



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

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OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Mr. Randy Peterson, CHMM
Director of Regulatory Affairs
Superior Special Services, Inc.
P.O. Box 1323
Fond du Lac, WI 54936-1323

Dear Mr. Peterson,

This letter responds to your inquiry of November 17, 1997, pertaining to section 313 of the Emergency Planning and Community Right to Know Act (EPCRA). As you know, section 313 of EPCRA requires certain covered facilities to report annually their releases and other waste management of listed toxic chemicals. On May 1, 1997, EPA published a rule (62 FR 23834) expanding the facilities covered by EPCRA section 313 to include seven additional industry groups, including facilities regulated under the Resource Conservation and Recovery Act (RCRA), subtitle C.

As I understand your letter, your questions pertain to activities performed at your subtitle C-regulated hazardous waste storage facility. At this facility, you conduct certain hazardous waste and non-hazardous waste storage activities as well as fluorescent lamp recycling and mercury retorting. Specifically, at the hazardous waste portion of your facility, you perform container transfer, repackaging, and bulking of hazardous wastes. At the non-hazardous waste portion of your facility, you perform waste storage, transfer, phase separation, recontainerization, bulking, and solidification of non-hazardous waste. In addition, your facility also performs fluorescent lamp recycling and mercury retorting of mercury contaminated phosphor powder PPE, mercury batteries, mercury switches, etc. Relating to these operations, you ask the following questions:

- 1) Are hazardous waste operations involving container transfer and tank transfer covered under the "new reporting requirements" because these activities do not meet the definition of "waste management"?
- 2) Are all processes occurring at a single facility potentially covered by the EPCRA section 313 reporting requirements if only some of the activities are regulated by RCRA Subtitle C?

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3) Are nonhazardous waste storage and transfer operations (including phase separation, recontainerizations, bulking, and solidification) regulated by EPCRA section 313?

4) Is the activity of physical separation for further processing of a toxic chemical considered "treatment for destruction" or "otherwise use" of the toxic chemical?; and

5) Is the reclamation of elemental mercury from contaminated phosphor powder, PPE, mercury batteries, mercury switches, etc (i.e., mercury retorting) and the subsequent sale of the liquid mercury, subject to the 25,000 pound processing threshold?

Each of these questions is addressed below.

As to your first question, your assertion that container and tank transfers do not constitute a waste management activity as described in the preamble to the May 1, 1997 final rule (62 FR 23850) is correct. If the facility is performing waste management activities on the toxic chemical such as container and tank transfers and is then sending the toxic chemical in waste off-site for disposal or treatment for destruction, the facility would not consider this activity towards an activity threshold because it is not manufacturing, processing or otherwise using the toxic chemical. However, if the facility exceeds an activity threshold for these toxic chemicals elsewhere at the facility, they should report these activities as appropriate in sections 6.2, and 8 of the Form R

The answer to your second question relates directly to the definition of the term facility. You ask whether all processes occurring at a single facility are potentially covered by the EPCRA section 313 reporting requirements if only some of the activities are regulated by RCRA Subtitle C. The term facility is defined as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person)." (40 CFR § 372.3) Because all of the activities occurring at your hazardous waste storage site are occurring on the same contiguous piece of land and are operated by the same organization, the entire area is considered one facility. As long as the facility's primary SIC code is 4953 and any portion of the facility is regulated under RCRA Subtitle C, it meets the SIC code criterion for reporting under EPCRA section 313. Thus, the facility must calculate threshold, releases, and other waste management amounts on a facility-wide basis, including the portion of the facility not regulated under Subtitle C.

Your next question addresses the nonhazardous waste storage and transfer operations (including phase separation, recontainerization, bulking and solidification) performed by your facility. You ask if these are regulated activities under EPCRA section 313. As of January 1, 1998, if your facility performs waste management activities, such as solidifying toxic chemicals in wastes received off-site, your facility would be otherwise using the toxic chemical. The revised interpretation of otherwise use requires facilities to include toxic chemicals that are received from off-site for further waste management and then disposed, stabilized or treated for destruction on-site in this threshold activity calculation. Because "a synonym for waste stabilization is waste solidification" (62 FR 23834 at 23852; May 1, 1997), the toxic chemicals

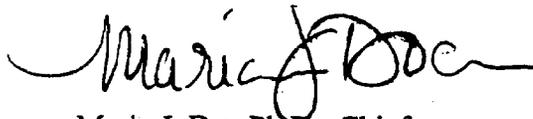
n the wastes received from off-site and stabilized on-site are counted towards the 10,000 pound otherwise use threshold. If the facility is conducting only phase separation, recontainerization, and/or bulking of the toxic chemicals before transferring them off site for treatment for destruction or disposal and is not disposing, treating, stabilizing them on site, the facility would not consider this activity towards an activity threshold because it is not manufacturing, processing or otherwise using the toxic chemical. However, if the facility exceeds an activity threshold for these toxic chemicals elsewhere at the facility, they should report these activities as appropriate in sections 6.2, and 8 of the Form R.

You ask if the activity of physical separation for further processing of a toxic chemical would be "treatment for destruction" or "otherwise use" of the toxic chemical? First, under the revised interpretation of otherwise use, if a covered facility treats for destruction on site a chemical that it received from off site for purposes of further waste management, it is otherwise using that toxic chemical. (62 FR 23850). Thus, "treatment for destruction" and "otherwise use" are not mutually exclusive activities. Your assertion that phase separation would not be treatment for destruction, however, is correct because the toxic chemical in the waste has not actually been destroyed. If a facility receives materials containing EPCRA section 313 toxic chemicals from off-site for further waste management and the toxic chemicals are treated for destruction, stabilized, or disposed on-site, the facility would be otherwise using the toxic chemical. However, because the toxic chemical is incorporated into a product at the facility that is further distributed in commerce (*i.e.*, the retorted mercury is sold for reuse in thermometers and mercury switches), the activity would be considered the first step in a processing activity and therefore subject to the 25,000 pound threshold. Once a facility exceeds an EPCRA section 313 chemical use threshold for a particular operation, amounts of the toxic chemical that are released or otherwise managed as a waste must be calculated for all on-site activities.

You also ask if the reclamation of elemental mercury from contaminated phosphor powder, PPE, mercury batteries, mercury switches (*e.g.*, mercury retorting) and the subsequent sale of the liquid mercury for reuse in thermometers and mercury switches, is subject to the 25,000 pound processing threshold. I understand from your letter that at least some of the mercury contaminated phosphor powder comes from the florescent lamps recycling operation. The mercury generated by this activity should only be considered once towards the 25,000 pound processing threshold. (See Q&A #84 from the Emergency Planning and Community Right-To-Know Act Section 313 Addendum to the Guidance Documents for the Newly Added Industries (EPA 745-B-98-001, February 1998)) The mercury retorted from wastes not associated with the fluorescent lamp recycling (*i.e.*, the mercury in the contaminated PPE, mercury batteries, mercury switches, etc.) should be added to the lamp-related mercury and should also be counted towards the 25,000 pound processing threshold.

I apologize for the delay in responding to your questions. 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 more questions about these or other activities potentially covered by the EPCRA section 313 program, please do not hesitate calling me at 202.260.9592 or Sara Hisel McCoy of my staff at 202.260.7937.

Sincerely,

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

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

enc.

cc: IG System