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OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

MEMORANDUM

SUBJECT: EPCRA Section 313 Reporting and the Maintenance and Repairs of Roads

FROM: Maria J. Doa 
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Region 10

This memorandum responds to an EPCRA section 313 interpretive guidance question regarding activities at a Federal facility. The issue relates to the use of materials, which contain EPCRA section 313 chemicals, for the maintenance and repair of facility roads. The roads are used by the facility's trucks, tanks and other vehicles. The use of these vehicles is essential for the successful operation of the facility. Many of the roads also are used by vehicles owned by the employees of the facility or by service-related vehicles. The question is whether the Federal facility can claim the facility grounds maintenance exemption (40 CFR § 372.38 (c)(2)) or the structural component exemption (40 CFR § 372.38 (c)(1)) for the road maintenance and repair.

EPA contends the Federal facility can not claim either exemption. The uses of the EPCRA section 313 chemicals in this situation are beyond the original scope for these exemptions. EPA has established the exemptions for manufacturing facilities. The intent is to provide regulatory burden relief for ancillary activities that are not central or integral to the operations of a facility. Federal facilities, like other sectors that recently have become subject to reporting under EPCRA section 313, are functionally different from the manufacturing sector. Use of EPCRA section 313 toxic chemicals that might be ancillary at a manufacturing facility can be central to the operations of a Federal facility.

The facility grounds maintenance exemption is an example. This exemption, as originally written in the 1988 Federal Register, reads:

"Use of products for routine janitorial or facility grounds maintenance. Examples include use of janitorial cleaning supplies, fertilizers, and pesticides similar in type or concentration to consumer products" (February 16, 1988; 53FR 4500; at 4528)

The intent is to cover small quantities of materials, which contain EPCRA section 313 toxic chemicals, that a facility uses to maintain its lawn or to clean its administrative offices. The language, "similar in type or concentration to consumer products" points to the category of

use identified for this exemption. The use of fertilizers or cleaning supplies by a manufacturing facility is ancillary to the operations of the facility and is unlikely to be significant. While EPA has included the maintenance of roads and signs at manufacturing facilities under this exemption, the reasoning remains the same. Road maintenance at a manufacturing facility typically is ancillary to the operations of the facility and is expected to require small quantities of materials containing EPCRA section 313 chemicals.

EPA, however, sets limits on the use of this exemption. It is not applicable for all road maintenance activities. A recent response to a question from industry, ([EPCRA Section 313 Addendum to the Guidance Documents for the Newly Added Industries](#), Question 94) is an example. EPA states that a mining facility can not claim the facility grounds maintenance exemption for the use of dust suppressants because that use is considered central to the facility's operations and in quantities beyond the original scope of the exemption. Similarly, road maintenance at many Federal facilities is beyond the original scope of the exemption. The road network in a National Forest or runways at an Air Force facility are central to those facilities' operations and are not exempt.

The structural component exemption also is not applicable. This exemption is intended for activities that are not integral to the operations of the facility. Structures that are process-related, however, are reportable under EPCRA section 313. While a manufacturing facility can claim the exemption for painting water pipes in a cafeteria or restroom, it can not claim the exemption for painting pipes that are process-related. Maintaining the roads (structures) at the Federal facility also is process-related and not exempt.

For Federal facilities, the maintenance and repair of roads may be process-related. As discussed previously, roads frequently are central to the operations of Federal facilities. Roads used for training exercises or to provide access to Department of Interior land are examples of process-related activities. Federal facilities should determine which roads are process-related and calculate threshold determinations for any EPCRA section 313 toxic chemicals used for the maintenance and repair of those roads. A Federal facility should make this calculation using the otherwise use threshold.

When making the determination if its roads are process-related, a Federal facility should consider the objective of Executive Order 12856. This directive, which requires Federal facilities to comply with EPCRA section 313, encourages Federal facilities to be proactive about reporting on the releases and and other waste management of toxic chemicals. As the preamble states, "the Federal Government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals...at Federal facilities."

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