



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

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OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

Mr. Keith Ristinen  
JBR Environmental  
5365 Mae Anne Ave.  
Suite B2  
Reno, NV 89523

Dear Mr. Ristinen,

This letter is in response to your e-mail to Greg Gholson, EPA Region 9, dated September 16, 1998, concerning the applicability of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Your e-mail contained ten questions, all of which have been addressed in the following paragraphs.

Your first question basically asks whether "mineral rights" is a sufficient interest in land to render two otherwise separate mining sites contiguous and, therefore one facility for EPCRA section 313 reporting purposes. The answer is yes. The holder of mineral rights has an ownership interest. The definition of facility (40 CFR section 372.3) reads:

"Facility" means 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.

Because the holder of the mineral rights has an ownership interest in the land that separates the two otherwise separate mines, the entire area (the mines and the intervening land subject to the mineral rights) at issue, is under common ownership and therefore, the sites are "contiguous or adjacent" and the entire area is one facility for EPCRA section 313 purposes.

Your second question is very similar to the first question. A company owns two sites that have a common border. The company has surface rights for one site and mineral rights for the other site. Once again, and for the reasons expressed in the answer to your first question, these two sites are "contiguous or adjacent" despite the different types of ownership interests at each site.

According to your third question, a company operates two mines which are separated by several miles of land. Some of the land separating the two mines is owned by the company and some of the land is owned by the government. Specifically, the land between the mines is divided up into a "checkerboard pattern," such that it is only possible to trace a path that lies

completely on company-owned land between the two mines by moving from corner to corner of adjacent squares in the checkerboard pattern. Based on this fact pattern you want to know if the two mines are contiguous and, therefore, one facility for purposes of EPCRA section 313. Since there is an unbroken connection between the mines, regardless of how narrow the connection, the two mining sites are "contiguous or adjacent" and, therefore, would be considered one facility for EPCRA section 313 reporting purposes.

In your fourth question the two mines are, once again, several miles apart. Both mines are operated by the same company. The company also controls a haul road which joins the two mines. The haul road crosses over land which is neither owned nor operated by the company. The general public has a limited right-of-way to the road, with public access occurring only when the road is needed to detour traffic from an accident that has taken place on a nearby road. Consistent with the reasoning expressed in the answer to your first question, the two mines are "contiguous or adjacent" because the entire area (the mines and the haul road) is under common control. Therefore, the two mines constitute one facility for EPCRA section 313 reporting purposes.

Your fifth question asks how close together two sites must be to one another to be considered adjacent sites. In your fact pattern two mining sites (each 10 square miles) are separated by a strip of land two miles wide. This two mile wide strip of land is a mixture of public and private property which is not owned, operated or controlled by your company. An interstate road is located on this two mile wide strip of land. You also believe there is a railroad and possibly some ranching taking place on this intervening strip of land. No further detail regarding the extent of activity taking place on this strip of land has been provided. Ore is trucked between the mines over this two mile wide strip of land. Based on these facts only, the two mining sites do not appear to be adjacent to one another and therefore, the two mining sites constitute two separate facilities for EPCRA section 313 purposes.

The sixth question in your e-mail involves a surface impoundment. You state that water is routed to this impoundment. Some, but not all of the water is pumped out of the impoundment and used for a process. The impoundment functions as a part of a process water loop and a release point for excess water. Assuming that the water at issue is not drawn from the environment or municipal sources, do all the listed chemicals present in the water sent to the impoundment have to be counted as a release for EPCRA section 313 reporting purposes? While all of the listed chemicals in the water routed to the impoundment qualify as a release, as that term is defined under EPCRA section 313, the facility does not have to report as a release the listed chemicals associated with that portion of the water that is reused in the process prior to the reporting deadline.

Question seven of your e-mail states that a company uses nitric acid in a facility process. During the course of that process the pH of the nitric acid solution is raised above 6. Your question asks if the nitric acid should be considered treated for Form R reporting purposes. No, the nitric acid should not be considered treated for Form R reporting purposes because the pH is raised during the process. To be considered treated for reporting purposes, the nitric acid has to be part of a waste stream. The facility should recognize that by raising the pH of the nitric acid

solution it will be manufacturing nitrate compounds, a category of compounds to which EPCRA section 313 applies. Further, if the facility distributes in commerce the nitrate compounds manufactured, then the facility must also apply both these compounds and the nitric acid toward the processing threshold determinations for these listed constituents.

In question eight a mine uses a dry fertilizer as part of its reclamation. The dry fertilizer contains water dissociable nitrates. Because nitrate compounds are reportable only when in aqueous solution, you want to confirm that the nitrate compounds in the dry fertilizers are not reportable. If the nitrates are not in aqueous solution they are not reportable. If an aqueous solution is created after the fertilizers are applied to the land, the facility still does not have to report on these compounds since facilities are not required to report on conversions that take place in the environment.

Question nine asks if two separate mines constitute one facility if the company that owns the mines is also the lessee of all the land between the two mines. The leasehold is an ownership interest. This renders the two mines "contiguous or adjacent" (once again, for the reasons expressed in the answer to your first question). Since the two mines are "contiguous or adjacent," they constitute one facility for purposes of EPCRA section 313.

Finally, question ten provides that a company owns two separate mines. The company also holds unpatented mining claims on all the land between the mines. For this question you want to know whether the company should consider the two mines as one facility. Yes, the company should consider the two mines as one facility for purposes of EPCRA section 313. Because an unpatented mining claim is an ownership interest, the entire area at issue is under common ownership. Therefore, the mines are "contiguous or adjacent" (see answer to question one) and constitute one facility for EPCRA section 313 purposes.

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". The signature is fluid and cursive, with a long horizontal stroke at the end.

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