



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

October 02, 2000

Deborah Henry  
Project Engineer  
Black & Veatch Corporation  
11401 Lamar Avenue  
Overland Park, Kansas 66211

OFFICE OF  
ENVIRONMENTAL INFORMATION

Dear Ms. Henry:

This letter responds to your July 18, 2000 letter requesting guidance regarding the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, you are requesting guidance about construction activities taking place prior to, as well as during, facility operations.

Your letter provides two scenarios and several discussion points, all of which are addressed in this response. First, you want to know if the toxic chemicals in sheet metal and pipes should be considered toward threshold determinations if the sheet metal and pipes are used for constructing and installing process equipment prior to the onset of plant operations. Second, as part of routine maintenance, some plant operations may be temporarily shut down to allow for replacement or repair of process equipment. For both of these scenarios you note in your letter that during construction/installation releases of toxic chemicals from the sheet metal and pipes are likely to exceed 0.5 pound thereby negating any eligibility for the articles exemption (40 CFR section 372.38(b); *see also*, Q&A 342-3 82 and Directive # 1 -Article Exemption in the 1998 EPCRA Section 313 Questions and Answers document, December 1998, EPA 745-B-98-004). However, once in service, you state that all releases of toxic chemicals from these items will be less than 0.5 pound and you indicate that these items would otherwise be eligible for the articles exemption.

Prior to initial facility construction and before a Standard Industrial Classification (SIC) code can be assigned, the EPCRA section 313 reporting criteria (*see* 40 CFR sections 372.22 and 372.25 for a description of the SIC code, employee threshold, and chemical activity criteria) do not have to be considered. Accordingly, the toxic chemicals in the materials used to initially construct the facility (*e.g.*, the sheet metal and the pipes) do not have to be considered toward chemical activity thresholds. You should note, however, that after the initial facility construction is complete, if chemical activity thresholds for any of the toxic chemicals in the pipes or sheet metal are exceeded elsewhere at the facility, then for those toxic chemicals, any release or other waste management activities associated with the construction materials are reportable unless the pipes and other materials used to construct the facility qualify for an exemption, such as the structural component exemption or the articles exemption. You have indicated that after the facility has been constructed, the pipes and other materials used to initially construct the facility would, in fact, qualify as articles.

Once the facility is constructed, however, if the facility meets all the reporting criteria (SIC code, employee threshold and toxic chemical activity threshold - *see* 40 CFR section 372.22) then the toxic chemicals in any materials used after initial construction must be considered toward the appropriate chemical activity thresholds (unless a specific exemption such as the articles exemption applies) regardless of whether material usage takes place during start-up activities, normal operation of the facility, or during a temporary shut down of the facility for maintenance, upgrade, or expansion purposes. The following *Question & Answer* makes clear that all activities occurring after initial facility construction should be considered for EPCRA section 313 reporting purposes:

A recently constructed *facility* which has not begun production but is in a *covered SIC code* has used several listed *toxic chemicals* in preparing a reactor bed and distillation columns for manufacturing. Is the *facility* required to report these chemicals if they exceed the threshold levels?

Yes. Once a *covered facility* has been constructed, any *toxic chemicals* used to prepare production equipment for manufacturing activities must be included towards the threshold determinations that reporting year. This includes start-up activities. **[Emphasis Added.]**

(See Q&A #5 in the 1998 EPCRA Section 313 Questions and Answers, (December 1998, EPA 745-B-98-004))

Next, as you correctly note in your letter, demolition, by itself, is not a threshold activity. However, if a covered facility exceeds an activity threshold for a listed toxic chemical elsewhere at the facility, any releases and other waste management activities of the listed toxic chemical in non-exempt demolished materials should be included in the facility's release and other waste management calculations. Of course, any toxic chemicals used to perform the demolition should be counted toward the appropriate otherwise use thresholds and any toxic chemicals coincidentally manufactured during demolition should be counted toward the appropriate manufacturing activity thresholds (See Q&A #100, 1998 Q&A document, *supra*).

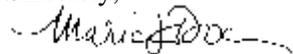
Finally, with regard to your concerns about the articles exemption, the 0.5 pound limit on releases from all like items being considered for the articles exemption applies during the normal circumstances of processing or otherwise use of the items:

... if the processing or otherwise use of all like manufactured items at a facility results in a total release of 0.5 pounds or less of a toxic chemical in a reporting year, EPA will allow this release quantity to be rounded to zero and the manufactured items remain exempt as articles. Facilities should round off and report all estimates to the nearest whole number. The 0.5 pound limit does not apply to each individual article, but applies to the Sum of all releases from processing or otherwise use of all like articles.

(See Directive #I - Appendix A, 1998 Q&A document, *supra*). In short, there are greater than 0.5 pound of releases from all like items, thereby negating articles exemption eligibility, then the toxic chemicals in all those like items should be considered toward the appropriate threshold determinations 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,



Maria J. Doa, D., Director  
Toxics Release Inventory Program Division