

COMMONLY ASKED QUESTIONS AND ANSWERS

RELEASE REPORTING

1. There is a fire at your facility that does not involve a regulated hazardous material. Must you report this incident?

No. Because the fire does not involve a regulated hazardous material, this is not a reportable incident.

2. There is a small fire at your facility involving the release of less than a reportable quantity of a regulated hazardous material. Given its nature, the fire clearly does not have the potential to affect public safety beyond the boundaries of your facility. There is no protective action beyond the boundaries of your facility, and there are no injuries or fatalities. Must you report this incident/release?

No. Because the fire clearly could not reasonably be expected to affect public safety beyond the boundaries of your facility, there is no protective action beyond the boundaries of your facility, there was no release of a reportable quantity of a regulated hazardous material, and there were no injuries or fatalities, it is not a reportable incident/release.

3. An employee at your facility is sent to the hospital for reasons that do not involve a regulated hazardous material. The employee stays overnight for treatment. Must you report this incident because of a hospitalization?

No. A hospitalization has to be reported only when it is required because of an injury directly caused by the release of a regulated hazardous material. As this incident did not involve any release of a regulated hazardous material, this incident is not reportable because of a hospitalization.

4. An employee at your facility complains of a chemical smell. You conduct an immediate investigation and discover a release of less than a reportable quantity of a regulated hazardous material. Within 24-hours of the employee's complaint, you learn that after leaving work, the employee went to the emergency room of a local hospital where he was examined, but then sent home shortly thereafter without receiving any treatment. Must you report this release because of a hospitalization?

No. Because your employee did not stay overnight at the hospital, nor did he receive emergency treatment at the hospital, there was no hospitalization. Thus, this release is not reportable because of a hospitalization.

5. What does “hospitalization” mean?

“Hospitalization” is defined in R.S. 30:2363(8) as “the admission into a hospital as a patient for an overnight stay or emergency treatment at a hospital to the extent that the owner or operator requested such treatment or becomes aware of such treatment within twenty-four hours of the initiation of the relevant release.” This definition provides for three separate situations, each of which constitutes a hospitalization that may have to be reported:

- a. admission into a hospital as a patient for an overnight stay;
- b. emergency treatment at a hospital to the extent that the owner or operator requested such treatment; or
- c. emergency treatment at a hospital to the extent that the owner or operator becomes aware of such treatment within twenty-four hours of the initiation of the relevant release.

Of course, for a hospitalization to give rise to an obligation to report, there must be a **release** of a **hazardous material that directly causes** an injury requiring that hospitalization. Each of these elements must be met.

For emergency treatment at a hospital, the knowledge of the facility owner or operator controls; that is, the facility owner or operator either would have had to request the emergency treatment or become aware of such emergency treatment within 24 hours of when the relevant release began.

If a term is not otherwise defined in the statutes or regulations, you should use the common sense meaning of that term. Thus, “hospital” means, e.g., the Baton Rouge General Medical Center, the Lake Charles Memorial Hospital, or the Charity Hospital of New Orleans, where the sick or injured are given medical or surgical care and can stay overnight (not an afterhours medical facility or a local doctor’s office or an emergency responder outside of a normal hospital). “Overnight stay” means the person spent the night in a hospital bed. “Treatment” means the person did not simply go to the hospital for evaluation; something was either done or provided to him to make him physically/mentally better or to his alleviate his pain. “Emergency” generally means an urgent need for relief or care.

6. An employee at your facility suffers from heat-related cramps while involved in a confined-space entry in a process vessel that does not contain regulated hazardous materials. You contact the local fire department, whose firemen respond, extract your employee, and provide him with fluids, after which he returns to work. Must you report this incident because of a hospitalization?

No. Again, a hospitalization has to be reported only when it is required because of an injury directly caused by the release of a regulated hazardous material. As this incident did not involve any release of a regulated hazardous material, this incident is not reportable because of a hospitalization. *See, also, Responses to Questions 7.*

7. An employee at your facility suffers from heat-related cramps while involved in a confined-space entry in a process vessel that contains regulated hazardous materials. You contact the local fire department, whose firemen respond, extract your employee, and provide him with fluids, after which he returns to work. Must you report this incident as a hospitalization?

No. The employee's cramps were heat-related. As the employee's injury was not directly caused by the release of a regulated hazardous material, this incident is not reportable as a hospitalization.

8. More than a reportable quantity of a liquid regulated hazardous material is released on the ground at your facility, but the material is immediately contained before it goes offsite or reaches any surface waters. Must you report this release?¹

No. Because the released material could not be reasonably expected to escape beyond the site of your facility, the release is not reportable.²

¹ This assumes that the incident/release was not otherwise reportable; i.e., there were no injuries, fatalities, fires, or explosions; the incident/release could not reasonably be expected to affect public safety beyond the boundaries of your facility; and that there was no protective action beyond the boundaries of your facility.

² However, if the liquid volatilizes and a reportable quantity of a gaseous hazardous material is released to the atmosphere, you must report such release (even if the related liquid hazardous material release is not otherwise reportable). In releases of gases to the atmosphere, it is our position that the gas has escaped offsite since it is impossible to contain it.

9. More than a reportable quantity of a liquid regulated hazardous material is released on the ground at your facility and before it can be contained, it enters a nearby bayou. Must you report this release?

Yes. As the released material entered the bayou, it is our position that the material could be reasonably expected to escape beyond the site of your facility, because it is impossible to contain once it reaches the bayou. (However, to be reportable, a reportable quantity of the liquid regulated hazardous material must escape beyond the site of the facility.)

10. When does the period (five business days) for making a follow-up written report for a reportable release or incident commence?

This period starts on the first business day after the release/incident was discovered. So, if the release/incident was discovered on Monday, the five business days start on the following day after (Tuesday.). The mail envelope containing the follow-up written report must be post-marked by the post office by no later than the fifth business day, or by the following Monday in this example.

11. Less than a reportable quantity of a regulated hazardous material is released from a railcar that is being loaded at a loading rack within the perimeter of your chemical manufacturing facility.³

a. Must you report the release under the Right-to Know Law?⁴

No, because less than a reportable quantity of the hazardous material was released.

b. Must you immediately report the release under the Hazardous Materials Transportation and Motor Carrier Safety Law (Hazardous Materials Transportation Law)?⁵

No, because the incident occurred within your facility, your facility is subject to the release reporting requirements of La. R.S. 30:2373(B), and your facility is engaged in chemical manufacturing (NAICS Subsector 325), La. R.S. 32:1510 does not apply.⁶

³ This assumes that the incident/release was not otherwise reportable under the Right-to-Know Law; i.e., there were no injuries, fatalities, fires, or explosions; the incident/release could not reasonably be expected to affect public safety beyond the boundaries of your facility; and that there was no protective action beyond the boundaries of your facility.

⁴ La. R.S. 30:2361, et seq., and particularly La. R.S. 30:2373, and related regulations (LAC 33:V.10111, et seq.).

⁵ La. R.S. 32:1501, et seq., and particularly La. R.S. 32:1510.

⁶ See, La. R.S. 32:1510(E) (1)

12. Less than a reportable quantity of a regulated hazardous material is released from a facility hose being used to load a railcar at your chemical manufacturing facility. The regulated hazardous material comes into contact with the railroad engineer. Facility personnel provide the railroad engineer on-site first aid and then transport him to the hospital where he is admitted and stays overnight.⁷

a. Must you report the release under the Right-to Know Law?

Yes. Because the release caused an injury to the railroad engineer requiring "hospitalization" (he was admitted to the hospital and stayed overnight), you must report even though less than a reportable quantity of the hazardous material was released.

b. Must you immediately report the release under the Hazardous Materials Transportation Law?

No. Because the incident occurred within your facility, your facility is subject to the release reporting requirements of La. R.S. 30:2373(B), and your facility is engaged in chemical manufacturing (NAICS Subsector 325), La. R.S. 32:1510 does not apply.⁸

13. Less than a reportable quantity of a regulated hazardous material is released from a railcar located at a rail spur within the perimeter of your chemical manufacturing facility.⁹

a. Must you report the release under the Right-to Know Law?

No, because less than a reportable quantity of the hazardous material was released.

b. Must you immediately report the release under the Hazardous Materials Transportation Law?

No. Because the incident occurred within your facility, your facility is subject to the release reporting requirements of La. R.S. 30:2373(B), and your facility is engaged in chemical manufacturing (NAICS Subsector 325), La. R.S. 32:1510 does not apply.¹⁰

⁷ This assumes that the incident/release was not otherwise reportable under the Right-to-Know Law; i.e., there were no fatalities, fires, or explosions; the incident/release could not reasonably be expected to affect public safety beyond the boundaries of your facility; and that there was no protective action beyond the boundaries of your facility.

⁸ See, La. R.S. 32:1510(E) (1).

⁹ This assumes that the incident/release was not otherwise reportable under the Right-to-Know Law; i.e., there were no injuries, fatalities, fires, or explosions; the incident/release could not reasonably be expected to affect public safety beyond the boundaries of your facility; and that there was no protective action beyond the boundaries of your facility.

¹⁰ See, La. R.S. 32:1510(E) (1).

14. Less than a reportable quantity of a regulated hazardous material is released from your railcar located at a rail spur outside the perimeter of your chemical manufacturing facility.¹¹

a. Must you report the release under the Right-to Know Law?

No, because less than a reportable quantity of the hazardous material was released.

b. Must you immediately report the release under the Hazardous Materials Transportation Law?

Yes, if the incident, accident, or cleanup of the incident or accident involved a continuing danger to life, health or property at the place of the incident or accident. Because it is your railcar, you are deemed to have been involved in the incident, accident, or the cleanup of the incident or accident. Because the incident occurred outside of your facility, the exemption in La. R.S. 32:1510(E) (1) does not apply.¹²

15. A railcar is being transported to your chemical manufacturing facility from a customer. The railcar contains a “heel” of a regulated hazardous material that the customer received from an unrelated third party. A leak occurs on the railcar during transit (outside the perimeter of your facility); your facility receives notification of the release and facility emergency response personnel respond. Your facility does not own the railcar, the rail track, or the regulated hazardous material contained in the railcar.

a. Must you report the release under the Right-to Know Law?

No, because the release occurred outside the boundaries of your facility.

b. Must you immediately report the release under the Hazardous Materials Transportation Law?

Yes, if the incident, accident, or cleanup of the incident or accident involved a continuing danger to life, health or property at the place of the incident or accident) and your facility personnel (and thus your facility) are deemed to have been involved in the incident, accident, or the cleanup of the incident or accident because of their response activities. Because the incident occurred outside of your facility, the exemption in La. R.S. 32:1510(E) (1) does not apply.¹³

¹¹ This assumes that the incident/release was not otherwise reportable under the Right-to-Know Law; i.e., there were no injuries, fatalities, fires, or explosions; the incident/release could not reasonably be expected to affect public safety beyond the boundaries of your facility; and that there was no protective action beyond the boundaries of your facility.

¹² See, La. R.S. 32:1510(E) (1).

¹³ See, La. R.S. 32:1510(E) (1).