



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

June 23, 2000

OFFICE OF
ENVIRONMENTAL INFORMATION

J.P. Gibbons, President
North American Transportation
Consultants, Inc.
P.O. Box 1404
Hightstown, NJ 08520

Dear Mr. Gibbons:

This letter responds to your June 14, 2000 letter requesting guidance regarding the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). According to your letter, as well as a follow-up conversation, you are requesting guidance about the following scenario.

A facility causes toxic chemicals to be imported into the United States. This facility, however, does not receive the materials containing the toxic chemicals. Instead, as your letter states, most of the materials containing the toxic chemicals are sent directly to the facility's customers. Some of the materials are sent to public warehouses located in different parts of the United States. These warehouses are not owned or operated by the facility importing the toxic chemicals. From the warehouses the materials are directly shipped to the facility's customers. The warehouse personnel are not employees of the facility and they do not work directly for the facility. Further, the warehouses service many other facilities. Finally, all employees for the facility at issue are located at sites that do not receive the imported toxic chemicals. Based on this background information you are requesting guidance regarding the EPCRA section 313 reporting requirements.

As you are aware, importation constitutes manufacturing for purposes of EPCRA section 313. (See EPCRA section 313 (b)(1)(C)(i)). However, if a facility that causes the materials containing toxic chemicals to be imported does not ever receive the materials on-site, but instead, has the materials sent directly to another location, then the facility that caused the importation does not need to consider the toxic chemicals contained in the imported materials for EPCRA section 313 reporting purposes. (See #217, #218 and #220 in the 1998 EPCRA Section 313 Questions and Answers document (December 1998, EPA 745-B-98-004)). In fact, 1998 Q&A 217 directly addresses your scenario:

A facility imports a listed chemical, but it is imported directly to stand-alone warehouses (not owned by the facility). The facility controls the sale/distribution of these unaltered products. Should the warehouses properly report on these materials or should the facility?

The facility should count the chemical towards its *manufacturing* threshold only if it actually receives the *toxic chemical* at the *facility*. The warehouse is a separate *facility*, and may not be within a *covered SIC code*; it, therefore, may not need to report. If the warehouse assumes the SIC code of the *facility* it supports, it is an *auxiliary facility*, and it will need to independently make employee and threshold determinations. Because the warehouse has not caused the *toxic chemical* to be *imported*, it has not *manufactured* the *toxic chemical*. However, if the warehouse *processes* or *otherwise uses* the chemical above an applicable activity threshold, and meets the other EPCRA Section 313 criteria, it would be required to file the Form R.

Q&A 217 expressly states that the toxic chemicals imported do not have to be considered toward the manufacturing activity threshold by the facility that caused their importation if those toxic chemicals are not received at the facility. Q&A 217 further states that the stand-alone warehouses (not owned by the facility importing the toxic chemicals) are separate facilities. As separate facilities, even if they constitute auxiliary facilities that assume the SIC code of the facility importing the toxic chemicals, they would still be responsible for their own reporting based upon their own, independent threshold determinations (employee and chemical activity) and release and other waste management calculations.

I hope this information is helpful to you in complying with the reporting requirements of section 313 of EPCRA. If you have any other questions, or desire further information, please call Larry Reisman, of my staff, at 202.260.2301.

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., Director
Toxics Release Inventory Program Division