



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

July 27, 1999

Stephanie A. Woolf
Environmental Programs & Settlement
Agreement Division
Department of Energy
Idaho Operations Office
850 Energy Drive
Idaho Falls, Idaho 83401-1563

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

Dear Ms. Woolf:

This letter responds to your July 6, 1999 letter to Larry Reisman, of the Toxics Release Inventory Branch, in which you ask for guidance concerning the applicability of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) to your facility. Specifically, the U.S. Department of Energy's Idaho National Engineering and Environmental Laboratory (INEEL) uses lead bricks for radioactivity shielding purposes. According to your letter the INEEL purchases pre-made lead bricks and uses the bricks without modifying the original dimensions. However, the INEEL frequently covers the lead bricks with duct tape or paint to avoid lead exposure to personnel handling the bricks. In a follow-up telephone conversation you stated that you believe the lead bricks themselves meet all of the criteria for the article exemption. Accordingly, at this time you are only asking for guidance as to whether the application of paint or tape to the lead bricks disqualifies the bricks from being considered articles eligible for the article exemption.

As you are aware, the article exemption is provided for at 40 CFR section 372.38(b) and basically states that facilities do not have to consider toward activity threshold determinations and release and other waste management calculations toxic chemicals present in an "article." The term "article" is defined at 40 CFR section 372.3 and reads:

Article means a manufactured item: (1) Which is formed to a specific shape or design during manufacture; (2) which has end use functions dependent in whole or in part upon its shape or design during end use; and (3) which does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishments.

Further, this exemption only applies to the quantity of the toxic chemical present in the article. If the toxic chemical is manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the article, then those quantities of the toxic chemical are

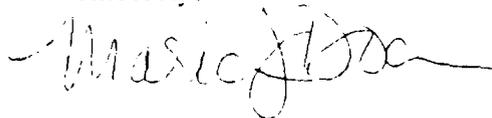
not eligible for the article exemption. Accordingly, the article exemption does not apply to the manufacture of an article. (See Q&As 346 and 372 in the 1998 EPCRA Section 313 Questions and Answers document; December 1998, EPA 745-B-98-004.)

With regard to your question about how the application of paint or tape impacts the above definition of "article," the first part of the definition (the requirement that the item be formed to a specific shape or design during manufacture) needs to be considered. "If, as a result of processing or otherwise use, an item retains its initial thickness or diameter, in whole or in part, it meets the first part of the definition." (See Directive #1 - Article Exemption, 1998 EPCRA Section 313 Questions and Answers document, *supra*). The painting or application of tape to an item that otherwise meets the EPCRA section 313 definition of an "article" does not affect the article status of that item because the initial thickness or diameter of that item is retained. Therefore, if the bricks meet all of the criteria required for the article exemption, then, even if the facility applies paint and/or tape to the outside of the bricks, the toxic chemicals present in the bricks themselves do not have to be considered toward threshold determinations and release and other waste management calculations. However, toxic chemicals in the paint would not qualify for the article exemption and facilities should not consider the toxic chemicals in the paint exempt from EPCRA section 313 reporting pursuant to the article exemption. As for any toxic chemicals in the tape applied to the bricks, the tape may qualify for the article exemption. For the tape, however, the facility should consider whether there are releases of toxic chemicals from the cutting or application of the tape. In particular, if there are releases of greater than 0.5 pounds of a toxic chemical from all like articles (i.e., all of the tape used by the facility) during the reporting year then the facility cannot exempt that toxic chemical from the EPCRA section 313 reporting requirements pursuant to the article exemption. (See 1998 Q&A 358, *supra*).

Finally, please note that while a Federal facility can claim the article exemption, EPA encourages Federal facilities to consider waiving the exemption. The intent of the article exemption, as well as most of the other exemptions provided for at 40 CFR section 372.38, is to allow facilities to exclude from threshold determinations and release and other waste management calculations *de minimis* or trivial amounts of toxic chemicals. Federal facilities, however, can have functions very different from the industries with primary SIC codes subject to EPCRA section 313. In the situation addressed in your letter, for instance, the use of lead bricks for shielding purposes may constitute substantial quantities of lead. If so, EPA encourages your facility to consider waiving this exemption. As Executive Order 12856 states, "the Federal Government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals. . . ."

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 black ink, appearing to read "Maria J. Doa", with a long horizontal flourish extending to the right.

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