



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

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

MEMORANDUM

MAR 11 1999

SUBJECT: EPCRA Section 313 Reporting and the Incineration of Solid Wastes at Federal facilities

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This memorandum responds to EPCRA Section 313 interpretive guidance questions regarding activities at a federal facility. The issue relates to the incineration of solid waste received from another facility. The resultant incinerator ash, which is disposed by the federal facility, contains heavy metals such as lead, cadmium and nickel. The federal facility suspects, but does not know, that the heavy metals come from batteries in the original solid waste. An additional unknown is the amount of the heavy metals in the original solid waste. The Federal facility has three questions based on this scenario.

The first question is whether, under the revised definition of otherwise use, the federal facility should consider the incineration of the heavy metals a manufacturing activity. This revised definition, which took effect starting January 01, 1998, reads in part:

"Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:

- 1) The toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or
- 2) The toxic chemical that was disposed, stabilized or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities."

Under this definition, the federal facility must count any EPCRA Section 313 chemicals it receives in the waste toward the otherwise use threshold for those chemicals because the federal facility receives the waste from off-site for the purposes of further waste management. This further waste management includes both disposal and treatment (incineration). For release

and other waste management determinations, an important point about heavy metals is that treatment does not destroy these chemicals. Heavy metals in waste that undergo incineration are going to remain in the ash, except for any releases of the heavy metals to air.

In addition, the incineration of heavy metals is likely to result in the coincidental manufacture of Section 313 chemicals. The amount of EPCRA Section 313 chemicals that are coincidentally manufactured during the treatment (incineration) of the waste should be applied toward the manufacturing threshold for those chemicals. For heavy metals, the following scenarios would apply:

- 1) If a heavy metal in the waste is converted to a heavy metal compound, then manufacturing has occurred.
- 2) If a heavy metal in the waste is in the form of a heavy metal compound, which is converted to the parent heavy metal or to a different heavy metal compound during incineration, then manufacturing also has occurred.

The facility also must consider these chemicals toward the otherwise use threshold, provided the facility subsequently disposes, stabilizes or solidifies the manufactured chemicals. The reason is that under the revised definition of otherwise use, effective January 01, 1998, the disposal of the manufactured EPCRA Section 313 chemical or chemical compound by the federal facility is an otherwise use activity.

The second question the federal facility raises is whether it must report releases and other waste management activities since it does not know the amount of heavy metals in the original solid waste. If the facility has reason to believe that the solid waste contains EPCRA Section 313 chemicals, it must use the best readily available information or develop reasonable estimates to determine whether it triggers a threshold. If the federal facility triggers a threshold, it must report. The federal facility also should use the best readily available information or develop reasonable estimates when making its release and other waste management calculations.

The third question is whether the Federal facility should use the back calculation method for making threshold determinations for the heavy metals. The answer is that if back calculating is the best method for determining whether the facility meets the otherwise use threshold, then the Federal facility should use this method.

If you have any questions on this matter, please feel free to contact me. I can be reached by telephone at 202 260 6395, by email at "harman.john@epamail.epa.gov", and by fax at 202 401 8142. Thank you.