



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

February 2, 2000

OFFICE OF
ENVIRONMENTAL INFORMATION

Stephen J. DeLussa
Environmental Affairs Manager
Envirosource Technologies
1155 Business Center Drive
Horsham, PA 19044-3454

Dear Mr. DeLussa:

This letter is in response to your December 15, 1999 letter requesting guidance regarding the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, you are asking for guidance concerning the October 29, 1999 final rule for persistent bioaccumulative toxic (PBT) chemicals, and in particular, dioxin and dioxin-like compounds.

According to your letter, Envirosource Technologies, Inc. owns two commercial hazardous waste landfill facilities that store, treat, and dispose of wastes received from off-site facilities. You further provide that no dioxin or dioxin-like compounds are manufactured during the treatment process. You state, however, that very low levels of dioxin or dioxin-like compounds, that meet Land Disposal Restriction (LDR) standards, may be contained in the wastes received from off-site (e.g., contaminated soil and debris from remediation sites) which are then disposed of in your facility's landfill cells. Based on this background information, you want to know if the dioxin and dioxin-like compounds in these wastes are subject to threshold determinations and release and other waste management calculations pursuant to the final rule for PBT chemicals.

In the October 29, 1999 final rule for PBT chemicals EPA added a category of dioxin and dioxin-like compounds to the EPCRA section 313 list of toxic chemicals and established a 0.1 gram reporting threshold for this category. Specifically, section 372.65 ("Chemicals and chemical categories") and section 372.28 ("Lower thresholds for chemicals of special concern") of title 40 of the code of federal regulations (CFR) provides the following qualifier for dioxin and dioxin-like compounds:

Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical).

Both sections of the CFR then list the 17 specific chemicals included in the dioxin and dioxin-like compounds category. Section 372.28 also provides that the reporting threshold for this category is 0.1 gram. Section 372.65 states that the effective date for reporting for this newly added category is January 2000 (for reports due July 1, 2001).

As you are aware, your facility's receipt from off-site and subsequent on-site treatment or disposal of wastes containing toxic chemicals constitutes an otherwise use of the toxic chemicals in the wastes. In fact, if the toxic chemical that was disposed on-site, stabilized (without subsequent distribution in commerce), or treated for destruction on-site was received from off-site for the purposes of further waste management, or was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management, then the toxic chemical was otherwise used and needs to be considered toward the appropriate otherwise use threshold determination and release and other waste management calculations. (40 CFR section 372.3).

Consequently, when waste management facilities are otherwise using dioxin and dioxin-like compounds because the waste received from off-site for the purposes of on-site waste management (i.e., disposal, stabilization or treatment) contains dioxin or dioxin compounds, they need to consider if:

the dioxin and dioxin-like compounds are present as contaminants that were created during the manufacturing of chemicals in the waste received from off-site.

If so, then the qualifier for dioxin and dioxin-like compounds has been met and the dioxin and dioxin-like compounds should be considered toward threshold determinations and release and other waste management calculations.

As you correctly note in your letter, the preamble language at page 58697 of the final rule (64 FR 58666, 58697) provides insight to the development of this qualifier for dioxin and dioxin-like compounds. As stated in that section of the preamble language, the aim of the qualifier was to:

reduce reporting burden on facilities, mainly in the food processing industry, that results from the unique combination of circumstances related to the reporting for these chemicals and to focus on those activities that add to the loading of dioxins in the environment rather than on activities dealing with previously released and bioaccumulated chemicals.

Although the preamble language provides insight into the development of the regulatory language, the regulation and not the preamble is the binding language. Accordingly, if the facility receiving the off-site waste that is contaminated with dioxin and dioxin-like compounds (and the contamination resulted from the manufacturing of chemicals in the waste) disposes, treats or stabilizes on-site the dioxin and dioxin-like compounds in the waste, then the facility must consider the dioxin and dioxin-like compounds toward the otherwise use threshold determinations and release and other waste management calculations for dioxin and dioxin-like compounds. Of course, if, through the management of waste received from off-site, dioxin and

dioxin-like compounds are manufactured, then clearly this otherwise use of the dioxin and dioxin-like compounds satisfies the qualifier and the dioxin and dioxin-like compounds manufactured during waste management need to be considered toward both the manufacturing *and* otherwise use threshold determinations and release and other waste management calculations for dioxin and dioxin-like compounds.

The determination regarding whether the qualifier for dioxin and dioxin-like compounds has been met may be more difficult for some waste streams (e.g., contaminated soil and debris), than for other waste streams (e.g., a closely monitored manufacturing process waste stream). Nevertheless, facilities should use their best readily available data to determine if the dioxin and dioxin-like compounds are present as contaminants that were created during the manufacturing of chemicals. (See EPCRA Section 313(g)(2), and Q&As 461, 475, 480, and 585 in the 1998 EPCRA Section 313 Questions and Answers document (December 1998, EPA 745-B-98-004) for general information on readily available data.) With regard to other assistance for this category of toxic chemicals, as stated in the preamble to the final rule, EPA will provide a guidance document to assist facilities in making threshold and release determinations for the dioxin and dioxin-like compounds category. (64 FR 58666, 58704).

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