



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

March 15, 1999

Dennis Arfmann
Holme Roberts & Owen LLP
1700 Lincoln Street
Suite 4100
Denver, CO 80203-4541

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Mr. Arfmann:

This letter is in response to your February 12, 1999 letter in which you ask for guidance concerning the reporting obligations under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, in writing on behalf of Trapper Mining, Inc. (hereinafter "Trapper"), your letter asks for guidance about coal ash received by Trapper from an Electricity Generating Facility (EGF) and used on-site by Trapper as structural fill and for reclamation activities. In particular, you are asking EPA to state that the ash is being directly reused and is not being managed as a waste, and therefore, the de minimis exemption applies to the coal ash being used as structural fill and for reclamation activities. In support of this position you cite a June 19, 1998 letter from EPA to DuPont-Chambers Works. That letter states that, "the toxic chemicals that were received from off-site in the coal and that are subsequently transferred off-site for direct reuse as structural fill are considered processed. . . . Because the toxic chemicals in the ash are being sent off-site for reuse, and (are) not being managed as waste, the amount of these toxic chemicals is not reportable anywhere on the Form R, including section 8." Accordingly, you assert that the ash is not being managed as a waste by Trapper and therefore, the de minimis exemption should apply.

Further, you state that Trapper considers the ash to be a "valuable imported, 'in commerce' material." However, the contract between Trapper and the EGF that supplies Trapper with the ash (a partial copy of which is attached to your letter) states that instead of paying the EGF for the ash, Trapper is actually paid \$110.00 for each truck load of ash Trapper hauls from the electricity generating station and then manages as fill.

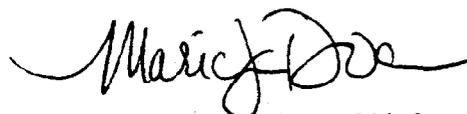
Further, you are asking for comment on the position that the ash being used as structural fill is exempt from threshold determinations and release and other waste management calculations pursuant to the structural component exemption (40 C.F.R. section 372.38 (c)(1)). You cite the proposed industry expansion rule (61 FR 33602) to support your position that the mine itself is part of the facility and therefore, the ash being used as structural fill should be exempt under the structural component exemption.

First, the EPCRA section 313 chemicals in the coal ash are not being processed but rather are being disposed of off-site when they are sent off-site by the EGF to be used as structural fill and for reclamation activities. Because these chemicals are being disposed, they are being managed as a waste and therefore, the de minimis exemption does not apply. The 1998 version of the EPCRA Section 313 Industry Guidance for Electricity Generating Facilities states, "EPCRA Section 313 chemicals in ash sent off-site for use as roadfill, landfill, and in mining reclamation are being managed as a waste; therefore they are not eligible for the *de minimis* exemption." (p. 3-49). Further, the June 19, 1998 letter you cite above is no longer current guidance and has since been replaced by a January 20, 1999 letter to DuPont-Chambers Works. The January 20, 1999 letter, attached hereto, states that the facility transferring the ash off-site to the strip mine, to be used for land reclamation/structural fill activities, is not processing the EPCRA section 313 chemicals in the ash. "The strip mine is disposing the ash, thus the ash is being managed as a waste, (and therefore,) . . . the EPCRA section 313 chemicals in the ash are not eligible for the de minimis exemption." Accordingly, the de minimis exemption does not apply to Trapper's otherwise use of the EPCRA section 313 chemicals in the ash that serve as structural fill and for reclamation activities. Therefore, these chemicals must be considered toward threshold determinations and release and other waste management calculations.

Second, the structural component exemption does not apply here because that exemption is limited to non-process related structures. Q&A 278 in the Revised 1998 Version of the EPCRA Section 313 Questions and Answers document states that "structural materials not associated with the process are exempt from reporting." As the ash used as structural fill and for reclamation activities is integral to the processes taking place at mining facilities, the chemicals in the ash used for these purposes are not eligible for the structural component exemption.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Maria J. Doa". The signature is fluid and cursive, with a large, stylized initial "M".

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