

OE-3: 2020-02

May 2020

New Chemical Accident Reporting Requirements

PURPOSE

This Operating Experience Level 3 (OE-3) document provides information on a new requirement imposed by the U.S. Chemical Safety and Hazard Investigation Board (CSB) to report certain accidental releases of chemicals. The CSB requires reporting of any accidental release into the ambient air that results in a fatality, serious injury, or substantial property damage. This new reporting requirement is distinct and separate from other release reporting requirements from other governmental agencies. This OE-3 document includes the applicability criteria for reporting an accidental release, steps to report the release, and a recommendation to update protocols and procedures.

BACKGROUND

The CSB is an independent federal agency created by the 1990 Clean Air Act Amendments - 42 United States Code (U.S.C.) §7412(r)(6). It is chartered with investigating and determining the facts, conditions, circumstances, and cause(s) of any accidental release resulting in a fatality, serious injury, or substantial property damage. As part of this mandate, the CSB is required to establish, via regulation, requirements for reporting accidental releases into the ambient air that are subject to the CSB's investigatory jurisdiction. On February 21, 2020, the final CSB Accidental Release Reporting regulation was published in the Federal Register (85 FR 10074), with an effective date of March 23, 2020.

DISCUSSION

Unlike other release reporting requirements, a threshold value does not have to be exceeded to trigger reporting to the CSB; rather, the standard for reporting an accidental release to the CSB is the **IMPACT** of the release to human health and the environment (i.e., fatality, serious injury, and substantial property damage). If the accidental release caused a fatality, serious injury, or substantial property damage, it must be reported to CSB regardless of the amount of a regulated or extremely hazardous substance released to the ambient air. There are no reportable quantities or thresholds applicable to this reporting requirement.

The CSB Accidental Release Reporting regulation in Title 40 of the Code of Federal Regulations (40 CFR) Part 1604, uses common environmental terms that have been assigned unique and specific definitions by the CSB. These definitions include:

- **Ambient Air:** any portion of the atmosphere **INSIDE** or outside of a stationary source;
- **Extremely Hazardous Substance:** **ANY SUBSTANCE** which may cause death, serious injury, or substantial property damage, including any amount of any regulated substance;
- **Regulated Substance:** Substances listed pursuant to the authority of 42 U.S.C. 7412(r)(3) and listed by the U.S. Environmental Protection Agency (EPA) in 40 CFR §68.130 Tables 1 through 4;
- **Serious Injury:** Any injury or illness that results in death or formal admission of a

patient to a hospital or clinic for inpatient care;

- **Stationary Source:** Any buildings, structures, equipment, installations, or other stationary activities, which belong to the same industrial group, are located on one or more contiguous properties, and are under the control of the same person from which an accidental release may occur; and
- **Substantial Property Damage:** Estimated property damage within and outside a stationary source of at least \$1,000,000.

Additionally, this requirement only applies to accidental releases (unanticipated emissions). This would include releases due to accidents or malfunctions but would not apply to anticipated or approved releases.

Unlike the EPA, the CSB cannot levy fines or issue citations; rather it investigates the root cause(s) of chemical accidents at stationary sources to make non-binding recommendations to both regulated industry and governmental regulatory agencies. CSB can only refer to EPA any failure to report an accidental release, as this is the only requirement in CSB regulations; CSB cannot enforce any of its recommendations or investigation results. After accepting a referral, EPA would determine what type of enforcement action is appropriate for failure to report an accidental release to CSB, including administrative penalties, civil action, and criminal action. The CSB has established a one-year (until February 21, 2021) grace period from enforcement referrals, to allow for education on this new reporting requirement.

The CSB only investigates accidental releases from stationary sources; mobile sources are only included in an investigation if they are connected to a stationary process (i.e., loading or unloading) or are a contributing cause to an accidental release at a stationary source.

ANALYSIS

If an accidental release to the ambient air of a regulated substance or an extremely hazardous substance occurs at a stationary source that results in a fatality, a serious injury that results in death or inpatient hospitalization, or significant property damage (\geq \$1,000,000), the following information must be reported to the CSB:

1. Owner or operator name and contact information;
2. Name and contact information for person making the report;
3. Location information and any facility identifiers (EPA Registry Identification);
4. Approximate time of the accidental release;
5. A brief description of the accidental release;
6. An indication whether a fire, explosion, death, serious injury, or property damage has occurred;
7. Name(s) and Chemical Abstract Service (CAS) number(s) of the material(s) involved in the accidental release;
8. Amount of the release (if known);
9. Number of fatalities (if known);
10. Number of serious injuries (if known);
11. Estimated property damage at or outside the stationary source; and
12. Whether the accidental release has resulted in an evacuation order impacting members of the general public or the facility, including the number of persons evacuated (if known), the approximate radius of the evacuation zone; and type of person(s) subject to the evacuation order (i.e., employees, members of the general public, or both).

This information must be reported within 8 hours of the accidental release and may be made to the CSB by email at report@csb.gov or by telephone at 202-261-7600.



If the owner or operator has submitted a report to the National Response Center (NRC) pursuant to 40 CFR §302.6, the NRC will assign an NRC Report Number (SEQNOS) to the report. Since the NRC requires the same information as the CSB, to eliminate duplicative reporting to both NRC and CSB, the CSB will allow the owner or operator to report to the CSB within 30 minutes of the NRC notification the SEQNOS number. The CSB can then access the information reported to the NRC using the SEQNOS.

If an accidental release does not satisfy all of the reporting criteria, it is not required to be reported to CSB. **ALL** of the following criteria must be satisfied for the CSB reporting requirement to apply to an incident:

- Accidental release (unanticipated emissions);
- Into the ambient air;
- From a stationary source; and
- Caused a fatality, serious injury, or substantial property damage.

An owner or operator may update and revise any notification submitted to the CSB by submitting a revised notification within 30 days of the initial notification. Revisions may be submitted to the CSB at report@csb.gov or by correspondence to:

Chemical Safety Board (CSB)
1750 Pennsylvania Ave. NW, Suite 910
Washington, DC 20006

RECOMMENDATIONS

Since accidental release reporting required by the CSB focuses on the impacts of the release, reports to the CSB may also be required when submitting reports to other agencies. For example, if an accidental release to the ambient air caused a serious injury that required inpatient hospitalization, an Occupational Safety and Health Administration (OSHA) Serious Event Report AND a CSB accidental release report would be required. However, not every accidental release must be reported to CSB. If diesel fuel spills into a

waterway causing over \$1,000,000 in property damage, the CSB is not required to be notified since there is no release to ambient air. DOE sites should review their existing protocols and procedures for reporting chemical releases and accidents to incorporate this new requirement. Examples of documents that may require modification include:

- EPA Chemical Accident Prevention/Risk Management Plan
- OSHA Process Management Plan
- Integrated Contingency Plan (“One” Plan)
- Emergency Response Plan
- OSHA Serious Event Reporting
- Emergency Spill or Release Notifications

REFERENCES

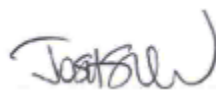
[42 U.S.C. §7412](#), *Air Pollution Prevention and Control - Hazardous Air Pollutants*

[40 CFR §302.6](#), *Superfund, Emergency Planning, and Community Right-to-know Programs – Notification Requirements*

[40 CFR 1604](#), *Chemical Safety and Hazard Investigation Board – Reporting of Accidental Releases*

Questions regarding this OE-3 document can be directed to Ashley L. Ruocco at (301) 903-7010 or e-mail Ashley.Ruocco@hq.doe.gov.

This OE-3 document requires no follow-up report or written response.



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