



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

April 9, 1999

Scott Kuhn
Safety-Kleen
1301 Gervais Street
Suite 300
Columbia, SC 29229

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Mr. Kuhn:

This letter is in response to your March 30, 1999 email to EPA's Toxics Release Inventory Branch concerning the applicability of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) to your facility. Specifically, your facility receives waste from off-site and disposes of the waste in active, on-site landfills. According to your email, the waste placed in the landfills produces a leachate. The leachate is stored in tanks and transferred off-site for disposal. According to your email, no treatment of leachate occurs on-site.

Based on this set of circumstances, you are asking for guidance to the following questions:

(1). Does on-site landfill disposal of toxic chemicals in wastes received from off-site constitute an otherwise use activity?

Yes. The on-site disposal of toxic chemicals in wastes received from off-site for the purposes of further waste management constitutes an otherwise use of those toxic chemicals.

40 CFR Section 372.3 defines otherwise use:

Otherwise use means any use of a toxic chemical, including a toxic chemical contained in a mixture or other trade name product or waste, that is not covered by the terms "manufacture" or "process." Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:

(1) The toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or

(2) The toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute otherwise use or processing of the toxic chemical.

(2). Does the transfer of leachate (produced from the on-site landfills) for off-site disposal constitute a threshold activity?

No. The transfer of the leachate for off-site disposal does not constitute a manufacturing, processing or otherwise use activity. If, however, for any of the toxic chemicals in the leachate a threshold is exceeded elsewhere at the facility, then the transfer off-site for disposal should be reported in Part II, Section 6.2 and Section 8.1 of the Form R. (See Q&A 131 in the 1998 EPCRA Section 313 Questions and Answers document.)

(3). Would the facility have to report as an off-site transfer those toxic chemicals in leachate transferred off-site if the leachate was produced by a closed, on-site landfill that was not the disposal unit for the wastes received from off-site that caused the facility to exceed the otherwise use activity threshold for the toxic chemicals?

Yes. If a facility exceeds an activity threshold for a toxic chemical then the facility must report all releases and other waste management activities for that chemical. The toxic chemicals being released or managed as wastes do not have to come from the chemical source that caused the facility to exceed the activity threshold. (See Q&A 117 in the 1998 EPCRA Section 313 Questions and Answers document.)

(4). Finally, altering the original fact pattern described above, suppose the facility performs on-site stabilization for the toxic chemicals in the leachate and then disposes of these chemicals in an on-site landfill. Or, suppose the facility simply collects the leachate, and without stabilizing it, disposes it in an on-site landfill? How should the facility account for these activities?

Because the toxic chemicals being stabilized and disposed of, or simply being collected and disposed of, were not received from off-site, but instead, came from an on-site landfill, this stabilization and/or disposal is not an otherwise use activity. Stabilization without subsequent distribution in commerce and/or disposal is also not a manufacturing or processing activity. (Although facilities should always remember that "the possibility exists for new chemicals to be created during on-site treatment, disposal, or stabilization. If a new section 313 chemical is created, it must be considered towards the facility's manufacturing threshold." Q&A 131.) Accordingly, if the toxic chemicals in the leachate are being stabilized and/or disposed back into the landfill, the facility would not report as a release to land the chemicals in the leachate because these chemicals would have already been reported as a release to land on the Form R when the waste received from off-site was initially disposed in the on-site landfill. (Q&A 525 in the 1998 EPCRA Section 313 Questions and Answers document.)

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 cursive script that reads "Maria J. Doa". The signature is fluid and extends to the right with a long horizontal stroke.

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