



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File: EHA/HEER Office
13-645 SL

December 20, 2013

TO: Gary L. Gill
Deputy Director for Environmental Health

THROUGH: Keith E. Kawaoka, D.Env., Program Manager 
Hazard Evaluation and Emergency Response Office

FROM: C. Curtis Martin, Supervisor 
Emergency Response Preparedness and Prevention Coordinator
Hazard Evaluation and Emergency Response Office

SUBJECT: Request Approval of HSERC Policy and Procedures for Public Access To Tier II Reports Document

During the December 6, 2013 HSERC Meeting, the members voted to appoint the HEER Office to act on behalf of the HSERC to process any request for Public Access to Tier II Reports. In doing so, the HEER Office will perform the following tasks:

1. Researches and prepares office files and contacts persons requesting access to public records within ten (10) business days.
2. Verifies requestor's name, address and phone number where they can be reached.
3. Make copies of files that requestor would like to have.
4. Notify requestor if no records are found.

Currently, the HEER Office continues to experience an extraordinarily high volume of incoming information and documents associated with hazardous materials and the subsequent response/clean-up activities, which require action or attention.

In order to be fully compliant with rules and regulations established by the Uniform Information Practices Act, it is imperative that the HEER Office process these requests within a ten business-day period.

APPROVED DISAPPROVED



Gary L. Gill, Deputy Director for Environmental Health

11/3/14
Date

Attachment

Hawaii State Emergency Response Commission (HSERC) Policy and Procedures for Public Access to Tier II Reports

Purpose: The primary purpose of this policy is to establish procedures for the HSERC, and LEPCs to receive and process requests for Tier II information to meet Hawaii statutory requirements (see below). The primary intent is to ensure that the release of Tier II data will not be applied to conduct illegal activities which could jeopardize the public safety and welfare of the citizens of Hawaii. None of the Homeland Security precautions identified in these procedures stop the processing of a valid request for information about hazardous materials by citizens. The State of Hawaii remains in full compliance of Hawaii Emergency Planning Community Right-to-Know (HEPCRA) law.

General: Tier II reports must be submitted annually by facilities that have the reportable quantities Threshold Planning Quantity (TPQ), of chemicals and hazardous substances in their inventory (fixed facilities only; transportation facilities are not required to report under Federal and State law). Reports must be submitted to the Local Emergency Planning Committee (LEPC), local fire department, and the Hawaii Department of Health Hazard Evaluation and Emergency Response (HEER) Office. Reports are due by March 1 of each year and represent inventories for the previous calendar year.

Under the Federal Emergency Planning and Community Right-to-Know Act (EPCRA), concerned citizens and the general public may request Tier II information on facilities in their community.

Following the September 11, 2001 terrorist attack on the United States, concerns regarding the use of extremely hazardous substances as chemical weapons needed to be considered. HEPCRA and Homeland Security concerns are not diametrically opposed and these procedures comply with the requirements of each concern.

Summary of Statutory Authorities:

Hawaii Revised Statutes Chapter 128E, Hawaii Emergency Planning and Community Right-To-Know Act, Section 128E-13 states:

"Relationship to other laws.

- (a) This chapter shall be read in conjunction with the federal statutes and regulations providing for the identification, labeling, and reporting of information concerning hazardous material releases, and any other health and safety provisions relating to hazardous materials, and is intended to supplement federal statutes and regulations in the interest of protecting the health and safety of the citizens of the State."

Federal EPCRA Section 312 (e)(3), 42 U.S.C. § 11022(e)(3), states:

- (3) "Availability to public
 - (A) In general
Any person may request a State Emergency Response Commission or local emergency planning committee for Tier II information relating to the preceding year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility."

Federal EPCRA Section 324, 42 U.S.C. § 11044 states:

(a) Availability to public

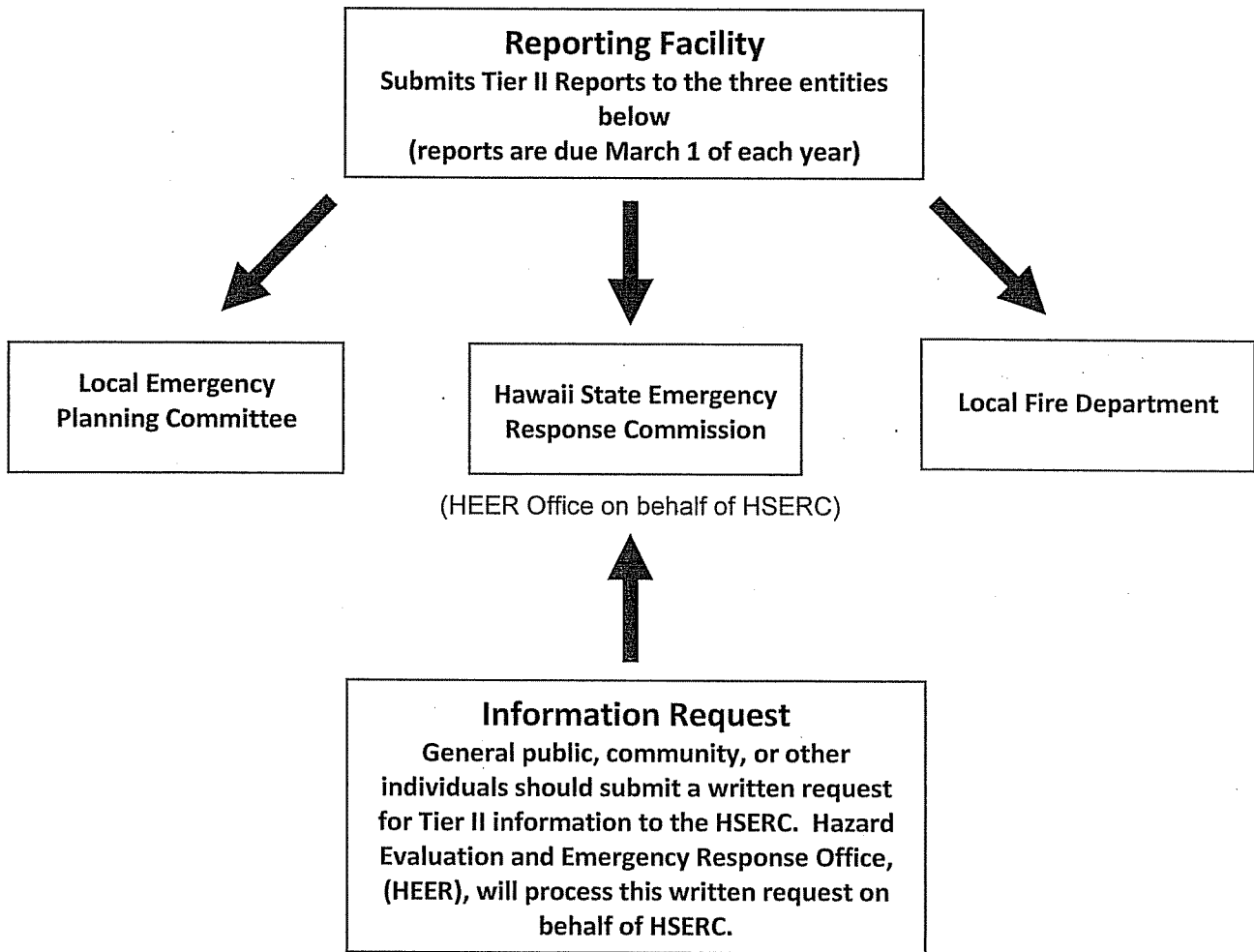
Each emergency response plan, material safety data sheet, list described in Section 11021(a)(1) of this title, inventory form, toxic chemical release form, and follow-up emergency notice shall be made available to the general public, consistent with section 11042 of this title, during normal working 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."

Department of Health Chapter 11-453, Hawaii Administrative Rules:

11-453-34 Receiving and processing community right-to-know request.

- (a) To obtain information regarding a specific hazardous chemical or extremely hazardous substance at a specific facility, local emergency response plan, or notice regarding a reportable toxic chemical release, a person shall submit a written request to the committee or commission. The committee will have primary responsibility for processing such requests. If a request is submitted to a committee, the committee is encouraged to forward a copy of the request to the commission so commission staff can coordinate a response to the request.
- (b) The committee or commission shall respond to a written request for information. The response shall advise the person making the request of one of the following:
 - (1) The time and location at which the person may inspect and copy the requested information;
 - (2) That additional information is needed to process the request;
 - (3) That the requested information is not available but the commission or committee will ask the owner or operator of the facility to provide the information; or
 - (4) That the request is denied because:
 - (A) The requested information does not exist;
 - (B) The owner or operator of the facility is not required to provide the information; or
 - (C) The committee or commission determined that disclosing the information will impair its ability to protect public health or safety and the public interest in nondisclosure outweighs the public interest in disclosure.
- (c) The committee or commission shall charge the person making a request under this subchapter the cost of reproducing the information requested.
- (d) The committee or commission will provide all information to any person unless that information is protected from disclosure by federal or state law or the committee or commission makes a finding in accordance with section 11-453-34 (b) (4) (c).

General Process for Receiving and Disseminating Tier II Information:



Procedures for Releasing Tier II Data to the Requestor

The Hazard Evaluation and Emergency Response (HEER) Office will handle the Request for Public Records on behalf of the Hawaii State Emergency Response Commission (HSERC). A Request for Public Records form must be received by the HEER administration staff.

1. A *Request to Access a Government Record* form must be received by mail, fax, or personal delivery (the form is available at: <http://eha-web.doh.hawaii.gov/eha-cma/documents/1a039eeb-c798-4605-90b6-7c50b19ff411>).
2. The requestor's legal name, address (NO P.O. BOX), and a phone number where requestor can be reached must be provided.
3. Requests will be date stamped upon receipt and are processed in the order in which they are received. The HEER Office is allowed up to ten (10) business days to process a records request.
4. Name of specific facility (if the facility name has changed, supply the previous facility name as well), address of facility, TMK (if no address available), and any information that shows the facility location must be provided in the request.
5. If the facility has been moved, provide the old and new address.
6. If no records are found, the requestor will be notified.
7. If records are found, the administrative staff will notify the requestor to schedule an appointment. **The requestor must view the records during business hours (Monday through Friday 7:45 a.m. to 4:30 p.m.).**
8. If the requestor is late or unable to keep his/her appointment, the HEER Office must be notified.
9. Identification of requestor will be presented to administration staff or Tier II Database personnel before the records are viewed.
10. Requestor will be shown to viewing area and must sign in.
11. The requestor will be monitored during the review period.
12. The requestor may record information on a piece of paper.
13. Copies of files may be requested. Administration staff or Tier II Database personnel will explain how to "mark" files to be copied. The requestor will be charged for each page copied.
14. Requestor will NOT BE ALLOWED to view Tier II database via a computer.
15. All files and data will be checked to insure no files or materials are missing.
16. Upon the request of the facility owner/manager, information such as specific locations of chemicals and or maps may be blocked out or omitted entirely from the record. **HEER Office personnel may also make this decision.**