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TO: CSMA Membership

FROM: George G. Misko *gmm*
Regulatory Counsel

RE: Federal Community Planning and
Emergency Right To Know Act

On October 17, 1986, President Reagan signed into law the Superfund Amendments and Reauthorization Act of 1986 (SARA). This law revises and extends the authorities established under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA; also known as Superfund).* Title III of SARA establishes new provisions regarding emergency planning and preparedness for chemical releases, community right to know reporting requirements and toxic chemical release reporting requirements.

Title III provides for specific dates by which various provisions of the law must be implemented by EPA, state and local authorities, and facilities with hazardous substances. The first such date requires EPA to publish a list of extremely hazardous substances along with threshold planning quantities for the substances by November 17, 1986. In addition, facilities with extremely hazardous substances must comply with the emergency release notification requirements of the law beginning November 17, 1986. EPA met this deadline with publication of an interim final rule and a proposed rule which are the subject of a Regulatory Alert enclosed with this memorandum.

Overview of Title III

Title III of SARA, also known as the "Emergency Planning and Community Right to Know Act of 1986" is designed to support emergency planning efforts at the state and local level

* CSMA will present a special program on SARA at its Annual Meeting in Fort Lauderdale, Florida on Tuesday, December 9, 1986 from 1:00 - 3:00 p.m. The program will be conducted by members of the law firm of McKenna, Conner & Cuneo.

in order to respond to chemical accidents; provide residents and local officials with information concerning potential chemical hazards in their communities; and provide the appropriate authorities with immediate notification and information concerning accidental releases of extremely hazardous substances.

Subtitle A: Framework for Emergency Planning Programs

Title III is organized into three subtitles. Subtitle A establishes the framework for emergency planning programs at the state and local level. The law mandates each state to establish an emergency response commission by April 17, 1987. This state commission is responsible for establishing emergency planning districts by July 17, 1987 and appointing local emergency planning committees for each district by August 17, 1987. The state commission is also responsible for supervising and coordinating the activities of local emergency planning committees.

In addition, Subtitle A governs the development of comprehensive emergency response plans to chemical accidents by local emergency planning committees. The response plans must include such factors as the identification of covered facilities and routes used for the transportation of extremely hazardous substances; methods and procedures to be followed in the event of a release; and evacuation plans including alternative traffic routes. This response plan must be in operational order by October 17, 1988. Subtitle A also mandates the promulgation of a list of extremely hazardous substances by EPA and the threshold planning quantities for these substances by November 17, 1986. Facilities with the listed substances in excess of the threshold planning quantities must notify the appropriate state commission by May 17, 1987 that they are subject to the requirements of the Act. Finally, Subtitle A requires the immediate reporting of certain releases of hazardous substances to local committees and state commissions. The manner of reporting required depends upon whether the substance is an extremely hazardous substance as defined by the Act (see Regulatory Alert enclosed herewith), a substance covered under Section 102(a) of CERCLA or both. Moreover, the Act provides for specific information to be given on the release including the chemical identity, time, duration and quantity of the release, known or anticipated acute or chronic health effects and proper precautionary measures. Facilities must then provide follow-up reports on the release, the effects and response actions taken by the facility.

Subtitle: B: Facility Submissions of MSDS's and Inventory Report.

Subtitle B includes the submission of Material Safety Data Sheets (MSDS's) and emergency and hazardous chemical inventory forms to state and local governments. The law mandates that facilities required to have MSDS's pursuant to OSHA regulations submit copies of the MSDS's to state commissions, local committees and appropriate fire departments by October 17,

1988. In lieu of such submissions, facilities may submit a list of chemicals (for which MSDS's are required) that are grouped in accordance with OSHA's categories of health and physical hazards, or in such other categories as EPA may prescribe. If a list is submitted instead of MSDS's, then an MSDS for any listed substance must be provided upon request to local committees.

In addition to the above requirement, Subtitle B requires owners and operators of facilities to submit emergency and hazardous chemical inventory forms by March 1, 1988 (containing data for the preceding calendar year) and then annually thereafter. The inventory form must be filed for every hazardous chemical present in a facility above certain threshold levels for which an MSDS is required by OSHA regulations. The inventory form must contain the following information grouped in OSHA categories of health and physical hazards: 1) an estimate of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year; 2) an estimate of the daily average amount of hazardous chemicals in each category present at the facility in the preceding calendar year; and 3) the general location of hazardous chemicals in each category. This inventory report is referred to as Tier I Information.

Upon request, or in lieu of submitting Tier I Information, a covered facility must provide Tier II Information. Tier II contains the information required by Tier I plus: 1) the chemical or common name of the chemical; 2) a description of the manner of storage of the chemical; 3) the specific location of the chemical at the facility; and 4) an indication of whether locational information should be withheld from public disclosure.

Finally, Subtitle B requires submission of Toxic Chemical Release Forms by manufacturing facilities in Standard Industrial Classification Code 20-39 and which use, manufacture or process certain threshold amounts of the toxic chemicals. This submission is designed to allow EPA and the states to keep track of toxic chemical releases on a site-specific or geographically specific basis. The form, which must be published by EPA by June 1, 1986, will require, among other things, the following information: 1) name, location and principal activities of the facility; 2) certain Tier I type information; 3) the waste treatment or disposal method employed for each wastestream and a treatment efficiency estimate; and 4) the annual quantity of each toxic chemical entering each environmental medium. The toxic chemicals covered by the reporting requirement have been specified by Congress, and may be revised by EPA on its own initiative, or upon petition by interested parties based upon very specific guidelines.

Subtitle C: General Provisions

Subtitle C of the Act provides for a number of general provisions including a provision specifically rejecting any

preemptive effect the law may have on state or local laws. In addition, the subtitle contains extensive provisions relating to trade secret claims and determinations made by EPA with regard to the validity of those claims. Provisions are also included for administrative or civil penalties of \$25,000.00 for frivolous trade secret claims. Moreover, provisions are made for the release of trade secret information to health care professionals for purposes of diagnosis or treatment upon submission of a written statement of need and a confidentiality agreement; to doctors or nurses in emergency situations without first providing a confidentiality agreement; and to local government health care professionals who submit a written statement of need and a confidentiality agreement.

Finally, Subtitle C provides for extensive administrative, civil and criminal penalties for violations of the Act, and for citizen suits against owners and operators of facilities, the EPA Administrator and/or state governors for failure to comply with almost any provision of the Act.

Statutory Timeframe

As previously noted, Title III sets out a number of specific periods of time in which certain provisions of the law must be implemented or complied with by facility owners and operators, by EPA, and by state and local authorities. Enforcement actions can be brought to force implementation or compliance with these dates. The following chart sets forth the date and action required in order that you may become better acquainted with the manner in which the Act will be implemented. We understand that EPA's Administrator, Lee Thomas, has made EPA's compliance with the statutory deadlines a high priority.

<u>Date</u>	<u>Action Required</u>
November 17, 1986	EPA Publication of List of Extremely Hazardous Substances and Threshold Planning Quantities
November 17, 1986	Facilities to Notify Designated Authorities of Emergency Release
November 17, 1986	EPA to Initiate Review of Emergency Systems for Dealing with Extremely Hazardous Substances
January 17, 1986	EPA to Publish Uniform Format for Emergency and Hazardous Chemical Inventory Forms
April 17, 1986	State Governors to Establish State Emergency Response Commissions

May 17, 1986	Facilities to Notify State Commission of Presence of Extremely Hazardous Substances at Facilities
May 17, 1987	EPA Interim Report to Congress Reviewing Emergency Systems for Dealing with Extremely Hazardous Substances.
June 1, 1987	EPA to Publish Uniform Format for Toxic Chemical Release Form
July 17, 1987	State Commissions to Establish Emergency Planning Districts
August 17, 1987	State Commissions to Establish Local Emergency Planning Committees
September 17, 1987	Facilities to Notify Local Committees of Facility Representatives
October 17, 1987	Facilities to Submit MSDS's or List of Chemicals to State Commissions, Local Committees and Fire Departments
March 1, 1988	Facilities to Submit Emergency and Chemical Inventory Forms to State Commissions, Local Committees and Fire Departments
April 17, 1988	EPA Final Report to Congress Reviewing and Recommending Emergency Systems for Dealing with Extremely Hazardous Substances
July 1, 1988	Facilities to Submit Toxic Chemical Release Forms to EPA and State Commissions
October 17, 1988	Local Emergency Planning Committee to Complete Preparation of Emergency Plan
October 17, 1991	EPA to Submit to Congress a Report on Mass Balance Study Conducted by NAS

The foregoing is not in any sense meant to be a complete exposition of Title III of SARA. There are many other specific provisions of the Act which will affect facilities with hazardous substances and/or extremely hazardous substances. Many of these detailed provisions concern reporting requirements, updating reports or inventories, and revising lists of chemicals covered by the Act. You will be advised of these detailed provisions as they become more relevant through the passage of time and/or as they become the subject of regulatory action.