials listed above (i.e., sulfuric acid with not more than 51% acid, and lead-acid batteries) are not.

Last, and perhaps most on point, the ERG states that for “Batteries, wet, filled with acid” (UN 2794) and “Batteries, wet, non-spillable” (UN 2800), the appropriate guide is # 154. Guide #154 cautions against touching damaged containers or spilled material unless wearing protective clothing, but makes no mention of vapors or vapor cloud drift or suggest a need for respiratory PPE. This again supports the view that lead-acid batteries, even if accidentally broken open, not present any risk of airborne offsite impacts.

In addition, the form and quantities of the electrolyte in the lead-acid batteries used by EHSCP member companies presents no possibility of surface flow of electrolyte offsite. First, many of those batteries are essentially unspillable (i.e., the so-called gel-cell or absorbed glass mat batteries). Second, even those with a more free flowing electrolyte contain only about 0.5 to 20

gallons per battery. Although some facilities may have a large number of such batteries, any one of which may leak from time to time, there is no foreseeable scenario in which a sufficient number would all break open at once and create a surface flow that could leave the premises. With no risk to persons offsite, such batteries and their electrolyte should not have to be reported under EPCRA section 302.

B. Communication of risk to emergency responders and building occupants is satisfied by other means

The risk posed by potential acid releases from batteries is primarily to employees or to emergency responders in the immediate area, which is beyond the intent of EPCRA's extremely hazardous substance regulation. However, communication of these risks is adequately covered by OSHA's Hazard Communication rules (for employees and our vendors) and by required fire code signage.

- OSHA Hazard Communication: The Hazard Communication Program required by OSHA and implemented by each company (see 29 CFR 1910.1600) ensures that employees who may be exposed to the hazards associated with lead-acid batteries are made aware of those hazards and are trained regarding the appropriate actions to take in the event of a spill or other incident involving a battery.
- Fire Code required communication: Emergency responders are informed of the presence of lead- acid batteries and associated hazards through signage required by the fire code.

The National Fire Protection Association (NFPA), the International Fire Code, and other authorities require very explicit marking and signage for any area where more than specified quantities of lead-acid batteries are stored. Where required, signage must state:

- that the room contains lead-acid batteries,
- that energized electrical circuits are present, and
- that the battery electrolyte is a corrosive liquid.

Signage is required where more than 50-100 gallons of electrolyte is present.

- Specifically, under the 2015 edition of NFPA-1, Chapter 52, signage indicating the presence of stationary storage battery systems and energized electrical circuits must be placed on doors or by other access points into areas containing stationary storage battery systems having an electrolyte capacity of (A) more than 100 gal. (378.5 L) in sprinklered buildings, or (B) 50 gal (189.3 L) in unsprinklered buildings for flooded lead-

- acid and valve-regulated lead–acid (VRLA) batteries. If the area contains flooded lead acid batteries, the sign must also indicate the presence of corrosive battery electrolyte.
- Similarly, battery cabinets must have exterior labels that identify the manufacturer and model number of the system and electrical rating (voltage and current) of the contained battery system.
 - Signs within battery cabinets must indicate the relevant electrical, chemical, and fire hazard.

The requirements under the 2015 edition of the International Fire Code, Section 608 are substantially the same, except that no differentiation is made between sprinklered and unsprinklered buildings.

- The requirements apply when there is an electrolyte capacity of more than 50 gallons of electrolyte, nor is there differentiation between flooded or VRLA batteries. Doors to buildings or rooms containing stationary battery systems must have signs indicating the presence of energized battery systems and energized electrical circuits as well as an indication that battery electrolyte solutions, where present, are corrosive liquids.
- The requirements for labeling on the exterior and interior of battery cabinets is consistent with the requirements of NFPA-1, Chapter 52.

These Fire Code requirements, which are triggered at a threshold approximately one-fifth of that which would trigger EPCRA Tier II reporting, serve to warn first responders of the presence of lead-acid batteries and to inform anyone not already familiar with their hazards. The ERG identifies appropriate response actions.

As described above, the hazards presented by lead-acid batteries and appropriate response protocols are fully addressed by fire code requirements and the ERG, resources routinely consulted by the emergency response community.

In summary, the industry is expending a great deal of effort and creating a large quantity of paperwork to be managed by state and local authorities, to communicate to communities a hazard with only a minimum potential for harm due from a release, and to let emergency responders know that lead-acid batteries are corrosive, a fact that is readily known by all affected parties and, if not, is extremely well communicated with labels and signs already required under NFPA Standards and related fire codes.

Thus, we request EPA modify designation of sulfuric acid as an Extremely Hazardous Substance and its subsequent listing in Appendices A and B to Part 355 to align with DOT. This could be achieved in the following manner (additions are in **sulfuric acid** text):

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
7664-93-9	Sulfuric Acid (greater than 51% concentration)		1,000	1,000

Alternatively, this could be achieved specific to the sulfuric acid found in lead-acid batteries in the following manner:

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
-----	-----	-----	-----	-----
7664-93-9	Sulfuric Acid	h	1,000	1,000
*Only the statutory or final RQ is shown. For more information, see 40 CFR 355.61 .				
Notes:				
a. This material is a reactive solid. The TPQ does not default to 10,000 pounds for non-powder, non-molten, non-solution form.				
b. The calculated TPQ changed after technical review as described in a technical support document for the final rule, April 22, 1987.				
c. Chemicals added by final rule, April 22, 1987.				
d. Revised TPQ based on new or re-evaluated toxicity data, April 22, 1987.				
e. The TPQ was revised due to calculation error, April 22, 1987.				
f. Chemicals on the original list that do not meet toxicity criteria but because of their acute lethality, high production volume and known risk are considered chemicals of concern ("Other chemicals"). (November 17, 1986, and February 15, 1990.)				
g. The TPQ was recalculated (September 8, 2003) since it was mistakenly calculated in the April 22, 1987, final rule under the wrong assumption that this chemical is a reactive solid, when in fact it is a liquid. RQ for this chemical was adjusted on September 11, 2006.				
h. Excluding sulfuric acid found in electrolyte contained in lead-acid batteries, provided the electrolyte is no more than 51 percent acid				

II. Standardize data format for EPCRA reporting

There is no standard data structure for EPCRA Tier II inventories. Since the passage of EPCRA in 1986, states have had significant flexibility in how to implement the EPCRA program. This flexibility allows for the inclusion of more chemicals, setting lower reporting thresholds, and creating a reporting format that includes more information than is required under federal requirements.¹ State and local authorities use a variety of different tools to collect information reported under EPCRA, including Tier2 Submit, E-Plan, Tier II Manager, state mandatory databases, and Tier II Forms, as well as various additional paper forms. There are even jurisdictions where the State Emergency Response Commission ("SERC"), Local Emergency Planning Committee ("LEPC"), and Fire Department each has its own EPCRA reporting database and different submission requirements and tools. This forces regulated entities to manually report the same data on the

¹ 75 FR 39852 (July 13, 2010)

same hazardous chemicals at the same facility using three different reporting databases or forms. Consequently, after 30 years, the reporting of inventories has become increasingly complex.

Multiple reporting formats do little to enhance the quality of information. Rather, they greatly complicate the data submission process for larger organizations with numerous affected facilities, particularly if those facilities are spread across multiple jurisdictions. Multiple formats also impede the aggregation of data to produce any broad national or regional statistics. They may also prevent easy retrieval of information by emergency response organizations for other jurisdictions who may be called upon for assistance in the event of a catastrophic or wide scale emergency, or by members of the community that might be impacted by an emergency.

EPA has worked with state authorities to develop uniform data formats and data interchange standards in other areas of data collection, including air emission and water discharge monitoring as well as ambient environmental data collection. Developing such standards for EPCRA Tier II data would simplify compliance, while making the data more useful to EPA and others. The EHSCP recommends the EPA strongly encourage and work with states to develop a more standardized format for EPCRA Tier II data submission for the information common to all jurisdictions. This would not preclude states from including additional chemicals, setting lower thresholds, or requesting additional information. It would merely provide a more standardized format for data submission and retrieval, reducing the administrative hurdles related to submitting data in multiple formats and the complexity of navigating unfamiliar formats when attempting to access data.

III. Encourage single point of submission for EPCRA Tier II Reporting

EPCRA rules require inventory submittal to the SERCs, LEPCs, and Fire Departments that have jurisdiction over the sites. LEPC and Fire Department contacts change often and contact data are not always publicly updated or readily available. This can create an obstacle to timely reporting, particularly for companies subject to reporting to a multitude of authorities across the country. SERCs do keep in contact with LEPCs and have regular communication with them. Based on a previous EPA suggestion, as discussed below, some states have developed partnership programs for joint access to information or have developed programs to distribute EPCRA information to affected LEPCs and Fire Departments electronically. Where these programs exist, the regulated community need only submit reports to the SERC, who in turn makes the information available to the other authorities. This significantly reduces the reporting burden on the regulated businesses and the information management burden on local authorities that were previously inundated with stacks of paper copies.

In a June 8, 1998 proposed rule,² EPA outlined the flexibility that state and local agencies have in collecting EPCRA data and made clear that such flexibility did not depend upon whether EPA amended the existing regulations. EPA did not propose any regulatory revisions, but sought comments on various reporting options. To streamline the submission process, EPA suggested that SERCs, LEPCs, and fire departments could partner and agree that one agency would receive the section 311 and 312 reporting information and make it available electronically to the others. The Agency suggested the single point submission to reduce the burden on the regulated community, as well as reduce information management burden on some implementing agencies. In guidance published July 13, 2010, EPA further encouraged this approach without offering any regulatory amendments³.

Despite EPA's statements in the 1998 and 2010 publications mentioned above about state flexibility under the existing rules, it seems that a lack of regulatory text expressly recognizing this option may be impeding progress toward centralized EPCRA data collection. For example, the state of Louisiana recently withdrew such a program, with the comment that it believed it to be in conflict with the EPCRA requirements.

Therefore, the EHSCP recommends that EPA revise the EPCRA rules to more clearly support what EPA has already put forth in its July 13, 2010 Federal Register notice. For example, EPA could do that by amending 40 CFR 370.44 as follows (additions are in **bold and underscored** text):

40 CFR 370.44 To whom must I submit the inventory information?

*You must submit the required inventory information to your SERC, LEPC, and fire department with jurisdiction over your facility. **Submission to any one of these entities may qualify as submission to another of these entities, if the latter has agreed to a formal agreement regarding information sharing that provides for the latter receiving the required inventory information by the statutory deadline.***

The EHSCP also requests that EPA work with states to identify funding mechanisms to provide the resources necessary to develop information systems -- with appropriate encryption capabilities to protect confidential data -- that would provide access to information for LEPCs and fire departments, and to help clear any hurdles preventing utilization of those funding mechanisms.

² 63 FR 31268, at 31287-31289 (June 8, 1998)

³ 75 FR 39852, at-39855 (July 13, 2010)