



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

January 6, 1999

Alice Mayer
Manager, Environmental Programs
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Ms. Mayer:

This letter is in response to two issues pertaining to section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) that were raised during our meeting on Monday, November 16, 1998. Let me say at the outset that I greatly appreciate the attendees' willingness to take time from their busy schedules to discuss with EPA those issues of concern to the utilities industry. Both issues raised at the meeting were given thoughtful consideration by the section 313 interpretive guidance workgroup.

The first issue raised at the meeting focused on nuclear facilities that have an oil-fired peaking unit at or adjacent to the nuclear facility. In support of your request to have EPA carve an exemption from the section 313 reporting requirements, you stated that only a small number of nuclear facilities surveyed (approximately six) have oil-fired peaking units at or adjacent to a nuclear facility. Further, you also represented that none of the peaker units will exceed a manufacture, process or otherwise use threshold for any TRI chemical. In fact, you stated that for three of the six facilities identified in your survey, the combined nuclear plant and peaking unit would not exceed any activity threshold. For the other three facilities, you believe that thresholds would be exceeded for only one to three chemicals, with all threshold exceedances related to water treatment activities at the nuclear plant. Additionally, you estimated a high cost of compliance for these six facilities. Finally, you argued that reporting by these nuclear facilities is contrary to EPA's stated intent to exclude nuclear power plants from the reporting requirements of EPCRA section 313 and that reporting by only a few nuclear facilities will actually send a confusing signal to the public. In short, you are basically asking EPA to limit EPCRA section 313 reporting to coal and/or oil-fired facilities whose "primary function" is to combust coal and/or oil for the generation of electricity for distribution in commerce.

For the reasons expressed in the preamble to the May 1, 1997 final rule (40 CFR Part 372) in response to comments from the Edison Electric Institute and other commenters concerned about this exact same issue, EPA is not willing to provide a specific exemption from reporting for the electricity generating facilities described in the preceding paragraph. The relevant portion of the preamble to the final rule follows and can be found at 62 FR 23863 - 23864:

EPA does not agree with the commenters who recommend that EPA exempt non-coal/oil-fired facilities that combust limited quantities of coal or oil for the purposes of generating power for distribution in commerce, such as backup or peak power generation. EPA believes it is appropriate to include as covered facilities all facilities which burn any quantity of coal or oil to generate power for distribution in commerce. EPA does not agree with commenters who state that facility coverage should be based on the percentage use of coal and/or oil. Particularly in the case of large facilities, exempting facilities which burn 10 percent to 15 percent coal or oil, or 50 percent as some commenters recommend, could mean exempting facilities which burn very large quantities of coal or oil, even if such quantities are not large in percentage terms. Under such an exemption, a large facility which burns a comparatively low percentage quantity of coal or oil could be exempt from the reporting requirements even if it burned more coal or oil than a small facility which was 100 percent coal or oil-fired and therefore was subject to section 313 requirements. Such a result would not be sensible from a public right-to-know standpoint.

EPA believes that the proper mechanism for relieving reporting burden for facilities which combust only limited quantities of coal or oil is the existing activity threshold system under EPCRA section 313 (f)(1). . . . EPA believes its approach for defining the utilities covered best balances the reporting interests of the public with the concerns expressed by the commenters given the existing burden reduction mechanisms in the statute and regulations.

Accordingly, with regard to SIC codes 4911, 4931 and 4939, the final rule (40 CFR section 372.22(b)) provides the following qualifier:

limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce.

The second issue raised at the meeting addressed the "Parent Company Information" required by Part I, Section 5.1 of both Form R and Form A. At the meeting you provided, as an example, a situation where seven separate companies (companies A - G) own some portion of four different boilers at a facility. Owner A, however, is the sole operator of the entire facility. With regard to the facility at issue, only a contractual relationship exists between the seven companies. None of the companies wants its parent company to be the only company listed in Section 5.1. Instead, you represented that the industry wants to include in Section 5.1 the parent company of every owner, as well as the percentage of ownership attributable to each owner.

Q&A 625 in the 1998 Version of the EPCRA Section 313 Questions and Answers document provides:

An electricity generating facility (EGF) is comprised of multiple independent owners. Each individual owner runs his/her own separate operation, but each has a financial

interest in the operation of the entire facility. What name should be entered as the parent company in Part I, Section 5.1 of the Form R? Should the facility report under one *holding company name*?

The electricity generating facility should enter in Part I, Section 5.1 of the Form R the name of the holding or parent company, consortium, joint venture, or other entity that owns, operates, or controls the facility. (Emphasis Added.)

Further, the 1997 Reporting Forms and Instructions document states that "for purposes of Form R, a parent company is defined as the highest level company, located in the United States, that directly owns at least 50 percent of the voting stock of your company."

Based on this guidance, when a facility (such as the one described above) is owned by more than one company and there is no parent company for the entire facility (meaning that none of the facility owners (companies A-G) directly owns at least 50 percent of the voting stock of the facility at issue), the facility should provide in Part I, Section 5.1 the name of the parent company of either the facility operator or the owner with the largest ownership interest in the facility. If neither the operator nor this owner has a parent company then the NA box should be checked. Finally, in Part I, Section 5.2 the facility should report the Dun & Bradstreet number that corresponds to the parent company reported in Section 5.1.

Next to the name of the parent company of either the operator or the owner with the largest ownership interest, however, the facility may include the respective percentage of facility ownership. For example, based on the scenario you presented, the facility may choose to provide the parent company for the operator, company A. In that case, the facility would provide in Section 5.1 "the name of the parent company of company A, X% ownership of facility."

Presently, the field for Section 5.1 is limited to 45 characters in both the Toxics Release Inventory System (TRIS) database and the Automated TRI reporting software. Accordingly, for reports due on July 1, 1999, facilities should bear in mind that they may be able to report more information in this section of the form if they decide to file a paper version instead of an electronic version. *Regardless of which means of filing a facility chooses, the TRIS database will only contain 45 characters of information for Part I, Section 5.1 of the Form R or Form A.* To better accommodate the addition of the percentage of ownership, however, beginning with the reports due by July 1, 2000 (for reporting year 1999) the field size for this data element will be expanded to 75 characters in both TRIS and the reporting software.

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,

A handwritten signature in black ink that reads "Maria J. Doa". The signature is fluid and cursive, with a long horizontal stroke at the end.

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