

**IMPLEMENTATION OF THE EMERGENCY PLANNING
AND COMMUNITY RIGHT TO KNOW ACT IN OKLAHOMA:
ELITE DOMINANCE AND
COMMUNITY NON-PARTICIPATION**

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The federal Emergency Planning and Community Right to Know Act (EPCRA) directs Local Emergency Planning Committees (LEPCs) to make citizens aware of chemical hazards in their communities. This study of how EPCRA is being implemented in eight Oklahoma communities finds that: there is considerable variation in implementation from one county to another; most communication by the LEPCs is directed to industry rather than the general citizenry; the most active LEPCs are chaired and aided by industries regulated by the law; and LEPC members have a narrow view of their functions and limited understanding of their community outreach responsibilities. Reforms are suggested to involve the public more actively in the risk communication process.

Environmentalists hailed passage of the Emergency Response and Community Right to Know Act (EPCRA) in 1986 as a breakthrough in citizen access to knowledge about chemical hazards in their community (Elkins1987). Industrialists, on the other hand, expressed concern that the new legislation would force them to disclose information which might reveal trade secrets or cause panic among lay publics. Passed as Title III of the Superfund Amendments and Reauthorization Act (42 U.S.C.A. § 1100 et seq.), EPCRA was the United States Congress's response to the deaths of 2,500 people in Bhopal, India, from a chemical accident at the Union Carbide facility. The new law instituted "community right to know" about toxic chemicals stored by local industries and provided for response planning to chemical emergencies.

EPCRA was intended to alert citizens to chemical hazards in their midst (Administrative Conference of the United States 1989). The law established a network of Local Emergency Planning Committees (LEPCs), composed of locally elected representatives and fire, police, hospital and other emergency response personnel, working closely with industry. The LEPCs are charged with

the development and implementation of emergency preparedness and response plans tailored to the specific needs of the community; and with the implementation of risk communication programs. LEPCs are to receive reports about toxic chemicals stored by local industries, and to share this information with the local public. In Oklahoma, there are seventy-seven of these committees, one for each county.

This paper examines implementation of EPCRA in Oklahoma, with emphasis upon the role of the LEPCs and the extent to which risk communication and citizen involvement objectives of the statute are being achieved. The objectives of this research are: (1) to describe and explain the patterns of implementation of EPCRA in Oklahoma; (2) to evaluate the Oklahoma experience in terms of the goals of EPCRA; and (3) to suggest changes which might improve implementation of the statute in the future. The relationship between LEPC activism and the structure, size, recruitment patterns, resources, and role orientation of LEPCs will be investigated in the context of theoretical literature on policy implementation, citizen participation and regulatory "capture." We will assess the extent to which the citizens' "right to know" has become a reality in Oklahoma. Based on the EPCRA implementation literature from other states, we expect to find that implementation of EPCRA by LEPCs in Oklahoma has fallen short of the statutory goals.

THEORETICAL PERSPECTIVES

Shortly after EPCRA was passed, the Director of the Environmental Protection Agency's (EPA) Office of Toxic Substances, Charles Elkins, predicted a public "armed" with a tidal wave of new information about chemical hazards and able to make "informed, reasoned...decisions" which would reflect the needs and values of citizens" (Elkins 1987). Yet subsequent studies indicate that implementation of EPCRA has fallen short of these worthy goals, with considerable variability among the states in how the various provisions of the law are being carried out (Conn et al. 1988; Conn et al. 1990; Mason and Clark 1991; 1992; Soyst and St. Amand 1993). This has been especially true with respect to the manner in which LEPCs have interpreted their responsibilities for communicating information about hazards to the general public. A few have taken an activist view of their role, and engaged in ambitious outreach activities (Mason and Clark 1991; 1992; Rich et al. 1993). Most, however, have been more restrained — some existing only on paper, meeting only once or not at all (Solyst 1991). We expected the Oklahoma LEPCs to follow the same pattern.

This pattern is consistent with the theoretical literature on public policy

implementation. Policy implementation encompasses “those actions by public and private individuals that affect the achievement of objectives set forth in prior policy decisions” (Van Horn and Van Meter 1976). Among the numerous factors impinging on the implementation process, Sabatier and Mazmanian (1979) identify three broad categories of variables which are suitable for guiding our analysis: (1) those relating to the tractability of the problem; (2) those relating to the statutory structure of implementation; and (3) non-statutory variables affecting implementation.

Where the first of these categories, tractability, is concerned, problems of emergency planning and “community right to know” about chemical hazards have characteristics which make them relatively intractable, especially: the fact that highly technical information must be communicated to “lay” publics, and the necessity to coordinate a diversity of target groups ranging from corporate executives and local firefighters to citizen groups and unorganized individuals. Also problematic is the second category, statutory structure, including the clarity and consistency of statutory objectives, the sufficiency of start-up funds, and the integration of implementing agencies. Statutory objectives of EPCRA are ambiguous, leaving considerable latitude to implementing LEPCs to decide whether a proactive or reactive posture *vis-a-vis* the citizenry is appropriate (Rich et al. 1993). The federal statute provided no funds for implementation, thereby passing the responsibility for funding to state and local authorities, with widely varying results (Conn et al. 1990; Musselman 1989). EPA, State Emergency Response Commissions (SERCs) and LEPCs are loosely integrated, with wide discretion left to the LEPCs to define their role and priorities without much guidance or interference from federal or state authorities (Solyst 1991).

Of the non-statutory variables, public support, attitudes and resources of clientele and access by outsiders are directly relevant to any program designed to inform the public. Rich et al. (1993) note that for EPCRA to be effective, “citizens must aggressively utilize the information provided to monitor industrial practices and press for risk reduction.” Yet research to date shows the difficulties of generating the necessary levels of citizen involvement (Baram et al. 1990; Pease 1991; Rich et al. 1993). Citizen participation can occur at different levels, ranging from largely symbolic involvement to actual citizen power (Arnstein 1969; Boyte 1980). At the lowest levels are “manipulation” and “therapy” to make the citizenry feel that they are being considered by decision makers. This involves an essentially one-way flow of information from decision makers to target publics. Above that level are various forms of “tokenism”, including placation and consultation, in which citizens are given a hearing without necessarily influencing decisions. At higher levels, citizens have degrees of actual influence over decisions. Studies of LEPCs indicate that citizen involvement has

generally remained at the manipulation-therapy stage and has rarely achieved actual degrees of citizen influence (Baram et al. 1990; Rich et al. 1993).

Yet corporate-industrial interests have been actively involved with the LEPCs because of the legal requirements of disclosure under EPCRA. In other fields of regulation, "capture" or "co-optation" of regulatory agencies by regulated industries is alleged to be widespread (Bernstein 1955; Cohen 1986; Downs 1972; Huntington 1952; Peltzman 1974; Pinkston 1984; Selznick 1949; Stigler 1971), although some scholars have challenged the inevitability of the process (Meier and Plumlee 1978; Meier 1985; Mitnik 1980; Quirk 1981; Stone 1982). Since community "right to know" has been characterized as a form of "indirect regulation" or "regulation through information" (Rich et al. 1993), it is pertinent to consider the extent to which the LEPCs may have succumbed to co-optative pressures.

METHODS

In this comparative case study, we conducted in-depth interviews in the fall of 1992 with representatives of eight LEPCs randomly selected from Oklahoma's seventy-seven committees and with representatives from four separate regulatory agencies involved with LEPCs. To assure confidentiality, we agreed that the LEPCs would not be identified in our report. The LEPCs include three which were identified by the Region VI EPA administrator as "successful." Each 1991 chairman of these local units had received a plaque for outstanding efforts. Three of the other LEPCs have been relatively inactive, with little to show in five years of existence. The remaining two are transitional — one characterized by increasing activity, while the other showed confusion about many issues and meets increasingly less often. The three state officials interviewed included a sitting member of the Oklahoma Hazardous Material Emergency Response Commission (OHMERC), a staffer for the chairman of the OHMERC and a designee for another OHMERC member who attended most OHMERC meetings. The EPA Region VI liaison to the State of Oklahoma SERC and LEPCs was also interviewed.

Persons interviewed were listed as the local contact by OHMERC, and in five of the LEPCs, that contact was the chairperson. Of the federal and state regulators interviewed, three of the four agencies with membership on OHMERC were interviewed. The fourth agency has very little contact with LEPCs. The EPA representative is one of five working with LEPCs in the five states which make up EPA Region VI and was the only agent assigned to work with Oklahoma.

Two sets of open-ended questions were administered — one set for LEPC

contacts and another for the state and federal administrators. Questions were pre-tested with persons having a working knowledge of EPCRA programs.

FINDINGS AND ANALYSIS

The data clearly indicate a wide disparity in the structure, capabilities and approaches of the various LEPCs. No two LEPCs were identical, but there were some common patterns.

LEPC COMPOSITION AND ORGANIZATION

The four most active LEPCs are currently chaired by industry. One of these LEPCs changes chairpersons every year, and has been chaired by public sector employees in the past; but the program has always had strong support from industry, and at least one industry representative has been an officer each year. The EPA representative stated that sometimes industry involvement "may seem like the foxes watching the chicken coop and that's a valid concern, but without them there would be no LEPC" in many places. Indeed, the four communities with the least active LEPCs have little or no involvement from industry.

Non-industry members came largely from emergency response occupations, such as firefighters, and from political public service roles, such as mayor. The former tend to define the role of the LEPC narrowly in terms of the task of preparing a technically sound emergency plan and one-way communication of risk to the public. The latter had many other responsibilities besides LEPC assignments, and often complained about being over-extended.

Four of the LEPCs had no representation from local citizens' groups. In most cases, efforts had been made to recruit citizen groups, but few felt they were successful in getting citizen participation. All interviewees admit that there is little involvement by many of the committee members.

Two LEPCs met monthly but one of these mentioned moving meetings to a bi-monthly schedule in the near future. Two LEPCs met bi-monthly, although one had met monthly for the first several years and the other group has a subcommittee which meets most months. Another LEPC initially met monthly, but two years ago changed the by-laws to schedule quarterly meetings. One LEPC has tried to meet annually in conjunction with the county's storm spotting school. Two of the committees no longer meet, although one had met a few times in 1987. Remarkably, one that had not met in four years had completed a plan

regarding the chemical risk in the community.

Most of the LEPCs had completed and updated a plan several times. One admitted to a very general plan which it is in the process of expanding. Two had no plan, although one of these had developed a risk analysis of the community which was published in the local paper.

There appears to be little relationship between committee activity and length of experience *per se* on the LEPC. The LEPC that met only to approve a plan and never again has formally been headed by the same chairperson for five years. Two other LEPCs that are relatively inactive are chaired by five year veterans of the EPCRA program. The LEPC with no plan, no meetings and no chair is "run" by two individuals in the emergency management office with two years or less experience with LEPCs. On the other hand, three of the most active chairpersons are veterans of the program; but the LEPC making the most progress has a chair with two years involvement with LEPCs.

UNDERSTANDING OF THE LAW

Each interviewee was asked to define certain terms used in EPCRA and to explain the intent of the law. The intent of the law was not clear to many. Only three LEPC respondents thought that the law was designed to provide information to the general public. Three felt that the major goal of the legislation was to assist emergency responders in planning for a chemical emergency. Three others characterized the law as an overreaction to Bhopal. Two stated that the primary objective was to inform the public of chemical hazards and to help responders with emergency plans, while one of these stated that the law provided a way to inform the public of chemical hazards in their community.

Although most agreed that the phrase "right to know" referred to the general public or citizens, two referred only to the rights of emergency responders. One interviewee insisted that the county had several LEPCs, and indicated confusion between the LEPC and rural volunteer fire meetings. Another interviewee had basic knowledge of the law but was unaware of recent changes in interpretation and often mentioned a state employee who had retired more than three years previously.

Only one regulator knew that the law requires an effort of public outreach including publishing one available location and of planning information and hours. Three said that no outreach is required. One respondent not only saw no requirement for LEPCs to conduct outreach, but stated that the SERCs should be responsible for these activities because the LEPCs lacked the resources.

Industry representatives were required to be current with compliance issues as part of their job and were often the best informed members about the

particulars of the law. Others working with the LEPC were busy with many other jobs, primarily in the public sector, and were less well-informed about the particulars of the law. In one county, a mayor chaired the LEPC while carrying out a wide variety of other responsibilities to which he assigned far greater priority. Another chairman, who also acted as Assistant Fire Chief, complained: "It's always the busiest people who are asked to do more."

Most LEPCs had participated in educational activities for LEPC members, including sending representatives to the state LEPC conference, hosting regional LEPC workshops, and presenting training for members as part of regular meetings. One LEPC is working with the state to review computerized modules for LEPC members.

COMMUNICATING WITH THE PUBLIC

Several questions dealt with the interaction between members of the LEPC with members of the general public. Few of those interviewed reported being asked a single question about chemicals in the community by a member of the general public.

Only one LEPC had reported citizen calls, and these were about a specific company which was often in the newspaper headlines for environmental violations. Another mentioned inquiries from a consulting group wishing a list of potential clients. Another had been approached by a public service group looking for a "community project" to receive the proceeds of a bake sale. Others had received questions from industries about how to comply.

Without probing, few of the LEPC representatives could list outreach activities directed toward the general public. Many had not conducted any outreach activities at all or had confined their efforts toward the regulated industries. Three LEPCs had no policy or procedures in place for citizens' requests for information. The others had policies ranging from "the records are available any time for anyone" to elaborate procedures requiring a written request to be voted on at an LEPC meeting before information could be provided. All LEPC interviewees acknowledge that there is little public awareness that the information which they have gathered exists.

LEPCs had tried various methods to alert the general public of meetings, and the availability of planning documents. Methods include (in descending order of use): publishing an annual schedule in the local newspaper; following the Oklahoma Open Meeting Act, publishing meeting notices for each meeting or special meetings; posting signs in downtown windows; community talks; sending communications to public officials; publishing an annual schedule in a brochure; and depending on word of mouth. Three LEPCs had combined outreach

activities with other emergency management activities — e.g., discussing chemical safety issues at the annual storm spotting schools and mentioning chemical emergencies in tornado safety literature.

Interviewees considered community talks successful because “people keep asking for more.” Several years ago, one city had a large public meeting to explain the LEPC program and about 200 of the general public attended. Three local committees published brochures, but only one thought they were successful. One group had handed brochures out at the county fair with little response. Another had spent at least forty-five minutes arguing about where to put the brochures because some industry representatives objected to having them in every hotel; as a compromise, the brochures were put only in convenience stores.

We asked interviewees to describe their relationship with the local media. Most felt dependent on the local newspapers for getting out information. Half stated that they get along “well,” although most acknowledged that it was difficult to get information published. Three said they have major problems with the media and “beg a lot” to get the media to use information. Two said they do not work well with the media. Most agreed that “The media is not particularly interested” in what an LEPC does. OHMERC expressed concern that a statewide letters-to-the-editor campaign had brought no response. Not one editor had called to clarify the information.

Although EPA has touted the value of training exercises to inform and involve the public, two of the committees had no such programs and three had relied on exercises conducted by another agency. Only one LEPC used citizens in the area surrounding the site of an exercise as participants.

COMMUNICATING WITH INDUSTRY

Considerably more LEPC effort has been devoted to communicating with regulated facilities. At least one entity on the SERC has worked almost exclusively with industry outreach. LEPCs chaired by industry representatives were more inclined to conduct outreach activities with regulated facilities. However, all LEPCs except one had participated in some outreach activities targeting such facilities, including: participating in or providing compliance workshops, in cooperation with EPA; visiting industrial sites of those who have not complied, or contacting them by phone; including informational material in monthly mailings to all facilities filing forms with the LEPC; providing guidance documents and reference material in libraries; asking for enforcement actions by EPA; and publishing newspaper articles specifically geared to such facilities. Most LEPCs

at least attempted to publish newspaper articles specifically geared to facilities.

Of these various activities, interviewees rated the EPA compliance workshops highest. These were well-organized, with a great deal of effort by EPA to reach the industries in need of information. As an example of success, the EPA staffer stated that the first workshop increased compliance dramatically. Prior to the workshop only 36 facilities in the county were reporting to the LEPC. Now 230 facilities report. One LEPC chairperson further stated that among major industries compliance rates are approximately 100 percent. A respondent remarked "The EPA letterhead carries more weight" than the letterhead of the local LEPC.

Site visits and telephone follow-ups to industry were also rated highly successful. Other facility outreach activities achieving some measure of success included delivery of brochures or flyers to area industries and the provision of reference and guidance documents in local libraries.

RESOURCES AND CONCERNS FOR THE FUTURE: INDUSTRY CO-OPERATION OR CO-OPTION?

Over half of the LEPCs contacted had no plans for future outreach activities of any kind to any group. The remaining three planned a variety of activities which were geared primarily to facility and LEPC education. These included: continuation of on-going mailings of regulatory material, site visits, working with EPA on local workshops for facilities, and working with the *ad hoc* committee. Five of those interviewed stated that lack of funding is a major roadblock for LEPC advancement. Unlike some states, there is no funding structure for LEPCs in Oklahoma. Three interviewees remarked on both the inability to keep abreast of changing laws and the problems of data management as a result of an increasing number of forms and plans. The same number also expressed a concern for the burdens placed on volunteers, and the lack of support from locally elected officials.

Two interviewees complained of a lack of meaningful support from state agencies and OHMERC's failure to provide clear leadership. This was followed by the expressed hope that changes with the recent consolidation of Oklahoma environmental agencies in a Department of Environmental Quality would improve the situation. Two experienced LEPC officers commented on the difficulty of maintaining active members and the problem of burnout. Two stated that a full-time staff person should be assigned to an LEPC to make sure things got done.

Each of the following concerns were stated by at least one interviewee:

facilities that should be in compliance are not; there should be more cooperation between all levels — industry, citizens and government; maintaining current levels of compliance may be difficult without added resources; local government and industries are ignoring EPCRA in the hopes that it will go away; local government expected industry to handle and fund everything; more facilities should take an active role; and the LEPC lacks real authority. One interviewee suggested that if each LEPC could be funded at only \$100 per month, the impact of the LEPC could be felt for the first time. This funding problem is not limited to counties. The state has no one devoted primarily to working with LEPCs or collecting EPCRA data. EPA has one person to work with the entire state and has considered cutting that position.

Both EPA and OHMERC interviewees suggested LEPCs build a closer working relationship with industry in hopes of securing additional funding. Indeed, the three most active LEPCs represented in the Oklahoma study were currently chaired by industry representatives, had *ad hoc* committees consisting primarily of industry representatives, and had some services supplied by industry, such as assistance with training material, printing of the plan, and mailing of meeting announcements or other information.

One regulator noted inherent problems in asking industry to provide most of the personnel and funds for an active LEPC. However, there are instances in which no LEPC would exist if industry did not take the lead. For example, one regulator remarked that as one facility was fined for not reporting to an LEPC even though none existed in that county except on paper. Part of the fine included having the company furnish a chair and operating funds for the new LEPC for a two-year period.

CONCLUSIONS

This research confirms for Oklahoma a pattern which other studies have found for other states: the community “right to know” provisions of EPCRA are not uniformly effective in involving the general public in informed monitoring of chemical risks (Conn et al. 1990; Hadden 1989; Lindell and Meier 1991; Lynn 1989; McCallum et al. 1990; Pease 1991; Rich et al. 1993; Sutton 1989). The Local Emergency Planning Committees included in this study have taken a narrow view of their duties under the law and are failing to inform the general public of the existing chemical risks in their communities. There is little public awareness that such information exists, and few LEPC members believe that community outreach is an active responsibility of the LEPCs. Instead, the bulk of LEPC outreach activities are directed toward the facilities which must com-

ply with the reporting requirements.

This study also provided support for the hypothesis of co-optation of the LEPCs by industry. Ironically, to the extent LEPCs have been active in carrying out their outreach responsibilities, it has been as a result of industry support. The most active LEPCs are chaired by industry representatives and have relied on industry for funds or services, in the absence of adequate federal or state resources for the programs. Although Oklahoma LEPCs have benefitted from industry support, the potential for regulatory capture is considerable.

The most obvious solution to the problem, increased funding from federal, state and local governments, is unlikely to occur because of severe budgetary constraints at all levels. Absent this solution, other measures might improve the community outreach functions of LEPCs and reduce the pressures for co-optation by industry. In terms of the Sabatier-Mazmanian framework (1979), much can be done to improve the statutory structure of implementation.

The priority to be given to the goals of public information and involvement should be made more explicit and emphatic so that LEPC members will not be in doubt about the importance of community outreach. Recruitment to the LEPCs and SERCs should be modified to include greater representation of environmental groups and other citizens' groups. Rich et al. (1993) recommend that one-quarter of the LEPCs be drawn from such groups — a change which could dramatically alter the pro-industry orientation of these bodies.

This assumes, however, that EPCRA is to be taken at face value. A more cynical view is that the law is serving its intended purpose of providing symbolic reassurance to the citizenry that the community's "right to know" has been recognized and protected, while allowing regulated facilities effectively to control the information process. Opinion toward chemical emergencies appears to follow the classic cyclical "issue at attention" pattern identified by Downs (1972) — intense public interest in the wake of the Bhopal disaster, followed by diminishing interest after the EPCRA structure was created to "deal" with the problem. In the absence of efforts on the part of federal or state authorities to provide funds, direction or other encouragement for the LEPCs, they remain an example of elite dominance rather than citizen control of information about chemical hazards.

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