



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

Lisa R. Kost, Chairman
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OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

FEB 1 1999

Dear Ms. Kost:

I am writing in response to your letter to Dr. Warren Layne of EPA, Region 6, dated January 14, 1999. In your letter you ask for clarification on how reclamation activities at coal mining facilities are treated under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). In support of your understanding that reclamation activities at coal mining operations are exempt under the coal extraction activities exemption, you cite several sources; namely, the training sessions held by Region VI on February 3, 1998, the September 26, 1997 Guidance Document for Coal Mining Facilities, and the language found at 40 CFR section 372.3 and 40 CFR section 372.38. In your letter, however, you recognize that subsequent guidance indicates that reclamation activities may not be exempt under the extraction exemption. In asking for clarification on this issue, you provide that reclamation activities include, but are not limited to, leveling and contouring spoil, planting vegetation, and vegetation management that includes mowing, fertilization and the use of pesticides.

The sources you cited do not expressly state that reclamation is part of extraction. 40 CFR section 372.3 defines coal extraction and it reads:

Coal extraction means the physical removal or exposure of ore, coal, minerals, waste rock, or overburden prior to beneficiation, and encompasses all extraction-related activities prior to beneficiation. Extraction does not include beneficiation (including coal preparation), mineral processing, in situ leaching or any further activities.

Section 372.38(g) allows for a coal extraction activities exemption. It reads:

Coal extraction activities. If a toxic chemical is manufactured, processed, or otherwise used in extraction by facilities in SIC code 12, a person is not required to consider the quantity of the toxic chemical so manufactured, processed, or otherwise used when determining whether an applicable threshold has been met under section 372.25 ("Thresholds for reporting") or section 372.27 ("Alternate threshold and certification"), or determining the amounts to be reported under section 372.30 ("Reporting requirements and schedule for reporting").

Similarly, the 1997 guidance document for coal mining facilities does not state that reclamation is exempt under the extraction exemption. (See page 5-1).

However, as you point out, the February 1998 Addendum to the 1997 guidance document provides additional insight regarding this exemption. In fact, at page 41-42, the Addendum expressly provides that the "otherwise use of ash, waste rock or fertilizer for reclamation are not considered part of extraction, and amounts of listed toxic chemicals contained in these materials must be considered toward threshold determinations and release and other waste management calculations." Actually, this portion of the Addendum has been incorporated into Q&A 386 of the revised 1998 version of the EPCRA Section 313 Questions and Answers document (December 1998). (See also Q&A 383).

Further, you should note the new, 1999 guidance document for coal mining facilities, is presently available on the TRI web site at <http://www.epa.gov/opptintr/tri/> and will soon be available in paper version. Pages 3-45 and 3-46 of that document specifically address the coal mining extraction activities exemption. Moreover, page 3-37 provides a complete discussion regarding reclamation activities at coal mining facilities and how various materials that may contain EPCRA section 313 chemicals should or should not be considered. Q&A 386 in the 1998 version of the Q&A document also mentions how activities where reclamation and extraction take place simultaneously should be considered. EPA has determined that materials containing EPCRA section 313 chemicals associated with extraction, such as top soil, overburden, etc., are exempt from threshold determinations and release and other waste management calculations. As a result, amounts of these materials do not have to be considered toward release calculations when they are disposed at the site from which they were extracted. However, materials not eligible for the extraction exemption (e.g., ash or overburden brought from off-site) disposed of on-site are considered otherwise used and must be considered toward threshold determinations and release and other waste management calculations. Since these materials are disposed, they are ineligible for the de minimis exemption. In accordance with this guidance, the reclamation activities mentioned in your letter (leveling and contouring spoil, vegetation planting, and vegetation management that includes mowing, the use of fertilizer and the use of pesticides) may not be entitled to the extraction exemption and therefore, the listed chemicals associated with these activities may have to be considered toward the appropriate threshold determinations and release and other waste management calculations.

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