



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

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

MAY 28 1998

Ms. Catherine D. Little
Hunton and Williams
The NationsBank Plaza, Ste. 4100
600 Peachtree St., N.E.
Atlanta, GA 30308-4000

Dear Ms. Little,

This letter responds to your inquiry of March 17, 1998 concerning the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, your question relates to the consideration of EPCRA section 313 toxic chemical impurities in raw materials.

As I understand your question, an EPCRA section 313 covered facility produces a non-EPCRA section 313 listed inorganic heavy metal oxide. The ores used as raw materials for the production of the metal oxide contain EPCRA section 313 toxic chemicals as impurities. During production, these impurities are chemically converted from oxides to sulfates or chlorides, separated from the main product stream, and discharged in wastes. You indicate that at no point in the process does the concentration of an EPCRA section 313 toxic chemical (*i.e.*, the sum of the concentrations of compounds falling into any listed chemical category) ever exceed the appropriate *de minimis* concentration. You ask if the *de minimis* exemption would apply to these activities.

In your correspondence you also assert that because the toxic chemicals being coincidentally manufactured are in the same EPCRA section 313 chemical category, the conversion should not be considered "manufacturing" new toxic chemicals. However, as stated in the revised 1997 Forms and Instructions, "[w]hen reporting for one of these toxic chemical categories, all individual members of a category that are manufactured, processed, or otherwise used must be counted." (See Toxic Chemical Release Inventory Reporting Forms and Instructions, Revised 1997 Version; pp. 14) (See also Q&A No. 289 in the revised 1997 EPCRA Section 313 Questions and Answers document.) Therefore, any EPCRA section 313 toxic chemicals manufactured during the facility's production, even if the toxic chemicals are created from toxic chemicals in the same EPCRA section 313 chemical category, must be considered towards the facility's manufacturing threshold.

You also inquire as to whether the toxic chemical impurities are exempt under the *de minimis* exemption. (40 CFR § 372.38(a)) As you note in your letter, the language in the Forms and Instructions makes it clear that the *de minimis* exemption does not generally apply to the manufacture of EPCRA section 313 toxic chemicals. (See Toxic Chemical Release Inventory Reporting Forms and Instructions, Revised 1997 Version; pp. 8, and 10) Although there are two instances when toxic chemicals that are manufactured under EPCRA section 313 may be eligible for the *de minimis* exemption, your situation does not apply. As stated in the Appendix A, Directive #2, of the 1997 EPCRA Section 313 Questions and Answers document:

The *de minimis* exemption may apply to mixtures and trade name products containing toxic chemicals that are imported into the United States. Another exception applies to toxic chemicals that are coincidentally "manufactured" as impurities that remain in the product distributed in commerce at below the *de minimis* levels.

Because, in the situation you provide, the EPCRA section 313 toxic chemicals are not imported but are instead manufactured and subsequently removed from the product that is subsequently distributed in commerce, these toxic chemicals are not eligible for the *de minimis* exemption. Therefore, the facility must consider all of the EPCRA section 313 listed metal sulfates and chlorides created as a result of their production process for threshold determinations and release and other waste management reporting.

I hope this information is helpful to you in making your threshold determinations and release and other waste management calculations under EPCRA section 313. If you have any further questions, please call me at 202.260.9592 or Sara Hisel McCoy of my staff at 202.260.7937.

Sincerely,



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

cc: IG system