



Environmental Guidance Regulatory Bulletin

Office of Environmental Policy & Assistance • RCRA/CERCLA Division (EH-413)

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Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting Community Right-to-Know

TRI-Phase II Expansion; Final Rule Issued

Effective Date: December 31, 1997

Background

The reporting requirements to the Toxic Release Inventory (TRI) are found in section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 and section 6607 of the Pollution Prevention Act (PPA) of 1990. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). [Public Law 99-499] The reporting requirements to the TRI are found in 40 CFR Part 372. The purpose of these reporting requirements is to provide the public with information on releases, transfers, and waste management activities of listed toxic chemicals in their communities and to provide EPA with this information to assist the agency in determining the need for future regulations. Reporting must be completed by "covered" owners or operators of facilities that meet all of the following criteria: 1) having 10 or more full-time employees (or 20,000 hourly equivalents per year); 2) being classified in Standard Industrial Classification (SIC) codes being added by this rule and certain facilities in SIC codes 20-39; and 3) manufacturing (defined to include importing), processing, or otherwise using any

listed toxic chemical or chemical category listed at 40 CFR 372.65 in excess of the threshold quantities set forth in 40 CFR 372.25. These threshold quantities are manufacturing or processing greater than 25,000 pounds or otherwise using greater than 10,000 pounds of a listed toxic chemical per calendar year. Executive Order 12856 (*Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements*), dated August 3, 1993, directs Federal Agency facilities to comply with EPCRA section 313 reporting requirements regardless of SIC code.

On November 30, 1994, EPA issued a final rule for the Phase I TRI Expansion to add 286 chemicals and chemical categories to the section 313 list of chemicals. [62 FR 61432] On June 27, 1996, EPA issued a Notice of Proposed Rulemaking for Phase II TRI Expansion in the Federal Register to add seven industry groups to the list of facilities subject to reporting requirements of section 313 of EPCRA and section 6607 of PPA. [61 FR 33588] Industry groups included in the proposed expansion were metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemicals and allied products - wholesale, petroleum bulk stations - wholesale, and solvent recovery services. EPA's proposal expanded the coverage of TRI to include additional industry groups to more completely account for the use, management, and disposition of EPCRA section 313 chemicals in the U.S., and to provide the public, all levels of government, and the regulated community with information that will improve decision-making, measurement of pollution, and the understanding of the environmental and health consequences of toxic chemical releases. EPA also proposed to modify its interpretation of activities considered "otherwise used" as it



applies to activity thresholds under EPCRA section 313(f) to avoid information gaps relating to the use and releases and other waste management activities of toxic chemicals by facilities within the candidate industry groups.

Proposed Rule Comments And EPA's Response

On September 23, 1996, DOE provided a consolidated Departmental response to the Notice of Proposed Rulemaking for TRI Phase II. DOE requested guidance on how to prevent duplicative release reporting by waste generating facilities, which may report the waste transferred off-site for treatment, and waste management facilities, which report on the same waste being treated. Without guidance, the TRI reports would double the releases that are actually taking place and the public may become unduly alarmed.¹ In the final rule, EPA stated that section 8 of the Form R accounted for how different facilities managed a quantity of an EPCRA section 313 chemical in waste. For example, facility A reported 1,000,000 pounds of an EPCRA section 313 chemical which was sent off-site for recycling to facility B. Facility B recycled 800,000 pounds of the 1,000,000 pounds received from facility A, treated for destruction 150,000 pounds and emitted 50,000 pounds. Although the reported total quantity of the EPCRA section 313 chemical managed as waste was the same for both facilities, how each facility managed the waste was reported differently. EPA believes this information on waste management provides useful information on toxic chemicals to the public. [62 FR 23855]

The Department was concerned that section 313 reporting of waste management activities currently regulated by other environmental statutes was a duplicative effort. DOE believed that at facilities undergoing cleanup under the

Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), these laws already provided information on levels of worker safety and risk reduction to human health and the environment for the waste management activities taken.¹ Also, the general public and communities surrounding DOE sites had access to a multitude of data which met the "right-to-know" concerns expressed under EPCRA. In the final rule, EPA acknowledged that similar information about toxic chemicals existed under other environmental statutes, but the information had been difficult to aggregate and interpret and, therefore, made it difficult for the public to gain an overall understanding of their toxic chemical exposure. EPA pointed out that other available information typically did not include EPCRA section 313 annual data regarding releases and other waste management of toxic chemicals from the newly added industry groups. [62 FR 23881]

DOE provided specific comments regarding EPA's proposed changes to its interpretation of "otherwise use." The proposed interpretation stated that when a facility received materials containing *any* chemical, then a threshold determination must be made. DOE was unclear about the benefit of triggering the threshold determination when a facility received material containing a non-EPCRA section 313 listed chemical. DOE believed that threshold determinations should only be made when the receiving facility had a basis for believing that a section 313 chemical was contained in the waste.¹ EPA clarified in the final ruling that the word "materials" is used rather than "EPCRA section 313 listed toxic chemicals" to avoid a situation where a facility that receives materials for further waste management would not report on an EPCRA section 313 chemical that it treated for destruction, stabilized or disposed. [62 FR 23848]

¹ Office of Environmental Policy and Assistance Memorandum dated 9/23/96, Subject: "Consolidated Departmental Response to Addition of Facilities in Certain Industry Sectors; Toxic Chemical Release Reporting; Community Right-to-Know; Notice of Proposed Rulemaking (NPRM)."

In the Department's consolidated comments, DOE indicated that the management of legacy waste would also be affected by the revised interpretation of "otherwise use." The Department was concerned that for some of these wastes the individual toxic chemical constituents were not known, and that in order to complete the TRI reporting, additional characterization would be needed that could increase the potential for worker exposure to radioactive material.¹ EPA indicated in the final rule that if information is not readily available on the presence or concentration of toxic chemicals in wastes, a potential reporter is not required to undertake activities to characterize these waste in order to make threshold determinations and report releases of toxic chemicals. EPA stated that "a facility was only required to use the best available information when making threshold determinations, and release and other waste management calculations." [62 FR 23849] A discussion of what reasonable steps can be taken to identify toxic chemicals and quantities of these toxic chemicals is provided at 52 FR 2115-2116, 53 FR 4510-4511, and in EPA's annual Toxic Chemical Release Inventory Reporting Form R and Instructions.

In the proposed rule, EPA classified the recovery/recycling of materials containing a section 313 chemical as "processing" that chemical, thus the quantity of that chemical is included when determining whether the threshold for processing has been exceeded. The Department believed this interpretation of the term "processing" was new and raised issues needing clarification.¹ As stated in the final rule, EPA indicated that recovery of an EPCRA section 313 chemical for further distribution or commercial use is "processing" of that chemical. This interpretation applies to recycling activities where the listed toxic chemical that is recovered is distributed in commerce. EPA contended that their interpretation of "processing" was not new to this rulemaking nor did EPA intend to change its interpretation. [62 FR 23850] However,

EPA clarified that if a facility recycles an EPCRA section 313 chemical and uses that material at the facility, and the chemical is not distributed in commerce, the chemical is "otherwise used."

In the Department's consolidated response, DOE suggested that one way to reduce the reporting burden was to apply a *de minimis* level for section 313 chemicals present in wastes that were being treated for destruction, disposal and waste stabilization. Treatment, storage, and disposal facilities (TSDFs) were not likely to have information on the presence of a toxic chemical beyond that needed for permitting the facility and compliant management of the waste.¹ In the final rule, EPA stated that the *de minimis* exemption applies solely to mixtures and the term "mixture" does not include wastes. This means that the *de minimis* exemption does not apply to the "processing" or "otherwise use" of a waste stream. Therefore, the exemption does not apply to many of the activities at RCRA Subtitle C TSDFs. [62 FR 23846]

The Final Rule

On May 1, 1997, EPA issued a final rule titled "Addition of Facilities in Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting; Community Right-to-Know; Final Rule." [62 FR 23834] EPA clarified that reporting for the new facilities is effective with the 1998 reporting year, with the first reports due by July 1, 1999. Under section 313(b) of EPCRA, EPA has the authority to add facilities and industry groups to the EPCRA section 313 list. Originally, section 313 (b)(1)(A) specifically applied these reporting requirements to owners and operators of facilities that have 10 or more full-time employees and that are in SIC codes 20 through 39. The final rule can be separated into two general areas: the addition of industry groups to the list of facilities subject to reporting requirements of section 313 of EPCRA and section 6607 of the

PPA; and clarification of reporting activities, including EPA's modified interpretation of "otherwise use."

Addition of Industry Groups and Applicability to DOE and GOCO Facilities

EPA has added seven industry groups to the list of industry groups "covered" under section 313 of EPCRA and section 6607 of the PPA. These industries are metal mining (SIC codes 1021, 1031, 1041, 1044, 1061, 1094, 1099), coal mining (SIC codes 1221, 1222, 1231), electric utilities limited to the combustion of coal and/or oil for the purpose of generating electricity for distribution in commerce (SIC codes 4911, 4931, and 4939), commercial hazardous waste treatment (SIC code 4953), chemicals and allied products - wholesale (SIC code 5169), petroleum bulk stations - wholesale (SIC code 5171), and solvent recovery services (SIC code 7389). SIC codes for coal- and oil-fired electric utilities, petroleum bulk stations - wholesale, commercial hazardous waste treatment and solvent recovery services are of particular relevance to the Department. In particular, disposal, stabilization and treatment for destruction are now considered EPCRA section 313 reportable activities at hazardous waste treatment and hazardous waste disposal facilities or at solvent recovery facilities, and are subject to reporting threshold determinations. Prior to this rule, these were not covered threshold activities. Releases and other waste management activities of section 313 chemicals from these activities were reported only when another "covered" activity triggered a reporting threshold.

Under E.O. 12856, Federal Agency facilities are directed to comply with EPCRA section 313 reporting requirements regardless of SIC code. Therefore, DOE facilities conducting operations under these seven industry SIC codes are already complying with TRI reporting. However, contractors performing activities within

these SIC codes at DOE facilities will now be required to report under section 313 of EPCRA. EPCRA's reporting requirements carry civil, administrative, and criminal penalties for non-compliance. These penalties will not apply to governmental entities, but will apply to government-owned, contractor-operated (GOCO) facilities. Contractors who operate DOE facilities within SIC codes that are required to report are subject to all of the civil, administrative, and criminal penalties for non-compliance with EPCRA section 313. For example, for the 1996 reporting year, one DOE site, in accordance with E.O. 12856, prepared and submitted a Form R for methanol that had been received in off-site waste materials. The facility contractor determined that their applicable SIC code was 4953 (commercial hazardous waste treatment); therefore, they were not subject to EPCRA section 313 reporting requirements. As a result of the SIC code facility expansion, however, starting with reporting year 1998, SIC code 4953 - and thus the facility contractor - will be subject to EPCRA section 313 reporting requirements.

Clarification Of Reporting Activities

Interpretation of "Otherwise Use"

EPA has modified its interpretation of activities considered "otherwise used" to include treatment for destruction, disposal, and waste stabilization when EPCRA section 313 facilities engaged in these activities receive materials containing any chemical (not limited to EPCRA section 313 listed toxic chemicals) from one or more other facilities (regardless of whether the generating or receiving facilities have common ownership) for purposes of further waste management. [62 FR 23846] As a result of comments, EPA clarified its interpretation of "otherwise use" as follows.

"Otherwise use" means any use of a toxic chemical, including a toxic chemical contained in a mixture, trade name product, or

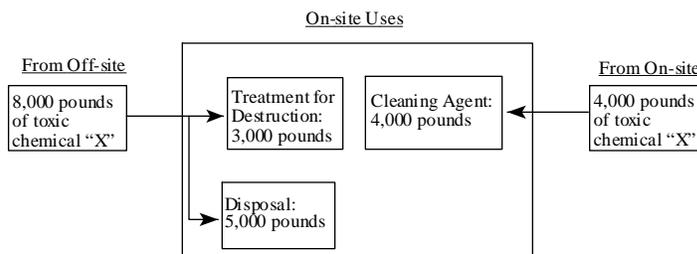
waste that is not covered by the terms “manufacture” or “process.” Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction unless:

- (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. Relabeling or redistributing of the toxic chemical where no repackaging of the toxic chemical occurs does not constitute use or processing of the toxic chemical. [62 FR 23846]

For example, suppose a DOE site receives 8,000 pounds of an EPCRA section 313 chemical from off-site for the purposes of further waste management. The site treats for destruction 3,000 pounds of this toxic chemical and disposes of 5,000 pounds on-site. Suppose this site also uses 4,000 pounds of the same toxic chemical from existing on-site stock as a cleaning agent. All three of these quantities (i.e., amounts destroyed, disposed and used as a cleaning agent) count towards the “otherwise use” threshold for the toxic chemical.

To determine whether the facility exceeds the otherwise use activity threshold for a listed EPCRA section 313 chemical, the facility must sum all quantities of the chemical that undergo an otherwise use activity. In this example, the facility should sum the quantities that are treated for destruction (3,000 pounds), disposed (5,000 pounds), and used as a cleaning agent (4,000 pounds), and should compare this quantity (12,000 pounds) to the “otherwise use” threshold (10,000 pounds). In this case, the threshold

for the EPCRA section 313 chemical is exceeded and the site is required to submit a Form R for that chemical.



EPA has purposefully adopted a broad interpretation of “otherwise use” because they believe that interpreting the definition of “use” narrowly can have the unintended impact of limiting the amount and kind of information readily available to local communities. [62 FR 23847]

EPA included in its interpretation of “otherwise use” the phrase “the facility receives *materials* from other facilities for purposes of further waste management activities.” EPA did this to ensure that a facility that receives materials (which do not contain an EPCRA section 313 chemical) for further waste management reports on an EPCRA section 313 toxic chemical that it may “manufacture” as a result of waste management activities on that material, and subsequently treats for destruction, stabilizes or disposes. [62 FR 23848] For example, suppose a site receives chemical A from off-site. Chemical A is not an EPCRA section 313 listed toxic chemical. The facility treats chemical A for destruction. Since chemical A is not an EPCRA section 313 listed chemical, this chemical is not reportable. However, in treating for destruction chemical A, 11,000 pounds of chemical B, which is an EPCRA section 313 listed chemical, are manufactured and subsequently disposed on-site. The quantity of chemical B manufactured is less than the 25,000 pound manufacturing threshold. However, under EPA’s clarification in the interpretation of “otherwise use,” the disposal of chemical B would be considered “otherwise use.” Since the

11,000 pounds of chemical B exceeds the 10,000 pound “otherwise use” threshold, the site would be required to submit a Form R for chemical B.

This interpretation has potential implications for any DOE site that is involved in treatment for destruction, stabilization or disposal of materials received from one or more other facilities for the purposes of further waste management. The site now has to keep track of *all* materials (i.e., wastes) received from off-site for treatment, stabilization or disposal, not just wastes containing a section 313 chemical. The site also must make sure that if section 313 chemicals are coincidentally “manufactured” during waste management of those materials, these are reported, if applicable.

Interpretation of “Waste Management Activities”

EPA interprets “waste management activities” to include recycling, combustion for energy recovery, treatment for destruction, waste stabilization, and release, including disposal. Waste management does not include the storage, container transfer, or tank transfer if no recycling, combustion for energy recovery, treatment for destruction, waste stabilization or release of the chemical occurs at the facility. [62 FR 23850]

Recycling. The recovery of an EPCRA section 313 listed chemical, regardless of origin, for further distribution or commercial use is considered “processing” of that chemical. This interpretation applies to recycling activities where the EPCRA section 313 listed toxic chemical that is recovered is distributed in commerce. If a facility recycles an EPCRA section 313 listed toxic chemical and uses that material at the facility, e.g., as a solvent, and the EPCRA section 313 listed toxic chemical is not distributed in commerce, the chemical is “otherwise used.” [62 FR 23850] EPA clarified that a

toxic chemical is considered “recycled” in the reporting year that it was recovered as a usable product. [62 FR 23851]

Combustion for Energy Recovery v. Treatment for Destruction. For threshold determination purposes, combustion for energy recovery is characterized as “otherwise use” of EPCRA section 313 chemicals regardless of the origin of the waste. EPA also considers an EPCRA section 313 chemical in waste that is “treated for destruction” to be “otherwise used” if the facility engaged in “treatment for destruction” of the toxic chemical receives materials from other facilities for purposes of further waste management activities. However, once the otherwise use threshold has been met for reporting the activity pursuant to section 6607 of the PPA (i.e., section 8 of the Form R), the distinction is made between “combustion for energy recovery” and “treated for destruction” based on whether an energy recovery device was used and the heating value is greater than or equal to 5,000 Btus per pound. EPA interprets “combustion for energy recovery” as the combustion of the toxic chemical that (1) is (i) a RCRA hazardous waste or waste fuel, (ii) a constituent of a RCRA hazardous waste or waste fuel, or (iii) a spent or contaminated “otherwise used” material; and that (2) has a heating value greater than or equal to 5,000 Btus per pound in an “energy or materials recovery device.” [62 FR 23852]

Treatment for Destruction. EPA interprets “treatment for destruction” of a listed toxic chemical to mean the destruction of the toxic chemical in waste such that the substance is no longer a toxic chemical subject to reporting under EPCRA section 313. Incineration of a toxic chemical is one clear method of treatment for destruction. EPA also considers acid or alkaline neutralization to be treatment for destruction if the toxic chemical is the entity which reacts with the acid or base and the resulting substance is no longer subject to reporting under EPCRA section 313. Biological

treatment can also result in the destruction of a listed section 313 toxic chemical. However, EPA does not consider “treatment for destruction” to include physical removal or other activities intended to render a waste stream more suitable for further “otherwise use” or “processing,” such as a distillation or sedimentation. [62 FR 23852]

Waste Stabilization. EPA interprets waste stabilization to be consistent with the definition provided in 40 CFR 265.1081, except that for purposes of EPCRA section 313, the definition should be interpreted to apply to any EPCRA section 313 listed chemical or waste containing any EPCRA section 313 listed chemical. [62 FR 23852] The definition provided in 40 CFR 265.1081 states:

“Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquid as determined by Test Method 9095 (Paint Filter Liquids Test) in ‘Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,’ EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference - refer to 40 CFR section 260.11). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are ‘waste fixation’ or ‘waste solidification.’ This does not include the adding of absorbent materials to the surface of a waste, without mixing, agitation, or subsequent curing, to absorb free liquid.”

EPA’s interpretation of waste stabilization for purposes of EPCRA section 313 differs from that provided in 40 CFR 265.1081 by not excluding the adding of absorbent materials to the surface of a waste without mixing, agitation,

or subsequent curing to absorb free liquids. [62 FR 23853]

For purposes of section 313 reporting, only those listed toxic chemicals contained in wastes that are received from one or more other facilities for purposes of further waste management and stabilized on-site are considered “otherwise used.”

Release, including disposal. EPA is clarifying the activities that it interprets to be “releases.” EPCRA broadly defines “release” to mean “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment,” and “environment” to “include water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.” [EPCRA section 329(8)] EPA has interpreted release to include, for example, the on-site disposal to land of EPCRA section 313 listed chemicals in mining materials, ash, and sludge; the on-site disposal of EPCRA section 313 listed toxic chemicals into a RCRA Subtitle C facility; and the on-site injection of EPCRA section 313 listed toxic chemicals into underground injection wells, particularly Class I and II injection wells. Form R section 5.5, entitled “Release to Land On-site,” is divided into four subsections: landfill; land treatment/application farming; surface impoundment; and other disposal. The Form R also includes a data element specific to underground injection, section 5.4 entitled “Underground Injections On-site.” This data element includes the “total annual amount of the toxic chemical that is injected to all wells, including Class I wells, at the facility.” [62 FR 23853]

For purposes of section 313 reporting associated with releases, only those listed toxic chemicals contained in wastes that are received from one or more other facilities for purposes of further waste management and disposed on-site are considered “otherwise used.”

De minimis Exemption

This exemption allows facilities to exempt certain minimum concentrations of chemicals in mixtures they process or otherwise use in threshold and release determinations for section 313 reporting. The *de minimis* exemption does not apply to the manufacture of a chemical except if that chemical is manufactured as an impurity and remains in the product distributed in commerce below the appropriate *de minimis* level. The *de minimis* exemption does not apply to by-products or wastes. A toxic chemical manufactured at a facility that does not remain in a product distributed by the facility does not qualify for the *de minimis* exemption. [62 FR 23845] For example, suppose a DOE site creates quantities of formaldehyde as a result of waste treatment. The site must apply the quantities of formaldehyde toward the threshold for “manufacture” of this toxic chemical, regardless of the concentration of the toxic chemical in the waste. Furthermore, because the *de minimis* exemption does not apply to wastes and by-products, section 313 chemicals contained in spent solvents or other waste/by-product materials being recycled would be included in the applicable processing or otherwise use threshold, regardless of concentration.

Fuel Combustion

“Otherwise Use” of Toxic Chemicals Contained in Fuels. EPA has clarified that all of the constituents of coal and oil are subject to the “otherwise use” threshold when combusted for energy production and may be subject to the *de minimis* exemption for this activity. Therefore, toxic chemicals present in coal and oil “otherwise used” below *de minimis* levels would not be subject to reporting under the otherwise use activity. [62 FR 23866] However, because the *de minimis* exemption does not apply to wastes, section 313 chemicals contained in waste used as fuel in energy recovery systems would be included in otherwise used threshold determinations, regardless of the concentration.

Coincidental Manufacture of By-products During Fuel Combustion. In the combustion of coal and oil, metal compound by-products may be produced from either the parent metal or a metal compound contained in the coal or oil. Metal compounds which are produced in the combustion process are considered coincidentally “manufactured” for purposes of EPCRA section 313. [61 FR 33601] If a metal undergoes a valence state change, a metal compound is considered to be “manufactured” since the metal ion that results from the change in valence state to the metal will combine with another element. [62 FR 23849] For example, if copper (0) (copper in valence state 0) changes valence state to copper (+2) and the copper (+2) then combines with some other element such as oxygen, the resulting product, in this case copper oxide, is a metal compound and thus, a metal compound has been manufactured. However, EPA also stated that the manufacture of metal compounds “may or may not involve a change of valence state.” This means that if copper sulfate, in which copper’s valence state is +2, is converted to copper oxide during combustion, no change in the valence state of copper occurs, but a new metal compound (copper oxide) has been manufactured. The test of whether a metal compound has been manufactured is not whether there has been a change in the valence state of the metal, but whether a metal compound has been manufactured as a result of the combustion of the coal or oil. [62 FR 23849]

The combustion of coal and oil produces both a product (the energy produced) and by-products (e.g., ash and combustion gases). Although EPA has determined that coal- and oil-fired electric utility combustion by-product ash is not a hazardous waste under RCRA and can be disposed of as any other non-hazardous waste, listed toxic chemicals contained in these wastes are subject to EPCRA section 313 reporting. [62 FR 23867] In the combustion of coal and oil, there are no chemicals that remain in the product (energy) as impurities. All

chemicals produced during combustion are by-products that are separate from the product and, therefore, not subject to the *de minimis* exemption. [62 FR 23866] A threshold determination must be made on the annual quantity of the toxic chemical “manufactured” as a by-product from combustion, regardless of the concentration. If reporting thresholds are met, a Form R must be prepared for each chemical.

Petroleum Bulk Stations and Terminals

EPA has added SIC code 5171, bulk petroleum stations and terminals, to the list of industry groups covered under EPCRA section 313. This industry group includes facilities that receive petroleum products and petroleum additives that contain EPCRA section 313 chemicals, take possession of those chemicals and reformulate the products, and/or repackage those petroleum products prior to their distribution in commerce. [62 FR 23836] The petroleum industry maintains many bulk stations and terminals that manage a variety of refined petroleum products. These include crude oil, motor gasoline, diesel, heating fuel, aviation jet fuel, asphalt and liquid petroleum hydrocarbons. The primary functions of these facilities include storage, mixing, blending, distribution, and sale of refined petroleum products. [61 FR 33600]

Many activities performed by petroleum bulk storage facilities involve section 313 chemicals which are “processed.” For example, the repackaging, mixing or blending of petroleum products that contain section 313 chemicals for the purpose of distribution in commerce constitutes processing of those chemicals. However, because the *de minimis* exemption applies, only quantities of section 313 chemicals at concentrations above *de minimis* must be applied to the 25,000 pound processing threshold. Petroleum bulk stations and terminals also may exceed the threshold for “manufacturing” or “otherwise using” a section 313 chemical. A facility may manufacture a section 313 chemical by importing a petroleum product that contains

section 313 chemicals. Section 313 chemicals present above *de minimis* levels in imported product must be counted towards the 25,000 pound threshold for manufacturing. In addition, a facility may use materials in tank and pipe maintenance, such as cleaners and lubricants, that may contain section 313 chemicals. These chemicals, if above *de minimis* concentration levels, must be applied to the 10,000 pound threshold for otherwise use.

Amounts of listed section 313 chemicals retained in storage are not counted toward reporting thresholds. However, when these amounts are transferred, such as pumping from a storage unit to a truck, for further distribution in commerce, the amounts of listed section 313 chemicals must be considered toward the processing threshold, because this is considered repackaging of the section 313 chemicals. [62 FR 23873]

Further EPA Guidance

In the May 1997, Final Rule, EPA frequently referenced a guidance document entitled *Interpretations of Waste Management Activities: Recycling, Combustion for Energy Recovery, Treatment for Destruction, Waste Stabilization, and Release*, EPA, 1996. This document is outdated in several areas. EPA has prepared industry-specific guidance documents for facilities covered by the TRI industry sector expansion rule, which are scheduled to be released in print in January 1998. They are available on the Internet at EPA’s TRI Home Page at <http://www.epa.gov/opptintr/tri>.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-413 Regulatory Bulletins unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Regulatory Bulletin to:

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