RELEASE REPORTING: WHEN, HOW, TO WHOM, AND WHAT IF YOU DON’T?
S. Beaux Jones
“A prudent question is one-half of wisdom.”

The Right Honorable Sir Francis Bacon
ULTIMATE QUESTIONS

• Do we have to report?
• When do we have to report?
• To whom do we have to report?
• What must be in our report?
INITIAL QUESTIONS

• Who am I?
• Who are we?
• What was the release?
• Who was near?
• Is it an emergency?
• QQL: Quantity, Quality, Location?
• When did it happen?
• Who might care?
• Do we operate under a permit?
• What are the risks if I don’t report?
WHO AM I?

• Discharger?
  ➢ facility, plant, company, site, person or its reps, agents or employees, which discharge pollutants. (LAC 33:I.3905)

• Person in Charge? (CERCLA)
  ➢ Occupies position of responsibility and power (Tyson)

• Owner/Operator? (“right to know”)
  ➢ Any person, p-ship or corp...engage in business or research which use, manufacture, emit or store HAZMAT (30:2363)

• Responder?
IS IT AN EMERGENCY?

Any condition which could reasonably be expected to endanger the health and safety of the public, cause significant adverse impact to the land, water or air environment, or cause severe damage to property.

LAC 33:1.3905
WHAT WAS RELEASED?

• Gaseous
• Liquid
• Semi-solid
• Solid
HOW MUCH WAS RELEASED?

• Most RQs in pounds
• Be **precise**, but efficient in conducting due diligence
• Constructive knowledge or actual knowledge
WHERE WAS IT RELEASED?

• Ground?
• Water?
• Groundwater?
• On-site?
• Off-site?
IF YOU DETERMINE THAT A REPORT IS REQUIRED

• To whom?
• When?
• In what method?
• Are you required to follow-up?
• What if it is a continuous release?
WHERE DO REPORTING OBLIGATIONS COME FROM?

Report

- Statute
- Regulation
- Permit
- Consent
- Decree
- Internal Policy
REGIMES WITH REPORTING OBLIGATIONS

• CERCLA
• RCRA
• EPCRA
• CWA
• OPA

• TSCA
• HMTUSA
• CAA
• LEQA
CERCLA
40 C.F.R. PART 302

Comprehensive Environmental Response, Compensation and Liability Act

Reportable Release of a Hazardous Substance
CERCLA
40 C.F.R. PART 302: TRIGGERS

• Release that Exceeds RQ in 24-Hour Period
  • RQ in pounds and applies to all media
  • RQ Reference:
    o Listed Hazardous Substances in Table 302.4 (40 C.F.R. 302.4)
      • A2213 through K181
    o Unlisted per 302.4 (b) → 100 pounds
  • Exceptions to RQ for certain industries/actions/pollutants
  • Excludes federally permitted releases and application of pesticide
  • Continuous Release Reporting
CERCLA: 40 C.F.R. PART 302
TO WHOM AND WHEN TO MAKE THE REPORT?

• National Response Center (800) 424 8802
  ➢ Verbal
  ➢ Calling LSP is not sufficient
  ➢ This is watched closely by community groups.

• IMMEDIATELY
  ➢ A reasonable time after identifying the nature and quantity
  ➢ Not later than an hour after knowledge

• Updates: required to use NRC Reference #
  ➢ No written report required
EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT: 40 C.F.R. PART 355
RELEASE OF A CERCLA HAZ SUBSTANCE OR EHS

• TRIGGER EVENTS
  ➢ Release of EHS or Haz, Sub. Exceeds RQ in 24-Hours
    ▪ RQ in pounds and applies to all media
    ▪ RQ References:
      ○ EHS (40 CFR 355, Appendix A & Appendix B)
      ○ CERCLA (40 C.F.R. 302.4, Table 302.4)
    ▪ Exceptions to RQ for certain industries/actions/pollutant
    ▪ Excludes federally permitted releases
      ○ Insignificant activities are “permitted”
      ○ “State-Only” permit limits are not excluded (e.g., Ammonia)
      ○ Continuous Release Reporting (reduced)
EPCRA: 40 C.F.R. PART 355
TO WHOM AND WHEN TO MAKE THE REPORT?

• Reports under EPCRA are primarily for the public and for its “Right to Know”

• **Immediately:**
  - Call to LEPC; and*
  - State Emergency Response Commission/LSP Hotline

• Phone Updates: as required by LSP

• Written Report: No

*State regulations require calling LEPC first. Federal EPRCA does not require a particular order. Thus, if you call LSP first and LEPC second, you will be in compliance with 40 C.F.R. 355.42, but in violation of LAC 33:V.10111(F).

**PRACTICE TIP: CALL LEPC FIRST**
LDEQ UNAUTHORIZED DISCHARGE
CHAPTER 30

• LAC 33:I Chapter 39

• Unauthorized Discharge of a Pollutant
  ➢ Unauthorized Discharge
    • Continuous, Intermittent, or One-time
    • Intentional or Unintentional
    • Permitted or Unpermitted Source
    • In contravention of LEQA (La. R.S. 20:2001 et seq.)
  ➢ Pollutant
    • Substance that tends to degrade the chemical, biological, or radiological integrity of the environment
LDEQ UNAUTHORIZED DISCHARGE: TRIGGERS

- **Emergency**: irrespective of quantity
  - Reasonably expected to affect health & public safety beyond the boundary
  - Significant impact to land, water, or air
  - Severe damage to property

- **Non-Emergency**: Exceeds RQ in 24-Hour Period
  - If source is permitted: RQ begins where permit limits end
  - RQ in pounds and applies to all media
  - RQ (Subchapter E; LAC 33:I.3927-3931)
    - CWA (40 CFR 117.3, Table 117.3)
    - CERCLA (40 CFR 302.4, Table 302.4)
  - Excludes federally or state permitted releases (which includes “insignificant activities”)

bhbmlaw.com 20
LDEQ UNAUTHORIZED DISCHARGE: TO WHO AND WHEN TO MAKE THE REPORT?

• **EMERGENCY** (immediately)
  - LDEQ via the Louisiana State Police Hotline
  225-925-6595
    - NOT THE LDEQ HOTLINE OR THE SPOC
    - A single call can suffice for multiple days of release if that point is clearly stated.

• **Non-Emergency** (within 24 hours)
  Online incident form, or e-mail, or call (225) 219-3640 during office hours, or at (225) 342-1234 after hours.

• **Groundwater** (within 7 days to SPOC)
LDEQ UNAUTHORIZED DISCHARGE: TO WHOM AND WHEN TO MAKE THE REPORT?

• Written Report due within 7 calendar days of the required notification
• Update every 60 days as necessary.
• See LAC 33:I.3925
LDPS RIGHT TO KNOW REGS

• LAC 33:V. Chapter 101; § 10111
• Reportable Release of a Hazardous Material or Substance
• Purpose: to provided citizens & emergency response personnel with data on hazardous material storage and releases in order to make educated and responsible decisions
• **Regardless of the Quantity**- must report if:
  - Release directly causes injury or fatality; or
  - Release results in a fire or explosion, which could reasonably expected to affect the public safety beyond the boundaries of the facility; or
  - The owner or operator knows a protective action beyond the facility has been initiated
• **Release of RQ in a 24-Hour Period**
  - RQ in pounds and applies to all media
  - RQ References
    - CERCLA (40 CFR 302.4, Table 302.4)
    - EHS (40 CFR 355, Appendix A)
    - DOT (49 CFR 172, Appendix to 172.10)
    - Material on which Material Safety Data Sheet (MSDS) required
      - Flammable Gases = 100 pounds
      - Flammable Liquid = 100 pounds
      - Other MSDS Liquids = 1,000 pounds
      - Other MSDS Materials = 5,000 pounds
  - Exceptions to RQ for certain industries/actions/pollutants
  - Excludes federally or state permitted releases (which includes “insignificant activities”)
LDPS RIGHT TO KNOW REGS: TO WHOM AND WHEN TO MAKE THE REPORT?

• Local Emergency Planning Committee (LEPC) with jurisdiction over the facility; and then to
• LSP (225) 925-6595 or 1-877-925-6595
• Notification to LSP constitutes notification to LDEQ, LPGC, and LOSCO

• **IMMEDIATELY**
  - Or by the owner or designated rep as soon as they have knowledge of the release
  - Reasonable time to identify nature and quantity
  - Follow-up, written report within 5 days.
• Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of a hazardous material subject to this Chapter shall report immediately by electronic or telephonic notification to the department if that incident, accident, or cleanup of an incident or accident

Single Point of Contact

The following are the procedures used for reporting any spills or releases to the Single Point of Contact (SPOC) at the DEQ.

Requirements for Emergency Notification: (LAC 331:3915)
For Emergency Incidents, as defined in (LAC 331:3915), call the Hazardous Material Hotline at (225) 925-6595 as soon as possible within the first hour of the emergency. A call to the DEQ Hotline does not qualify as Emergency incident notification. However, a written notification report by the facility to the DEQ is still required within seven calendar days after the initial reporting to the Louisiana State Police.

Requirements for Non-Emergency Notification: (LAC 331:3917)
In the event of an unauthorized discharge that exceeds a reportable quantity specified in Subchapter E of LAC 331, Chapter 39 but does not cause an emergency condition, call Hazardous Material Hotline at (225) 925-6595 within 24 hours after learning of the discharge.

Requirements for Notifying the Department: (LAC 331:3923)
Permit excursions, exceedances, and any other conditions do not fall under one of the two conditions above can be reported to DEQ Single Point of Contact (SPOC) by one of the three ways below:

1. The first is the a verbal notification can be made by calling the DEQ Hotline at (225) 342-1234. The DEQ-SPOC phone line is manned during working hours (M - F, 8:00 am - 4:30 pm). The DEQ-SPOC office line is (225) 219-3640. If calls are made after hours, leave a voice mail.

2. Another option for reporting is the Online Incident Reporting system. Simply follow the onscreen instructions and complete the necessary fields. The onscreen user will receive a summary of the notification along with a confirmation tracking number which can be printed for a record of the notification.

3. As a final alternative, a direct email may be used to contact the DEQ at the following address with the necessary information to submit a notification: spoc@DEQ.LA.GOV. (This option does not produce a confirmation.)

Written Notification Procedures: (LAC 331:3925)
Written reports (LAC 331:3925) should be mailed to:

Louisiana Department of Environmental Quality
Post Office Box 4312
Baton Rouge, LA 70821-4312
ATTENTION: Office of Environmental Compliance - SPOC
"UNAUTHORIZED DISCHARGE NOTIFICATION REPORT"

Or, the Written Notification Report may be faxed to the Louisiana Department of Environmental Quality, Office of Environmental Compliance, Single Point of Contact at: (225) 219-4044.

Information Needed for Reporting Releases

When contacting SPOC about releases, please have the following information available:

- Your name and the name of your company
- The mailing address of your company
- The telephone number(s) where you can be reached
<table>
<thead>
<tr>
<th>Parish</th>
<th>Agency</th>
<th>Phone</th>
<th>Parish</th>
<th>Agency</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 E Baton Rouge</td>
<td>FD Communications</td>
<td>225-389-2050</td>
<td>36 Orleans</td>
<td>OHSEP</td>
<td>504-658-8725</td>
</tr>
</tbody>
</table>

LEPC INFORMATION
WHAT HAPPENS IF YOU DON’T REPORT

• Direct penalties
• Indirect consequences
  ➢ LDEQ penalty matrix and the violator-specific factors
  ➢ EPA Enforcement...civil to criminal? Devaney Memo

• Citizen Suits (La. R.S. 30:2026)
• Whistleblowers (La. R.S. 30:2027)
  ➢ Borcik v. Crosby, 2016 WL 3913431 (La. 2017)-The bar for “good faith” was clarified or lowered depending on who you ask.
LEFT FOR INTERPRETATION

• Interplay between RECAP Standards and reporting contamination of groundwater or discharge of solid waste
• Follow-up/ confirmatory testing
ETHICAL CONSIDERATIONS

• Lawyers
• Engineers
• Environmental Consultants
QUESTIONS?

S. Beaux Jones
bjones@bhbmlaw.com
504.585.7781