



NJ Communities Remain in the Dark about Chemical Disasters



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Access Denied: NJ Communities Remain in the Dark about Chemical Disasters

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WEC gratefully acknowledges support for our efforts to win and defend the right to know about chemical exposures in the workplace and community, and for this report, from the Fund for New Jersey and the Environmental Endowment of New Jersey, as well as from our member organizations. Special thanks to Teamsters Local 877 in Linden, for their continued partnership.

WEC is an alliance of 70 labor, community, and environmental organizations working together for safe, secure jobs, and a healthy, sustainable environment. WEC links workers, communities, and environmentalists through training, technical assistance, grassroots organizing, and public policy campaigns to promote dialogue, collaboration, and joint action. WEC is affiliated with the National Council for Occupational Safety and Health and the BlueGreen Alliance.

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CONTENTS

1) Executive Summary	4
2) Key Findings	6
3) Background: It Started in Linden	8
4) Public Access Is Critical for Public Protection	9
5) Transparency: It's About Saving Lives	11
6) Recommendations	13
7) Appendices	
A. Survey Results by County and Municipality	15
B. Survey Results by County with Additional Information	19
C. Methodology	20
D. Request from WEC to Review Municipal/County Emergency Response Plans	21
E. WEC Factsheet: How to Request an Emergency Response Plan	22
F. Letter from John J. Hoffman, Acting Attorney General of NJ	24
G. Results of survey of target municipalities	25
H. For More Information	26

New Jersey has more than 5,000 facilities that each use more than 10,000 pounds of hazardous chemicals and has the highest population density of any state.

EXECUTIVE SUMMARY

The federal Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 was created to help communities plan for chemical emergencies. It requires industry to report on the storage, use and releases of hazardous substances to federal, state, and local governments. EPCRA requires state and local governments to use this information to prepare their community from potential risks. EPCRA requires state and local governments to use this information to plan and prepare their community for potential chemical risks by developing Emergency Response Plans (ERPs) and making them available to the public.

Gov. Christie is responsible for ensuring that each municipality and county has up-to-date ERPs to protect the public in the event of a chemical fire, explosion, or other toxic emergency. The ERP must be accessible for public review and a notice must be published in a local newspaper on how to access the ERP annually.

EPCRA was enacted as part of Title III of the Superfund Amendments and Reauthorization Act (SARA). The late Senator Frank Lautenberg and Representative James Florio were the lead sponsors of this law, which was based in part on the 1983 NJ Worker and Community Right to Know Act. Section 11044 of EPCRA ensures public access to local ERPs.

These responsibilities are particularly important given that New Jersey has more than 5,000 facilities that each use more than 10,000 pounds of hazardous chemicals and has the highest population density of any state.¹

As WEC documented in our report, *Danger in the Dark*, in December 2014, Governor Christie allowed municipalities and counties to violate federal law and keep the public in the dark about how to prepare and plan for a disaster from the most potentially dangerous sites: the 90+ facilities regulated by the NJ Toxic Catastrophe Prevention Act (TCPA).²

The State Emergency Response Commission (SERC), composed of representatives of the NJ Department of Environmental Protection and the NJ State Police, continues to fail to ensure that counties and municipalities provide public access to ERPs, as required by EPCRA.

In 2016, WEC wrote to the 59 municipalities and the 19 counties that host TCPA high hazard facilities, requesting access for WEC under EPCRA to review their ERPs. Sixteen percent of counties and 41% of municipalities agreed to grant access and should be commended for their compliance with the law.

1 2015 *Community Right to Know Survey*, NJ Department of Environmental Protection; and *Statistical Abstract of the United States: 2012*, Table 14, U.S. Census Bureau, based on 2010 census data.

2 December 2014, New Jersey Work Environment Council, *Danger in the Dark: How Governor Christie Helps Oil, Chemical and Railroad Companies Cover Up Potential Catastrophes* at <http://njwec.org/2016/08/danger-in-the-dark-how-gov-christie-helps-oil-chemical-and-railroad-companies-cover-up-potential-catastrophes/>.

However, **34 municipalities (58%) and 16 counties (84%) denied our request**, reflecting the continued practice of the Christie administration to allow this clear violation of EPCRA.

Gov. Christie's failure to ensure public oversight required by law has serious consequences.

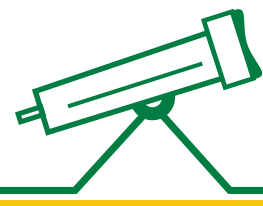
- It makes it more likely that preparedness and emergency response measures will prove inadequate in the event of a toxic release, explosion, or fire – and that New Jerseyans could be seriously injured or die as a result.
- It prevents residents and community advocates from making suggestions to improve emergency plans.
- It exchanges opportunities for informed community preparedness for misleading promises of security.
- By keeping the public in the dark about the dangers we all face, the Christie administration protects corporate executives from pressure to replace highly hazardous substances or processes with safer ones.

In other words, Gov. Christie is giving short-term corporate profits priority over public safety and community health.

WEC again asks that Gov. Christie direct his State Emergency Response Commission to enforce EPCRA by immediately requiring Local Emergency Planning Committees in each of NJ's 21 counties and 565 municipalities to:

- Make up-to-date ERPs accessible for public review.
- Ensure annual publication about public access in local newspapers.

LOOKING AHEAD



More needs to be done by the next Governor to ensure that communities are prepared. For example, changing the designation of emergency planning districts from every county and municipality to a county or regional level with coordination within and between municipalities and regions. The current model is broken and has led to confusion statewide on what information goes into an ERP and what is required to be released to the public. Centralizing the responsibility to the county or regional level will take the burden off municipalities and hopefully reinvigorate an important, but stalled community emergency planning process.

In 2016, WEC wrote via email to the clerks of 19 NJ counties and 59 municipalities that host the 95 TCPA facilities and requested that WEC be allowed to review

1) KEY FINDINGS

- There are 95 facilities in New Jersey that use extraordinarily hazardous chemicals that pose a potential catastrophic risk to workers and/or the public in the event of a worst case toxic or flammable release³ caused by an incident or attack. These facilities are located in 19 of NJ's 21 counties and in 59 municipalities. The facilities include chemical plants, oil refineries, sewage and water treatment works, bulk chemical handling and storage terminals, and refrigerated food processing facilities that use ammonia.⁴
- An estimated 12 million people live or work in the danger zones of NJ-based TCPA facilities, according to data supplied by facility management to the U.S. Environmental Protection Agency (EPA) and/or the NJ Department of Environmental Protection (DEP).⁵
- The federal Emergency Planning and Community Right to Know Act (EPCRA), passed in 1986, requires that each state establish a State Emergency Response Commission (SERC) and Local Emergency Planning Committees (LEPCs) that develop an ERP, review the plan at least annually, and provide information about chemicals in the community to citizens.⁶ Plans are supposed to be developed by LEPCs with stakeholder participation.⁷
- Under a 1987 NJ Executive Order, there is one LEPC for each of the 21 NJ counties and 565 NJ municipalities, which have all been designated as local emergency planning districts.⁸
- EPCRA ensures public access to the local emergency response plan. Section 11044 reads, in part, as follows (***bold italicized type*** indicates our emphasis):

§11044. Public availability of plans, data sheets, forms, and followup notices

(a) Availability to public

Each emergency response plan, material safety data sheet, list described in section 11021(a) (2) of this title, inventory form, toxic chemical release form, and followup emergency notice ***shall be made available to the general public, consistent with section 11042 of this title, during normal working hours*** at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate.

3 Worst case scenario data is required by the US Environmental Protection Agency under the Risk Management Program rule.

4 TCPA regulated facilities list, NJ Department of Environmental Protection, Bureau of Release Prevention, TCPA Program, October 13, 2016.

5 The estimate is based on October 2013 data. Off-site consequence data may have been revised by some facilities and facilities may have been removed from or added to the TCPA list since that time. The latest information can be reviewed at EPA's reading room in Edison, NJ with an advance appointment.

6 For the text of EPCRA, go to www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap116.htm. EPCRA was enacted as Title III of the Superfund Amendments and Reauthorization Act (SARA). Former NJ Senator Frank Lautenberg and Representative James Florio were the lead sponsors of this law, which was based in part on the 1983 *NJ Worker and Community Right to Know Act*. EPCRA was passed after the Bhopal disaster in India, where thousands of people died and hundreds of thousands were injured as a result of a chemical release from a Union Carbide plant.

7 The LEPC membership must include (at a minimum): elected state and local officials; police, fire, civil defense, and public health professionals; environment, transportation, and hospital officials; facility representatives; and representatives from community groups and the media.

8 Executive Order 161, February 13, 1987, issued by NJ Governor Thomas H. Kean.

(b) Notice of public availability

Each local emergency planning committee ***shall annually publish a notice in local newspapers that the emergency response plan***, material safety data sheets, and inventory forms have been submitted under this section. ***Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a) of this section.***

(Pub. L. 99-499, title III, §324, Oct. 17, 1986, 100 Stat. 1752.)

- The nine required elements⁹ of a local ERP are:
 1. Identification of facilities and transportation routes of extremely hazardous substances
 2. Description of emergency response procedures, on and off site
 3. Designation of community and facility emergency coordinator(s) to implement the plan
 4. Outline of emergency notification procedures
 5. Description of how to determine the probable area and population affected by releases
 6. Description of local emergency equipment and facilities and persons responsible
 7. Outline of evacuation plans
 8. A training program for emergency responders (including schedules)
 9. Methods and schedules for exercising ERP.
- In 2015, SERC issued guidance¹⁰ and the New Jersey Office of Emergency Management (NJ OEM) conducted training on the requirements of EPCRA, including public access, to some municipalities (See Appendix G) and a majority of County Emergency Management coordinators with a commitment to make the training available to the remaining municipalities in 2016.¹¹
- In 2016, WEC wrote via email to the clerks of 19 NJ counties and 59 municipalities that host the 95 TCPA facilities and requested that WEC be allowed to review their ERPs. In some instances, we also followed-up on these communications via email and telephone.
- Our requests cited the federal EPCRA law guaranteeing public access. This law supersedes the state Open Public Records Act (OPRA) that has been cited by some local officials who choose to deny access by claiming security concerns.
- Of the 19 counties WEC contacted:
 - Only three were willing to provide access.
 - Sixteen denied access, either in a response or by not responding at all.
- Of the 59 municipalities WEC contacted¹²:
 - Only 24 were willing to provide access.
 - 34 denied access, either in a response or by not responding at all.
- Three counties and three municipalities denied the legally required access on grounds that it would jeopardize security – although EPCRA does not provide for any such exception. Ten counties and 16 municipalities did not respond to our written requests. WEC classified this lack of response as a denial.
- The guidance and training SERC and NJ OEM provided to municipal and county agencies did not significantly improve compliance with EPCRA; confusion about what information is required in an ERP and public access remains widespread.

Only 3 of 19 counties contacted were willing to provide access.
Only 24 of 59 municipalities were willing to provide access.

⁹ In addition to the nine elements, ERPs may also be required to have Safety Data Sheets, chemical lists and inventory forms.

¹⁰ NJ SERC Guidance to LEPCs Emergency Planning and Community RTK Act at http://www.state.nj.us/njoem/plan/pdf/20151230_lepc_guidance.pdf.

¹¹ See Appendix F for letter from John J. Hoffman, Acting Attorney General of New Jersey.

¹² One municipality stated there are no EPCRA facilities in their district.

2) BACKGROUND: IT STARTED IN LINDEN

Oil and chemical workers found out firsthand what Gov. Christie's failure to enforce the law means when it comes to getting information about potential workplace and community catastrophes.

In February 2014, oil and chemical workers who belong to Teamsters Local 877¹³ attempted to use the public's right under EPCRA to find out what the impact would be on workers and local residents in the event of chemical release.

A union representative went to the Linden City Clerk's office multiple times, to ask to see the local ERP, as required by EPCRA. The city clerk said he was not familiar with EPCRA. To this date, a total of five requests have been made to Linden by either WEC or Teamsters Local 877. The most recent request was made on June 7, 2016, and the city of Linden continues to violate federal law and deny public access.

On October 5, 2016, Teamsters Local 877 and NJ Work Environment Council (WEC) filed a 60-day notice of the intent to file suit against the city of Linden unless they make their ERP available to the public.

It is important to note, that in May 2015, WEC, Teamsters Local 877, and other allies met with the State Emergency Response Commission (SERC). The outcome of this meeting was that SERC agreed to issue guidance on the requirements and responsibilities under EPCRA on ERPs and public access,¹⁴ and to conduct training starting with ten target LEPC districts.

On December 31, 2015, WEC received notification that training had been conducted in the ten target districts, including Linden, and also with many county offices of emergency management. SERC issued a guidance document outlining the requirements of EPCRA and public access¹⁴ and New Jersey Office of Emergency Management created a template for developing an ERP¹⁵.

Guidance was also issued in June of 2015 by the US Environmental Protection Agency (EPA) on *How to Better Prepare Your Community for a Chemical Emergency: Guide for State, Tribal and Local Agencies*¹⁶ in which it states, "The purpose of EPCRA is to provide the public with information on chemical risks in their community and information on what to do if a chemical accident occurs."

Despite the training from SERC and guidance documents from EPA and SERC, Linden Mayor Derek Armstead continues to violate federal law, citing security reasons for not releasing the information.

13 Teamster Local 877 represents over 600 oil, chemical and terminal workers at the Phillips 66 Bayway Refinery, the Infineum Chemical Corporation, the Watco Crude Rail Terminal, Eastman Turbo Oil and the Linden Business & Technology Center (Infineum) in New Jersey. It has long history dedicated to protecting safety and health not only for its members but also for the residents of the neighboring communities of Linden and Elizabeth.

14 http://www.state.nj.us/njoem/plan/pdf/20151230_lepc_template.pdf

15 http://www.state.nj.us/njoem/plan/pdf/20151230_lepc_guidance.pdf

16 https://www.epa.gov/sites/production/files/2015-07/documents/state_tribal_local_guide_factsheet_7-10-2015_2.pdf

3) PUBLIC ACCESS IS CRITICAL FOR PUBLIC PROTECTION

There are several obvious reasons why Gov. Christie must ensure that the public has access to ERPs, as required by law.

Prevention. Knowing about potential catastrophes allows companies; government agencies; railroad, oil, chemical, firefighter and health care unions and workers; and community organizations to question whether everything possible is being done to minimize hazards and prevent possible disasters in the first place.

Emergency planning by others. Many companies and public agencies are legally responsible for safety and security plans of their own that cannot be effectively prepared, updated, implemented, and evaluated by others in the community without access to county and municipal emergency plans.

For example, thousands of trains, each carrying millions of gallons of Bakken crude oil, now pass through NJ towns in at least 11 counties every week, often traveling through industrial areas. Plant managers, union representatives, and employees of industrial facilities all need access to local preparedness and response plans to address and help prevent chemical emergencies, including a fire or explosion of a crude oil rail car that could ignite a chemical plant right in the railroad corridor and threaten workers and surrounding communities.

Some specific legal requirements can be fulfilled only with access to county and municipal ERPs, including the following:

- **New Jersey mandates that all school districts establish safety and security plans** in cooperation with police, fire departments, emergency management planners, and others. The hazard assessment within these plans must consider risks posed by local industry, as well as evacuation and shelter-in-place procedures. Each board of education must disseminate to its employees the school safety and security plan.¹⁷
- **New Jersey requires that child care centers**, including early childhood and school-age programs, have “written emergency procedures” for ensuring children’s safety and communicating with parents in the event of evacuation, lockdown, natural or civil disaster, or other emergencies. The emergency procedures shall be posted in a prominent location on every floor within the center.¹⁸
- **Under the NJ Toxic Catastrophe Prevention Act and U.S. Environmental Protection Agency Risk Management Planning rules, managers of the 95 NJ chemical plants, oil refineries, and other facilities that use extraordinarily hazardous chemicals must comply with extensive emergency response planning requirements to protect public health and the environment.** These include provisions for developing and implementing ERPs that include procedures for informing the public and emergency response agencies about chemical releases. The ERP developed under these rules “...shall be coordinated with the community emergency response plan” developed by the Local Emergency Planning Committee.¹⁹

17 N.J.A.C. 6A:16-5.1, School Safety and Security Plans, at: <http://www.state.nj.us/education/code/current/title6a/chap16.pdf>.

18 N.J.A.C. 10:122, Requirements for Child Care Centers, N.J. Department of Children and Families, at: <http://www.state.nj.us/dcf/providers/licensing/laws/CCCmanual.pdf>.

19 N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and 26:2C-1 et seq., Toxic Catastrophe Prevention Act Program, Consolidated Rule Document, p. 69, at http://www.nj.gov/dep/rules/rules/njac7_31_consolidated.pdf.

- **Under the Occupational Safety and Health Act (OSHA) and the New Jersey Public Employees Occupational Safety and Health Act (PEOSHA), private and public sector employers must have “Emergency Action Plans.”**²⁰ These plans must include, in part, procedures for evacuation, accounting for employees after an evacuation, rescue and medical duties, alarm systems, employee training, and more. The plan for workplaces with 10 or more employees must be available for employee review. The public may also be able to review this plan or obtain copies under the NJ Open Public Records Act.
- **Under OSHA and Public Employee OSHA, many private and public sector employers, including hospitals, must comply with the “Hazardous Waste Operations and Emergency Response Standard”, often referred to as HAZWOPER.**²¹ Under this standard, employers must develop an ERP. It must be in place before emergency response operations begin. The ERP must be rehearsed regularly and updated periodically. It must include pre-emergency planning; training and communications; emergency recognition and prevention; emergency alert procedures; protocols for personnel and lines of authority; procedures for handling emergency incidents, including necessary air monitoring and use of effective protective equipment; site control measures, including use of a buddy system so no one is in a contaminated zone alone; evacuation routes and procedures; decontamination procedures; and emergency medical treatment. This plan must be available for review and copying by employees, their representatives, and OSHA and PEOSH inspectors. The public may also be able to review the plan or obtain copies under the N.J. Open Public Records Act.

Community preparedness. Local residents cannot wait until a catastrophe occurs to start trying to find out how to respond. For example, neighbors of a chemical plant or railroad line need to know before anything happens if they should evacuate or “shelter in place” in an emergency situation.

News media alerts. If disaster strikes, traditional media need to be able to quickly access emergency response information to share with others.

Comparing best and worst practices. With public disclosure of potential catastrophes and ERPs, it is possible for community residents, advocates, and researchers to identify best practices and encourage those who have not adopted them to do so. For example, residents might question why their community is preparing for a potential chlorine disaster when other communities are not; nearly 300 NJ facilities have switched to safer processing methods that don’t require use of gaseous chlorine anymore, and more could make the switch.

20 OSHA Standard 1910.38, Means of Egress; Emergency Action Plans, at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=9726&p_table=standards.

21 OSHA Standard 1910.120, *Hazardous Waste Operations and Emergency Response* (HAZWOPER), at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=9765.

4) TRANSPARENCY: IT'S ABOUT SAVING LIVES

Access to ERPs is a matter of planning and ensuring public safety. WEC strongly supports right to know laws and believes information can help protect people in the case of an emergency.

Not having access to information and failing to plan for a chemical disaster puts the public at risk. It makes it more likely that preparedness and emergency response measures may prove inadequate in the event of a toxic release, explosion, or fire – and the result could be serious injuries or deaths.

A recent example of this in New Jersey occurred in 2012 when a train carrying vinyl chloride derailed in Paulsboro. Community members and emergency responders were exposed. The National Transportation Safety Board recommended that the NJ State Police Office of Emergency Management develop community emergency response plans that adequately provide for response to hazardous materials threats facing communities, including rail transportation.²² Advanced planning and better communication would have helped mitigate the risks.

Finding out what to do at the time of an incident is dangerously inadequate. For example, if there is a chance that community members are going to have to shelter in place, community members need to understand what that actually means beforehand. Will they need certain supplies on hand to make the response effective? Will they know what to do if other family members are outside the home? More generally, have they discussed any emergency preparedness or been notified to do so? Is the information regarding emergency planning presented in the language or languages the community speaks? Is shelter in place even a viable option in a worst-case release?

There is a common refrain regarding nefarious characters getting their hands on this public information as a reason not to release it. We should recognize that those bad actors can access much of this information without an ERP. Large chemical facilities are easily discoverable with either a quick google search or a pair of binoculars. If facility information is already disclosed, easily observable, or readily discoverable, then keeping it secret is not an option.

This is a distraction from the larger issue about preparing our communities for the more likely scenario of a chemical release or fire.

The need for an informed emergency response is real. According to the EPA, “in the past 10 years nearly 60 people died, some 17,000 people were injured or sought medical treatment, and almost 500,000 people were evacuated or sheltered-in- place as a result of accidental releases at chemical plants. During that time, more than 1,500 incidents were reported causing over \$2 billion in property damages.” Since the April 17, 2013 West, Texas disaster there have been more than 430 incidents and 82 deaths.²³

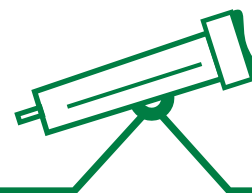
²² National Transportation Safety Board report: Conrail Freight Train Derailment with Vinyl Chloride Release Paulsboro, New Jersey, November 30, 2012 at: <http://www.nts.gov/investigations/AccidentReports/Reports/RAR1401.pdf>.

²³ Coalition to Prevent Chemical Disasters, February 29, 2016, Press Release: EPA Proposed Rule: A Missed Opportunity to Prevent Plant Chemical Disasters

Another example, the agency in charge of workplace safety – the U.S. Occupational Safety and Health Administration – reports that 4,609 workers were killed on the job in 2011 within the U.S. homeland. Compared that to the U.S. Department of State report that 17 U.S. citizens were killed *worldwide* as a result of terrorism in 2011. In other words, you were 271 times more likely to die from a workplace accident than terrorism in 2011.²⁴

Although we should be vigilant about terrorism, the greater risk to workers and community members is exposure to chemicals, particularly if there is a disaster, and we should be just as vigilant in preparing for and reducing the risk of that scenario. While workplace accidents are much more likely, emergency responders and communities should prepare for chemical releases from terrorism too – and should be knowledgeable about technology upgrades that might make facilities less attractive terrorist targets.

We should ask ourselves, in the absence of emergency response information, when was the last time our elected officials conducted an emergency preparedness training drill for the community, or proactively distributed information about what we should do in a worst case scenario?



PREVENTION MITIGATES HAZARD

Although this report focuses on emergency planning for the community, we must be mindful that prevention is the best way to mitigate the hazard. An effective approach to ensure chemical safety must address every aspect of a toxic disaster, from prevention to response. Simply providing access alone to emergency planning and preparedness documents is no substitution for prevention.

New Jersey has adopted landmark public policies that successfully prompted industries using extraordinarily hazardous substances to become safer and more secure. This includes requiring TCPA facilities to conduct Inherently Safer technology (IST) reviews to determine if they can substitute safer chemicals or processes to reduce their offsite consequences, when feasible.

In 2016, the US EPA took action by issuing a draft rule to update chemical safety rules to its Risk Management Plan (RMP) that would require a subset of chemical facilities to conduct safer alternatives analysis (STAA). Of the facilities that are required to conduct STAA, none of them are required to switch to feasible alternatives. The final rule is scheduled to be published in January 2017.

²⁴ <https://www.osha.gov/oshstats/commonstats.html>

The next Governor should ensure that ERPs inform the community about actions that may be required in an emergency. Effective plans must be written for a layperson

5) RECOMMENDATIONS

Governor Chris Christie should immediately direct the New Jersey State Emergency Response Commission (SERC), which is composed of representatives of the NJ Department of Environmental Protection (DEP) and the NJ State Police, to require NJ's 21 county and 565 municipal Local Emergency Planning Committees (LEPCs) to:

- Make up-to-date ERPs accessible for public review as legally required;
- Ensure municipalities and counties annually publish notice about public access in local newspapers as legally required; and
- Fund a small team of experts that can provide technical assistance to LEPCs upon request.

The next Governor should:

- Issue an Executive Order changing the designation of the Emergency Planning Districts. One approach might be to utilize the Hazard Mitigation Plan model that requires counties to submit a comprehensive plan to the State with municipalities submitting information to the county. Another model to consider is creating regional areas, as was done by the Homeland Security Urban Area Security Initiative.

In addition, consider also requiring municipalities with large quantities of hazardous substances, TCPA facilities or densely populated areas to continue as designated Emergency Planning Districts. Whichever model is used, it is important that community members are also included as key stakeholders in developing ERPs.

- Ensure that ERPs inform the community about actions that may be required in an emergency. Effective plans must be written for a layperson to understand and in the language (or languages) spoken by the community.
- Direct the SERC to require NJ counties and municipalities to post their emergency plans online, recognizing what public access means in the 21st century.
- Host an annual conference for LEPC members to share best practices.
- Provide sufficient staff and resources for the NJ Department of Environmental Protection and other state government agencies to ensure effective oversight and support for Emergency Planning Districts.
- Explore establishing a certification program for emergency management coordinators and other appointees to better ensure continuing education.

The NJ Department of Environmental Protection should:

- Conduct and publish an ERP capacity assessment for each county and municipality to determine whether funding levels and available expertise are sufficient for effective prevention, preparedness, and response.
- Engage community leaders; fire, police, and emergency response officials; labor union officers and safety committee members; TCPA facility and railroad management; and technical and communications experts in a comprehensive review of the ERP.

This collaborative review should address:

- The risks of high hazard facilities within each county and municipality, including the 95 TCPA sites and other major facilities using hazardous substances.
- Potential prevention methods, such as process improvements and substitution of safer chemicals.

- Adequate training, readily available expertise, and equipment for firefighters, EMTs, police, and other emergency responders to effectively carry out duties under the plan.
 - Effective notification of a hazmat incident to all those within danger zones, including residents, managers, and people in schools, day care centers, nursing homes, hospitals, etc.
 - The disproportionate impact of hazmat incidents on low income people and people of color, who often face language and transportation barriers.
 - New threats such as preparedness and response measures for crude oil train incidents involving ultra-explosive Bakken crude and heavy Canadian tar sand oil.
- Make widely known safer alternative options that facilities are using to reduce or remove chemical hazards, including options developed under the TCPA program.

The US Environmental Protection Agency should:

- Annually host a regional conference for SERCs to share best practices.
- Issue a report assessing state compliance, including case studies.
- Make widely known options that successful firms are using to reduce or remove chemical hazards, including solutions developed under federal Risk Management Planning programs.

Municipalities and Counties (Emergency Planning Districts) should:

- Review the ERP at least annually at a public meeting.
- Post the ERP on municipal or county website.
- Post the ERP notice in newspaper annually as legally required.
- Hold a public meeting to review the ERP if requested by 20 residents and/or workers from a chemical facility located within the municipality.

APPENDIX A

SURVEY RESULTS BY COUNTY AND MUNICIPALITY

Summary of Emergency Planning Districts Table that Follows

19 Counties Surveyed which hosted 95 TCPA facilities

- 3 Counties Provided Access
- 16 Counties Denied Access

59 Municipalities Surveyed which hosted 95 TCPA facilities

- 24 Municipalities Provided Access
- 34 Municipalities Denied Access

Please note that WEC surveyed counties and municipalities.

COMPARISON OF COUNTY RESPONSES FROM 2014 TO 2016

	# of County Surveys	Provided Access	Denied Access	#No Responses
2016	19	3	16	10
2014	19	6	13	10

COMPARISON OF MUNICIPALITY RESPONSES FROM 2014 TO 2016

	# of Municipalities Surveys	Provided Access	Denied Access	N/A	#No Responses
2016	59	24	34	1	16
2014	59	19	40	0	31

Note: the number of counties/municipalities that denied access includes the number that did not respond, included separately above as No Responses.

TCPA FACILITY	COUNTY/MUNICIPALITY SURVEYED	# TCPA FACILITIES	PROVIDED ACCESS	REASON
	Bergen County	3	No	No response
FXI Foamex Innovations	East Rutherford Borough	1	No	Under review by County
Suez Water New Jersey	Haworth Borough	1	Yes	
Crest Foam Industries Inc.	Moonachie Borough	1	No	
	Burlington County	4	No	No response
New Jersey American Water	Delran Township	1	No	Executive Order 21
Stepan Company	Fieldsboro Borough	1	Yes	
Garelick Farms LLC	Florence Township	1	No	
CVS Speciality Chemicals Inc.	Maple Shade	1	No	No response

TCPA FACILITY	COUNTY/MUNICIPALITY SURVEYED	# TCPA FACILITIES	PROVIDED ACCESS	REASON
Camden County				
		3	No	No response
State Metal Industries Inc.	Camden City	1	Yes	
Western Fumigation	Gloucester City	1	Yes	
The Dow Chemical Company	Pennsauken	1	Yes	
Cape May County				
		1	No	No response
Cape May County Municipal Utilities Authority	Middle Township	1	No	No response
Cumberland County				
		5	Yes	
Buona Vita/Crestwood Midstream LP	Bridgeton	2	Yes	
Seabrook Brothers & Sons Inc.	Seabrook	1	No	No response
Bridor USA/Casa DiBertacchi Corporation	Vineland	2	Yes	
Essex County				
		8	No	Denied: N.J.S.A. 47:1A-1 et seq.
New Jersey American Water	Millburn Township	1	Yes	
Boasso America Corporation/Deltech Resin Company/Elan Incorporated/ Newark Tank Depot/Sunoco Partners Newark Terminal/Welco Acetylene Corp.	Newark	6	No	Multiple extensions requested and granted
Al & John Inc.	West Caldwell Borough	1	No	No response
Gloucester County				
		12	No	No response
Ploymer Additives/VWR International LLC	Logan Township	2	Yes	
Coim USA Inc./ Paulsboro Refining Company LLC	Paulsboro	2	Yes	
LaBrea Bakery/Logan Generating CO LP	Swedesboro	2	No	provided partial information
Coim USA Inc./Johnson Matthey Inc. Solvay Specialty Polymers USA, LLC Sunoco Logistics Partners L.P.	West Deptford	4	No	Exempt from disclosure; Homeland Security Act 2002
Sunoco Partners Marketing & Terminals LP	Westville Borough	1	No	No plan
Grasso Foods Inc.	Woolwich Township	1	No	incomplete information
Hudson County				
		6	No	Denied: N.J.S.A. 47:1A-9a and EO 21
Bayonne Plant Holding Inc./Imtt-Bayonne LLC	Bayonne	2	Yes	
Ahold Ecommerce Sales Company LLC/ PSEG Fossil LLC/ Tropicana Products Inc	Jersey City	3	No	No response
Kuehne Chemical Co Inc.	South Kearny	1	No	No response
Hunterdon County				
		3	No	No response
Johanna Foods Inc.	Flemington Borough	1	No	No response
Rinchem Company Inc.	Raritan Township	1	No	No response
Readington Farms Inc.	Readington Township	1	No	No response

TCPA FACILITY	COUNTY/MUNICIPALITY SURVEYED	# TCPA FACILITIES	PROVIDED ACCESS	REASON
	Mercer County	2	No	
PSEG Fossil LLC	Hamilton Township	1	Yes	
City of Trenton	Trenton City	1	No	
	Middlesex County	13	No	No response
Kinder Morgan Liquids Terminals LLC	Carteret Borough	1	No	
L'oreal USA Inc	Cranbury Township	1	No	
Equistar Chemicals LP/ W R Grace & CO-CONN	Edison Township	2	No	request not specific enough
Ashland Inc./E.I. Dupont De Nemours & Co. Inc.	Old Bridge Township	2	No	No response
Buckeye Perth Amboy Terminal LLC	Perth Amboy City	1	No	
Colart Americas	Piscataway Township	1	No	No response
Menlo Logistics/L'oreal USA Inc	South Brunswick Township	2	No	
Dana Corporation/Buckeye Port Reading Terminal LLC Motiva Enterprises LLC	Woodbridge Township	3	Yes	
	Monmouth County	3	No	Denied U.S.C.A. 42 and EO 21
New Jersey American Water	Colts Neck Township	1	No	No response
Nestle USA INC	Freehold Township	1	Yes	
New Jersey American Water	Neptune Township	1	No	No response
	Ocean County	2	No	No response
Brick Township Mun. Util. Auth.	Brick Township	1	No	No response
Church & Dwight Company Inc	Lakewood Township	1	No	Document confidential
	Passaic County	2	No	No response
Passaic Valley Water Commission	Totowa Borough	1	Yes	
City of Newark	West Milford Township	1	Yes	
	Salem County	8	No	No response
Chambers Cogeneration LP/McLane New Jersey Inc.	Carneys Point Township	2	Yes	
E I Dupont De Nemours & Co Inc./ The Chemours Company FC LLC/ Siefried USA LLC	Pennsville Township	3	Yes	
Lubrizol Advanced Materials Inc./ Mexichem Specialty Resins, Inc./Oxy Vinyls LP	Oldmans Township	3	Yes	
	Somerset County	10	Yes	
Falcon Safety Products Inc./Tekni-Plex Inc. American Spraytech LLC	Branchburg Township	3	No	No response
Brook Warehousing Corporation/ Fisher Scientific Company LLC	Bridgewater Township	2	Yes	
NJ American Water/Rust-Oleum Corporation/Veeco Instruments Inc	Franklin Township	3	No	
Aeropres Corporation	Hillsborough Township	1	Yes	
RB Manufacturing LLC	Montgomery Township	1	Yes	

TCPA FACILITY	COUNTY/MUNICIPALITY SURVEYED	# TCPA FACILITIES	PROVIDED ACCESS	REASON
	Sussex County	1	No	No plan
Diversified CPC International Inc.	Sparta Township		Yes	
	Union County	6	No	Not custodian of record
Cogen Technologies Linden Venture LP/Infineum USA LP/LBT Intermodal LLC/Phillips 66 Company/Public Service Electric and Gas Co./Veolia North America Regen. Services LLC	Linden	6	No	Denied: N.J.S.A. 47:1A-11 and EO 21
	Warren County	3	Yes	
Linde Gas North America LLC	Alpha Borough	1	Yes	
Avantor Performance Materials	Phillipsburg Town	1	No	No response
Basf Corporation	Washington Borough	1	N/A	Facility located in Raritan Township

APPENDIX B

SURVEY RESULTS BY COUNTY WITH ADDITIONAL INFORMATION

County	# of TCPA Facilities (which use <u>Extraordinarily</u> Hazardous Substances)	# of Facilities using 10,000 Pounds or More of a <u>Hazardous</u> Substances	Provided Access to ERP
Atlantic*	0	125	Denied
Bergen	3	562	Denied
Burlington	4	288	Denied
Camden	3	240	Denied
Cape May	1	46	Denied
Cumberland	5	102	Yes
Essex	8	308	Denied
Gloucester	12	179	Denied
Hudson	6	294	Denied
Hunterdon	3	95	Denied
Mercer	2	223	Denied
Middlesex	13	609	Denied
Monmouth	3	294	Denied
Morris*	0	335	Denied
Ocean	2	238	Denied
Passaic	2	299	Denied
Salem	8	51	Denied
Somerset	10	207	Yes
Sussex	1	82	Pending
Union	6	326	Denied
Warren	3	93	Yes
TOTALS	95	5,068	

Source: 2015 Community Right to Know Survey, NJ Department of Environmental Protection or EPCRA.

APPENDIX C

METHODOLOGY

From January 2016 through November 2016, the New Jersey Work Environment Council emailed every NJ county (21) and every NJ municipality (59) in which the 95 facilities currently regulated by the NJ's Toxic Catastrophe Prevention Act (TCPA) were located and requested to review their ERP.

We first considered using the NJ Department of Environmental Protection's online directory of Local Emergency Planning Committees (at: www.nj.gov/dep/opppc/crtk/lepc.pdf) for municipal contacts. However, the list did not include email addresses or telephone numbers and was out of date, so we did not use it.

To contact municipalities, we wrote the municipal clerk. To contact counties, we wrote to the county office of Emergency Management Coordinators.

Municipal clerks routinely route correspondence to the appropriate person, such as the Local Emergency Planning Committee chair, record's custodian, emergency management coordinator, or legal counsel. When necessary, we followed up initial emails to municipalities and counties with additional emails and/or phone calls.

The list of TCPA facilities, which included their addresses, was obtained from the NJ Department of Environmental Protection.

APPENDIX D

REQUEST FROM WEC TO REVIEW EMERGENCY RESPONSE PLAN

Date

Dear County Clerk or County Office of Emergency Management Coordinator:

On behalf of the New Jersey Work Environment Council (WEC), I request the opportunity to review the Local Emergency Response Plan for your county.

WEC is a nonprofit coalition of 70 labor, community and environmental organizations that works to prevent accidents involving chemicals and for effective emergency response. WEC was founded in 1986 and is a member of the national Coalition to Prevent Chemical Disasters.

We are making this request under Section 11044 of the federal Emergency Planning and Community Right to Know Act. (See text below.)

Please let me hear back from you to schedule a time and place when the plans will be made available to me. If the plan is already on your web site or elsewhere on the internet, please inform us of the URL.

Alternatively, you could email or mail me a copy of the plan. If forwarding a hard copy, be assured that WEC will pay reasonable copying and postage fees; kindly include the bill with the mailing.

To respond, please complete the enclosed form or send us a letter. Please address any questions by email to wec@njwec.org.

Please respectfully understand that if we do not receive the completed form or a letter from you within seven days, we will take your inaction as a denial of this request.

Thank you for your cooperation in this matter.

Sincerely,

Debra Coyle McFadden
Assistant Director

Emergency Planning and Community Right to Know Act Section 11044 ensures public access to the local “emergency response plan.” Section 11044 reads as follows (bold, italicized type indicates our emphasis):

§11044. Public availability of plans, data sheets, forms, and followup notices

(a) Availability to public

Each emergency response plan, material safety data sheet, list described in section 11021(a)(2) of this title, inventory form, toxic chemical release form, and followup emergency notice **shall be made available to the general public**, consistent with section 11042 of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 11022 of this title, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section 11022(d)(2) of this title to be contained in an inventory form as tier II information.

(b) Notice of public availability

Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup emergency notices may subsequently be issued. **Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (a) of this section.**

(Pub. L. 99-499, title III, §324, Oct. 17, 1986, 100 Stat. 1752.)

APPENDIX E

WEC FACTSHEET: HOW TO ACCESS AN EMERGENCY RESPONSE PLAN

The Emergency Planning and Community Right to Know Act Section 11044:
Is Your Community Prepared to Respond to a Toxic Chemical Accident?

What is the federal Emergency Planning and Community Right to Know Act?

The Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 was created to help communities plan for chemical emergencies. It requires industry to report on the storage, use and releases of hazardous substances to federal, state, and local governments. EPCRA requires state and local governments to use this information to prepare their respective community from potential risks.

EPCRA was enacted as part of Title III of the Superfund Amendments and Reauthorization Act (SARA). The late Senator Frank Lautenberg and Representative James Florio were the lead sponsors of this law, which was based in part on the 1983 NJ Worker and Community Right to Know Act.

Section 11044 of EPCRA ensures public access to a local emergency response plan (ERP).

What is the Structure for Implementing EPCRA and Who is Responsible?

Each Governor appointed a State Emergency Response Commission (SERC) that is tasked with implementing EPCRA provisions. The SERC appoints, supervises and coordinates the activities of a Local Emergency Planning Committee (LEPC).

In 1987, NJ Governor Thomas H. Kean issued Executive Order 161 which created the SERC and designated every municipality and county in New Jersey as a local emergency planning district. Thus, each county and municipality in NJ has its own LEPC.

What is the role of LEPCs?

LEPCs must develop an emergency response plan, review the plan at least annually, and provide information about chemicals in the community to citizens. Plans are developed by LEPCs with stakeholder participation. Typically, the local emergency management coordinator is the contact for the LEPC.

The LEPC membership must include (at a minimum):

- Elected state and local officials
- Police, fire, civil defense, and public health professionals
- Environment, transportation, and hospital officials
- Facility representatives
- Representatives from community groups and the media

What are the required elements of an ERP?

There are nine essential elements to an ERP:

1. Identification of facilities and transportation routes of extremely hazardous substances
2. Description of emergency response procedures, on and off site
3. Designation of a community coordinator and facility emergency coordinator(s) to implement the plan
4. Outline of emergency notification procedures
5. Description of how to determine the probable affected area and population by releases
6. Description of local emergency equipment and facilities and the persons responsible for them
7. Outline of evacuation plans
8. A training program for emergency responders (including schedules)
9. Methods and schedules for exercising emergency response plans

In addition to the ERP, other supporting documents required to be made available to the public are:

- Material Safety Data Sheet (MSDS) or Safety Data Sheet (SDS)
- List of Hazardous Chemicals requiring a MSDS/SDS
- Emergency and hazardous chemical inventory forms
- Toxic chemicals release form
- A statement that follow-up emergency notices may be issued

Note: EPCRA permits owners or operators of facilities to request that specific information be withheld from public disclosure as trade secrets, or if categorized as Tier II chemicals

How are ERPs made publicly available?

LEPCs are required to publish an annual notice in local newspapers instructing the public on the procedure to review ERPs, including MSDSs/SDSs, Emergency and Hazardous Chemical Inventory Forms, and a statement that follow-up emergency notices may be issued.

In absence of this notice, ERPs and supporting documentation can be requested via the county or municipal clerk or through an Open Public Records Act (OPRA) request. It is important to note on your OPRA request the following statement:

This request is being made under the federal Emergency Planning and Community Right to Know Act.

Please contact WEC if you need help making an OPRA request or if your request is denied.

APPENDIX F

LETTER FROM JOHN J. HOFFMAN, ACTING ATTORNEY GENERAL OF NEW JERSEY



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO BOX 081
TRENTON, NJ 08625-0081

JOHN J. HOFFMAN
Acting Attorney General

JENNIFER E. FRADEL
Administrator

December 30, 2015

Via E-Mail Only: dcoyle@njwec.org

Debra Coyle McFadden
NJ Work Environment Council
7 Dunmore Avenue
First Floor East
Ewing, New Jersey 08618

Re: EPCRA Training


Dear Ms. McFadden:

Please be advised that, per our agreement, the New Jersey Office of Emergency Management has conducted training on the requirements of EPCRA to all of the priority municipalities you identified by e-mail correspondence dated May 22, 2015. In addition, a majority of County Emergency Management coordinators have received the training as well. NJOEM will make the EPCRA training available to the remaining municipalities/LEPCs in 2016.

Thank you.

Sincerely,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 
Mary Beth Wood, SDAG
Chief Counsel to the State Police

c: Robert VanFossen
LTC J. Mottley



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APPENDIX G

RESULTS OF SURVEY OF TARGET MUNICIPALITIES AFTER RECEIVING GUIDANCE AND/OR TRAINING BY NJ OFFICE OF EMERGENCY MANAGEMENT ON LEGAL REQUIREMENTS OF PUBLIC ACCESS TO ERPS

On May 18, 2015, WEC and allies including Teamsters local 877 and Clean Water Action NJ, met with SERC. At the meeting, WEC and allies were requested to choose ten priority municipalities for SERC to begin training on responsibilities under EPCRA. Not all of the municipalities listed host TPCA facilities. Some were chosen because they are pass through communities for high hazard trains including Bakken crude oil.

WEC received communication (see Appendix F) that training was conducted in the ten priority districts. WEC then surveyed the ten districts to request public access to the ERP. WEC found, six of the ten municipalities continued to deny access, further demonstrating confusion about the existing law. See Table 1 below.

TABLE 1

Ten Target Municipalities	Provided Access	Reason	Date of Denial
Kearny Township	No	N.J.S.A. 47: 1A-1.1	1/21/2016
Linden City	No	N.J.S.A. 47: 1A-1.1 and NJ Executive Order # 21	2/22/2016
Perth Amboy City	No	NJ Executive Order # 21	1/25/2016
Trenton City	No	"According to the Department of Law"	2/05/2016
Woodbridge Township	No	NJ Executive Order # 21	1/26/2016
Jersey City [Note 1]	No	No plans available	2/24/2016
Newark City [Note 2]	Limited		
Ewing Township	Yes	Provided access to Emergency Operation Plan	
Greenwich Township	Yes	Provided access to Emergency Operation Plan	
Borough of Westville	Yes	Provided access to Emergency Operation Plan	

Note 1: On February 24, 2016, WEC was informed there is no ERP on file. Approximately 40 facility specific ERPs must be created per Battalion Chief Kevin Nally, the HAZMAT/CBRNE COORDINATOR at Jersey City Fire Department.

Note 2: There is only one facility specific ERP on file. It is for Newark Energy Center power plant. On March 10, 2016, Debra Coyle McFadden reviewed the ERP, but was instructed that she was **not** allowed to take notes.

APPENDIX H

FOR MORE INFORMATION

- **For the EPCRA law and its emergency planning requirements:**
<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap116.htm>.
- **For WEC's 2014 report *Danger in the Dark: How Governor Christie Helps Oil, Chemical, and Railroad Companies Cover Up Potential Catastrophes*:**
<http://njwec.org/2016/08/danger-in-the-dark-how-gov-christie-helps-oil-chemical-and-railroad-companies-cover-up-potential-catastrophes/>
- **To see WEC's February 16, 2016 *Star-Ledger* opinion-editorial, *Christie Puts Public's Safety at Risk by Blocking Information*:**
http://www.nj.com/opinion/index.ssf/2016/02/njs_first_responders_to_christie_youre_putting_pub.html
- **To see how at least one in three US schoolchildren go to school inside chemical plant danger zones, go to the Center for Effective Government report:**
www.foreffectivegov.org/files/kids-in-danger-zones-report.pdf
- **For more information on the disproportionate burden of chemical hazards in lower income communities, see *Who's in Danger? Race, Poverty, and Chemical Disasters*, at:**
<http://comingcleaninc.org/assets/media/images/Reports/Who's%20in%20Danger%20Report%20FINAL.pdf>
- **For how chemical facilities can avoid catastrophic chemical hazards by using safer and more secure technologies, see “Chemical Security 101: What You Don’t Have Can’t Leak, or Be Blown Up by Terrorists”:**
<https://www.americanprogress.org/issues/security/report/2008/11/19/5203/chemical-security-101/>
- **For the National Transportation Safety Board report: *Conrail Freight Train Derailment with Vinyl Chloride Release Paulsboro, New Jersey, November 30, 2012*:**
<http://www.nts.gov/investigations/AccidentReports/Reports/RAR1401.pdf>