



National Association of SARA Title III Program Officials

Concerned with the Emergency Planning and Community Right-to-Know Act

March 1, 2008

DISCUSSION DRAFT VERSION

GUIDANCE FOR LOCAL EMERGENCY PLANNING COMMITTEES AND STATE EMERGENCY RESPONSE COMMISSIONS REGARDING THE DHS CFATS REQUIREMENTS FOR EMERGENCY PLANNING AND EXERCISES

The purpose of this guidance is to provide assistance to LEPCs and SERCs in working with facilities that are regulated by the CFATS program. The facilities are, of course, part of our communities. The safety of the community, the safety of employees at the facility, the community's preparedness for hazardous chemical releases, and most critically the safety of first responders depends on cooperation between the facility, LEPCs and first responders in planning, training and exercising for possible incidents.

The Department of Homeland Security's Chemical Facility Anti-Terrorism Standards contain the following provision at 6 CFR §27.230:

(9) Response. Develop and exercise an emergency plan to respond to security incident internally and with assistance of local law enforcement and first responders.

Of course it's helpful to have some idea of what DHS intended with this provision. The following discussion is found in the explanatory materials in the Federal Register when the regulation was announced. At 72 FR 17724, we find the following statement:

Developing and exercising an emergency plan to respond to security incidents internally and with local law enforcement and first responders (i.e., emergency medical technicians (EMTs), fire, police) benefits the facility by preparing it to take quick and decisive action in the event of an attack or other breach of security. Establishing relationships with local law enforcement improves responder understanding of the layout and of hazards associated with the facility and strengthens relationships with the community.

It's also useful to understand that DHS did not intend to preempt existing regulatory programs such as the Emergency Planning and Community Right-to-Know Act which created LEPCs and SERCs in the first place. At 6 CFR §27.405 we find:

(1) Nothing in this part is intended to displace other federal requirements administered by the Environmental Protection Agency, U.S. Department of Justice, U.S. Department of Labor, U.S. Department of Transportation, or other federal agencies.

Again we find that the explanatory materials in the Federal Register are helpful. A 72 FR 17714 we find the following:

At this time, we do not intend to displace or otherwise affect any provisions of Federal statutes, including the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11001 et seq., or section 112r and 114 of the Clean Air Act of 1990, as amended, 42 U.S.C. 7412(r), 7414, sections 308 and 402 of the Clean Water Act, 33 U.S.C. 1318, 1342, and section 104(e)(7) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9604.

In NASTTPO's view this means that LEPCs should play their normal role in promoting communication, planning, training and exercises with a focus on the sorts of incidents the facility might experience. This approach is also consistent with NFPA 1600 requirements in Section 4.3 dealing with a facility advisory committee.

The objective of these efforts is clear. Planning and preparedness to protect communities and all their members from the impacts of hazardous chemical releases is a community-wide process. Only through cooperation can we be successful.

Its important to draw a distinction between law enforcement interactions with CFATS regulated facilities versus chemical release emergency planning. Quite obviously many security issues that will be discussed between the facility, local law enforcement and DHS will not involve an actual or threatened chemical release. In order to achieve community preparedness it will be important for all involved to have a responsible perspective on this balance. It is inappropriate for a facility to "hide" behind security issues as an excuse to fail to cooperate with LEPCs and first responders. It is equally inappropriate for LEPCs and non-law enforcement first responders to attempt to force access to information that is unnecessary to emergency planning, training and exercises.

LEPCs and first responders should expect facilities to do the following:

- communicate that hazardous chemicals are present with information on the name, typical quantity and hazard presented - this should include a discussion of chemical release scenarios with impacts outside the facility
- communicate internal response capabilities and planning
- review facility operational and access conditions that can impact search and rescue, first responder access and egress, and critical areas that first responders should attempt to protect
- if there are security systems in place that will retard first responder access or egress, or which are so unique that unknown hazards are presented to first responders during an incident, then the facility must make an effort to protect the health and safety of first responders

LEPCs and non-law enforcement first responders need to understand that "confidential vulnerability information" protected under the CFATS program should not be necessary to accomplish reliable planning, training and exercises. While this might not be comfortable it is important to allow the facilities to comply the DHS requirements.