



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

March 11, 2002

OFFICE OF
ENVIRONMENTAL INFORMATION

Laurie Seifert-Kissner
Bauerly Bros, Inc.
4787 Shadow Wood Dr. NE
Sauk Rapids, MN 56379

Dear Ms. Seifert-Kissner:

This letter is intended to clarify the reporting requirements of section 313 of the Emergency Planning Community Right-to-Know Act (EPCRA). Specifically, your facility submitted a Form R for the 2000 reporting year reporting releases from a mobile asphalt plant (plant). The Toxics Release Inventory (TRI) Program Division followed up on your Form R submission with several phone calls to you in order to gain a better understanding of the plant and its operations.

According to the information you provided in our phone conversations, the plant is moved to different sites during the year where it is used to produce asphalt for construction jobs. The plant does not move on its own power, but rather, must be towed. Once at a site, the plant remains stationary until the job is completed. The land on which the plant is operated during a construction job is either owned by your company or obtained via a contractual agreement (lease, permit, etc.) that allows the plant to be operated on that land. As indicated on your Form R, your company has a primary SIC code of 2951.

Based on this limited information, the sites where your plant is operated appear to be "facilities". A 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). A facility may contain more than one establishment." (40 CFR Section 372.3) When the plant is operated on land that is owned by your company or obtained via a contractual agreement, you should consider that site (gravel pit, plant, offices, etc.) a facility for EPCRA section 313 reporting purposes. Once it is determined that a particular site constitutes a facility that is owned or operated by your company, you are required to make employee and chemical threshold determinations for that individual site. If you satisfy the reporting requirements for a particular facility, releases and waste management activities must be reported for the chemicals that exceeded an activity threshold at that site. In the event that your

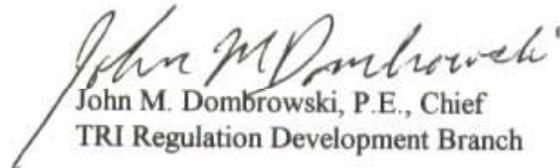
company uses the same facility on two separate occasions during a reporting year, the employee and chemical activity threshold quantities from the separate time periods should be added together. For example, if your plant is at a particular facility in March and June, the employee hours and chemical threshold quantities from those two months should be added together when calculating employee and chemical thresholds for that facility.

If your company is hired by a facility and your plant is operated on this facility's property, then the hiring facility may be required to calculate threshold and release quantities of the toxic chemicals associated with the plant. In this scenario, your company would be considered a contractor to the hiring facility. Because that facility hired your plant and the plant was operated on its property, the facility is considered the operator of the plant.

Toxic chemicals associated with the use of the plant are not subject to the motor vehicle exemption (40 CFR Section 372.38(c)(4)). The plant does not have a motor to drive its wheels and is stationary when used to produce asphalt. The exemption only applies to motor vehicles, not stationary equipment. (See Q&A 289 in the 1998 EPCRA Section 313 Questions and Answers document, December 1998, EPA 745-B-98-004) Accordingly, the toxic chemicals used at the plant are not eligible for motor vehicle the exemption.

I hope this information is helpful to you in understanding the reporting requirements of section 313 of EPCRA. If you have any other questions, or desire further information, please call Marc Edmonds, of my staff, at 202-260-0616.

Sincerely,


John M. Dombrowski, P.E., Chief
TRI Regulation Development Branch