



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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OFFICE OF
ENVIRONMENTAL INFORMATION

MEMORANDUM

SUBJECT: EPCRA Section 313 Reporting and Lead Storage at Federal Facilities

FROM: Maria J. Doa, Director 
Toxics Release Inventory Program Division

TO: F. Kevin Reilly
Defense National Stockpile Center

This memorandum responds to an EPCRA Section 313 interpretive guidance question regarding activities at a federal facility. The issue involves federal facilities known as Defense National Stockpile Centers (DNSC). These facilities, which are responsible for storing lead bars and ingots, are now selling the lead. The question is whether the sale of the lead bars and ingots constitutes a *processing* activity, requiring the DNSC facility to consider the amount sold toward the *processing* threshold.

According to your conversation with John Harman, the DNSC facilities have stored the lead bars and ingots in warehouses and storage locations for thirty to forty years. The DNSC facilities have not performed any activity involving the lead other than to store it. Because Congress has determined that this large-scale storage is no longer necessary, the DNSC facilities are now selling the lead. When a buyer purchases the lead bars and ingots, the DNSC facility "bundles the bars/ingots into metric ton lifts and loads them onto the buyers' conveyances." "When a storage location is vacated, DNSC conducts environmental reviews and cleans the site if necessary."

In the case presented by DNSC, these federal facilities have performed a *processing* activity. *Processing* is defined as the "preparation of a toxic chemical, after its *manufacture*, for distribution in commerce..." When the DNSC facilities bundle the bars/ingots into metric ton lifts in order to provide them to the buyer, it is preparing the bars/ingots for the purposes of distribution into commerce, and thus is processing the bars/ingots.

EPA has provided guidance on the preparation of a toxic chemical prior to distribution into commerce in its EPCRA section 313 Questions and Answers, Revised 1998 Version document. Question 164 addresses a facility that receives petroleum via a pipeline from off-site, stores the petroleum on-site, then sends the petroleum via pipeline to another facility. The facility in question has repackaged the toxic chemical after storage for distributing it into commerce, and thus is processing the toxic chemical.

Another example is question 207, in which a facility receives shipments of an EPCRA section 313 listed toxic chemical in a railcar. The facility transfers the toxic chemical into large tank trucks for distribution into commerce. As stated in the answer to this question, "The act of removing a listed toxic chemical from one container and placing it in another is considered repackaging, regardless of the size of the containers involved".

The DNSC facilities have received the toxic chemical (e.g., lead), stored it, then transferred the toxic chemical onto trucks for distribution into commerce. The DNSC facilities have processed the lead ingots. Each DNSC facility should count this amount of the toxic chemical sent off-site to other facilities toward its 25,000 pound processing threshold.

The exception is if the DNSC facilities can claim an exemption under EPCRA section 313. These facilities may be eligible for the articles exemption. The articles exemption allows facilities to exempt toxic chemicals that are part of an article. There are three basic criteria for meeting the articles exemption:

- 1) if the articles are formed to a specific shape or design during manufacture
- 2) if the articles have end use functions dependent in whole or in part upon its shape or design; and
- 3) if the articles do not release a toxic chemical under the normal circumstances of processing or otherwise use at the facility.

According to your conversations with John Harman, the DNSC facilities received the lead bars/ingots after their manufacture in their present shape or design. The DNSC facilities have stored the lead bars/ingots and have not altered their shape or design. The final criterion the DNSC facilities should consider is if there were releases of toxic chemicals (i.e., lead) from these articles.

On this final point, EPA allows facilities to round any amounts equal to or less than 0.5 pound per year to zero for each year. If, however, a DNSC facility has releases from the lead bars/ingots totaling more than 0.5 pound per year for all like articles, then the articles exemption does not apply. A DNSC facility, therefore, must consider the total amount of releases per year from all the lead bars/ingots. If this total amount exceeds 0.5 pound per year, then the DNSC facility can not claim the articles exemption for the lead bars/ingots unless any amount above 0.5 pound for all like articles during the entire reporting year is completely captured and sent for recycling/reuse on-site or off-site. In such cases, the items may remain exempt as articles.

If you have any questions on this matter, please feel free to contact John Harman of my staff. He can be reached by telephone at 202 260 6395, by email at "harman.john@epa.gov", or by fax at 202 401 8142. Thank you.

cc: IG Workgroup