UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

April 9, 1999

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Kristina M. Woods, Esq.
Ashland Inc.
P.O. Box 2219
Columbus, Ohio 43216

Dear Ms. Woods:

This letter is in response to your March 30, 1999 letter to EPA's Toxics Release Inventory Branch, as well as a follow-up conversation, concerning the applicability of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) to your facility. Specifically, you are asking for guidance about the reporting requirements for an establishment that is part of a multi-establishment facility required to comply with the reporting requirements of EPCRA Section 313 and section 6607 of the Pollution Prevention Act of 1990.

Your letter states that Ashland Inc. (hereafter "Ashland") owns facilities with a primary SIC code of 5169 ("Chemicals and Allied Products, Not Elsewhere Classified"). These facilities engage in repackaging and distribution of virgin chemicals and plastics for sale to a broad spectrum of industrial customers. You further provide that some of Ashland's facilities with primary SIC code 5169 are multi-establishment facilities. In particular, you assert that one of the establishments that is a part of these facilities is Ashland's Environmental Services business unit (hereafter "ES"). You state that the ES establishment operates RCRA-permitted storage facilities as collection points for customer-generated hazardous and non-hazardous wastes. These wastes are generated off-site by other entities and facilities and are in no way related to or associated with the wholesale chemical distribution operations taking place at the covered facilities. In fact, you state that the permits authorize storage only. According to your letter, no treatment or disposal of waste occurs at these sites. Off-site generated wastes are received in closed containers (typically 55-gallon drums, but also other types of containers). These containers are brought on-site by truck and unloaded into a section of a warehouse or protected outdoor storage area. The closed containers are loaded back onto another truck at a later time for shipment to an off-site treatment, recycling, or disposal facility. While on-site, however, these containers are not opened except if necessary to obtain a sample for analysis. Based on this description of the ES operations you are asking for guidance as to whether the toxic chemicals at the ES establishments need to be included on the Form Rs submitted by the multi-establishment facilities that have as a part of the facility an ES establishment.

Basically, you argue that because the ES establishments do not manufacture, process, otherwise use or release toxic chemicals, the toxic chemicals at the ES establishments do not have to be included on the forms submitted by the facility. To support this reasoning you cite 40

CFR Section 372.30(c), and in particular, the last sentence of that paragraph, which reads:

> However, an establishment or group of establishments does not have to submit a report for a chemical that is not manufactured (including imported), processed, otherwise used, or released at that establishment or group of establishments.

First, and in response to your arguments, the statute requires:

(1). Reporting by facilities, and
(2). Reporting is not limited to releases.

Reporting is required of facilities, not establishments. The statute states that, "The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section . . ." (EPCRA Section 313(a)). This "toxic chemical release form," according to the statute, shall:

> (C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:
>
> . . . (iv) The annual quantity of the toxic chemical entering each environmental medium.

(EPCRA Section 313(g)(1)(C)(iv)). The Conference Report for the statute elaborates upon this reporting requirement and states that:

> Reporting on releases to each environmental medium under subsection (g)(1)(C)(iv) of the conference substitute shall include, at a minimum, releases to the air, water (surface water and groundwater), land (surface and subsurface), and waste treatment and storage facilities.

(Conf. Rep. at 298). Additionally, language in the proposal to the 1988 rule also states that reporting is not restricted to releases taking place on facility grounds:

> The statute requires information on "the annual quantity of the toxic chemical entering each environmental medium." The conference committee report elaborates upon this requirement, stating that "Reporting on releases to each environmental medium . . . shall include, at a minimum, releases to the air, water (surface water and groundwater), land (surface and subsurface), and waste treatment and storage facilities." The transfer of chemical-laden wastes to treatment or storage facilities is not commonly construed as a "release" to the "environment." However, such transfers are comparable to discharges from a facility because they are wastes leaving the facility, with the possibility that some fraction of the chemical in the waste may ultimately enter the environment.

(52 FR 21161; June 4, 1987). Succinctly put, reporting on the chemicals "entering each environmental medium" is not limited to the definition of release.

The statute also does not limit reporting to quantities generated on-site and EPA has made clear in guidance that the waste does not have to be generated on-site or managed on-site for the toxic chemicals in the waste to be subject to reporting requirements. In Q&A 563 of the 1998 EPCRA Section 313 Questions and Answers document (EPA 745-B-98-004) a TSD facility receives waste from off-site that contains a listed toxic chemical. The facility blends the waste with a fuel to increase its heat value, repackages the blended fuel, and then transfers the waste off-site to a cement kiln. In its answer to this Q&A, while EPA recognized that the TSD did not perform a threshold activity, it advised covered facilities to

> keep in mind, however, that if they exceed an activity threshold elsewhere at the facility for the listed chemical contained in the waste fuel, the facility should report the quantity of the toxic chemical in the waste fuel sent off-site for energy recovery in Part II, Section 6.2 and Section 8 of the Form R.

Similarly, with regard to ES, the establishment's receipt from off-site, and subsequent transfer off-site of toxic chemicals does not constitute a threshold activity. However, if the facility exceeds an activity threshold for any of those toxic chemicals handled by the ES establishment, then the facility must report on all quantities of those toxic chemicals at the facility, including those quantities transferred off-site by ES. The quantities transferred off-site by ES would be reported in Part II, Section 6.2 and Part II, Section 8 of the Form R.

Finally, while EPA decided to allow individual establishments to report separately, in the preamble to the 1988 regulations EPA made clear that the same information should be reported regardless of whether the facility files a single submission or files reports for each establishment:

> Several commenters raised the concern that it will be difficult for facilities consisting of more than one establishment to submit a single report covering the entire facility. . . . As explained in A. of this unit, the facility is the unit that is responsible for reporting. While EPA could continue to require a single submission for multi-establishment facilities, EPA has decided to require a compliance determination by the whole facility covering all its establishments, but to allow individual establishments or groups of establishments to report separately, provided all releases and waste treatment methods are accounted for.

(53 FR 4502; February 16, 1998) Accordingly, the toxic chemicals in the waste transferred off-site by ES must be reported on Form Rs if the facility as a whole exceeds an activity threshold for those toxic chemicals.

I hope this information is helpful to you in making threshold determinations and release and other waste management calculations for section 313 of EPCRA. If you have any other questions, or desire further information, please call either Larry Reisman at 202.260.2301 or me at 202.260.9592.

Sincerely,

Maria J. Doa, Ph.D., Chief
Toxics Release Inventory Branch

cc: Patricia Roberts, Esq.