



Department of Energy

Washington, DC 20585

August 19, 1997

Mr. Michael Hart
U.S. Environmental Protection Agency
Office of Pollution Prevention and Toxics
401 M St., SW
Washington, DC 20460

Dear Mr. Hart:

Re: 62 FR 37053, "Toxic Chemical Release Reporting; Community Right-to-Know; Addition of Facilities in Certain Industry Sectors; Industry-Specific Guidance; Notice of Public Meeting"

On July 10, 1997, the Environmental Protection Agency (EPA) published a notice in the Federal Register announcing that EPA would hold public meetings to solicit and discuss comments on industry-specific reporting guidance documents for the newly added industry groups subject to Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 and Section 6607 of the Pollution Prevention Act of 1990. The notice also invited interested participants to review and comment on the draft guidance documents. Written comments were due to EPA on or before August 20, 1997.

Attached for your consideration are comments from the Department of Energy (DOE) on the *Draft Guidance for RCRA Subtitle C TSD Facilities*. While our comments focus mainly on the revised interpretation of the "otherwise use" reporting threshold, we also have asked for clarification on recycling of toxic chemicals as it pertains to both the "processing" and "otherwise use" reporting thresholds. In our comments, we have given examples of recycling activities at DOE facilities that might be affected by this interpretive guidance and asked for clarification.

The Department appreciates the opportunity to comment on the draft interpretative guidance. If you have questions on our comments, please contact Ms. Jane Powers of my staff at (202) 586-7301.

Sincerely,

Thomas T. Traceski
Director, RCRA/CERLA Division
Office of Environmental Policy and Assistance

Enclosure

Department of Energy Comments
Draft Guidance for RCRA Subtitle C TSD Facilities
Section 313 Emergency Planning and Community Right-to-Know Act
July 24, 1997

Section 1, Introduction

1. Page 1-2, 2nd paragraph after bullets-- The draft guidance states that the TRI database is computer-accessible to anyone with a modem via the National Library of Medicine's TOXNET on-line system and also through EPA's Internet Web Site. Please give the internet addresses for these sites, i.e., http://....

Section 2, Section 313 Reporting Requirements

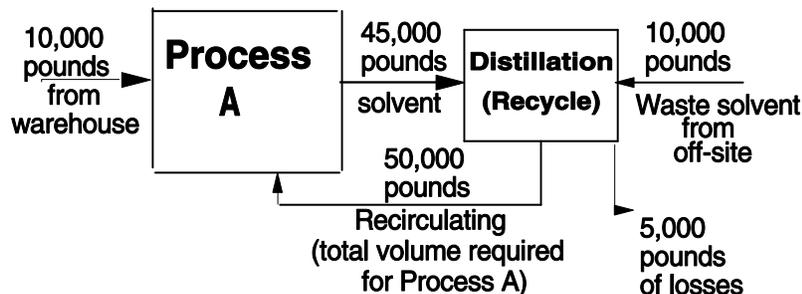
2. Page 2-5, 2nd bullet (otherwise use)-- The draft guidance states that "otherwise use of a Section 313 chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless: (1) the Section 313 chemical that was disposed, stabilized or treated for destruction was received from off-site for the purposes of further waste management; or (2) the Section 313 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 purposed of further waste management." Would stabilization of a Section 313 chemical that was distributed in commerce then be considered processing? DOE interprets (2) above to mean that in the scenario described, the Section 313 chemical would count toward the manufacturing and otherwise use thresholds. However, if the section 313 chemical was from on-site, it would count only toward the manufacturing threshold. Is this a correct interpretation? There is a typo under item (2); purposed should be changed to purposes.
3. The draft guidance states that recycling of a toxic chemical for distribution in commerce is processing (page 2-5, 1st bullet), but does not state in the otherwise use definition (page 2-5) whether recycling of a toxic chemical for use on-site (i.e., not distributed in commerce) is considered otherwise use. The final rule on SIC expansion gives the example of recycling a toxic chemical by recovering it for reuse as a solvent on-site and states that the toxic chemical is "otherwise used." [62 FR 23850, May 1, 1997] However, neither the draft guidance nor the final rule state whether the recycling of a toxic chemical that is recovered and incorporated into a product and subsequently used on-site would be considered "otherwise use." For example, a DOE facility recycles existing lead (the toxic chemical, lead, is incorporated into the product) for re-use as waste containers elsewhere at the facility. Would EPA interpret this example as "otherwise use" of the lead?
4. Page 2-6, Definition of Recycling-- The draft guidance describes recycling to mean recovery for reuse. In the definition for recovery, the draft guidance under (2) in the last sentence states recovery includes "the reclamation for reuse of an "otherwise used" toxic chemical that is spent or contaminated and that must be recovered for further use in either

the original or any other operations.” In addition, on page 3-1, third bullet, the draft guidance states “the recovery of a listed Section 313 chemical from a mixture for on-site reuse constitutes otherwise use of that chemical.” Putting these statements together, is it correct that EPA is saying that recycling the initial “otherwise used” material is counted, for threshold determination purposes, as being “otherwise used” before it is reclaimed and each time it is reclaimed? If that is correct, the amount of material counted as “otherwise used” could greatly exceed the amount present. The supporting rationale for this interpretation appears to be on page 6 of the EPA reference titled, “*Interpretations of Waste Management Activities: Recycling, Combustion for Energy Recovery, Waste Stabilization and Release*” where it states “basing the reportable activity on whether the “otherwise used” chemical needs some form of reclamation before it can be used is reasonable because since the “otherwise used” chemical is unusable, the chemical is amenable to source reduction.” It is unclear what this means. Why is the fact that a chemical is amenable to source reduction relevant to basing the reportable activity on whether the “otherwise used” chemical needs some form of reclamation? It would be helpful for EPA to clarify this by providing an example.

In the following example, what amounts of the Section 313 chemical would be considered “otherwise used” for threshold purposes, and what amount would need to be reported as “recycled”?

A facility operates a “Process A” that requires a solvent volume containing 50,000 pounds of a toxic chemical (see Figure 1). Prior to being returned to Process A, the solvent is distilled to remove impurities (recycled). During this reporting year, the facility charges Process A with 10,000 pounds of virgin solvent (never before used on-site) from an on-site warehouse and also recovers 10,000 pounds of waste solvent, received from off-site by adding it to the distillation unit.

FIGURE 1



5. Page 2-7, 3rd paragraph, 3rd sentence-- The draft guidance states the “materials in inventory or wastes in storage at the end of the calendar year are not included in the threshold determination.” Are “materials in inventory” only virgin materials, or could they include materials that have been recovered for reuse? For example, a facility decontaminates and decommissions a building, removes and stores the copper piping for reuse. Is the copper pipe considered as “otherwise use” or a “material in inventory”?
6. Page 2-9, Table 2-2, “Examples of Processed Chemicals--repackaging only”-- The TSD example given is: “Hazardous wastes from lab packs that are removed from their original containers, commingled with other hazardous wastes, and shipped off site for treatment.” If a facility does not remove the hazardous wastes from the lab packs, but simply puts several lab packs in a larger drum for off site treatment, would this activity still be considered processing?
7. Page 2-13, 1st bullet, 1st paragraph- The first sentence states “Quantities of a listed Section 313 chemical contained in an article do not have to be factored into threshold or release determinations when that article is processed or otherwise used at your facility. Assuming that the three criteria for an article exemption are met (i.e., a manufactured item that is formed to a specific shape or design during manufacture, that has end-use functions dependent in whole or part upon its shape or design during end-use, and does not release a toxic chemical under normal conditions of the processing or otherwise use of that item); does the article exemption hold for toxic chemicals in an article that is recycled?

Section 3, Making the Threshold Determination

8. Page 3-1, last bullet-- This bullet states that the use of a listed Section 313 chemical to treat another chemical constitutes otherwise use (provided that the first chemical does not become incorporated into a product that is subsequently distributed in commerce). Does it then follow that if the first chemical does become incorporated into a product that is subsequently distributed in commerce, that it constitutes “processing”?
9. Page 3-2, 1st paragraph, third sentence-- This sentence states three things that TSD’s should determine in conducting threshold determinations. The draft guidance should state that the TSD’s first step (prior to the 3 listed) should be a determination of the amount of Section 3123 chemicals contained in waste received from off-site.
10. Page 3-2, text box-- The example given in the text box indicates that the same quantity of hydrogen chloride gas must be counted in both the “manufacture” and “otherwise use” threshold determinations. Was it EPA's intent to have two thresholds for the same quantity of hydrogen chloride?
11. Page 3-5, 3rd bullet, “Facility Debris”-- The first sentence reads: “Hazardous waste debris received from off-site locations for treatment is not included within the scope of the exemption for materials that are part of the facility.” What is the significance of the

waste being received from “off-site”? Would hazardous waste debris from on-site locations be within the scope of the exemption for materials that are part of the facility? If yes, what does this exemption cover? Is this referring to the structural component exemption?

12. Page 3-7, last paragraph, 1st sentence-- The sentence reads: “Any purchased material that is used as feedstock in a recovery process, as auxiliary fuel in incineration, as a chemical in the treatment process (i.e., flocculation agents, caustics, acids, etc.), or as an additive to reclaimed materials prior to customer delivery should be included in the threshold determination as these activities are reportable.” What is the significance of the term “purchased”? Would this mean that materials a facility did not purchase would be treated differently? It is unclear what “an additive to reclaimed materials prior to customer delivery” would be. Please provide an example.

Section 4, Overview of Section 313 Release Estimation

13. Page 4-13, last heading-- The heading “On-site energy recycling processes” contains a typo. The word “energy” should not be in this heading.
14. Page 4-17, last paragraph-- This paragraph states: “On-site treatment, energy recovery, or recycling of Section 313 chemicals in wastes generated as a result of remedial actions, catastrophic events, or one-time events associated with production processes are not reported in Part II, Section 8.8 nor Sections 8.1 through 8.7 of Form R.” It appears that the sentence contains an error and should read “...events not associated with production processes...”. If our interpretation of this paragraph is correct, a facility could recycle toxic chemicals on-site (as a one-time event) but could not report it as quantity recycled in Section 8.8. For example, a facility decontaminates and decommissions a building on-site (a one-time event) and recycles lead shielding block from that building. Is it correct that this recycling would not be reported anywhere in Section 8?

Section 5, Form R Reporting at TSD Facilities

15. Page 5-8, Non-Destructive Technologies-- It is unclear why non-destructive technologies are included in this draft guidance when the definition of “otherwise use” includes only treatment for destruction and stabilization technologies as reportable activities for threshold determination purposes. Please clarify this apparent contradiction.