United States Environmental Protection Agency
Office of Solid Waste and Emergency Response (5104)
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EMERGENCY PREPAREDNESS AND COMMUNITY RIGHT-TO-KNOW ACT - QUESTIONS AND ANSWERS

LANDFILLS AND TITLE III

Question: Are landfills covered under Title III of SARA since they are covered by RCRA?

Answer: Yes, landfills are subject to certain Title III requirements. Subtitle A of Title III is intended to identify facilities which present a potential hazard for a chemical emergency and to provide a process for local emergency planning committees to engage with such facilities in determining the significance of the release hazard and developing response plans to facilitate timely and appropriate response in the event of a chemical spill. Because landfills meet the definition of "facility" and may in some instances present such a hazard, EPA interprets them to be subject to reporting and notification requirements under Section 302 in Subtitle A. While EPA agrees that conditions at some facilities (including landfills) may not pose significant chemical hazards even though extremely hazardous substances are present in excess of the threshold planning quantity, in other such facilities conditions will exist which do present a significant hazard. Such assessment must be made on a site-specific basis. EPA believes that leaving such decisions to the local planning committees is consistent with the purpose of Subtitle A. Communities must know which facilities may present potential for chemical emergencies so they can determine the nature of the risk to the public and to emergency responders. It is recognized that Resource Conservation and Recovery Act (RCRA) regulations already address many of the goals of Subtitle A of Title III. However, it is important that the facility contingency plan and local coordination required by RCRA be coordinated with any new State and local planning structure or community planning process established under Title III. Full compliance with RCRA requirements should minimize additional planning activities with local communities under Title III. Therefore, these requirements are not duplicative. It should be noted that landfills may not be covered under the other sections of Title III. The placing of a container holding an extremely hazardous substance into a landfill which has a federal permit for this chemical is exempt from the Section 304 emergency release notification. Also, under Subtitle B, Sections 311/312, most substances at landfills would be exempt due to the exemption for any hazardous waste such as defined by the Solid Waste Disposal Act under the OSHA Hazard Communication Standard (only hazardous chemicals for which a MSDS must be prepared or available under the OSHA Hazard Communication Standard must report under Sections 311/312). In addition, landfills generally do not fall into the SIC codes 20-39 covered by the Section 313 Toxic Chemical Release reporting requirements (however, they may be covered if they have manufacturing operations on-site). (August 1987 Monthly Hotline Report & Q&A June 1, 1989, #120)

CALCULATION OF EXTREMELY HAZARDOUS SUBSTANCES IN LANDFILLS

Questions: How are the quantities of the extremely hazardous substances (EHSs) to be calculated in determining if landfills are subject to the Section 302 requirements?

Answer: EPA realizes the practical problems presented for landfills in complying with the Title III requirements. Owners of these facilities must determine, based on reasonably available information whether any EHS's are in excess of the threshold planning quantities (TPQ). However, in making such a determination, owners and operators of landfills should apply the one percent (1%) exclusion (see 40 CFR 355.30(a) and (e)(1)). EPA believes that the one percent (1%) exclusion is applicable to the contents of the entire landfill based on the assumption that such containers will degrade in the landfill environment. Therefore, if the total weight of an extremely hazardous substance is greater than one percent (1%) of the total weight of the landfill waste and equals or exceeds the threshold planning quantity for that substance, the landfill is subject to Section 302 notification requirements. If no extremely hazardous substance exceeds this level, the landfill is not subject to emergency planning requirements under Title III unless designated by the Governor or State Emergency Response Commission under Section 302(b)(2). Following any resulting notification to the State Commission and designation of a facility emergency coordinator (Section 303(d)(1)) the local committee may, depending on their site specific assessment of the hazards posed by the particular facility, request participation of the facility in the Title III planning process. Even though many landfills may not be required to provide planning notification based on the one percent (1%) exclusion cited above, the landfill owner/operator and the local emergency planning committee should work cooperatively to ensure that potential chemical emergencies are addressed. (August 1987 Monthly Hotline Report & Q&A June 1, 1989, #121)

STATE FACILITY NOTIFICATION

Question: Considering the OSHA expansion to the non-manufacturing sector, are state facilities required to meet the notification requirements of §§311 and 312 of Title III?

Answer: No. Sections 311 and 312 apply to owners and operators of facilities who must prepare or make available an MSDS under the Occupational Health and Safety Act of 1970 (OSHA) and its implementing regulations. OSHA does not apply to state governments (OSHA applies to "employers" and states are specifically excluded from the definition of "employers"). Although states may choose administer their own occupational safety program in lieu of the Federal government's OSHA program, and such a program must, by definition, apply to the state employees, the state program is administered exclusively under state law. Furthermore, unlike state-administered programs under some environmental statutes (e.g., RCRA), the state standards do not become Federal standards once the state plan is approved by the Occupational Health and Safety Administration. Thus §§311 and 312 do not apply to state facilities because OSHA and its implementing regulations do not apply to state facilities. (October 1987 Monthly Hotline Report & Q&A June 1, 1989, #96)

SECTION 103 NOTIFICATION

Question: Section 103(a) of SARA requires that any person who owns or operates a facility where there has been a release of a hazardous substance in quantities equal to or greater than the reportable quantity, must notify the National Response Center of such a release. Section 103(c) requires that any person who owned or operated any facility at which hazardous wastes have been stored, treated, or disposed of shall, unless the facility has interim status or a permit, notify the Administrator of the EPA of the existence of such facility. As part of a degradation study, various FIFRA registered pesticides listed in Subpart D of 40 CFR Section 261, have been applied to the ground in quantities greater than the RQ for those substances. Is notification of this activity required?

Answer: Section 103(e) of SARA states that no notification requirements under Section 103 shall apply to the application of a pesticide product registered under FIFRA, or to the handling and storage of such a pesticide product by an agricultural producer. While this exemption applies to the handling and storage of a pesticide by an agricultural producer it also applies to the application of pesticides regardless of whether the applicator is an agricultural producer or not. However, because this exemption was intended to exclude from the notification requirements the application of a pesticide product generally in accordance with its purpose, (50 FR 13464, April 4, 1985) the exemption applies to the application of pesticides for research purposes if the application is done in the normal manner and amount usually associated with that product. (November 1987 Monthly Hotline Report)

SECTION 311/312 REPORTING REQUIREMENTS

Question: A manufacturing operation was built upon a waste disposal site. The owner/operator of the facility believes there are hazardous chemicals buried within the facility boundaries. Would the owner/operator be required to report these chemicals (hazardous waste) under Section 311/312 of Title III?

Answer: Sections 311 and 312 of Title III of SARA requires that the presence of hazardous chemicals for which facilities are required to have or prepare a Material Safety Data Sheet (MSDS) under the OSHA Hazard Communication Standard (29 CFR Section 1910.1200) (HCS) be reported to state and local committees. The HCS applies only to "any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency." 29 CFR Section 1910.1200(b)(2). Thus unless employees are exposed to these buried chemicals during a foreseeable emergency, an owner/operator is not obligated to prepare or have available an MSDS on the chemicals and thus, in turn, is not required to report their presence under sections 311 and 312 of Title III. Assuming the facility's employees are not exposed to the buried chemicals under the conditions described above, they may still be exempt from the HCS, and thus sections 311 and 312, under HCS's exemption for "any hazardous waste as such term is defined by the Solid Waste Disposal Act (as amended by the Resource Conservation and Recovery Act (RCRA)), when subject to regulations issued under that Act by the Environmental Protection Agency." Even if not subject to Title III because exempt from the HCS, the owner/operator may be required to notify the EPA of the chemical's disposal on the facility under section 103(c) of CERCLA, provided the hazardous chemicals are also CERCLA hazardous substances. An owner/operator of a facility with hazardous chemicals buried within the facility boundaries should consult OSHA before

determining that it is subject to or exempt from OSHA's HCS. (November 1987 Monthly Hotline Report)

EMERGENCY RELEASE NOTIFICATION INFORMATION

Question: Questions No. 3 of the proposed trade secret substantiation form requires the submitter to list all local, State and Federal government entities to which the submitter has disclosed the specific chemical identity. Does the submitter need to report §304 emergency release notifications if the submitter had a covered reportable release?

Answer: No. The submitter is only required by the Emergency Planning and Community Right-to-Know Act of 1986 (Title III) to report if the chemical identify is "required to be disclosed, or otherwise made available, to the public under any other Federal or State law" as per §322(b)(2) of Title III. Hence, emergency release notifications under §304 of Title III, in which the chemical identified would have to be revealed, would not need to be disclosed on the proposed substantiation form. (December 1987 Monthly Hotline Report)

MSDS REPORTING REQUIREMENTS FOR RESEARCH AND DEVELOPMENT FACILITIES

Question: Upon request by the public, must a Research and Development facility submit a MSDS for a chemical if the chemical is exempt from reporting under §311 (311(e)(4)) but not exempt from the OSHA requirement of having available a MSDS?

Answer: No. Under §311, a Research and Development facility would not be required to report a chemical if it is used "under the direct supervision of a technically qualified individual" (311(e)(4)). So, despite the fact that the facility is required to have a MSDS under OSHA's Hazard Communication Standard, the facility is not required to report it under §311 of Title III. Therefore, the facility would not be required to submit a MSDS to the public upon request. (December 1987 Monthly Hotline Report)

REPORTABLE QUANTITY DETERMINATION

Question: Hydrogen chloride gas is introduced into water to form hydrochloric acid. Saturation for this reaction occurs at 38 percent (%). Therefore, any hydrogen chloride present after the saturation point is reached, does not go into solution and will remain in the gaseous state. Can the reportable quantity (RQ) assigned to hydrochloric acid, a listed hazardous substance, be used for hydrogen chloride gas?

Answer: The RQ for anhydrous hydrogen chloride is 5000 pounds and applies to all forms of hydrogen chloride. When determining a RQ for a form of hydrogen chloride that occurs in a solution, the Clean Water Act (CWA) "mixture rule" will be used if the percentage of hydrogen chloride in solution is known. For example: To determine the RQ of a product solution of water and 35 percent (%) hydrochloric acid, the CWA "mixture rule" is applied as follows: divide the RQ of hydrochloric acid, 5000 pounds, by the percentage (expressed as a decimal) of the hydrochloric acid in solution, 0.35. The product of this equation is the RQ, in pounds, for the

previously describe solution.

5000/0.35 = 14,286 pounds

If the hazardous substance occurs as a constituent of a hazardous waste, the same rule can be applied when determining the RQ for the hazardous waste. If the percentage of the hazardous substance in the waste is not known, however, the RQ for the listed or unlisted hazardous substance constituent is to be used. When more that one hazardous substance is in product or waste solution, always use the lowest applicable RQ for the solution. (January 1988 Monthly Hotline Report)

CERCLA NOTIFICATION

Question: CERCLA Section 103(d)(1) authorizes the EPA to promulgate rules and regulations specifying, with respect to the location, title, or condition of a facility, and the identity, characteristics, quantity, origin, or condition of any hazardous substances contained or deposited in a facility, the records which shall be retained by any person required to notify the EPA under CERCLA Section 103(c). Section 103(d)(2) specifies the restrictions regarding the disposition of the records identified in Section 103(d)(1) and penalties for violating those restrictions. Has EPA promulgated any regulations under its authority in Section 103(d)(1)? Are the restrictions and penalties under Section 103(d)(2) currently in effect?

Answer: No rules, or regulations have yet been proposed or promulgated under the Agency's authority in CERCLA Section 103(d)(1). Restrictions and penalties under Section 103(d)(2) will not become effective until such time as regulations are promulgated specifying the records which shall be retained. (January 1988 Monthly Hotline Report)

EMERGENCY RELEASE NOTIFICATION

Question: Must a follow-up emergency notice be given for a release of a CERCLA hazardous substance which is not an extremely hazardous substance and for which a reportable quantity has not been established under Section 102(a) of CERCLA?

Answer: In lieu of the emergency release notification required under Section 304(b), Section 304(a)(3)(B) provides that owners and operators of facilities that produce, use or store a hazardous chemical and from which is released a CERCLA hazardous substance that is not an extremely hazardous substance and for which a reportable quantity has not been established under Section 102(a) of CERCLA, shall provide the same notice to the local emergency planning committee as is provided to the National Response Center under Section 103(a) of CERCLA. Although Section 304(b) notice is not required, the facility owner or operator must still provide follow-up emergency notification under Section 304(c). Section 304(c) states that, "As soon as practicable after a release which requires notice under subsection (a), such owner or operator shall provide a written follow-up emergency notice... setting forth and updating the information required under subsection (b), and including additional information...". Notification of the above describe release is required under subsection (a), thus written follow-up emergency notice is required. Follow-up notification of these releases must be reported in the manner prescribed by Section 304(b). (January 1988 Monthly Hotline Report & Q&A June 1, 1989,#33)

EMERGENCY AND HAZARDOUS CHEMICAL INVENTORY: CONFIDENTIAL LOCATION INFORMATION

Question: When submitting a Tier II form under SARA Title III Section 312, a covered facility can claim the required location information confidential. How is this confidential information protected? Are there any penalties under Title III if a State or local official, who receives this information, fails to protect its confidentiality?

Answer: While the location information on the Tier II form can be claimed confidential under Title III, Title III does not provide a confidentiality protection procedure for this information. Since claims of confidentiality regarding the location of chemicals in facilities are not covered by Title III trade secrecy protection, the duty to protect this information as confidential rests with State and local officials. As the Agency stated in its October 15, 1987 rule, "The confidential location information should not be sent to EPA, but only to the requesting entity. This information will be kept confidential by that entity under Section 312(d)(2)(F) which refers to Section 324 of Title III. Section 324(a) states that upon request by a facility owner or operator subject to the requirements of Section 312, the State emergency response commission and the appropriate local emergency planning committee must withhold from disclosure the location of any specific chemical required by Section 312(d)(2) to be contained in a Tier II inventory form." 52 FR 38312, 38317. Interested persons should contact their State and local government's attorneys office for information regarding procedures for protecting confidential location information. Since protection of Tier II confidential location information is not covered under Title III, the State itself does not provide penalties for the failure to protect such information. Penalties may, however, be provided under State and local law. (February 1988 Monthly Hotline Report & Q&A June 1, 1989, #71)

SECTION 304: RELEASE NOTIFICATION

Question: Must any amount of a listed chemical contained within abandoned or discarded barrels, containers, or other receptacles be considered to determine if a specific reportable quantity has been exceeded under the SARA Section 304 notification requirements?

Answer: Section 355.20 (52 FR 13395) defines a release as "any spilling, leaking, pumping, pouring, emitting emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other receptacles) of any hazardous chemical, extremely hazardous substance, or CERCLA hazardous substance." Therefore, if a facility has abandoned or discarded any barrels, containers, or other receptacles containing an extremely hazardous substance or a CERCLA hazardous substance and the total amount present in all of the receptacles is in excess of its designated reportable quantity and the containers have the potential to result in exposure to persons off site, the discarding or abandonment of the barrels should be reported as required in Section 355.40 (52 FR 13396). (March 1988 Monthly Hotline Report & Q&A June 1, 1989, #25)

APPLICABILITY OF THE EXEMPTION FOR AGRICULTURAL USE FOR SECTIONS 311/312

Question: An animal refuge sprays herbicides and pesticides on its grounds to better the quality of the area for the animal inhabitants. Is the spraying of these pesticides exempt from the requirements of Sections 311 and 312 of Title III under the exception to the definition of "hazardous chemical" for any substance to the extent it is used in routine agricultural operations?

Answer: The exemption for routine agricultural use under Sections 311 and 312 is designed to eliminate the reporting of many of the chemicals routinely used by farmers. The animal refuge is not spraying the chemicals for the production of food crops and the refuge is not in the food crop production business. Therefore, the refuge's spraying of herbicides and pesticides would not be considered routine agricultural operations and thus, not exempt from Sections 311/312 reporting. (April 1988 Monthly Hotline Report & Q&A June 1, 1989, #91)

SECTIONS 304 AND 313: REPORTING REQUIREMENTS

Question: Company A owns a facility which manufacturers crude oil. They sell the crude oil to Company B, where it is kept in tanks on Company A's facility, but leased to Company B. Who is subject to reporting under Sections 304 and 313?

Answer: Since the tanks are part of Company A's facility and Company A is the owner and/or operator of the facility, Company A would be subject to Section 304 release notification and Section 313 reporting requirements for any releases from the tanks, which may contain either 302 (EHS) listed substances, CERCLA hazardous substances and/or Section 313 listed chemicals above the applicable reporting thresholds. Company A would also be held liable if the reports were not made. (May 1988 Monthly Hotline Report & Q&A June 1, 1989, #51)

SECTION 304: REPORTING FOR MULTI-ESTABLISHMENT FACILITIES

Question: Regarding the written follow-up report to an incident, should location of the incident and the cause of the accident be included?

Answer: The April 22,1987 Federal Register (52 FR 13387) states that the location of the incident should definitely be included in both the initial and written follow-up reports. However, the cause of the accident is not addressed and it is not required in the regulations pursuant to Section 304 of Title III. EPA strongly encourages, but does not require the inclusion of the accident in the written follow-up report. (May 1988 Monthly Hotline Report)

EXEMPTIONS AND SMALL FARMS: SECTION 311 AND 312

Question: How are farms with ten or fewer employees covered under Sections 311 and 312 of Title III?

Answer: Sections 311 and 312 apply to any facility covered by the OSHA Hazard Communication Standard (HCS). On August 24, 1987, OSHA revised its HCS (52 FR 31852) to expand the scope of the industries covered by the rule from the manufacturing sector (in Standard Industrial Classification (SIC) codes 20-39) to all industries where employees are

exposed to hazardous chemicals (SIC codes 1-89). However, this expansion would not include farms with ten or fewer employees. This is due to a recent Congressional "rider" to OSHA's Appropriations Bill which prevents OSHA from promulgating and enforcing regulations for farms with ten or fewer employees. Therefore, since farms with ten or fewer employees are not covered by OSHA, they would not be covered under Sections 311 and 312. (July 1988 Monthly Hotline Report & Q&A June 1, 1989, #90)

SECTION 302: DETERMINING THRESHOLD PLANNING QUANTITIES

Question: A petroleum company is drilling for oil contained in the ground below their facility. Would the hydrogen sulfide present in the ground be counted toward the threshold planning quantity (TPQ) for this extremely hazardous substance (EHS)? Also, if there is a reportable release of this EHS above the reportable quantity (RQ) during this operation, would this release need to be reported under Section 302/304 of Title III?

Answer: For the purposes of emergency planning, Section 302 of Title III, the EPA is considering the issue of whether to include amounts of EHS's naturally present within facility grounds in determining if the TPQ has been met or exceeded. This issue is not addressed in the regulations, and at this time has not been resolved by EPA.

If the facility is generating hydrogen sulfide during its drilling operations, then the quantity they generate must be included in the TPQ determination for hydrogen sulfide. The facility is producing or causing the hydrogen sulfide to be present and is therefore subject to Section 302 reporting. A release of hydrogen sulfide above its RQ that affects persons off-site must be reported under Section 304 of Title III since the release would occur from the facility. The quantity of such releases may be determined. (August 1988 Monthly Hotline Report)

SECTIONS 311/312: MULTIPLE FACILITY REPORTING

Question: A petroleum company owns many oil wells on a large oil field. Each well is on its own plot of land. These plots of land are not adjacent or contiguous and the oil field itself spans many local planning districts. For purposes of Sections 311/312 reporting, is each oil well a separate facility and must separate reports filed for each oil well?

Answer: The definition of facility for Sections 311/312 includes "all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites that are owned or operated by the same person" (52 FR 38364). Therefore, unless the well properties are adjacent or contiguous, each well is a separate facility. The Title III definition of facility applies to the land surface only; the fact that one oil company may own the subsurface rights of an entire oil field does not make the field one "facility". Under Sections 311/312, a report must be prepared for each facility owned or operated by the same person. The regulations stipulate that certain information must be provided to the specified agencies. Nowhere do the regulations stipulate a separate report for each facility, EPA does not prohibit one report being filed for similar multiple facilities, so long as the report satisfies the statutory information requirements. Filing one report for similar multiple facilities is a kind of "generic reporting". A generic report would consist of one submission for each section - one MSDS for

each reportable chemical and one Tier I/II - which would provide the required information on each well (facility). However, a generic report may only be submitted for similar facilities. In order for facilities to be considered similar, they must have present the same extremely hazardous substances and hazardous substances on-site at any one time in similar amounts. If the facilities are not similar, the generic report would not contain the facility-specific required information and the facility would not be considered in compliance with Sections 311/312. When submitting a report under Sections 311/312, the report must be sent to the SERC, the LEPC and the fire department. In the case of a generic report being submitted, the report must be submitted to every SERC, LEPC and fire department under whose jurisdiction the similar facility crosses. In the case of reporting for an oil field and oil wells therein, generic reporting will prove beneficial since most wells are similar on a given field. Simply make sure that the wells are in fact similar, that the generic report provides the facility-specific information required and that the report is submitted to all relevant State and local agencies. In that manner, the generic report will provide all facility-specific information to all relevant State and local agencies. (August 1988 Monthly Hotline Report & Q&A June 1, 1989, #66)

SECTION 311: MSDS CHEMICALS LIST REQUIREMENTS

Question: Is the submission of a Tier II form an acceptable method of reporting a list of hazardous chemicals grouped by hazard category under Section 311 of Title III?

Answer: Section 311 of Title III requires facilities to submit copies of Material Safety Data Sheets (MSDSs) or a list of hazardous chemicals grouped by hazard category for those chemicals present above an applicable threshold. The language "grouped by hazardous category" in the regulations means that the facility needs to submit a list of hazardous chemicals with each of the hazard categories identified. Since the Tier II form would certainly contain at least as much information as a list of hazardous chemicals grouped by hazard category it would be an acceptable submission for a list of MSDS chemicals under Section 311. Facility owners/operators may feel that this submission of a Tier II would satisfy the Section 312 requirements, and therefore not submit a Tier II before March 1 of the following year. This belief is in error. Section 312 would require a Tier II submission between January 1 and March 1 of the following year. This submission is required in order for the facility to verify that the information is correct for the entire calendar year. (September 1988 Monthly Hotline Report & Q&A June 1, 1989, #65)

SECTION 311/312: TRANSPORTATION EXEMPTION FOR BREAKOUT TANKS IN A PIPELINE

Question: A transportation firm owns a pipeline that transports oil to an intermediate storage tank at their pumping station. At the pumping station the oil is sold and sent by a secondary pipeline to the purchaser. The transportation firm also owns the secondary pipeline until the pipeline reaches a valve in front of a purchaser's tank. The transportation firm sends 10,000 gallons of oil to the intermediate storage tank. Of this oil, 5,000 gallons are purchased by company A, so the transportation firm then directs the 5,000 gallons into the pipeline leading to Company A. Is the oil stored in the intermediate storage tank exempt from Section 311 and 312 reporting under Section 327 transportation

exemption?

Answer: Section 327 of SARA Title III exempts from any Title III reporting requirement other than the Section 304 notification obligation, substances or chemicals in transportation or being stored incident to transportation, including the transportation and distribution of natural gas. In a final rule promulgated April 22, 1988 (52 FR 13378,13385) the Agency interpreted this provision to exempt from Title III reporting the transportation of substances in pipelines. The Agency stated, "Title III does not apply to the transportation of any substance or chemical, including transportation by pipeline, expect as provided in Section 304." As Title III does not itself define "pipeline", the Agency will refer to the definition found in regulations implementing the Hazardous Materials Transportation Act (HMTA) and promulgated by the Department of Transportation. EPA believes the HMTA to be appropriate as a reference because of Congress' explicit reference to that Act in the legislative history referring to the Section 327 transportation exemption. In the Conference Report, Congress stated that limiting the exemption for storage incident to transportation to those chemicals under active shipping papers was consistent with the HMTA. Department of Transportation regulations implementing the HMTA define "pipeline" as "all parts of a pipeline facility through which hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks." "Breakout tanks" in turn, are defined under these same regulations as "a tank used to (a) relieve surges in a hazardous liquid pipeline system of (b) receive and store hazardous liquid transported by pipeline for reinjection and continued transportation by pipeline". Because the intermediate storage tank owned by the transportation firm described above receives and stores hazardous liquid transported by pipeline for reinjection and continued transportation by pipeline, it meets this definition of "breakout tank" included within the Department of Transportation definition of "pipeline". Therefore, EPA would interpret that the oil contained in such an intermediate tank would be exempt from reporting under the Section 327 transportation exemption. (October 1988 Monthly Hotline Report & Q&A June 1, 1989, #86)

SECTION 303: HAZARD ANALYSIS

Question: When calculating vulnerability zone distances, how would the quantity released (QR) be handled for an extremely hazardous substance (EHS) in solution?

Answer: If the EHS is in solution, a facility can make a rough estimate of the QR using equation (1) on page G-2 of the "Technical Guidance for Hazards Analysis." If the facility has information on the physical properties of the EHS in solution, this data can be input into equation (1) to get the QR of the EHS.

$$\text{Equation (1) } QR = \frac{(60 \text{ sec/min} \times MW \times K \times A \times VP \times 929 \text{cm}^2/\text{ft}^2)}{R \times (T1+273) \times (760 \text{ mm Hg/atm}) \times 454 \text{ g/lb}}$$

Where:

QR = Rate of release to air (lbs/min);
MW = Molecular weight (g/g mole);
K = Gas phase mass transfer coefficient (cm/sec);

A = Surface area of spilled material (ft2);
VP = Vapor pressure of material at temperature T1 mm HG);
R = 82.05 atm cm3/g mole K; and
T1 = Temperature at which the chemical is stored (C).

If physical properties of the EHS in solution are not available, the QR can be estimated using the physical properties of the EHS. This would reflect the QR of the EHS in its pure form. Since the EHS is in solution, the QR would need to be multiplied by the mole fraction of the EHS in solution to accurately reflect the QR of the EHS. If the facility only has the weight fraction of the EHS solution, the weight fraction can be used instead of the mole fraction to estimate the QR of the EHS. (October 1988 Monthly Hotline Report & Q&A June 1, 1989, #21)

SECTIONS 302 AND 304: LIABILITY

Question: For Section 302 purposes, if a contractor brings an extremely hazardous substance (EHS) on-site to a facility over the threshold planning quantity, is the owner/operator of the facility or the contractor required to make the notification to the LEPC? For Section 304 purposes, if a contractor bursts a tank at a facility and causes a release of reportable quantity (RQ) of an EHS, should the contractor or the owner/operator of the facility notify the community emergency coordinator?

Answer: For both Sections 302 and 304, a contractor could be considered an operator of the facility or of a portion of the facility depending on if he/she has enough authority. The definition of operator is not defined by statue or in the regulations. If the contractor is considered an "operator," he or she could be held liable for not making the required notifications under Sections 302 or 304 if no notification is made by the owner. (November 1988 Monthly Hotline Report & Q&A June 1, 1989, #54)

TITLE III TRADE SECRETS

Question: A chemical company has one operation in a foreign country and an identical operation in the U.S. For one chemical, they wish to file a trade secrecy claim under Sections 311, 312, and 313. With regard to public disclosure, all non-government entities in the foreign country are bound by a confidentiality agreement regarding this chemical's identity and usage. However, there is no confidentiality agreement with the foreign government because the foreign government's laws have a statutory guarantee of confidentially for all foreign business interests. Does this lack of a tangible confidentiality agreement with the foreign government constitute public disclosure? How is this reported on the substantiation form?

Answer: The fact that there is no tangible piece of paper stating "confidentiality agreement," is not dispositive. The statutory guarantee of confidentiality serves as an agreement of confidentiality. Therefore, Question 3.2 on the Substantiation Form asking about disclosure may be checked "No." (November 1988 Monthly Hotline Report & Q&A June 1, 1989, #98)

TRADE SECRET

Question: A facility was not aware that all confidential business information (CBI) could be deleted from a sanitized trade secret substantiation. As a result, when they filed using the proposed trade secret substantiation form, they only deleted the chemical identity and did not delete the CBI from the sanitized substantiation. Since all the proposed Substantiation Form submissions must be updated to reflect changes made in the final form, the facility can delete all CBI from the final sanitized substantiation form. Can the facility find out if anyone has requested their proposed sanitized Substantiation Form? Also, can the facility retrieve their proposed rule sanitized substantiation to prevent disclosure of the CBI?

Answer: At the Title III Reporting Center, all trade secret claims have been isolated and protected from disclosure. As soon as the updated trade secret claim is received, the proposed Substantiation Form submissions may be returned to the submitter. The only way the proposed rule sanitized substantiation form may be requested is through a Freedom of Information Act request. Since the Title III Reporting Center must contact the facility when their sanitized substantiation is requested, there is a way to protect their CBI. With the updated claim, the facility must include a cover letter explaining their mistake thereby identifying the proposed rule sanitized Substantiation Form as containing CBI. By doing so, the Title III Reporting Center will be aware of the error. Therefore, when the facility is contacted with notification of a FOIA request, the facility can delete all CBI from the Substantiation Form before it is sent to the requestor. Since sanitized substantiations were also sent to the State, the facility must check with the individual State on their procedures regarding updated claims and previously submitted sanitized substantiations. (November 1988 Monthly Hotline Report & Q&A June 1, 1989, #99)

TITLE III TRADE SECRETS

Question: A chemical company in Louisiana filed their Section 311/312 reports by hazardous components. The Louisiana State Right-to-Know laws require companies to report on all unique substances present at the facility. For example, if chemical A and chemical B are blended to make mixture C, than the facility would have to report on chemical A, chemical B and mixture C containing A and B. The facility has no problem reporting on the chemicals present on site because they stock a large number of chemicals and their competitors would never be able to figure out their mixture compositions from all these possible chemicals. However, Louisiana requires the company to report on mixture C and the chemicals in it - i.e., chemicals A and B. The facility does not want to reveal what chemicals are present in what mixtures. How does this facility file a trade secret claim?

Answer: Federal requirements for Section 311/312 state that a facility may report on the mixture as a whole or may report on the hazardous components. It does not require that a facility do both. Therefore, since the mixture and components are not required to be reported, there is no reason for the facility to file a trade secret claim with the Federal EPA. However, the State of Louisiana is requiring information above and beyond the Federal requirements. Therefore, in order for the facility to protect its trade secret mixture formulation, the company must file trade secret claim in accordance with the Louisiana State trade secret provisions (53 FR 28795). (November 1988 Monthly Hotline Report & Q&A June 1, 1989, #100)

SECTIONS 302,311 AND 312: TRANSPORTATION EXEMPTION

Question: An oil company owns many wells on an oil field. Each well is on its own plot of land. These plots are not adjacent or contiguous and, therefore, each well is its own facility. When operating these wells, it is sometimes necessary to inject air or gas into the well to get the flow of oil started. The machines that inject the gas are called boosters. The booster is a portable piece of equipment that can be attached via a hose to more than one well at a time. Once the wells are flowing, the booster can be moved to another location on the oil field to boost other wells. The booster contains some extremely hazardous substances (EHSs) that are released during normal operations. The amounts of some EHSs exceed their threshold planning quantity. Since these boosters are mobile and never part of a well (not part of an existing facility), can they be exempted under the transportation exemption?

Answer: The transportation exemption applies to EHSs that are traveling in commerce, such as in a truck, or are in transit, such as in a pipeline. Therefore, when the boosters are being moved and are not attached to any facility, they are in transit and exempt under the transportation exemption. However, when the booster is stationary and/or attached to the wells, it is not in transit or traveling in commerce and must be reported. Even though it is a temporary site, the presence of those EHSs above the threshold planning quantities (TPQs) is of concern to the local planning emergency committee (LEPC). Therefore, the EHSs in the booster should be reported in the same manner as a chemical that is only on-site for part of the year, which includes the time at one location. Similarly, any EHS present in the hose that is attached to the well from the booster is considered process equipment and subject to reporting as part of the booster. A generic report may be prepared (i.e., one Tier I/II for similar wells). Therefore, one set of Material Safety Data Sheets (MSDSs) and one Tier I/II may be prepared for similar boosters with the same EHSs in similar amounts and submitted to each State emergency response commission (SERC), LEPC and fire department under whose jurisdiction the oil field falls. (December 1988 Monthly Hotline Report)

FACILITY DESIGNATION UNDER SECTION 302

Question: A natural gas distribution facility consists of a series of pipelines and breakout storage tanks. The substances stored at the facility are exempt from all applicable provisions of SARA Title III (except Section 304) under the transportation exemption at Section 327. Can such a facility be designated (under the authority of Section 302(b)(2)) as a facility subject to the emergency planning requirements of Title III?

Answer: Section 302(b)(2) of Title III gives the Governor or the State Emergency Response Commission (SERC) the authority to designate additional facilities as subject to the emergency planning provisions in Sections 301-304. Facilities may be designated under this authority even if all of the substances present at the facility qualify for the transportation exemption at Section 327 because they are under active shipping papers. In order to make such a designation, the Governor or SERC must first provide public notice and opportunity for comment on the proposed designation. The Governor or SERC must also notify the facility owner/operator of

any facility designation under Section 302(b)(2). The effect of such a designation will be to subject the facility owner/operator to the notification requirement under Section 302(c), and to the emergency planning provisions of Sections 302-304. Such a designation would not render the chemicals at the facility, which are otherwise exempt from the reporting provisions of Title III, reportable.
(January 1989 Monthly Hotline Report)

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW: SECTIONS 311 & 312: DETERMINING THRESHOLDS

Question: A facility owner/operator makes a specialty chemical by first producing one chemical- the reaction intermediate-and then injecting chlorine into the reaction vessel to start the final reaction for the final product. The facility runs these batches 3-4 times a year. The reaction intermediate is present over 10,000 pounds on those days that the batches are run for about a half a day. The facility is required to have an Material Safety Data Sheet (MSDS) for the intermediate. Since the substance is not on site for 24 hours, must it be reported on Tier II?

Answer: Since the facility owner/operator is required to prepare and have available a MSDS for the reaction intermediate, the substance is subject to Section 312. For the substance to be reportable, it must be present at the facility above the threshold planning quantity - 10,000 lbs. Since no time period is specified for "present at the facility," it is implied that if the substance is present at any one time during the year above the threshold it is reportable. Therefore, since the reaction intermediate is present at the facility over 10,000 lbs. at one time, the substance is reportable under Section 312 and must be included on Tier II. Also, the facility owner/operator may want to indicate in some way what three days the intermediate will be present in order to simplify planning for the facility. (February 1989 Monthly Hotline Report)

SECTIONS 311/312: EXEMPTIONS AND AGRICULTURE

Question: Does the agricultural use exemption, 311(e)(5), apply to fuels used by harvesting services to transport crops from the farm to the market or the food processor? Does the agricultural use exemption apply to the fuel used by the farmer to transport crops from the farm to the market or the food processor?

Answer: The agricultural exemption is intended primarily to cover hazardous chemicals used or stored at the farm facility. Therefore, the fuel used by a harvesting service would not be covered by the 311(e)(5) exemption. However, fuel used by the farmer and which is located at the farm itself would be exempt. (February 1989 Monthly Hotline Report)

SECTIONS 311/312: EXEMPTIONS AND AGGRICULTURE

Question: A citrus grove service owner stores pesticides and diesel fuel at his facility. The owner's business consists of transporting the pesticides to citrus groves and applying

them to trees. This application is the only use of the pesticides; the owner does not sell them or use them in any other way. The service uses the diesel fuel exclusively to transport the fertilizers and pesticides to the citrus groves so they may be applied. Would the pesticides or diesel fuel be covered by the 311(e)(5) agricultural use exemption from reporting under Sections 311 and 312 Title III?

Answer: The only instance covered by the 311(e)(5) agricultural exemption is the actual application of the pesticide. The owner/operator does not need to report the use of the pesticide at the citrus grove location because the citrus grove is considered a routine agricultural operation. With regard to the storage of the pesticides and diesel fuel at the service facility, these must be reported. The agricultural exemption is intended to primarily cover use and storage of hazardous chemicals at the farm facility.
(February 1989 Monthly Hotline Report)

311/312 EXEMPTIONS: OIL CORPORATIONS

Question: An oil corporation's pipeline facility contains three kinds of tanks. One type is a breakout tank used to receive and store hazardous liquids transported by a pipeline for
reinjection and continued transportation by the corporation's pipeline. Another type is used to receive and store hazardous liquid for delivery to pipelines owned by another corporation. The third type of tank receives and stores hazardous liquids for delivery to tank trucks and other modes of transportation. Would any tanks be covered by Section 327, the transportation exemption to Title III?

Answer: Section 327 of SARA Title III exempts from any Title III reporting requirement (other than the Section 304 notification obligation) substances or chemicals in transportation and or being stored incident to transportation, including the transportation and distribution of natural gas. In a final rule promulgated April 22, 1987, (52 FR 13378, 13385) the Agency interpreted this provision to exempt from Title III reporting the transportation of substances in pipelines. The Agency stated, "Title III does not apply to the transportation of any substance or chemical, including transportation by pipelines, except as provided in Section 304." As Title III does not itself define "pipeline," the Agency will refer to the definition found in regulations implementing the Hazardous Materials Transportation Act (HMTA) and promulgated by the Department of Transportation (DOT). EPA believes the HMTA to be appropriate as a reference because of Congress' explicit reference to that Act in the legislative history referring to the Section 327 transportation exemption. In the Conference Report, Congress stated that limiting the exemption for storage incident to transportation to those chemicals under active shipping papers was consistent with the HMTA. DOT regulations implementing the HMTA define "pipeline" as "all parts of pipeline facility through which a hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery statings and fabricated assemblies therein, and breakout tanks" under 49 CFR 195.2. "Breakout tanks" in turn, are defined under these same regulations as a "a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquid transported by pipeline for reinjection and continued transportation by pipeline." DOT includes the first two

types of tanks within its definition of "pipeline" but not the third type of tank. The first type of tank is a breakout tank (49 CFR Section 195.2) and as such is part of the pipeline regulated by DOT. The second and third types of tanks are examples of delivery stations. The delivery station which injects the hazardous substance into someone else's pipeline is part of the "pipeline" under DOT regulations. The delivery station which delivers the hazardous substance to other modes of transportation is called a terminal and is not included within the DOT definition of pipeline. Terminals are thus not covered by the transportation exemption in Section 327 of SARA Title III. The transportation exemption would apply to the substances in the first two types of tanks and they would be exempt from all of Title III except Section 304. The substance in the third tank would not be covered by the transportation exemption. Section 327 of Title III exempts substances from the requirements of the Title III exempts substances from the requirements of the Title, except Section 304, if those substances are in transportation or are stored incident to transportation. (March 1989 Monthly Hotline Report)

SECTION 311: INFORMATION REQUEST

Question: Under 311, 40 CFR 370.30, a local emergency planning committee (LEPC) can request a material safety data sheet (MSDS) from a facility for a hazardous chemical which is present at the facility below 10,000 pounds. Would the facility need to supply an MSDS to the LEPC if the material in question was not a hazardous chemical as defined under 40 CFR 370.2? For example, could an LEPC request that facility submit an MSDS for a chemical which is used in a research laboratory under the direct supervision of technically qualified individual?

Answer: The LEPC can only request the MSDS for a substance which defined as a hazardous chemical under 40 CFR 370.2. Since a substance used in a research laboratory under the direct supervision of a technically qualified individual is not a hazardous chemical as defined by 40 CFR 370.2, the facility does not need to submit the MSDS for this substance to the LEPC. (March 1989 Monthly Hotline Report)

OSHA DEFINITION OF HAZARDOUS SUBSTANCE

Question: The Occupational Safety and Health Administration (OSHA) recently promulgated worker protection standards for hazardous waste operations and emergency response as required by Section 126 of SARA. Would workers be covered by this rule when responding to emergency situations involving petroleum products?

Answer: The OSHA rulemaking promulgated in the March 6, 1989 Federal Register (54 FR 9294) amended existing worker protection standards for hazardous waste and emergency response (29 CFR section 1910.120). The final rule established regulations governing the health and safety of employees involved in the following activities: (1) clean-up operations at uncontrolled hazardous waste sites, both voluntary and those mandated by Federal, State, or other governmental agencies; (2) corrective actions at RCRA facilities; (3) hazardous waste operations at RCRA treatment, storage, and disposal facilities; and (4) emergency response operations for actual or threatened releases of hazardous substances. OSHA defines hazardous substance to include "any substance listed by the U.S. Department of Transportation as

hazardous materials under 49 CFR section 172.101 and appendices," which includes petroleum products (see 29 CFR Section 1910.129 (a)(3)). This is in contrast to the definition of hazardous substance under CERCLA Section 101(14), which specifically excludes petroleum products. In response to comments on this issue, OSHA stated that "Section 126 of SARA is directed to protecting workers from the hazards of all hazardous waste spills." (54 FR 9301) OSHA went on to conclude: "...it is crucial to cover responses to petroleum spills as well as other spills because petroleum products constitute a substantial threat to employees responding to accidental releases of these substances. Many petroleum products present health hazards as well as fire and explosion hazards. In addition they often contain fractions which present high health hazards." (54 FR 9302) Thus OSHA felt that the health and safety hazards created by petroleum spills warranted inclusion of these substances under this rule. (April 1989 Monthly Hotline Report)

PUBLIC AVAILABILITY OF TITLE III DOCUMENTS

Question: Section 324 of SARA Title III addressing the public availability of documents, states that the emergency response plan, material safety data sheet or list submission, Tier I/II, Form R and Section 304 written follow-up notice are to be made available to the public by "the State Emergency Response Commission (SERC), or Local Emergency Planning Committee (LEPC), as appropriate," (Section 324(a)). Can this be interpreted to mean that the documents can be made available by the SERC or LEPC as long as all the mentioned documents are made available by one or the other?

Answer: What Section 324(a) is addressing by saying the SERC or LEPC can make documents available as appropriate is the instance where a form may be submitted to one and not the other. For example, the LEPC does not receive Section 313 Form R submissions. Therefore, it would not be appropriate for the LEPC to make Form Rs publicly available. Therefore, EPA has interpreted Section 324 to mean that both the SERC and LEPC must make publicly available all the above documents that are submitted to them. (May 1989 Monthly Hotline Report)

EMERGENCY PLANNING REQUIREMENTS

Question: A farmer contracts with an applicator to spray pesticides on his fields. The applicator drives a tank truck onto the farmers' field and sprays the pesticide from the truck onto the fields. For purposes of Section 302 emergency planning requirements, are the EHSs in the truck considered present at the facility and reportable if above the threshold planning quantity? Or are they covered by the transportation exemption?

Answer: The transportation exemption is intended to exempt substances being transported in commerce and when stored incident to that transportation. The interpretation of storage is limited to storage under active shipping papers. Once a transportation vehicle arrives at its intended destination, it is no longer considered in transportation. If the substance which was transported to the site is not stored under active shipping papers, it is also not considered exempt. Thus, the EHS in excess of a TPQ, even though still contained in a truck would be considered present at the facility and, as such be reportable. The owner or operator of the facility (in this case the farm fields) is required to report if there are EHSs present at the facility in amounts in excess of their threshold planning quantities. However, the required report is simply an

identification of the facility and a facility coordinator who can be contacted for further information, to the local emergency planning committee (LEPC). Thus, it is anticipated (although not required) that in making a report to the LEPC, the owner or operator of the facility at which the EHS is applied, would indicate that the chemical is in intermittent use at a variety of sites and briefly explain the periods of time and locations where this application takes place. This will provide the LEPC with the necessary information to determine the nature of the risk posed by this facility or facilities, without placing an undue burden on the owner or operator of the facility. (May 1989 Monthly Hotline Report)

SECTION 311/312 MIXTURE REPORTING

Question: A facility owner/operator brings on-site two components that he blends into a mixture for on-site use. Since the mixture is not distributed to commerce, the facility owner/operator claims that Occupational Safety and Health Administration (OSHA) does not require him to develop a new Material Safety Data Sheets (MSDS) for the mixture. Rather he simply uses the MSDSs for the two components. When the facility owner/operator submitted his list under Section 311, he reported on the mixture rather than on the components. If his Local Emergency Planning Committee (LEPC) requests a copy of the MSDS for the mixture reported on his list, is the facility owner/operator required to develop a MSDS for the mixture? Or, can he submit the copies of the MSDSs for the components, since no new MSDS is required under OSHA's Hazard Communication Standard (HCS)?

Answer: In satisfying the reporting obligations of Sections 311 and 312 and 40 CFR Section 370.21 (material safety data sheet (MSDS) reporting) and Section 370.25 (inventory form reporting), the statute and the regulations allow an owner or operator the option of reporting on the hazardous components in the mixture or on the mixture as a whole (see Section 311(a)(3) and 40 CFR Section 370.28). The statute and regulations require, however, that when an owner or operator reports on the mixture as a whole, that he or she have available an MSDS for that mixture. For example, under Section 311(c), the statute requires that when an owner or operator of a facility submits a list of chemicals to satisfy the reporting requirement of Section 311, he or she submit the material safety data sheet for the chemicals on the list upon the request of the local emergency planning committee. In addition, under Section 312(d)(2)(A), a Tier II inventory form must provide "the chemical name or the common name of the chemical as provided on the material safety data sheet." Thus EPA interprets the statutory and regulatory provisions to allow reporting on mixtures for which owner or operator has available a material safety data sheet. The Agency recognizes that OSHA does not require the preparation or availability of MSDS for all mixtures an owner or operator may wish to report as a mixture under Title III. Nevertheless, because of the statutory and regulatory requirements of Title III, the Agency is limiting the reporting of mixtures, as a whole, to only those mixtures for which the owner or operator has available a MSDS, regardless of whether the preparation of such an MSDS is required by OSHA. If no material safety data sheet exists for a given mixture, the owner or operator should report the hazardous components of the mixture under Section 311 and 40 CFR Section 370.21 so that he or she is able to respond to a LEPC request for the MSDS of the mixture under Section 311(c). (June 1989 Monthly Hotline Report)

PENALTY PROCEDURES

Question: Under SARA Title III are there any provisions for penalties levied against violators of SARA Title III to be distributed to States and localities?

Answer: SARA Title III specifies that violators of the Act are liable to the United States, and therefore, fines levied under the Act are payable to the U.S. Treasury. At present, EPA does not have any provisions for distributing these penalties to States and localities. (August 1989 Monthly Hotline Report)

RELEASE NOTIFICATION: TRANSPORTATION

Question: An owner or operator of a facility from which there is a transportation related release may meet the emergency release notification requirement by providing the information specified in 40 CFR Section 355.40(b)(2) to the 911 emergency operator, or in the absence of a 911 emergency operator, to the regular telephone operator. (40 CFR Section 355.40(b)(4)(ii)). What must a facility owner/operator do if the telephone operator typically has a different procedure for handling emergency calls, e.g. connecting the caller directly to the police or fire department? Must the facility owner/operator provide all of the required information to the telephone operator even if the telephone operator does not want to accept it?

Answer: The alternative emergency release reporting method for transportation related releases was designed for transportation operators who may not know the telephone numbers of the relevant State and local entities. (52 FR 13386) If a 911 emergency number is available, the owner/operator reporting the release should use it. If no 911 emergency number can be reached, the facility owner or operator must contact the telephone operator. The telephone operator may follow their own procedures for handling emergency calls. If their procedures are to take all of the caller's information, then it would be appropriate for transportation operators to supply them with the information required in 40 CFR Section 355.40(b)(2). If the 911 emergency operator's procedure requires connection of the caller to an emergency response agency, then the caller must report the release information to this agency. (September 1989 Monthly Hotline Report)

SARA TITLE III: SECTION 304 EMERGENCY RELEASE REPORTING

Question: A facility owner/operator collects a CERCLA hazardous substance at his facility in an open dumpster. Every day the owner/operator collects more than the reportable quantity (RQ) of this CERCLA hazardous substance. The unenclosed dumpster is entirely enclosed in the facility. Does the owner/operator need to report this as a release of a CERCLA hazardous substance under CERCLA Section 103(a) or SARA Title III Section 304?

Answer: The May 24, 1989 Federal Register (54 FR 22526) considers the stockpiling of an RQ of a CERCLA hazardous substance and any activity that involves the placement of a hazardous substance into any unenclosed containment structure, wherein the substance is exposed to the environment, a release. The placement of CERCLA hazardous substances would be considered

a release if it was not wholly contained in the building. If this substance is totally contained in the building and no exposure to the environment occurs, then release reporting under CERCLA Section 103(a) is not required. In 40 CFR 355.40(a)(2), emergency release notification under SARA Title III Section 304 does not apply to any release which results in exposure to persons solely within the facility boundaries. If, during the collection of the CERCLA hazardous substance in the open dumpster there is no potential for exposure to persons outside the facility boundaries, emergency release notification is not needed for Section 304. (October 1989 Monthly Hotline Report)

SECTION 311: MATERIAL SAFETY DATA SHEET REPORTING REQUIREMENTS

Question: To comply with Section 311 of SARA, a facility owner/operator submitted 6,000 copies of various Material Safety Data Sheets (MSDSs) for the hazardous chemicals that were present at the facility. The submission was made to fulfill the October 17, 1987, deadline for reporting on hazardous chemicals at or above 10,000 pounds and extremely hazardous substances (EHSs) at or above 500 pounds or the threshold planning quantity (TPQ), whichever is less. Effective September 1, 1989, the Occupational Safety and Health Administration (OSHA) changed many their published permissible exposure limits (PELs) for hazardous chemicals. This represents significant new information about the chemicals, and now the facility owner/operator is required to submit a complete set of new MSDSs with the PEL information included to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and local fire department (LFD). To avoid a complete resubmittal of all 6,000 MSDSs, the facility owner/operator wants to change to the list option for Section 311 compliance. Would this be acceptable?

Answer: It is EPA policy to allow a facility owner/operator to change the owner's/operator's original method of submission under Section 311 from copies of MSDSs to a list. Although the current regulations do not address this issue, the EPA plans to publish a technical amendment to this effect along with the final rule regarding the permanent thresholds sometime early in 1990. Regarding the facility in question, the owner/operator must submit either new MSDSs or a list to the SERC, LEPC and LFD at this time. If a list is submitted, the submitter must indicate why he or she is making the submission. The owner/operator needs to explain that because of the changes in the PELs, the original MSDSs on file are out-of-date and should be disregarded. If the LEPC requires updated MSDSs, the LEPC still has the authority under 40 CFR Section 370.21(d) to request the information from the facility owner/operator.
(October 1989 Monthly Hotline Report)

SECTION 304: RELEASE REPORTING REQUIREMENTS

Question: A facility has a spill of an extremely hazardous substance (EHS) in a amount greater that its reportable quantity (RQ). The spill occurs on a concrete floor that is inside a facility building. Before the spill can be cleaned up, a portion (less than RQ) of the EHS enters the outside atmosphere through the window. Persons in off-site buildings report smelling the chemical. Does the facility owner/operator have a reporting requirement under SARA Title III, Section 304?

Answer: No. The reporting requirements codified at 40 CFR 355.40 apply when there is the "... release of a reportable quantity of any extremely hazardous substance or CERCLA hazardous substance." The definition of release further stipulates that the release must occur "...into the environment... ." [40 CFR 355.20] In this case, reporting is not required even though persons off-site are being affected by the spill because an RQ of material was not released "into the environment." To determine if reporting is required under SARA Title III Section 304 for a spill of an EHS or CERCLA hazardous substance, first determine if an RQ of material has entered "into the environment" (as the phrase is understood under CERCLA). If an RQ has entered "into the environment", then there has been a release. A release must be reported unless a specific exemption from reporting applies [such as the exemption for releases affecting"....persons solely within the boundaries of the facility." 40 CFR 355.40 (a)(2)(i))] (October 1989 Monthly Hotline Report)

CERCLA REPORTABLE QUANTITIES FOR MIXTURES

Question: A generator has a drum of RCRA hazardous waste which is classified as F005. The only spent solvent in his waste is toluene. He knows the exact composition of the waste, and toluene is the only CERCLA hazardous substance in the waste. What is the 40 CFR Part 302 reportable quantity (RQ) for his F005 waste?

Answer: If a CERCLA hazardous substance (HS) escapes from a facility or vessel into the environment, the person in charge of the facility or vessel must notify the National Response Center if a reportable quantity (RQ) or more of the HS is released. (40 CFR Section 302.6) If the substance released is a waste stream for which more than one RQ could apply, the determination of the RQ is based upon the person's knowledge of the composition of the substance released. If the person knows the exact composition of the spill, he determines if notification is necessary by referring to RQ's in 40 CFR Table 302.4 for the individual hazardous substances in the waste stream. He does not, in this case, use the RQ for the waste stream. (40 CFR Section 302.5(b)(1)(i)) If the person does not know the exact composition of the spill, the lowest RQ for the mixture applies to the total quantity of the spill. (40 CFR Section 302.5(b)(1)(ii)). For example, if 250 pounds of a RCRA F005 waste stream containing an unknown concentration of toluene and methyl ethyl ketone is spilled, the possible RQ amounts are 100, 1000, 5,000, respectively. In this case, the lowest RQ 100 pounds, applies, so the spill must be reported. (50 FR 13463, April 4,1985; 54 FR 33431,33469; August 14, 1989). For a waste stream of known composition, the person in charge calculates the amount of an HS released by multiplying the concentration of the HS by the quantity of the waste stream released. (54 FR 33431, August 14, 1989) If, for example, a 10,000 pound spill of F005 contains 10% toluene and 5% methyl ethyl ketone and no other HS, the spill must be reported because an RQ of toluene, 1000 pounds, was released. In the case in the question, the generator with an F005 waste containing a known concentration of toluene and no other HS, the applicable RQ is also 1000 pounds, that applicable to toluene and is applied only to the amount of toluene released. (40 CFR Section 302.4; 54 FR 33431, August 14, 1989). (November 1989 Monthly Hotline Report)

SARA TITLE III: EMERGENCY PLANNING NOTIFICATION

Question: A public warehouse is used by several unrelated companies to store extremely hazardous substances (EHSs). For purposes of emergency planning notification, who is responsible, under SARA Title III Section 302, for notifying the State Emergency Response Commission if a threshold planning quantity (TPQ) of an EHS is present at the warehouse?

Answer: The emergency planning regulations (40 CFR 355.30(b)) state that "The owner or operator of a facility subject to this section shall provide notification to the Commission that it is a facility subject to the emergency planning requirements of this Part." Thus, the owner or operator of the warehouse should make notification if an EHS is present in an amount equal to or excess of its TPQ. In the event of noncompliance, both the owner and operator may be held liable. (Note: The ownership/operatorship of the chemicals is not an issue here, but rather the ownership/operatorship of the facility at which the chemicals are present.) The companies who rent space in the warehouse may be considered operators if they participate in the operation of the facility to any extent. For example, a company that rents space in the warehouse and physically enters the facility, stores the material in the storage space, and then leaves the facility would be considered an operator. The companies may also be considered operators (whether they physically enter the warehouse facility or not) if they control the rented space to the extent that they can exclude others from the space. It is also the responsibility of the owner or operator of the facility to provide the name of a facility emergency coordinator to the local emergency planning committee. (40 CFR 355.30(b)). In the event of noncompliance with this regulation, all of the owners and operators of the facility are liable. (November 1989 Monthly Hotline Report)

SECTION 312 VIOLATIONS

Question: Under Section 312 of the Emergency Planning Community Right-to-Know Act (EPCRA), a facility owner/operator which omits two reportable OSHA hazardous substances from the Tier I/II report has committed a violation. Would the omission of the two reportable hazardous substances from the Tier I/II report be considered two separate violations, or would the omission be considered one violation since one incomplete Tier I/II report was filed?

Answer: Section 312 of EPCRA and regulations thereunder require that the owner/operator of a facility which has hazardous chemicals, as defined by OSHA in 29 CFR 1910.1200, present at the facility above the reporting thresholds, shall prepare an inventory form (Tier I/II report) and submit it to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and local fire department (40 CFR 370.20). The omission of two OSHA hazardous chemicals from the Tier I/II report would result in separate violations, not one violation for submitting an incomplete Tier I/II report. Furthermore, since the Tier I/II report is required to be sent to three entities, a total six violations could occur for failure to submit two chemicals to the three entities. (December 1989 Monthly Hotline Report)

SECTION 303(d)(3) REQUESTS

Question: Under Section 312 of the Emergency Planning Community Right-to-Know

Act (EPCRA), if a Local Emergency Planning Committee (LEPC) requests a TierI/II from a facility owner/operator for a substance which is exempt (either under EPCRA, Section 311(e), or the OSHA Hazardous Communication Standard, 29 CFR 1910.1200(b)), are they required to comply with the request? If the LEPC requests Tier II information for the substance using their authority under Section 303(d)(3) would the facility owner/operator be required to submit the requested information?

Answer: Under Section 312 of EPCRA, since the substance is exempt, the facility would not need to include information on the substance in their Tier I/II report. Therefore, if the LEPC requests Tier II information from the facility under Section 312(e) on the exempted substance, the facility is not required to comply with the request. However, if the facility is subject to emergency planning under Section 302 of EPCRA, then the LEPC would have the authority (Section 303(d)(3)) to request any information necessary for developing and implementing the emergency plan. Such information may include Tier II information if the information is necessary for Section 303 planning purposes. (January 1990 Monthly Hotline Report)

RELEASE OF AN RQ "INTO THE ENVIRONMENT"

Question: The April 4, 1985 Federal Register (50 FR 13456) discusses releases "into the environment" in relation to requirements for notifying the National Response Center of a release of a hazardous substance in a quantity greater than or equal to its reportable quantity (RQ). According to this preamble, "Examples of such releases are spills from tanks or valves onto concrete pads or into lined ditches open to the outside air, releases from pipes into open lagoons or ponds, or any other discharges that are not wholly contained within buildings or structures. Such a release, if it occurs in a reportable quantity (e.g. evaporation of an RQ in to the air from a dike or concrete pad), must be reported under CERCLA." (50 FR 13462) The parenthetical example might lead one to believe that the amount that evaporated would have to be greater than or equal to an RQ to be reportable. Is this correct?

Answer: No. In the May 24, 1989 Federal Register (54 FR 22524) EPA addresses this subject when it states, "The Agency considers the stockpiling of an RQ of a hazardous substance to be a release because any activity that involves the placement of a hazardous substance into any unenclosed containment structure wherein the hazardous substance is exposed to the environment is considered a release". (54 FR 22524) EPA further clarifies its position: "Thus, the placement of an RQ of a hazardous substance in an unenclosed structure would constitute a "release" regardless of whether an RQ of the substance actually volatilizes into the air or migrates into surrounding water or soil." (February 1990 Monthly Hotline Report)

SARA SECTIONS 302,304, AND 311/312 REPORTING RANGES

Question: A facility has a mixture which contains extremely hazardous substances. The Material Safety Data Sheet (MSDS) for the mixture only indicates a range of concentration for its components. For the purposes, of reporting under SARA Sections 302, 304, and 311/312 of SARA Title III, should the facility owner/operator report be based on the lower, upper, or mid-point concentration of each component?

Answer: If the MSDS for the mixture indicates only a range of concentration for its components, then for purposes of reporting under SARA Sections 302, 304, and 311/312 of SARA Title III, the facility owner/operator should use the upper bound concentration when determining the weight of each component in the mixture. Such reporting is consistent with the purpose of Title III, which is to maximize local communities' opportunities to know about local chemicals and to plan for emergencies. (February 1990 Monthly Hotline Report)

SARA SECTIONS 302 AND 311/312 REPORTING REQUIREMENTS

Question: The Department of the Army leases property from a private citizen and begins to operate a laboratory on the property. The Army totally controls the laboratory. The owner of the land only has a real estate interest in the land and does not control the activities at then laboratory. The owner of the land has no employees at the property. Under SARA sections 302 and 311/312, who is responsible for reporting?

Answer: The Emergency Planning and Community Right-to-Know Act (Title III of SARA) does not require reporting by Federal facilities because Federal facilities are not covered in the definition of person under the ACT. The Army would have not reporting responsibility under SARA section 302 or sections 311/312. [The Department of the Army has issued a statement urging its facilities to report, but if its facilities do not report they cannot be held liable under SARA Title III.] However, SARA section 302 provides that the owner or operator of a facility which is subject to the emergency planning requirements must comply with the regulations under that section. Therefore, the owner is responsible for reporting under SARA Section 302. Under SARA section 311/312 the owner or operator of a facility which is required to prepare or have available MSDS's must comply with the requirements of 40 CFR 370, Subpart B. The owner of the facility whose only connection to the facility is a real estate interest and has no employees at the facility would not be required to have MSDS's. Therefore, neither the owner nor the operator (i.e. the Army) would be liable for reporting. (February 1990 Monthly Hotline Report)

SECTION 311/312 EXEMPTIONS

Question: A facility owner/operator uses chlorine to bleach flour at his/her facility. Would this facility owner/operator be exempt from reporting the chlorine used to bleach flour under SARA Title III Section 311/312?

Answer: SARA Title III Section 311 (e)(i) exempts any food, food additive, drug, or cosmetic regulated by the Food and Drug Administration (FDA). EPA considers a substance to be regulated by the FDA as long as the substance is used in a manner which is consistent with the FDA regulations. FDA regulations (27 CFR 137.200) regulate the bleaching of flour with chlorine. Chlorine, therefore is exempt from reporting under SARA Title III Sections 311/312 when its use at a facility is consistent with this FDA regulation (i.e., the bleaching of flour). (March 1990 Monthly Hotline Report)

SARA TITLE III SECTION 304: FACILITY DEFINITION

Question: The definition of "facility" under SARA Title III Section 329 states that "(f)or purposes of Section 304, term [i.e., facility] includes motor vehicles, rolling stock, and aircraft." The term "rolling stock" is not defined further. For purposes of SARA Title III Section 304, what items are covered by the term "rolling stock"?

Answer: The term "rolling stock" is a generic term that is used in the railroad industry to denote anything on rail wheels. The term includes locomotives, freight cars, flat cars, and other vehicles that use steel wheels on railroad tracks. The term is not specifically defined in either Department of Transportation regulations or interpretations. For purposes of SARA Title III Section 304 reporting, EPA interprets "rolling stock" to be the same items that fall within the scope of the generic term as commonly understood by the railroad industry. (March 1990 Monthly Hotline Report)

SARA SECTIONS 311/312 AND 304: EXEMPTION FROM THE DEFINITION OF "HAZARDOUS CHEMICAL"

Question: A hospital stores oxygen in a large outside bulk storage tank and delivers the material, as needed, throughout the hospital using a piping system (the oxygen is used only in the treatment of patients). The bulk storage tank is routinely maintained by hospital maintenance people but the oxygen itself is administered to patients by nurses, doctors, nurses aides, and other persons trained in the medical field. Furthermore, the hospital is required by OSHA to have available an MSDS for the oxygen. Is the oxygen a "hazardous chemical" pursuant to SARA Sections 304 and 311/312?

Answer: No. Section 311(e)(4) of SARA Title III and 40 CFR 370.2 and 355.20 of the regulations exclude from the definition of "hazardous chemical" any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual. EPA believes that this exemption is intended to include substances which are used or will be used at these facilities under the direct supervision of technically qualified individuals for medical or research purposes [see 52 FR 38347 and following, October 15, 1987]. The exemption would include the storage of the substances at these facilities prior to the use of the substance. [Note: the term "technically qualified" is interpreted (for purposes of SARA Title III Sections 304 and 311/312) to refer to individuals who are adequately trained in the research or medical fields, as appropriate (for example, doctors, nurses, research professionals).] In the above example, the oxygen at the hospital is not considered a hazardous chemical because it is used for medical purposes and its administration is carried out by medical professionals (i.e., doctors, nurses, etc.). The amount stored at the hospital is also exempt from being a hazardous chemical since it will be used for medical purposes (even though the actual storage is supervised by non-medical persons). [Note: if medical or research facility stores a material, some of which will be used for medical or research purposes and some of which will not be used for medical or research purposes, only the amount stored for medical or research purposes is exempt from the definition of a hazardous chemical.] Therefore, this exemption would not apply to building cleaning supplies used at research or medical facilities even though they may be used under the supervision of qualified

individuals, because they are used medical purposes. It is important to note that the exemption applies to the substances rather than the facility. Under Section 302 of the law, there are no exceptions. Under Sections 311 and 312, only those substance which are used for medical or research purposes in medical or research facilities are exempt. Medical or research facilities may have other hazardous chemicals which are subject to reporting. These medical and research facilities may also be subject to reporting under Section 304 if there are any of these other hazardous chemicals present at the facilities in any amount. (April 1990 Monthly Hotline Report)

CLARIFICATION OF NOTIFICATION CERCLA REQUIREMENTS FOR FACILITIES

Question: Preamble language in the April 4, 1985, Federal Register defines "concurrent releases" to be releases occurring in the same 24-hour period. Should numerous concurrent releases of the same hazardous substance occur at a contiguous plant or installation under common ownership, these release need not be reported individually. Rather, they should be reported in a single notification. The meaning of the term facility is defined in CERCLA Section 101(9) as "(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel." The April 4, 1985, Federal Register, states that "... all concurrent releases of the same substance from a particular facility into the environment must be aggregated to determine if an RQ (reportable quantity) has been exceeded. Releases from separate facilities need not be aggregated." If two separate buildings, 200 yards apart located on contiguous ground under common ownership, release the same hazardous substance in the same 24 hour period and each
release is two pounds below the RQ, should these releases be aggregated (i.e., has an RQ been reached)?

Answer: The Agency intended to simplify the notification requirements under Section 103 of CERCLA by allowing the regulated community the opportunity to report all concurrent releases of the same hazardous substance, from one contiguous plant or installation within the same 24-hour period, in a single phone call. In other words, the person in charge does not have to call the National Response Center twice if two releases of an RQ of the same substance occur in the same 24-hour period. One single phone call (reporting 2 releases) will meet the notification requirements. On the other hand, if less than an RQ of the same hazardous substance is released from two separate buildings in the same 24-hour period, notification will not be required, because less than an RQ was released from each facility. The amount of the substance released from each facility within common grounds will not have to be added for purposes of calculating an RQ. (May 1990 Monthly Hotline Report)

SECTION 304: RELEASE REPORTING REQUIREMENTS AND LIABILITY

Question: A waste treatment facility has a release of chlorine above the reportable quantity. The facility owner or operator did not make initial notification of the release as required under SARA Section 304. In addition, the facility owner or operator also refused to submit a written follow-up regarding the release of chlorine. Under SARA Section 326(a)(1)(A)(i), any person may commence a civil action in the U.S. District Court against owners/operators of facilities for failure to submit the SARA Section 304 follow-up report under Section 304(c). If a citizen wants to bring the case to court, will she/he be responsible for the attorney and court fees? Will she/he receive any of the money from fines collected?

Answer: SARA Section 326 (f) states that: "(t)he court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate." In addition, SARA Section 326(c) states that: "(t)he district court shall have jurisdiction in actions brought under subsection (a) against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement." Therefore, the court has the authority to impose penalties for violations of a requirement and to award costs of litigation, as appropriate, to the citizen who brought the suit. However, any civil penalties assessed by the court for an action brought under EPCRA Section 326 must go to the U.S. Treasury. Actions brought under State statutes may have different arrangements for penalty distribution. Thus, a citizen suit under EPCRA Section 326 does not allow for penalties to go to the complainant. (June 1990 Monthly Hotline Report)

SARA SECTIONS 311/312 AGRICULTURAL USE EXEMPTION

Question: Ammonia is held for sale by a retailer in a large storage tank. The retailer sells the ammonia as both an agricultural fertilizer and as a coolant for air conditioning systems. Section 311(e)(5) of SARA exempts from the definition of a hazardous chemical "(a)ny substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer". For purposes of SARA sections 311/312 reporting, how would this combined usage of the ammonia tank be affected by the agricultural use exemption under SARA section 311(e)(5)?

Answer: The ammonia in the tank that is held for use as coolant is not exempt from reporting under SARA section 311(e)(5) since it will not be "....used in routine agricultural operations". Neither is ammonia held for use as coolant "... a fertilizer held for sale by a retailer to the ultimate customer". Therefore, the amount of ammonia held for sale as coolant is reportable under SARA sections 311/312. The amount of ammonia held for sale as a fertilizer to the ultimate customer, however, would be exempt from reporting.
[Note that, since the retailer has a "mixed use" tank, she/he may find it easier to count all the material in the tank (both fertilizer and coolant) when determining whether or not to report. This is an appropriate option but it is not, however, required.] (June 1990 Monthly Hotline Report)

SARA SECTION 311/312 HOUSEHOLD PRODUCT EXEMPTION

Question: A facility sell automobile batteries wholesale. Are these batteries at the wholesaler's facility exempt from reporting under SARA Sections 311/312 due to the household product exemption under SARA section 311(e)(3)?

Answer: SARA section 311(e)(3) exempts from the definition of hazardous chemical "(a)ny substance to the extent is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public." This exclusion applies to household or consumer products either in use by the general public or in commercial or industrial use when the product has the same form and concentration as that intended for use by the general public. The term "form" refers to the packaging, rather than the physical state of the substance. Therefore, car batteries held for sale by a wholesaler are exempt from reporting since the hazardous chemicals contained are in the same form and concentration as batteries sold for use by the general public. (June 1990 Monthly Hotline Report)

SARA SECTIONS 311/312 AGRICULTURAL USE EXEMPTION

Question: Ammonia and phosphoric acid are held for sale by a retailer in large storage tanks. The retailer sells both ammonia and phosphoric acid to farmers to be used as fertilizers. The retailer also blends ammonia with phosphoric acid to produce a new compound which, in turn, is also sold to farmers as fertilizer. Are the amounts of ammonia and phosphoric acid that are held for blending at the retailer's facility exempt from the definition of "hazardous chemical" under SARA Sections 311/312?

Answer: SARA Section 311(e)(5) exempts from the definition of hazardous chemical "any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer". In the above example, the ammonia and phosphoric acid are intended for blending are not exempt form the definition of "hazardous chemical" since they are not "... a fertilizer held for sale by a retailer to the ultimate customer." They are, in essence, chemicals held for the purpose of producing a fertilizer. In other words, the ammonia and phosphoric acid held for blending are the starting materials used to make a fertilizer; they are not, in this instance, fertilizers themselves. The retailer should report the amounts of ammonia and phosphoric acid that are held for blending to produce the new fertilizer. The amounts of ammonia and phosphoric acid that are sold directly to the ultimate customer (without blending) are fertilizers exempt form the definition of "hazardous chemical" and would, thus, be exempt form reporting under SARA Sections 311/312. (June 1990 Monthly Hotline Report)

SARA SECTIONS 311/312 MEDICAL FACILITY EXEMPTION

Question: Are chemicals used at nursing home facilities exempt from reporting under SARA Sections 311/312 due to the medical facility exemption under SARA Section 311(e)(4)?

Answer: While a nursing home is treated like any other medical facility for SARA Section 311/312 purposes, Section 311(e)(4) does not exempt a medical facility from all Section 311/312 reporting. SARA Section 311(e)(4) exempts form the definition of hazardous chemical "(a)ny substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual." This exclusion applies to substances being used in the medical field at a nursing home (which has, as part of its normal operation, medical care responsibilities for its clients) to the extent that the substances are being used under the direct supervision of technically qualified individual." The term "technically qualified" is interpreted to refer to individuals who are adequately trained in the research or medical fields, as appropriate (for example, doctors, nurses, research professionals. etc.). Thus, this provision exempts only those chemicals used medically by technically qualified personnel, and not the entire facility. Nursing homes may have other hazardous chemicals which are not used for medical purposes and are subject to reporting. For example, certain cleaning supplies may be reportable under SARA Sections 311/312 if thresholds levels are met. (October 1990 Monthly Hotline Report)

SARA TITLE III SECTIONS 311 AND 312 APPLICABILITY

Question: A construction company is contracted by a manufacturing company to perform work at the manufacturer's site. The construction company brings hazardous chemicals onto the site to perform its construction activities. During normal conditions of use as well as in foreseeable emergencies, only employees of the construction company will be exposed to any of the hazardous chemicals brought to the site by the construction company. Is the manufacturing company responsible for reporting, under SARA Title III Sections 311 and 312, on hazardous chemicals brought onto its site by the construction company.

Answer: No. It is the responsibility of an owner or operator who is required by the Occupational Safety and Health Commission (OSHA) to prepare or have available a Material Safety Data Sheet (MSDS) for a hazardous chemical to report on those chemicals under SARA Title III Section 311 and 312. In the above scenario, the employer of the construction workers is the person who is required by OSHA to prepare or have available a MSDS for the hazardous chemicals that are brought onto the manufacturer's site to perform the contracted work. The employer of the construction workers operates a facility during the construction phase and should, therefore, report on these hazardous chemicals if applicable thresholds are met. For purposes of SARA Title III Sections 311/312, the manufacturing company is not required to factor into threshold calculations or report on any amounts of hazardous chemicals brought on site by the construction company because the manufacturer is not required to prepare or have available an MSDS for these chemicals under OSHA regulations. (November 1990 Monthly Hotline Report)

SARA SECTIONS 304 AND 311/312: EXEMPTION FROM THE DEFINITION OF A "HAZARDOUS CHEMICAL"

Question: A medical facility uses liquid nuclear magnetic resonance spectrometer. The spectrometer is used for medical diagnostic purposes. In addition, the facility is required

by OSHA to have an MSDS available for the liquid nitrogen. Is the liquid nitrogen at the facility considered a hazardous chemical for purposes of SARA Sections 304 and 311/312.

Answer: No. Section 311(e)(4) of SARA Title III and 40 CFR 370.2 and 355.20 of the regulations exclude from the definition of "hazardous chemical" any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of the technically qualified individual. For purposes of SARA Section 304 and 311/312, EPA considers this exemption to apply to chemicals that are used in machines or instruments that are directly used for medical or research purposes (e.g., medical diagnostic equipment, incubators, and oxygen at a hospital or in an ambulance). This exemption does not apply to chemicals used in machines or instruments that serve an ancillary function to the medical or research machines or instruments (e.g., fuel to run a hospital operating room emergency power generator). The exemption would also not apply to chemicals used in machines or instruments that do not have a direct medical or research purpose (e.g., fuel to run an ambulance or other facility vehicles or an autoclave used to sterilize instruments). Therefore, this exemption would not apply to building cleaning supplies used in research or medical facilities even though they may be used under the supervision of qualified individuals. It is important to note that the exemption applies to the substances rather than the facility. Under Section 302 of the law, there are no exceptions. Under Sections 311 and 312 only those substances which are used for medical or research facilities are exempt. Medical or research facilities may have other hazardous chemicals which are subject to reporting. These medical and research facilities may also be subject to reporting under Section 304 if there are any of these other hazardous chemicals present at the facilities in any amount. (November 1990 Monthly Hotline Report)

SARA SECTION 304 REPORTABLE QUANTITIES

Question: An asbestos removal contractor performs a capture technique at a facility within a 24-hour period. Assuming that 1,000 pounds of friable asbestos are located at the site and the contractor removes 999 pounds, would the one pound of asbestos that escaped capture be considered a release under CERCLA Section 103 or SARA Section 304? (Note: the reportable quantity for friable asbestos is one pound.)

Answer: As defined in CERCLA Section 101(22), a hazardous substance must be released "into the environment" in a reportable quantity before notification of the release is required under CERCLA. The term environment includes ... ambient air ,... [which] for purposes of CERCLA shall refer to the air that is not completely enclosed in a building or structure and that is over or around the grounds of the facility. A release into the air from a building or structure that does not reach the ambient air (either directly or via a ventilation system) is not a reportable event under CERCLA." (footnote omitted) (50 FR 13462) Therefore, the one pound of asbestos that escaped capture would be reportable under Section 103 of CERCLA only if it were released into the environment (i.e., ambient air). Further, under SARA Section 304(a), the release would be not be reportable even if it requires notification under CERCLA if it results in exposure to persons solely within the site or sites on which a facility is located. (December 1990 Monthly Hotline Report)

SARA SECTIONS 311/312 MIXTURES

Question: A facility has hydrofluoric acid which is a mixture of hydrogen fluoride and water. The MSDS specifies that the mixture is 50% hydrogen fluoride and 50% water. For purposes of reporting under SARA Sections 311/312, should the facility report on the hydrofluoric acid mixture or the 50% hydrogen fluoride?

Answer: Since the MSDS for hydrofluoric acid specifies that it is a mixture of 50% hydrogen fluoride and 50% water, the facility would only have to report the 50% hydrogen fluoride if it exceeded the 100 pound threshold planning quantity. See 40 CFR 370.28 (55 FR 30632, 30646 (July 26, 1990)). Hydrogen fluoride is the relevant Extremely Hazardous Substance, and its Sections 311/312 reporting threshold is 100 pounds. This is the case even though the CAS# for both hydrogen fluoride and hydrofluoric acid are the same. If more than 100 pounds of hydrogen fluoride is present at the facility, the facility may report hydrogen fluoride by itself (i.e., 100 pounds of hydrogen fluoride) or by the total weight of the mixture (i.e., 200 pounds of hydrofluoric acid). (December 1990 Monthly Hotline Report)

TITLE III: GENERAL

Question: What is the relationship between EPA's voluntary, non-regulatory Chemical Emergency Preparedness Program (CEPP) and Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA)?

Answer: In June 1985, the Administrator of EPA announced a comprehensive strategy for dealing with air toxics in the environment. As part of that strategy, EPA issued the CEPP interim guidance in December 1985. CEPP was developed to increase State and local community awareness of hazardous substances and to develop State and local emergency response plans and capabilities for dealing with chemical emergencies. A list of 366 extremely hazardous substances was included in the CEPP interim guidance as a focus for preparedness activities. On October 17, 1986, the Superfund Amendments and Reauthorization Act (SARA) was signed into law. A major SARA provision is Title III: "Emergency Planning and Community Right-to-Know Act of 1986." Title III establishes requirements for Federal, State, and local governments as well as industry regarding emergency planning and "Community Right-to-Know" reporting on hazardous chemicals. The emergency planning provisions of Title III require each State to establish a State emergency response commission (SERC), emergency planning districts, and a local emergency planning committee (LEPC) for each district. The state commission and local committees are responsible for preparing and implementing emergency plans as well as receiving and disseminating copies of material safety data sheets (MSDS), chemical inventory/release forms toxic chemical release forms, follow-up written notices (Section 304), and emergency response plans. EPA views Title III as the legislative embodiment of CEPP with several key additions. Title III builds upon EPA's CEPP and numerous State and local programs aimed at helping communities to meet their responsibilities regarding potential chemical emergencies by adding new, federally mandated concepts: a planning structure for the public sector (State commissions, planning districts, local committees) and reporting requirements for the private sector to help keep the community informed of potential chemical hazards. Title III also has provisions for training grants, a study of emergency systems, an emissions inventory, enforcement, civil suits, and trade secrets. The

general planning portions of the CEPP interim guidance (Chapters 1,2,4,5) have been incorporated into the Hazardous Materials Emergency Planning Guide developed by the National Response Team (NRT). This guide, published in March 1987, met the Title III requirement for the NRT to publish guidance on the preparation of emergency plans by March 17, 1987. The specific technical aspects of the CEPP interim guidance (site specific information and criteria included in Chapters 3 and 6) were issued in December 1987 in the Technical Guidance for Hazards Analysis as a supplements to the NRT guide. (Q&A June 1, 1989, #1)

EMERGENCY PLANNING: (SECTIONS 301-303, 305)

Question: How are States expected to form their State emergency response commission (SERC) as required under Title III?

Answer: States are required to establish a State emergency response commission (SERC) under Title III. The SERC may consist of existing emergency response organizations or may be an entirely new mechanism to address this requirement. A SERC is responsible for designating emergency planning districts within the State and appointing, supervising, and coordinating a local emergency planning committee for each district. Where appropriate, existing political subdivisions or multi-jurisdictional planning organizations may be designated as the districts and committees. EPA believes it is important that these SERCs include representation from more than one State agency. Many State commissions agree and have included agencies dealing with environmental protection, emergency management, public health, occupational safety and health, labor, transportation, the attorney general's office, and commerce department, as well as other appropriate public and private sector interests. Each of these agencies have expertise to bring to an emergency response commission. In addition, EPA's regional offices are available to assist States in establishing and implementing required planning structures. Expertise in chemicals, process safety, and the hazards posed by chemicals make State environmental protection agencies vital to the SERCs. State emergency management agencies' knowledge of emergency planning and preparedness is also needed in order to make a State commission an effective tool for emergency planning at the local level. Public health agencies can provide the knowledge of potential consequences to human health including worker safety, while the transportation agency should be involved due to the prevalence of transportation incidents involving hazardous materials. Working together, these agencies can help the State better meet its responsibilities under Title III. Of course, a governor may wish to choose one of these agencies to serve as the lead agency for the Commission. Some States have established such an organization; other States have enlisted the assistance of industry and transportation officials in such multi-agency/organization forums. The more expertise in a State commission, the better that commission will be able to meet the Title III requirements and assist communities in meeting their responsibilities to their citizens. A December 1986 letter from the National Governor's Association to all governors summarizes the Title III requirements and requests the designation of a contact person in each governor's office to receive further information on what other States and EPA are doing to implement Title III. The letter also mentions the existence of a State Chemical Preparedness Program contact and a State representative to the Regional Response Team. The need to coordinate with these individuals in the development of the State commission was strongly emphasized. (Q&A June 1, 1989, #2)

EMERGENCY PLANNING: (SECTIONS 301-303, 305)

Question: Must the States notify EPA when they have established the State emergency response commissions and local emergency planning committees? Will EPA publish this information in the Federal Register or disseminate it in some way so that all affected parties may have access to it?

Answer: Although states are not required to notify EPA of the establishment of State emergency response commissions and local emergency planning committees, the Agency strongly encourages States to do so. In addition, EPA encourages States to notify the public, especially potentially affected facilities. Interested parties may contact their Governor's office for information on their State commission, or call the Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202 (in the D.C. area: 703-412-9810). EPA Regional Administrators have written to the governors of each State and Territory to inform them of the Title III requirements, to offer information and technical assistance in the development of State and local planning structures, and to request that they notify EPA of the establishment of the State emergency response commission. (Q&A June 1, 1989, #3)

EMERGENCY PLANNING: (SECTIONS 301-303, 305)

Question: Title III requires each local emergency planning committee to prepare an emergency plan by October 17, 1988 and update them annually. What federal resources will be available to State and local governments to prepare and update these plans?

Answer: Recognizing that emergency planning is primarily a State and local responsibility, Congress did not explicitly authorize Federal funds for implementation of Title III requirements. However, Section 305(a) of Title III does authorize $5 million a year for the Federal Emergency Management Agency (FEMA) to make grants to support State/local- and university-sponsored programs for training-related activities associated with hazardous chemicals. These funds were available in FY 87-88. In the absence of explicit grant making authority for emergency planning activities, the Federal government will continue to provide technical assistance and guidance as well as training to support state and local emergency planning. EPA, along with other members of the National Response Team, has developed the Hazardous Materials Emergency Planning Guide, which was published in March 1987. This was supplemented in December of 1987 with the Technical Guidance for Hazard Analysis of extremely hazardous substance. In addition chemical profiles on each extremely hazardous substance are available to each State emergency response commission. EPA, FEMA, the States, the Chemical Manufacturers Association (CMA), other industry and trade associations, and public interest groups developed a booklet, It's Not Over in October, in September 1988. This booklet offers suggestions to local emergency planning committees to help them implement Title III. EPA will also continue to provide technical assistance and training to States and local communities through its regional offices and the Environmental Response Team (ERT) in Edison, New Jersey. ERT, in addition to its ongoing training courses, is developing two additional training modules focusing on extremely hazardous substances. EPA and FEMA have developed a hazardous materials contingency planning course with train-the-trainer delivery for states. EPA is developing a module on the National Contingency Plan, the hazardous materials response system, and the extremely

hazardous substances for incorporation into 17 currently identified FEMA emergency preparedness and response courses. Additionally, EPA regional offices, along with other Federal agencies Federal agencies through workshops and consultation with State and local officials upon request. (Q&A June 1, 1989, #4)

EMERGENCY PLANNING: (SECTIONS 301-303, 305)

Question: What will happen if a State refuses to comply with the emergency planning provisions?

Answer: A governor who does not designate a State emergency response commission becomes the commission by default. While the governor could choose not to fulfill any of the Title III provisions, the public could still request information that would be submitted by facilities as part of the emergency plan, material safety data sheets (MSDS), inventory forms, toxic chemical release forms, and follow-up emergency notices. In addition, Title III provides for citizens to bring suits against the State Governor or the State emergency response commission to force them to comply with certain Title III provisions. (Q&A June 1, 1989, #5)

EMERGENCY PLANNING: FEMA GRANTS: (SECTIONS 301-303, 305)

Question: Section 305(a) of Title III authorizes the Federal Emergency Management Agency (FEMA) to make grants to support State and local government and university-sponsored training programs. Specifically, what can these grants be used to fund?

Answer: The grants will be used to expand training activities beyond the existing training base of States. All training offered under Section 305(a) funding must be in addition to training already underway. The National Response Team has identified courses supporting Title III that warrant increased availability among State and local personnel. Each State emergency response commission will be responsible for channeling training to high hazard or priority areas and for approving training proposals within the state. EPA expects initial heavy emphasis on planning and awareness training, consistent with Title III objectives. FEMA and EPA have developed an addendum to the Comprehensive Cooperative Agreement (CCA) which will allow States to submit requests for these funds. This addendum was sent to all States on June 24, 1987. (Q&A June 1, 1989, #6)

EMERGENCY PLANNING AND FUNDING: (SECTIONS 301-303, 305)

Question: Are emergency exercise design, development, and implementation activities eligible to be funded under Section 305(a)?

Answer: Emergency exercises involving hazardous substances - such as tabletop, functional, and full-field exercise activities - are conducted routinely throughout the United States. Exercises which are part of specific courses or workshops such as EPA's Hazardous Materials Incident Response Operations course are covered under Section 305(a) funding for 1988. (Q&A June 1, 1989, #7)

EMERGENCY PLANNING: (SECTIONS 301-303, 305)

Question: To what extent is a State required to plan if there are only a few (or no) facilities having extremely hazardous substances present in excess of threshold planning quantities, but there is significant interstate transportation of these and other hazardous substances?

Answer: While Section 327 of Title III generally exempts the transportation of hazardous materials from coverage under most Title III reporting requirements, the law does require comprehensive emergency plans that address all hazardous materials and the potential for both fixed facility and transportation incidents (Section 303). The list of extremely hazardous substances should provide a focus and a starting point for planning. Therefore, the transportation routes and facilities with significant inventories of hazardous substances should be considered in any plan. Finally, Section 301 includes transportation officials among those representatives who must participate in local planning committees. (Q&A June 1, 1989, #8)

EMERGENCY PLANNING AND PLAN REVIEW: (SECTIONS 301-303, 305)

Question: Title III states that the Regional Response Teams (RRTs) "may" review and comment upon an emergency plan. What criteria will the RRT use for reviewing these plans?

Answer: The National Response Team (NRT) published the Hazardous Materials Emergency Planning Guide in which Appendix D: Criteria for Assessing State and Local Preparedness contains an adaption of criteria developed by the NRT/Preparedness Committee in August 1985. These criteria may be used for assessing local emergency plans. The NRT developed a document that contains a set of criteria which may be used by the RRT to review local plans. The document Criteria for Review of Hazardous Materials Emergency Plans (NRT-1A) was approved in May 1988. These criteria may be used by local emergency planning committees for preparing plans and also by the State emergency response commissions for reviewing the plans. (Q&A June 1, 1989, #9)

EMERGENCY PLANNING AND NOTIFICATION: (SECTIONS 301-303, 305)

Question: What is the primary purpose of Section 302 notification requirements?

Answer: Notifications indicating that a facility has one or more extremely hazardous substances in excess of the threshold planning quantity help to identify locations within the State where emergency planning activities can be initially focused. While the substances on the list do not represent the entire range of hazardous chemicals used in commerce, they have been designated as those substances which are, in the event of an accident, most likely to inflict serious injury or death upon a single, short-term exposure. Therefore, Section 302 notifications should be useful in helping State and local governments identify those areas and facilities that represent a potential for experiencing a significant hazardous material incident. (Q&A June 1, 1989, #10)

EMERGENCY PLANNING AND THE LIST OF HAZARDOUS SUBSTANCES: (SECTIONS

301-303, 305)

Question: What is purpose of the list of extremely hazardous substances in regards to the emergency planning requirements of Title III?

Answer: The extremely hazardous substances list and its threshold planning quantities are intended to help communities focus on the substances and facilities of most immediate concern for emergency planning and response. However, while the list includes many of the chemicals which may pose an immediate hazard to a community upon release, it does not include all substances which are hazardous enough to require community emergency response planning. There are tens of thousands of compounds and mixtures in commerce in the United States, and in specific circumstances many of them could be considered toxic or otherwise dangerous. The list represents only a first step in developing effective emergency response planning efforts at the community level. Without a preliminary list of this kind, most communities would find it very difficult to identify potential chemical hazards among the many chemicals present in any community. Similarly, threshold planning quantities are not absolute levels above which the extremely hazardous substances are dangerous and below which they pose no threat at all. Rather, the threshold planning quantities are intended to provide a "first cut" for emergency response planners in communities where these extremely hazardous substances are present. Identifying facilities where extremely hazardous substances are present in quantities greater than the threshold planning quantities will enable the community to assess the potential danger posed by these facilities. Communities also will be able to identify other facilities posing potential chemical risks and to develop contingency plans to protect the public from releases of hazardous chemicals. Sections 311 and 312 of Title III provide a mechanism through which a community will receive material safety data sheets and other information on extremely hazardous substances, as well as many other chemicals, from many facilities which handle them. A community can then assess and initiate planning activities, if desirable, for extremely hazardous substances below the threshold planning quantity and for any other hazardous substances of concern to them. In addition to the assistance provided by the extremely hazardous substances list and the threshold planning quantities, community emergency response planners will be further aided by the National Response Team's Hazardous Materials Emergency Planning Guide. A separate notice of availability of this document was published in the Federal Register on March 17, 1987 (52 FR 8360, 61) as required under Section 303(f) of Title III. The planning guide was supplemented in December 1987 with the Technical Guidance for Hazardous Analysis to assist local emergency planning committees in evaluating potential chemical hazards and setting priorities for sites. This technical document provides more detailed guidance on identifying and assessing the hazards associated with the accidental release of hazardous substances on a site-specific basis. It addresses considerations such as the conditions of storage or use of the substance (e.g., conditions of temperature or pressure); its physical properties (e.g., physical state - solid, liquid, or gas); volatility; dispersibility; reactivity; location (e.g., distance to affected populations); and quantity. EPA, FEMA, the States, CMA, other industry and trade associations, and public interest groups developed a booklet, It's Not Over in October, to offer suggestions to local emergency planning committees to help them implement Title III. (Q&A June 1, 1989, #11)

EMERGENCY PLANNING AND THRESHOLDS: (SECTIONS 301-303, 305)

Question: How did EPA determine threshold planning quantities for extremely hazardous substances?

Answer: The Agency assigned chemicals to threshold planning quantity (TPQ) categories based on an index that accounts for the toxicity and the potential of each chemical, in an accidental release, to become airborne. This approach does not give a measure of absolute risk, but provides a basis for relative measures of concern. Under this approach, the level of concern for each chemical is used as an index of toxicity, and physical state and volatility are used to assess its ability to become airborne. The two indices are combined to produce a ranking factor. Chemicals with a low ranking factor (highest concern), based on the Agency's technical review, are assigned a threshold planning quantity of one pound. It is believed that the one pound threshold planning quantity represents a reasonable lower limit for the most extremely hazardous substances on the list. Chemicals with the highest ranking factors, indicating lower concern, were assigned a threshold planning quantity of 10,000 pounds. This ensures that any facility handling bulk quantities of any extremely hazardous substances would be required to notify the State commission. Between the limits of one pound and 10,000 pounds, chemicals were assigned to intermediate categories of 10, 100, 500, or 1,000 pounds based on order of magnitude ranges in the ranking factors. The selection of the intermediate categories was based on standard industrial container sizes between one and 10,000 pounds. The Agency believes that limited State and local resources should be focused on those substances that could cause the greatest harm in an accidental release. The TPQs developed in this approach meet the objective such that substances that are most likely to cause serious problems (extremely toxic gases, solids likely to be readily dispersed, or highly volatile liquids) have lower TPQs than those that might be toxic but are not likely to be released to the air (non-reactive, non-powered solids). (Q&A June 1, 1989, #12)

EMERGENCY PLANNING AND THRESHOLDS: (SECTIONS 301-303, 305)

Question: How can a facility determine whether it has present an amount of an extremely hazardous substance (EHS) which equals or exceeds the threshold planning quantity?

Answer: To determine whether the facility has an amount of an extremely hazardous substance which equals or exceeds the TPQ, the owner or operator must determine the total amount of an extremely hazardous substance present at a facility on May 17, 1987 or any time after that date, regardless of location, number of containers, or method of storage. This calculation must also take into account the amount of an extremely hazardous substance present in mixtures or solutions in excess of one (1) percent and should include examination of such process components as reaction vessels, piping, etc., where formation of an EHS as a byproduct may take place. (Q&A June 1, 1989, #13)

EMERGENCY PLANNING AND SMALL BUSINESSES: (SECTIONS 301-303, 305)

Question: Will the local emergency planning committees impose significant

requirements on small businesses? Will EPA clarify the information requirements in the emergency planning guidance and in the rulemaking?

Answer: The Agency's small business analysis does not indicate that emergency planning requirements will cause a significant burden to small facilities. Small facilities are likely to use or store fewer extremely hazardous substances and handle smaller amounts, and their level of participation in the planning process will be less involved. In addition, small facilities as a class may be represented on local emergency planning committees, and their concerns will be addressed there. Participation in the planning process provides an opportunity to present concerns regarding the burden of planning and to ensure that local committee requests for information are necessary. In particular small businesses may wish to encourage special small business representation on the local emergency planning committee and also make their concerns known through their facility coordinators. In addition, the National Response Team's Hazardous Materials Emergency Planning Guide (notice of availability published on March 17, 1987, 52 FR 8360) describes the information requirements established under Title III and how this information will be useful in developing a local emergency plan. (Q&A June 1, 1989, #14)

EMERGENCY PLANNING AND EXEMPTIONS: (SECTIONS 301-303, 305)

Question: What types of facilities are exempt from Section 302 notification requirements?

Answer: With the exception of Federal facilities, Section 302 notifications are required from owners or operators of any facility that has present at any time, starting May 17, 1987, a listed extremely hazardous substance (EHS) in any amount exceeding the threshold planning quantity (TPQ) associated with that substance. (Q&A June 1, 1989, #15)

EMERGENCY PLANNING AND TRANSPORTATION: (SECTIONS 301-303, 305)

Question: How do Section 302 notification requirements apply to transportation of an extremely hazardous substance (EHS)?

Answer: Although Section 302 reporting requirements do not apply to the transportation of any EHS, including transportation by pipeline, or storage of EHS under active shipping papers, transportation activities within a community should be addressed in local emergency plans. (Q&A June 1, 1989, #16)

EMERGENCY PLANNING AND EXEMPTIONS: (SECTIONS 301-303, 305)

Question: Are facilities exempt form Section 302 notification requirements if they produce, use, or store mixtures whose extremely hazardous substance component information is not available on the MSDS provided by the manufacturer?

Answer: If the facility which produces, uses, or stores mixtures knows or reasonably should know the components of the mixture, the facility owner or operator must notify under Section 302 if the extremely hazardous substance component is more than one percent of the total weight of the mixture and equal to or more than the threshold planning quantity. (Q&A June 1, 1989, #17)

EMERGENCY PLANNING AND RESEARCH LABORATORIES: (SECTION 302)

Question: Since certain chemicals at research laboratories are exempt from the definition of "hazardous chemicals" and thus possibly exempt from release notification requirements under

Section 304, can this exclusion be extended to Section 302 planning requirements?
Answer: Title III defines "hazardous chemical" under Section 311 by reference to OSHA regulations. Under Section 311(e) "any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual" is excluded from the definition of "hazardous chemical." However, because the planning requirements are not tied in any way to the definition of "hazardous chemical," the "hazardous chemical" exclusion of Section 311(e) does not extend to Section 302. In addition, for emergency release notification purposes under Section 304, if a release of an extremely hazardous substance or CERCLA substance exceeds the reportable quantity and occurs on a facility that produces, uses, or stores a "hazardous chemical," the facility owner or operator must notify the required parties. Section 304 of Title III also states that releases of extremely hazardous substances and CERCLA substances are reportable under Section 304 only when they are released from a facility where "hazardous chemicals" are produced, used, or stored. Accordingly, the hazardous chemicals in the research laboratory are exempt from Section 304 emergency notification only if no hazardous chemicals are produced, used or stored at the facility, other than those used at the laboratory under direct supervision of a technically qualified individual. (Q&A June 1, 1989, #18)

EMERGENCY PLANNING AND INCINERATION: (SECTIONS 301-303, 305)

Question: If an extremely hazardous substance is not stored on-site but is produced in a process such as incineration, is it exempt from both threshold planning quantity calculation and release reporting if the release is covered by a Clean Air Act permit?
Answer: If the hazardous substance is produced on-site in a process such as incineration, it is considered present at the facility and subject to Section 302 reporting requirements (starting May 17, 1987 and continuing up to the present date) provided, of course, that the amount on site exceeds the threshold planning quantity at any one time. However, if the release is Federally permitted under Section 101(10) of CERCLA, which includes permitted emissions into the air under the Clean Air Act, then the release need not be reported under Section 304 of Title III. The proposed rulemaking on Federally permitted releases was published in the Federal Register July 19, 1988 (53 FR 27268). (Q&A June 1, 1989, #19)

EMERGENCY PLANNING AND STATE AND LOCAL LAWS: (SECTION 302)

Question: Can existing State and local laws that provide substantially similar emergency planning supersede the specific provisions of Section 302 of the Federal law?
Answer: Title III (Section 321) generally provides that nothing in Title III shall preempt or affect any State or local law. However, material safety data sheets, if required under a State or local law passed after August 1, 1985, must be identical in content and form to that required under Section 311. Accordingly, while Title III does not supersede State or local laws, EPA has no authority to waive the requirements imposed under Title III. These requirements, including the threshold planning quantities, are intended to be minimum standards. EPA is working with States that have developed reporting forms and planning structures to determine the most efficient approaches to avoid duplication of effort with existing State or local structures, forms, and requirements. (Q&A June 1, 1989, #20)

EMERGENCY PLANNING FACILITIES: (SECTIONS 301-303, 305)

Question: Does the statute allow the State to designate facilities which produce, use, or

store certain quantities of liquified petroleum gas, as emergency planning facilities?
Answer: EPA considers the designation of additional facilities to be accomplished through naming individual sites or companies, or by designation certain classes of facilities as newly covered by the emergency planning provisions of the Act. The classification scheme is one which is basically left to the Governor or the State or the SERC, after public notice and opportunity for comment. Designating facilities under Section 302(b)(2), even by targeting the facilities by the chemicals which they use or store does not have the effect of expanding the list of extremely hazardous substances (EHSs). Designating facilities under this provision only has the effect of subjecting these facilities to the emergency planning provisions of Subtitle A. Therefore, these facilities would not be subject to release reporting under Section 304, unless they also had listed chemicals, nor reporting at the lower of the threshold planning quantity or 500 pounds, under Section 311 and 312, because no substances have been added to the EHS list. (Q&A June 1, 1989, #22)

EMERGENCY RELEASE NOTIFICATION (SECTION 304)

Question: Who must be notified when a release occurs?

Answer: In the event that a listed CERCLA hazardous substance or extremely hazardous substance is released in an amount equal to, or exceeding the reportable quantity (RQ) for that substance, the following parties must be notified:

State emergency response commission (effective May 23, 1987);

Community emergency coordinator for the local emergency planning committee (effective August 17, 1987, or as soon as the local committee is established).

These notifications procedures are designed to provide for more timely notification to State and local authorities. In addition, the owner/operator of a facility is still required to notify the National Response Center (800/424-8802 or in DC 202/267-2675) when a release of CERCLA hazardous substance (in excess of an RQ) takes place. (Q&A June 1, 1989, #23)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): WHAT CHEMICALS ARE SUBJECT TO REPORTING

Question: What chemicals are subject to reporting under EPCRA Section 304?

Answer: Chemicals subject to Section 304 notification requirements are CERCLA hazardous substances listed under 40 CFR Table 302.4 and the extremely hazardous substances listed under 40 CFR 355 Appendix A and B. At present, the CERCLA list contains 719 chemicals or waste streams, 134 of which are also extremely hazardous substances. For the remaining 232 extremely hazardous substances not currently on the CERCLA list, their reportable quantity (RQ) is tentatively set at one pound until adjusted by rulemaking. For reportable quantity (RQ) release of one of the 232 extremely hazardous substances, the appropriate State and local agencies must be notified. The proposed rulemaking for adding these 232 chemicals to the CERCLA hazardous substance list was published on January 23, 1989 (54 FR 3388). When they become CERCLA hazardous substances, notification to the NRC will also be necessary. (Q&A June 1, 1989, #24)

EMERGENCY RELEASE NOTIFICATION (SECTION 304)

Question: What if the State commission and/or local committees must be notified of a release but have not yet been established?

Answer: States were required to establish their commissions by April 17, 1987, and those commissions were to establish local committees not later that 30 days after the designation of emergency planning districts or by August 17, 1987, whichever is earlier. Section 301 of Title III provides that if the State commission is not set up by April 17, 1987, the Governor must operate as the State commission, and thus notification must be made even if no commission is established. However, EPA has been informed that all States have established an emergency response commission. Local committees are required to be established not later than 30 days after the designation of emergency planning districts or by August 17, 1987, whichever is earlier. If local committees are not set up by August 17th, EPA encourages facilities to provide notifications to local emergency personnel such as local emergency management offices or fire departments. Local and State governments may make arrangements necessary for the receipt of the release information when local committees are not yet established. (Q&A June 1, 1989, #25)

EMERGENCY RELEASE NOTIFICATION (SECTION 304)

Question: How is an off-site release determined to be subject to Section 304 notification requirements?

Answer: A release need not result in actual exposure to persons off-site in order to be subject to release reporting requirements; potential exposure is sufficient. Any release into the environment above the reportable quantity may have the potential to result in exposure to persons off-site and therefore should be reported under Section 304 notification. (Q&A June 1, 1989, #27)

EMERGENCY RELEASE NOTIFICATION (SECTION 304)

Question: Do the CERCLA and Title III telephone notifications include the same basic information, such as whether the incident is still ongoing, abatement actions by whatever entities, cause of the accident, injuries caused by the incident if known, amount spilled, etc.?

Answer: The Agency does not believe that the notification specified in Section 304 should vary from the CERCLA notification in any significant way. (Q&A June 1, 1989, #28)

EMERGENCY RELEASE NOTIFICATION (SECTION 304)

Question: Should the written follow-up information go not only to the local emergency planning committee and the State commission but also to the State environmental agency?

Answer: Section 304(c) of Title III mandates that written follow-up notification go to the same entities that received the initial oral notification, i.e., the State commission and the local

emergency coordinator of the local emergency planning committee. Title III does not require that written follow-up information be given to the State environmental agency. However, written follow-up reports are available to the state agency as to any other member of the public under Section 324. In most cases, environmental agencies are represented on the commission and thus may receive the information directly. (Q&A June 1, 1989, #29)

EMERGENCY RELEASE NOTIFICATION (SECTION 304)

Question: Should the location and cause of an incident be included in the written follow-up report?

Answer: To be consistent with CERCLA, EPA believes that the location of the releases is always essential for both emergency response and follow-up actions and should be identified in any release notification under Section 304. The cause of the accident should always be included in the follow-up report to provide information for local, State, and Federal officials for preparedness and prevention purposes. (Q&A June 1, 1989, #30)

EMERGENCY RELEASE NOTIFICATION (SECTION 304)

Question: Should the written notification also include results of a facility's inspection?

An inspection may specify measures to be applied to prevent future releases.
Answer: While this information is certainly useful in terms of preventing similar releases, it is not required. However, State and local governments may wish to require such information as part of their notification programs. EPA has begun an initiative to focus corporate attention on releases. It is called the Accidental Release Information Program. Under this program, a facility who has more than a specific number of releases of a certain hazardous substance, or releases in certain quantities above the reportable quantity, must report in writing to EPA the cause of the accident, prevention practices in place, and the specific steps that are being taken to prevent recurrence of the release. (Q&A June 1, 1989, #31)

EMERGENCY RELEASE NOTIFICATION (SECTION 304)

Question: The follow-up emergency notice requires the owner or operator of a facility that has released a reportable quantity of a substance requiring Section 304 notification to relate, in a follow-up notice, "any known or anticipated acute or chronic health risks associated with the release." Since general health information is already given on a material safety data sheet (MSDS) for the chemical, will an indication that "severe adverse health effects may be expected" suffice for this requirement?

Answer: No. The health information contained in an MSDS is not specific enough to be of use health professionals, especially if the chemical name is confidential on the MSDS. However if the MSDS does contain specific information, it should be reported in the follow-up emergency notice. (Q&A June 1, 1989, #32)

EMERGENCY RELEASE NOTIFICATION AND EXEMPTION (SECTION 304)

Question: What facilities are exempt from Section 304 notification requirements?

Answer: A facility itself can only be exempted if there are no hazardous chemicals present at the facility. The term "hazardous chemical," as defined under Section 311 of Title III, includes any substance which constitutes a physical or health hazard. This broad definition is borrowed from the Occupational Safety Health Act (OSHA) Hazard Communication Standard, but there are certain exemptions specified in Section 311. However, there is no single classification or type of business (e.g. manufacturers) that are not subject to Section 304 reporting requirements. Therefore, it is probable that few, if any, facilities will actually have no hazardous chemicals and thus be exempt from Section 304 notification requirements. (Q&A June 1, 1989, #34)

EMERGENCY RELEASE NOTIFICATION AND EXEMPTION (SECTION 304)

Question: Are there exemptions to Section 304 reporting requirements?

Answer: The statute provides several exemptions from notification. They are:
(a) "federally permitted release" as defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 Section 101(10);
(b) releases which results in exposure only to persons solely within the facility boundaries;
(c) releases from a facility which produces, uses, or stores no hazardous chemicals;
(d) "continuous releases" as defined under CERCLA Section 103(e) except for initial reporting of the release and statistically significant releases;
(e) application of a Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registered pesticide, as defined under CERCLA Section 103(e) in accordance with its intended purpose;
(f) emissions from engine exhaust of a motor vehicle, rolling stock, aircraft, or pipeline pumping station;
(g) normal application of fertilizer; and
(h) release of source, byproduct, or special nuclear material from a nuclear incident at a facility subject to requirements of the Price-Anderson Act (i.e. nuclear power plants).
It should be noted, however, that some releases occurring at a facility which are not reportable under Section 304 may still be reportable releases under CERCLA 103 and, if so, must be reported to the National Response Center. Release reporting under Section 304 is in addition to release notification under CERCLA Section 103. Thus, notice to the National Response Center may be required even if no local or State reporting is required. (Q&A June 1, 1989, #35)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): CONTINUOUS AND FEDERALLY PERMITTED RELEASES

Question: How are "continuous" and "federally permitted" releases interpreted?

Answer: Certain conditions must be examined in order to determine whether a release meets the definition of "federally permitted" or "continuous" release and therefore, may not be required to be reported under Section 304. Section 101(10) of CERCLA defines "federally permitted releases" for purposes of Section 103 of CERCLA and release notification under Title III and includes 11 types of specific releases permitted under certain State and Federal programs. As

EPA issues clarifications of "federally permitted release" under Section 103 of CERCLA, these clarifications will apply equally to release notifications under Section 304 of Title III. The proposed rulemaking on "federally permitted releases" was published on July 19, 1988 (53 FR 27268). Under the provisions of Section 103 of CERCLA, the release must be continuous and predictable with respect to quantity and time in order to be exempt from Section 304 reporting requirements. In the interim, EPA is available to help clarify these definitions as they apply to specific circumstances in order to ensure compliance with the intent of these reporting requirements. "Continuous" releases must be reported annually under CERCLA Section 103, but do not have to be reported under Section 304 of Title III. The proposed rulemaking on "continuous" releases was published April 19, 1988 (53 FR 12868). (Q&A June 1, 1989, #36)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): FEDERALLY PERMITTED RELEASES

Question: Does the "federally permitted release" exemption apply fully to State permitted releases?

Answer: No. State permitted releases are exempted only to the extent that the releases are considered "federally permitted" under Section 101(10) of CERCLA. (Q&A June 1, 1989, #37)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): CONTINUOUS RELEASES

Question: Are releases above the amount qualifying as a "continuous releases" exempt from Section 304 notification requirements?

Answer: Because "statistically significant increases" from a"continuous release" must be reported as an episodic release under CERCLA Section 103(a), such releases must also be reported under Section 304 of Title III. Any clarifications or regulations interpreting "continuous releases" or "statistically significant increases" under CERCLA Section 103(f) will also apply to Section 304 Title III. (Q&A June 1, 1989, #38)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): PERMITTED RELEASES

Question: If disposal of hazardous waste or solid waste is performed according to the permitting and other relevant requirements of the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), or other applicable Federal or State laws, is it subject to emergency release notification?

Answer: EPA is currently considering whether TSCA-regulated disposal sites should be subject to CERCLA notification. Regardless of the outcome of that decision, it is important to note that spills and accidents occurring during disposal and outside of the approved operation, and resulting in reportable releases of extremely hazardous substances of CERCLA hazardous substances, must be reported to the State emergency response commission and local emergency planning committee as well as to the National Response Center. In addition, PCB releases of a reportable quantity or more from a TSCA-approved facility (as opposed to disposal into such a facility), must be reported under Section 304 and to the National Response Center. The RCRA

disposal issue is similar to PCB disposal under TSCA. In a final rule issued in April 1985, EPA determined that where the disposal of wastes into permitted or interim status facilities is properly documented through the RCRA manifest system and RCRA regulations are followed, notification under CERCLA does not provide a significant additional benefit as long as the facility is in substantial compliance with all applicable regulations and permit conditions. However, spills and accidents occurring during disposal that result in releases of reportable quantities of hazardous substances must be reported to the National Response Center under CERCLA Section 103 (50 FR 13461; April 4, 1985). EPA believes that the same rationale applies to Section 304. However, no notification of proper disposal into RCRA facilities is required. (Q&A June 1, 1989, #39)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): MINING

Question: Are mining and mineral extraction wastes exempt under Section 304?

Answer: No. The release notification requirements apply if the wastes are CERCLA hazardous substances or extremely hazardous substances. (Q&A June 1, 1989, #40)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): PETROLEUM

Question: Does the CERCLA "petroleum exclusion" apply to release reporting under Section 304 of Title III, since "petroleum including crude oil or any fraction thereof" is exempt from reporting under Section 103 of CERCLA?

Answer: No. "Petroleum" is exempted generally from CERCLA responsibilities since it is excluded from the definition of a "hazardous substance" under Section 101(14) and "pollutant or contaminant" under Section 101(33) of CERCLA. Because no such exclusion exists under Title III, if extremely hazardous substances are present in petroleum, those substances are subject to applicable emergency planning and release notification requirements under Title III. (Q&A June 1, 1989, #41)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): REPORTABLE QUANTITIES

Question: Can the "de minimis" concept used in determining the threshold planning quantities in mixtures be applied in the determination of the reportable quantity for emergency release notification?

Answer: No. The "de minimis" quantity was set in place for threshold planning quantities simply to make the calculation of the total amount of extremely hazardous substances at a facility more straightforward for planning purposes. The de minimus concept does not apply to Section 304 release reporting, however, because the extremely hazardous substance is already in the environment potentially doing harm. Facilities should follow the "mixture rule" for reporting releases under Section 304. This rule has some relevance in reporting small quantities of hazardous substances. See the April 4, 1985 RQ rule (50 FR 13463). (Q&A June 1, 1989, #42)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): TRANSPORTATION-RELATED

Question: How are transportation-related releases covered under Section 304?

Answer: Section 304 covers all releases of listed hazardous or extremely hazardous substances, including those involved in transportation in excess of the reportable quantity (RQ). Owners or operators of transportation facilities may call 911 or the local telephone operator, in order to satisfy Section 304 notification requirements when a transportation-related release occurs. Local emergency planning committees should work with the local 911 system and telephone operators to ensure such transportation release notifications are immediately relayed to the community emergency coordinator. (Q&A June 1, 1989, #43)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): TRANSPORTATION OWNERS AND OPERATORS

Question: What is the responsibility of transportation owners or operators in the event of a spill or release of extremely hazardous substances or CERCLA hazardous substances?

Answer: Although owners or operators of facilities in transportation or those that store substances under active shipping papers are not required to notify State and local authorities with regard to Section 302 emergency planning, they are required to report releases under Section 304. With regard to stationary facilities, Section 304 requires owners and operators to report releases to the local emergency planning committee and to the State emergency response commission. Owners and operators of facilities in transportation under Section 304 are allowed to call the 911 emergency number or in the absence of a 911 number, the operator, in lieu of calling the State commission and local committee. The rationale for this separate reporting is that transportation operators on the road most likely will not know the telephone numbers of all relevant State and local entities on their routes. If the transportation operator is in a community which has a generic emergency number rather than 911, the generic number should be used. If the release is of a CERCLA hazardous substance, a call to the National Response Center is also required. Local committees should consider training all personnel responsible for receiving telephone notice of such a release, so that proper notification procedures will be maintained. (Q&A June 1, 1989, #44)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): TRANSPORATION-RELATED

Question: How does EPA define a "transportation-related release?"

Answer: EPA defines a "transportation-related release" to mean a release during transportation, or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee. (Q&A June 1, 1989, #45)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): TRANSPORTATION-RELATED

Question: In the case of transportation-related releases, should the emergency release notification requirements apply to the owner or the operator of the facility?

Answer: Either the owner or operator may give notice after a release. Owners and operators may make private arrangements concerning which party is to provide release notification. However, under Section 304 both owner and operator are responsible if no notification is provided. (Q&A June 1, 1989, #46)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): PIPELINES, BARGES AND OTHER VESSELS

Question: Do the Section 304 release notification requirements apply to pipelines, barges, and other vessels as well as to other transportation facilities?

Answer: Title III (Section 327) does not apply to the transportation of any substance or chemical including transportation by pipeline, except as provided in Section 304. Section 304 requires notification from facilities of releases of extremely hazardous substances and CERCLA hazardous substances. Section 327 exempts only hazardous substances from reporting and does not otherwise exempt the facility from Title III. The word "facility" is defined in Section 329 to mean stationary items, which would include pipelines. The definition also includes, for purposes of Section 304, motor vehicles, rolling stock, and aircraft. Because barges and other vessels are not included in the definition of "facility", they are not subject to Section 304 reporting requirements. (Q&A June 1, 1989, #47)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): AIR CARRIERS

Question: When and where should an air carrier report a release? For instance should the release be reported to the State where the release occurred or to the airport of destination?

Answer: Since aircraft should have radio communication capabilities, the report should be given to the State(s) likely to be affected by the release as soon as possible after the release. Reporting at the destination will not necessarily enable the provision of timely response to the affected areas. (Q&A June 1, 1989, #48)

EMERGENCY RELEASE NOTIFICATION (SECTIONS 103 AND 304)

Question: What are the differences in the various requirements for release notification under Section 103 of CERCLA and Section 304 of Title III?

Answer: Under Section 103 of CERCLA, a release of a hazardous substance, in an amount equal to or in excess of its reportable quantity (RQ) which is not otherwise exempted under CERCLA, must be reported to the National Response Center. Section 304 of Title III provides a similar reporting requirement for releases of extremely hazardous substances, as defined under Section 103. However, reporting under Section 304 must be given by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee

and to the State emergency response commission, as well as to the National Response Center for CERCLA hazardous substances. Releases from transportation incidents are also subject to the Section 304 reporting requirements. A proposed rulemaking was published on January 23, 1989 (54 FR 3388) to designate under Section 102 of CERCLA all extremely hazardous substances which are not already defined as "hazardous substances" under Section 101(14) of CERCLA. At that time, any substance requiring local and State release reporting under Section 304 of Title III will also require reporting to the National Response Center under CERCLA Section 103. In addition, the extremely hazardous substances will continue to trigger contingency planning requirements in addition to release reporting. With regard to the contents of the required notification under SARA Section 304 and CERCLA Section 103, the required contents of Section 304 emergency notification are set out in Section 355.40. Although Section 103(a) of CERCLA does not specify the contents of release notification, the information necessary under Section 103(a) for potential federal response (e.g., type of substance and nature, location, and effects of the release) should not differ for any practical purpose from content of the notice specified under Section 304. Section 304 also requires follow-up written emergency notice to the State emergency response commissions and the local emergency planning committees that received the initial verbal notification. This reporting is not required to be sent to the NRC. (Q&A June 1, 1989, #49)

EMERGENCY RELEASE NOTIFICATION (SECTION 304): REPORTABLE QUANTITIES AND THRESHOLD PLANNING QUANTITIES

Question: What is the relationship between RQs and TPQs?

Answer: The reportable quantity that triggers emergency release notification (Section 304) was developed as a quantity that when released poses potential threat to human health and the environment. The threshold planning quantities for emergency planning provisions (Section 302) were designed to help States and local communities focus their planning efforts. The TPQ is based on those quantities of substances that can cause significant harm should an accidental release occur. The Agency has taken several types steps to make the TPQs and the RQs consistent. The agency is reviewing RQ and TPQ methodologies and will be proposing a rule in the near future which will address these inconsistencies for all CERCLA hazardous substances which meet the criteria for extremely hazardous substances. This rulemaking will eliminate this concern. (Q&A June 1, 1989, #50)

LIABILITY UNDER TITLE III

Question: Can individuals, as members of a State emergency response commission or a local emergency planning committee, be sued and/or be held liable for their commission's or committee's failure to fulfill its Title III requirements?

Answer: Under Section 326, an individual may assert a Federal cause of action against a SERC in Federal court for the commission's failure to fulfill certain obligations under the Act. Section 326 authorizes only injunctive relief against a State commission, i.e., if successful, the citizen may compel the State commission to fulfill the Title III obligations listed under Section 326, but may not receive money damages for the State's failure to do so. The Act does not create a

Federal cause of action for citizens who wish to sue individuals as members of these State commissions or local committee. Thus, whether an individual can be liable as a member of a State commission is a question of the law of each particular State. In most states, this issue has been addressed by legislation or a ruling of the Attorney General. Also, EPA will shortly publish a summary of Tort Liability issues. (Q&A June 1, 1989, #52)

LIABILITY UNDER TITLE III

Question: What are the liabilities of members of a State emergency response commission and a local emergency planning committee, if an incident is not handled properly despite following procedures developed and reviewed by those commission and committee members? Can the individual members be sued and held liable?

Answer: The general rule is that persons who serve on government committees have no liability for their actions except for gross negligence. According to EPA's Office of General Counsel, however, this issue varies from state to state. Those who wish to know the answer to this question must check with their individual State Attorney General's offices with regard to liability when serving on State emergency response commissions and local emergency planning committees. (Q&A June 1, 1989, #53)

SECTION 311: MSDS REQUIREMENTS

Question: What are the requirements of Section 311 and what facilities are covered? Are there thresholds for reporting?

Answer: Section 311 requires that the owner or operator of a facility must submit a material safety data sheet (MSDS) for each hazardous chemical which meets or exceeds a specified threshold quantity at the facility, to the State emergency response commission, the local emergency planning committee, and the local fire department with jurisdiction over the facility. A list of MSDS chemicals may be submitted instead of an MSDS for each chemical. Section 311 applies to any facility required under the Occupational Safety and Health Act to prepare or have available an MSDS for a hazardous chemical. At present, this requirement to prepare or have available MSDSs applies to all facilities. As of September 24, 1988, non-manufacturing facilities also must comply with the requirement and by April 30, 1989, the construction industry must comply with this section. In a regulation published on October 15, 1987, EPA established a threshold below which facilities do not need to report. By October 17, 1987, MSDS, or a list of MSDS chemicals must be submitted on all hazardous chemicals present at a covered manufacturing facility in quantities that equal or exceed 10,000 pounds. EPA has designated a different and lower reporting threshold for extremely hazardous substances. The reporting threshold is 500 pounds or the threshold planning quantity, whichever is less. Because EPA has yet to establish a permanent threshold level effective the third year of reporting, MSDSs or a list of MSDS chemicals must be submitted by October 17, 1989 (or two years and three months after the manufacturing facility first becomes subject to these requirements), for all hazardous chemicals present in quantities between zero and 10,000 pounds for which an MSDS has not been submitted. However, EPA intends to revise the permanent threshold (effective the third year) such that the threshold will not be as low as zero pounds. That threshold will be

established based on a study of first year reporting and public comments. Revised MSDSs must be provided to the local emergency planning committee, the State emergency response commission, and the local fire department within three months after discovery of significant new information concerning the hazardous chemical. (Q&A June 1, 1989, #55)

SECTION 311: MSDS REQUIREMENTS

Question: How does the Occupational Safety and Health Administration (OSHA) expansion of the Hazard Communication Standard affect Section 311?

Answer: Section 311 of Title III applies to any facility covered by the OSHA Hazard Communication Standard (HCS). On August 24, 1987, OSHA published a rule expanding the coverage of HCS, which had previously been limited to the manufacturing sector, to non-manufacturing facilities except for the construction industry, SIC 15-17. The effective date of this expansion was June 24, 1988. Three months after this effective date (September 24, 1988), these facilities were required to comply with Section 311. The phase-in rule for the non-manufacturing facilities would follow this schedule:

September 24, 1988 - for facilities having any quantity at or above 10,000 pounds for hazardous chemicals and 500 pounds or the threshold planning quantity, whichever is lower, for extremely hazardous substances;

September 24, 1990 - for facilities having any quantity above zero pounds for both hazardous chemical and extremely hazardous substances, threshold level to be published by EPA.

The final thresholds for the third year of reporting are under review to determine the appropriate amounts. (Q&A June 1, 1989, #56)

SECTION 311: MSDS REQUIREMENTS AND THE CONSTRUCTION INDUSTRY

Question: How is the construction industry covered by Sections 311 and 312?

Answer: The February 15, 1989 Federal Register (54 FR 6886), stated that the HCS has been in effect for the construction industry since January 30, 1989. EPA published in the March 13, 1989 Federal Register (54 FR 10325), a clarification of the Section 311/312 deadlines for construction industry. The initial submission of MSDSs or alternative list is due by April 30, 1989. The initial submission of the Tier I or Tier II is March 1, 1990. (Q&A June 1, 1989, #57)

SECTION 311: MSDS REQUIREMENTS

Question: Is the Section 311 requirement an annual or a one-time reporting requirement?

Answer: Section 311 is not an annual reporting requirement. EPA has designed a three year "phase-in" schedule to balance the public's right to know with the potentially overwhelming flood of information to State and local governments. All hazardous chemicals present in quantities above the established threshold must have been submitted on or before October 17, 1987. EPA will also establish a third year threshold reporting on or before October 17, 1989, which will also constitute the permanent threshold for Section 311 reporting. Updates are due

within three months after discovery of significant new information or when a new hazardous chemical becomes present at the facility above established levels. Following this system, each hazardous chemical is only reported once, but the reporting of the chemicals could fall at two different times. (Q&A June 1, 1989, #58)

SECTION 311: MSDS REQUIREMENTS

Question: Were the reporting thresholds for those facilities covered by the OSHA expansion (those facilities required to comply with Section 311 in September 1988) the same as those for the October 17, 1987, requirement?

Answer: Yes. Based on information currently available, EPA believes that the threshold that applies to the manufacturing sector currently subject to Sections 311 and 312 apply to the non-manufacturing facilities. However, concerns were raised over the need to provide separate thresholds for the facilities subject to these requirements as a result of OSHA's expanded MSDS requirements. As a result, EPA undertook a more detailed analysis of the universe newly covered by the OSHA MSDS requirements, including a more detailed analysis of small business impacts and the need for separate thresholds for such facilities. Based on that analysis, EPA will maintain the same reporting thresholds for the non-manufacturing facilities. (Q&A June 1, 1989, #59)

SECTION 311: MSDS REQUIREMENTS

Question: How would a facility report a hazardous chemical that they acquired above the reporting threshold after the October 17, 1987, deadline for Section 311?

Answer: An update must be submitted within three months anytime there is discovery of significant new information, or if an unreported hazardous chemical is present in a quantity exceeding the reporting thresholds. This update can be the MSDS for the new hazardous chemical, an updated list of hazardous chemicals or an addendum to the original MSDS list submitted. (Q&A June 1, 1989, #60)

SECTION 311: MSDS REQUIREMENTS

Question: What is required if a list is submitted instead of the actual material safety data sheets (MSDS) under Section 311?

Answer: Instead of submitting an MSDS for each hazardous chemical, the owner or operator may submit a list of the hazardous chemicals for which the MSDS is required. This list must identify the hazard categories (acute health hazard, fire hazard, reactive hazard, chronic health hazard, and sudden release of pressure hazard) associated with each chemical and must include the chemical or common name of each hazardous chemical as provided on the MSDS. (Q&A June 1, 1989, #61)

SECTION 311: MSDS REQUIREMENTS

Question: Why does EPA recommend submitting a list rather than Material Safety Data Sheets (MSDS) to meet the requirements of Section 311?

Answer: Lists will minimize the paperwork burden for State and local governments and local fire departments. In addition, the list can be used as an index to inventory forms required under Section 312, since the information on both forms is grouped in terms of hazard categories. Local government officials and fire departments can request individual MSDSs for hazardous chemicals if it is a priority for their community. (Q&A June 1, 1989, #62)

SECTION 311: MSDS REQUIREMENTS

Question: If a facility submits a list to comply with Section 311, does the facility have to supply a revised MSDS with significant new information or a new MSDS for substances that become present on-site after the initial reporting deadline and exceed the threshold within three months as required by Section 311 (d)?

Answer: If a facility has only a list of hazardous chemicals, rather than the actual MSDS, the facility does not need to file a revised MSDS for any hazardous chemical upon discovery of new information. However, a facility must submit a revised list of any addition to the list if the new information about that chemical changes the hazard category under which it falls or the facility acquires a new substance above the threshold level that was not included on the initial list. (Q&A June 1, 1989, #63)

SECTION 311: MSDS REQUIREMENTS AND PUBLIC ACCESS

Question: Where should citizens go to request MSDSs on chemicals in a facility within their community?

Answer: Each submitted MSDS or list along with the community emergency response plan, and inventory form are to be made available to the public at a designated location during normal working hours. Each local emergency planning committee (LEPC) must publish annually a notice in local newspapers that the above forms have been submitted and are open to public viewing at the designated location. In addition, any person may obtain an MSDS by submitting a written request to the LEPC. If requested through the LEPC, MSDSs can be obtained for hazardous chemicals present at a facility in amounts below the threshold. (Q&A June 1, 1989, #64)

TIER I/TIER II REPORTING (SECTION 312)

Question: The reporting under Section 312 is in two tiers, Tier I and Tier II. What are the general differences between the two forms?

Answer: Section 312 includes a two tier approach. Tier I requires information (such as maximum amount of hazardous chemicals at the facility during the preceding year, an estimate of the average daily amount of hazardous chemicals at the facility, and the general location) be aggregated and reported by hazard categories. Tier II not only requires the information

mentioned above, but also requests information on specific location and storage. Finally, Tier I is required by Federal law; Tier II is required only upon request by the local committee of State commission. However, a covered facility may submit Tier II forms instead of Tier I forms. Also, States may pass legislation requiring Tier II forms. (Q&A June 1, 1989, #67)

TIER I/TIER II REPORTING REQUIREMENTS (SECTION 312)

Question: Who is required to submit a Section 312 Tier I Form?

Answer: The requirements of Section 312 (40 CFR 370) apply to the owner or operator of any facility that is required to prepare or have available a material safety data sheet for a hazardous chemical under the OSHA Hazard Communication Standard. Reporting thresholds have been established under this Section below which a facility does not need to report. These thresholds are: For extremely hazardous substances:

500 lbs or the threshold planning quantity, whichever is lower, on March 1, 1988 and annually thereafter.

For hazardous chemicals which are not extremely hazardous substances:

10,000 lbs for March 1, 1988 (for calendar year 1987, or the first year reporting);

10,000 lbs for March 1, 1989 (for calendar year 1988, or the second year reporting);

For March 1, 1990 (for calendar year 1989, or the third year reporting) and annually thereafter. EPA will publish the final threshold amount as soon as it is determined. (Q&A June 1, 1989, #68)

TIER I/TIER II REPORTING (SECTION 312): DEADLINE AND WHERE TO SEND THE FORM

Question: Where should the Tier I form be sent and what is the deadline?

Answer: The owner or operator subject to this reporting requirement must submit a Tier I inventory form (or the optional Tier II inventory form) for all hazardous chemicals present at the facility in excess of the established threshold to the State emergency response commission, the local emergency planning committee, and the local fire department with jurisdiction over the facility. The deadline for submitting Tier I (or the optional Tier II) inventory forms is March 1, 1988, and annually thereafter by March 1. (Q&A June 1, 1989, #69)

TIER I/TIER II REPORTING (SECTION 312): LOCATION IDENTIFICATION

Question: How should locations be identified on Tier I/II forms?

Answer: Tier I forms provide for listing the general location for all applicable chemicals in each hazard category, including the names and identifications of buildings, tank fields, lots, sheds, or other such areas. Tier II forms provide for reporting buildings, at a minimum, and allow facilities to describe briefly the location of hazardous chemicals on the form itself or to submit site plans or site coordinates. Submitting additional information, such as site plans and site coordinate system may be useful on a site-by-site basis but is not necessary for every facility.

(Q&A June 1, 1989, #70)

TIER I/TIER II REPORTING (SECTION 312) AND PUBLIC ACCESS

Question: How will citizens have access to Tier I or Tier II inventory forms?

Answer: Tier I information may be obtained from State emergency response commissions or local emergency planning committees during normal working hours. Tier II information for a specific chemical at a facility may be obtained by sending a written request to the State emergency response commission or the local emergency planning committee. If they do not have the requested Tier II information, they must obtain it from the facility. For chemicals present below 10,000 pounds, the response is discretionary by either the State emergency response commission or the local emergency planning committee and depends on the justification of need by the requestor. The facility must make the information available to the SERC or LEPC if they request it on behalf of the individual. (Q&A June 1, 1989, #72)

TIER I/TIER II REPORTING (SECTION 312)

Question: In complying with a public request for Tier II information under Section 312, how is "need" determined?

Answer: Guidelines for determining need to know are the responsibility of the local emergency planning committees and State emergency response commissions. (Q&A June 1, 1989, #73)

TIER I/TIER II REPORTING (SECTION 312)

Question: OSHA expanded its Hazard Communication Standard on August 24, 1987. Does this affect Section 312 of Title III?

Answer: Yes. OSHA has expanded the Hazard Communication Standard (HCS) to cover non-manufacturers as well as manufacturers in all Standard Industrial Classification (SIC) Codes. The effective date of the expansion of HCS for non-manufacturers is June 24, 1988. Therefore, facilities that are newly covered by this expansion will be subject to Section 312 reporting requirements on March 1, 1989 for reporting on calendar year 1988. Facilities in the construction industry which were newly covered by OSHA requirements as of January 30, 1989 will begin reporting under Section 312 on March 1, 1990 for calendar year 1989.
(Q&A June 1, 1989, #74)

HAZARD CATEGORIES (SECTIONS 311 AND 312)

Question: Sections 311 and Section 312 group chemicals according to hazard categories.

What are these categories?
Answer: In the law, the reporting requirements for Section 311 and Section 312 are based on the 23 physical and health hazards identified under OSHA regulations. Under Sections 311 and 312, EPA was permitted to modify these categories of health and physical hazards. EPA recognized

that a smaller number or reporting categories might make managing the information easier as well as increase its usefulness, particularly since information on chemicals that present more than one hazard must be provided in all applicable categories. Based on public comment, EPA modified OSHA's 23 hazard categories to the following five hazard categories:

Immediate (acute) health hazard, includes "highly toxic," "toxic," "irritant," "sensitizer," "corrosive," and other hazardous chemicals that cause an adverse effect to a target organ which usually occurs rapidly as a result of a short term exposure.

Delayed (chronic) health hazard, includes "carcinogens" and other hazardous chemicals that cause an adverse effect to a target organ and the effect of which occurs as a result of long term exposure and is of long duration.

Fire hazard, includes "flammable," "combustible liquid," "pyrophoric," and "oxidizer."

Sudden release of pressure hazard, includes "explosive," and "compressed gas."

Reactive hazard, includes "unstable reactive," "organic peroxide," and "water reactive." (Q&A June 1, 1989, #75)

MIXTURES: SECTIONS 311 AND 312

Question: How are mixtures handled for Sections 311 and 312 reporting?

Answer: The owner or operator of a facility may meet the requirements of Sections 311 and 312 by choosing one of two options:

Providing the required information on each component that is a hazardous chemical within the mixture. In this case, the concentration of the hazardous chemical in weight percent must be multiplied by the mass (in pounds) of the mixture to determine the quantity of the hazardous chemical in the mixture. No MSDS has to be submitted for hazardous components in a mixture with quantities in concentrations under 0.1 percent for carcinogens and 1 percent for all other hazardous components of the total weight of the mixture.

Providing the required information on the mixture as a whole, using the total quantity of the mixture.

When the composition of a mixture is unknown, facilities should report on the mixture as a whole, using the total quantity of the mixture. Whichever option the owner or operator decides to use, the reporting of mixtures must be consistent for Sections 311 and 312, where practicable. (Q&A June 1, 1989, #76)

MIXTURES: SECTIONS 311 AND 312

Question: For Section 311 reporting, how are mixtures identified if a list is submitted instead of the MSDSs?

Answer: An owner or operator can comply with the requirements of Section 311 for a mixture of hazardous chemicals by providing the common or trade name of the mixture listed by hazard category or by listing the hazardous components. (Q&A June 1, 1989, #77)

MIXTURES: SECTIONS 311 AND 312

Question: Under Sections 311 and 312, when extremely hazardous substances are

contained within a mixture, does a facility still have the option to report the mixture as a whole or by its hazardous components?

Answer: Yes; the mixture may be reported as a whole or by its hazardous components. (Q&A June 1, 1989, #78)

MIXTURES: SECTIONS 311 AND 312

Question: With regard to thresholds in mixtures, how is reporting under Sections 311 and 312 handled if a facility has a number of different mixtures on-site and each is under 10,000 pounds but the mixtures contains an aggregated quantity of an extremely hazardous substance (EHS) that exceeds its reporting threshold?

Answer: If extremely hazardous substances are hazardous components of a mixture, the quantity of the extremely hazardous substance in each mixture shall be aggregated to determine if the threshold value has been reached for the facility. Reporting may be accomplished by reporting on the component or the mixture even if the amount of the mixture(s) is below the reporting threshold. (Q&A June 1, 1989, #79)

EXEMPTIONS: SECTIONS 311 AND 312

Question: Are there any exemptions under Title III for Sections 311 and 312?

Answer: There are five exemptions under Sections 311 and 312. These exemptions are:

Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration;

Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

Any substance to the extent it is used in routine agricultural operations or is fertilizer held for sale by a retailer to the ultimate customer.

There are also a number of exemptions under the OSHA Hazard Communication Standard which affect the requirement for preparing or having available an MSDS. These are listed in 29 CFR Section 1910.1200(b). (Q&A June 1, 1989, #80)

EXEMPTIONS AND RESEARCH LABORATORIES AND MEDICAL FACILITIES: SECTIONS 311 AND 312

Question: Are research laboratories and medical facilities exempt from reporting under Sections 311 and 312?

Answer: Research laboratories and medical facilities are not exempt from reporting

requirements under Sections 311 and 312, rather, Section 311(c)(4) of Title III excludes from the definition of hazardous chemical: "Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual." The exclusion applies to research laboratories as well as quality control laboratory operations located within manufacturing facilities. Laboratories that produce chemical specialty products or full scale pilot plant operations are considered to be part of the manufacturing facility and therefore would not be a "research laboratory." With respect to hospitals or medical facilities, the exemption applies only to hazardous chemicals that are used at the facility for medical purposes under the supervision of a "technically qualified individual." Veterinary facilities are included. (Q&A June 1, 1989, #81)

EXEMPTIONS AND PHARMACEUTICAL RESEARCH LABS: SECTIONS 311 AND 312

Question: A pharmaceutical research lab contains a pilot plant of its overall operation. The products manufactured in the pilot plant are not sold, but are distributed to hospitals and other health care facilities for use in continued clinical testing. Is the pilot plant exempt or must it report its hazardous chemicals under Sections 311 and 312?

Answer: In this case, because the pilot plant operation does not manufacture products for sale, the hazardous chemicals would be exempt. The primary function of the plant is research and testing. (Q&A June 1, 1989, #82)

EXEMPTIONS AND MANUFACTURING FACILITIES: SECTIONS 311 AND 312

Question: Is a facility that manufactures household products exempt from reporting under Sections 311 and 312 due to the household products exemption in Title III?

Answer: Section 311(e) exempts from the definition of "hazardous chemical" any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. This exclusion applies to household or consumer products, either in use by the general public or in commercial or industrial use when the product has the same form and concentration as that intended for use by the public. It also applies to these products when they are in the same form and concentration prior to distribution to the consumer, even when the substance is not intended for use by the general public. The term "form" refers to the packaging, rather than the physical state of the substance. However, the manufacturer is exempt from reporting the manufactured product only when the product is in the final consumer form. The manufacturer is not exempt from reporting the raw or processing materials. (Q&A June 1, 1989, #83)

EXEMPTIONS: SECTIONS 311 AND 312

Question: A facility purchases sheets of metal in order to manufacture its final product. A MSDS is received with this order. Must this be reported under Sections 311 or 312?

Answer: OSHA's Hazard Communication Standard (HCS) exempts from the definition of "hazardous chemical" those substance such as "articles" which are manufactured items:

Formed to a specific shape or design manufacturing,
Which have an end use function dependent upon that shape or design,
To the extent they do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use (see 29 CFR 1910.1200(b)).
However, if the sheet metal's use has the potential to expose downstream employees in a different facility to a hazardous chemical, the manufacturer must prepare or have available an MSDS for that item, even if the manufacturer's own use of the item in its own facility does not have the potential to expose it's own employees to hazardous chemicals. Therefore, primary and secondary metalforming operations are not exempt from OSHA's HCS. Section 311 (e)(2) exempts, "any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use." EPA interprets this exemption for solids to be broader than OSHA's exemption for "articles." Under Sections 311 and 312, hazardous chemicals at the worksite are reported to state and local government officials and the information is made available to the public. The purposes of Sections 311 and 312 reporting are to inform the local community of the presence of chemicals that could potentially cause a release and thus, merit public concern. Considering this purpose, EPA does not believe that Congress intended local communities to be notified of the presence of hazardous chemicals that raise no potential for release as they are used in that particular community. Therefore, facilities performing traditional metalforming operations should be exempt from Section 311 and 312 reporting requirements because within these facilities the use of sheet metal does not cause a release of, or otherwise result in exposure to, a hazardous chemical within the sheet metal. The sheet metal used at these facilities would be exempt from Sections 311 and 312 reporting requirements whether or not they are required to prepare or have available an MSDS under the HCS. Facilities that perform secondary operations would not be exempt from Sections 311 and 312 reporting requirements. Within these facilities, the use of sheet metal may cause a release of, or otherwise result in exposure to, a hazardous chemical. This potential for exposure renders the sheet metal used at these facilities ineligible for Section 311(e)(2)'s exemption from Sections 311 and 312 reporting requirements. (Q&A June 1, 1989, #84)

EXEMPTIONS AND STORAGE MATERIALS: SECTIONS 311 AND 312

Question: Pipelines and similar transport systems have been included in the recent OSHA expansion (FR August 24, 1987). Must the "storage" materials in these facilities be reported under Sections 311 and 312.

Answer: Materials in pipelines are included in the general exemption for substances in transportation from all requirements under Title III except Section 304 release reporting. Therefore, despite the new coverage of these facilities under OSHA, the materials in pipelines are not subject 311 and 312. (Q&A June 1, 1989, #85)

EXEMPTIONS AND FARMERS: SECTIONS 311 AND 312

Question: Under Sections 311 and 312, must a farmer report the fertilizers, pesticides, and other chemical substances he uses to protect his crops?

Answer: Farming operations that include a manufacturing facility (within Standard Industrial

Classification (SIC) Codes 20-39) presently are subject to Sections 311 and 312. In addition, farming facilities not within these SIC codes but covered under the new OSHA expansion (FR August 24, 1987) generally are covered by Sections 311 and 312 as of June 24, 1988. As such, they should have complied with Section 311 MSDS or list requirements by September 24, 1988, and with Section 312 inventory reporting by March 1, 1989. Even if a farming operation is covered under Sections 311 and 312, many of the substances may still be exempt from most reporting requirements. Under Section 311(e)(5), any substance - when used in routine agricultural operations - is exempt from reporting under Section 311 and 312. This exemption is designed to eliminate the reporting of fertilizers, pesticides, and other chemicals substances when stored, applied, or otherwise used at the farm facility as part of routine agricultural activities. This exemption would also include the use of gasoline and diesel to run farm machinery and also paint to maintain equipment. Thus, the storage and use of a pesticide or fertilizer on a farm would be considered the use of a chemical in a routine agricultural operations and is, therefore; exempt under Sections 311 and 312. (Q&A June 1, 1989, #87)

EXEMPTIONS AND FARM SUPPLIERS AND RETAILERS: SECTIONS 311 AND 312

Question: Would a farm supplier or retail distributor be excluded from Sections 311 and 312 reporting based on the agricultural exemptions?

Answer: Under Section 311(e)(5), retailers are exempted from reporting requirements for fertilizers only. Therefore, substances sold as fertilizers would not need to be reported under Sections 311 and 312 by retail sellers. However, other agricultural chemicals, such as pesticides, would have to be reported under Sections 311 and 312 retail sellers. (Q&A June 1, 1989, #88)

EXEMPTIONS AND FARM COOPERATIVES: SECTIONS 311 AND 312

Question: How are the activities of "farm cooperatives" interpreted for reporting purposes?

Answer: Farm cooperatives would be subject to Sections 311 and 312 reporting requirements. (Q&A June 1, 1989, #89)

EXEMPTIONS AND TOBACCO AND NICOTINE: SECTIONS 311 AND 312

Question: Tobacco and tobacco products are exempt from reporting under Sections 311 and 312. Does this mean that nicotine extracted from the tobacco is also exempt?

Answer: No. Current OSHA regulations exempt tobacco or tobacco products under the definition of a hazardous chemical. Since Sections 311 and 312 incorporate this definition of hazardous chemicals, this exemption applies only to the tobacco and tobacco products. However, nicotine, when extracted from the tobacco, is not exempt because it is not a tobacco product. (Q&A June 1, 1989, #92)

EXEMPTIONS AND MINING FACILITIES: SECTIONS 311 AND 312

Question: Are mining facilities required to notify under Sections 311 and 312?

Answer: Mining facilities regulated by the Mining Safety and Health Administration, (MSHA) are not subject to OSHA's Hazard Communication Standard (HCS) and, therefore, are not subject to the Sections 311 and 312 requirements. However, it should be noted that because MSHA covers only actual mining activities, all other operations, such as refining, are covered under OSHA's HCS and are thus subject to Sections 311 and 312. (Q&A June 1, 1989, #93)

EXEMPTIONS AND PETROLEUM PRODUCTS: SECTIONS 311 AND 312

Question: Are petroleum products exempt from the reporting requirements of Sections 311 and 312?

Answer: Petroleum products are not specifically exempted from Sections 311 or 312 reporting. However, some products could fall under the exemptions listed in Section 311(e). (Q&A June 1, 1989, #94)

EXEMPTIONS AND HOUSEHOLD HEATING FUEL: SECTIONS 311 AND 312

Question: Is household heating fuel exempt from the Sections 311 and 312 requirements?

Answer: Section 311(e)(3) exempts, "any substance to the extent it is used for personal, family or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public." This household product exemption does not apply to the use of household heating oil at business buildings for heating purposes. This exemption was intended by Congress and EPA to apply to packaged products as opposed to substances transported in bulk, that are distributed to the general public in a form with which the general public is familiar. EPA stated in the preamble to the final regulations, "Thus a substance may be packaged in small containers when distributed as a household product but transported or stored in bulk quantities when used for other purposes. Even though in the same concentration as the household product, a substance may pose much greater hazards when present in significantly larger quantities. In addition, while the general public may be familiar with the hazards posed by small packages of hazardous materials, they may not be as aware of the hazards posed by or likely location of the same substances when transported or stored in bulk"" 52 FR 38344,38348 (October 15, 1987). Fuel oil used for heating business buildings is not transported or distributed in small containers. Rather, the heating oil is transported in bulk by truck and dispensed into storage tanks at the business address. Just as the heating oil is not "packaged" when being transported in bulk by truck, it is not "packaged" when dispensed into a storage tank at the business site. Although heating oil is present in the same concentration and used for the same purposes at both household and a business, only fuel oil used at a household would be exempt and only under the first clause of the exemption ("any substance to the extent it is used for personal, family or household purposes"). Therefore, heating oil used at business buildings is not exempt from Sections 311 and 312 reporting requirements. (Q&A June 1, 1989, #95)

STATE AND LOCAL PREEMPTION (SECTIONS 311 AND 312)

Question: What effect will Sections 311 and 312 requirements have on existing State and local "Right-to-Know" programs?

Answer: Title III does not pre-empt existing State or local laws. Sections 311 and 312 requirements establish "ground rules" for submitting information about the presence of hazardous chemicals in the community. Where existing "Right-to-Know" laws are in place, officials should examine their programs to see if their requirements conform to those established under Title III. Some key factors to consider are:

What kind of information is required?
What chemicals are covered?
Is information publicly available?
What are the reporting periods and frequency of reports?
Under what conditions can trade secret protection be granted?

Existing Right-to-Know programs that meet (or exceed) the basic requirements of Title III will satisfy Sections 311 and 312 reporting requirements. To avoid duplicate reporting forms, State and local governments may use their own forms, but such forms must, at a minimum, include the content of the published uniform federal format. (Q&A June 1, 1989, #97)

HOW EPCRA AFFECTS VARIOUS TYPES OF FACILITIES

Question: Are farmers subject to Title III? If so, why? What exactly do farmers have to do?

Answer: There are four major reporting requirements under Title III: emergency planning notification (Section 302), emergency release notification (Section 304), community right-to-know (Section 311 material safety data sheets and Section 312 emergency and hazardous chemical inventory forms) and toxic chemical release forms (Section 313 "emissions inventory"). Each reporting provision has different requirements for chemicals and facilities covered. Due to this complexity in the statute itself, each Section must be read carefully to understand the chemicals covered and the facilities to which the Section applies. Farmers may be subject to several of the reporting requirements of Title III.

Emergency Planning Notification (Section 302)

Farm owners and operators are most likely to be subject to the emergency planning requirements of Section 302. Farms were not exempted from this provision, since the law was designed to generally identify all facilities that have any of the listed extremely hazardous substances (EHS) present in excess of its threshold planning quantity (TPQ). The TPQ is based on the amount of any of these substances which could, upon release, present human health hazards which warrant emergency planning. The TPQ emergency planning trigger is based on these public health concerns rather than the type of facility where the chemicals might be located. The type of facility and degree of hazard presented at any particular site, however, are relevant factors for consideration by the local emergency planning committees. For many farms, chemicals in these quantities may not present a significant hazard to their communities due to their to their rural location or short holding times, other farms may well present a potentially significant hazard if the chemicals are located in a suburban, populated area or near a school, hospital, or nursing

home. Even in a rural area, large volume storage could be a concern. Although these substances may only be stored or used periodically, there is always the possibility of accidents which could present a hazard to the community. Finally, in the event of a fire or other emergency on the farm, local responders should know what chemicals they might encounter in order to take appropriate precautionary measures. The hazards posed by an individual farm or ranch must be evaluated on a site-specific basis. Communities must know which facilities may present a potential for chemical releases so they can determine the nature of the risk to the public and to emergency responders in the event of a release. Title III established State and local planning organizations and notification requirements to meet these needs. Local emergency planning committees can best address these concerns by working with farm representatives. To meet the emergency planning requirements of Title III, farm owners and operators must determine if they have any of the listed EHSs in excess of the threshold planning quantity (TPQ) present on their farms at any one time in concentrations greater than one percent by weight. This requirement applies even if the chemicals are present for only a short period of time before use. There is no exemption to this requirement for farms or for substances used in routine agricultural operations. If any of the EHSs is present in excess of its TPQ, simply notify (preferably in writing) the State emergency response commission (SERC) and the local emergency planning committee. The notification need not include the names and quantities of identified substances, but EPA encourages the inclusion of such information because it will be useful to the SERC and the local committees in organizing and setting priorities for emergency planning activities. This notification was required by May 17, 1987 or 60 days after the TPQ is exceeded for at least one extremely hazardous substance, whichever is later. If such notification has not been made, farm owners and operators should do so immediately. This is a one-time notification. Once made, owners or operators are not required to notify the SERC further of other extremely hazardous substances that may become present on the farm; however, they may be required to inform the local emergency planning committee of such changes. EPA may revise the list of extremely hazardous substances. A facility which has any substances added to the list but which was not previously required to notify must notify its SERC and local emergency planning committee within 60 days. Farmers required to notify under Section 302 must designate representatives to work with the local emergency planning committee to address any need for emergency planning involving their farms. Local emergency planning committees were to be established by the SERC by August 17, 1987. There is no requirement for farm owners or operators to develop a farm emergency plan. A comprehensive emergency response plan is to be developed by the local emergency planning committee for the local emergency planning district it covers. This plan should address, to the extent possible, all potential chemical release hazards in the district including, where appropriate, chemicals on farms.

Emergency Release Notification (Section 304)

Farmers may also be subject to emergency release notification requirements (Section 304) if they release any of the listed extremely hazardous substances or Superfund hazardous substances in excess of its reportable quantity (RQ). Reportable quantities are the amounts of these substances which, if released, must be reported. (RQs for Superfund hazardous substances are specified in EPA regulations found in 40 CFR Table 302.4. The CFR is available in public libraries and EPA Regional Offices). Section 304 requires reporting of such releases to SERC and local emergency planning committees. Reporting of releases of Superfund hazardous substances to the National Response Center (1-800-424-8802) has been required since 1980. Section 304 also requires a written follow-up emergency notice to the SERC and local

emergency planning committee. Exempted from reporting are pesticides registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) when used generally in accordance with its intended purpose. Also, normal application of fertilizer would not need to be reported. However, an accidental release of such substances (or other release not generally in accord with its intended purpose) in excess of the RQ must be reported. Title III emergency release notification (Section 304) has two limitations which are not present in Superfund release reporting. First, Title III (Section 304) release reporting applies only to facilities which produce, use, or store a "hazardous chemical." Because the definition of "hazardous chemical" in Title III specifically excludes substances used in routine agricultural operations and household or consumer products, some farms or ranches will not be subject to Section 304. Secondly, releases reportable under Section 304 will include only those releases which have potential for off-site exposure and which equal or exceed the applicable reportable quantity for that substance. Thus, spills of pesticides which would require release reporting to the National Response Center under Superfund would not be subject to local and State reporting under Section 304 unless there were a potential for off-site exposure.

Community Right-to-Know (Sections 311 and 312)

Community right-to-know reporting (Sections 311 and 312) is limited to those facilities required to prepare or have available MSDSs under the Occupational Safety and Health Administration's Communication Standard (HCS). Sections 311 and 312 became applicable beyond the manufacturing sector beginning September 24, 1988, as a result of the expansion of OSHA Hazard Communication Standard, but chemicals used in routine agricultural operations and household products are not subject to these reporting requirements. Chemicals used for such purposes are excluded from the Title III definition of "hazardous chemical" to which the reporting requirement applies. In addition, farms with ten or less full-time employees are not covered by the HCS and, therefore, are not covered by Sections 311 and 312.

Toxic Chemical Release Forms (Section 313)

Toxic chemical release reporting (Section 313) is limited to facilities in SIC codes 20-39 with 10 or full time employees, and may apply to farms or ranches with on-site manufacturing operations.

Other Provisions:

Title III also includes various provisions for civil, administrative and criminal penalties and citizen suits for failure to comply with the requirements of the law. For assistance in meeting these requirements, farmers may call on their State and county offices of the USDA Agricultural Stabilization and Conservation Service, which have the list of EHS chemicals, their TPQ's and RQs, and a list of SERCs. They may also call EPA's Emergency Planning and Community Right-to-Know Information Hotline at 1-800-535-0202 (in the D.C. area: 703-412-9810). (Q&A June 1, 1989, #116)

HOW EPCRA AFFECTS VARIOUS TYPES OF FACILITIES

Question: Does a contractor for a Federal government facility need to comply with the Title III requirement?

Answer: Yes. Federal government facilities are exempt from reporting due to omission of

Federal facilities from the definition of "person" in the Title III statute. Thus, the definition excludes the federal government from being covered by the Title III provisions. However, the definition does include any other individual or private firm even if he or she is working under a contract for a Federal agency. Therefore, all government-owned, contractor-operated facilities are required to comply with any requirements that they may be subject to under Title III of SARA. (Q&A June 1, 1989, #118)

HOW EPCRA AFFECTS VARIOUS TYPES OF FACILITIES

Question: The term "government corporation" appears in the Title III definition of "person" (Section 329). How should this term be defined and, considering Federal facilities are exempt under Title III, does this term include Federal government corporation?

Answer: In general a "government corporation" refers to a corporation established and organized by a government unit and which is owned or controlled by a governmental unit. Government corporations include State, local, and Federal corporations and are likely to be listed in the legal code of the relevant governmental entity. For purposes of Federal government corporations, Congress has defined the term "government corporation" in 31 U.S.C. Section 9109. Under this provision, a Federal government corporation refers to a "mixed-ownership government corporation" and a "wholly owned government corporation." Section 9109 goes on to list the Federal government corporations that meet this definition (e.g., Amtrak, FDIC, Export-Import Bank, Commodity Credit Corporation, etc.) As to the second part of the question, whether the sovereign immunity of the U.S. government extends to Federal government corporations in the Title III context, the answer is generally no, as Congress has not accorded government corporations the same immunity that the United States itself possesses. That is, Federal government corporations are usually invested with the power "to sue and be sued." The U.S. Supreme Court has read this language to mean that Congress waived sovereign immunity for the government corporation. While courts have limited the sovereign waiver resulting from the "sue and be sued" language in specific contexts, the express inclusion of government corporations within the Title III definition of "person" makes it unlikely that Congress intended to relieve Federal government corporations of the obligation to comply with the Act. Thus, Federal government corporations as defined in 31 U.S.C. Section 9109 are subject to the requirements of Title III. (Q&A June 1, 1989, #119)

INSPECTIONS OF FACILITIES BY FIRE DEPARTMENTS

Question: Section 312(f) of the EPCRA states that "upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an onsite inspection of the facility, and shall provide to the fire department specific location information on hazardous chemicals at the facility." Can the fire department request an on-site inspection of a facility which does not file an inventory form under §312 since the chemicals present at the facility are below the threshold?

Answer: Yes. Section 312(e)(1) permits the fire department with jurisdiction over the facility to

request that the owner or operator of the facility provide Tier II information concerning the facility. When a fire department requests Tier II information pursuant to §312(e)(1), the applicable threshold for the facility subject to the request is zero (40 CFR §370.20(b)). Therefore, upon a fire department's request, the facility would have to file Tier II forms. Because the owner or operator of the facility would be required to file a Tier II form, the owner or operator must allow the fire department to conduct an on-site inspection of a facility that has not previously filed. (February 1991 Monthly Hotline Report)

LEASE AGREEMENT REPORTING RESPONSIBILITY

Question: An owner leases a facility to another person. The lease agreement states that "in its use and occupancy of the facility and in its use of the leased equipment, the lessee shall abide by and comply with all governmental laws, regulations and requirements." Does this contractual language exempt the owner of the facility from reporting under EPCRA §§311 and 312?

Answer: No. Private parties cannot by contract exempt themselves from liability created by the statutory provisions of Title III. Note, however, that the law assigns the responsibility for reporting under §§311 and 312 to "the owner or operator of any facility which is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations under that act." In some instances, both the owner/lessor and operator/lessee may have the responsibility for MSDS requirements, even for the same chemicals. In other instances only one party is assigned responsibility for MSDS preparation or availability under the OSHA Hazard Communication Standard. (February 1991 Monthly Hotline Report)

OWNERSHIP CHANGE AND RESPONSIBILITY FOR REPORTING

Question: A facility changed ownership during the third quarter of the 1990 calendar year. Which owner/operator is responsible for the submission of the §312 Tier II form for the calendar year 1990?

Answer: Both owners and operators have responsibility for reporting under §312. While it is not required under §§311 and 312, it would further the purposes of SARA Title III if owners and operators informed the State Emergency Response Commission (SERC) about the change in ownership of a facility. Specifically, 40 CFR §355.30(d)(1) requires that the owner of a facility subject to §§302 and 303 promptly inform the Local Emergency Planning Committee (LEPC) of any change relevant to emergency planning. Also, the SERC should be consulted to determine if two separate reports, one for each period of ownership, are preferred to be filed, or if one combined report capturing all information for the entire year is more desirable. Parties may wish to address who will report and the provisions of necessary records in the purchase agreement. Of course, a person who is liable for reporting cannot shed his liability through any private arrangement such as a purchase agreement. (February 1991 Monthly Hotline Report)

ESTABLISHMENT OF A LOCAL EMERGENCY PLANNING COMMITTEE

Question: A Local Emergency Planning Committee (LEPC) must be representative of different groups and organizations, as described in §301(c) of the Superfund Amendments and Reauthorization Act (SARA) Title III. * It states that, at a minimum, an LEPC must include "...representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subtitle." Does an LEPC have to consist of one individual representative from each group and organization, or can one member of an LEPC represent more than one group or organization listed?

Answer: In order for an LEPC to properly carry out its duties, such as developing and distributing an emergency plan and responding to public comment, it must consist of representatives from different groups and organizations as described in §301(c). One member of an LEPC can be the representative for more than one group or organization, but the LEPC must include representatives from all the groups and organizations listed in the statute. For example, a member of the LEPC could be both the community group representative and the hospital representative, assuming that person is involved in both organizations. (January 1992 Monthly Hotline Report)

PESTICIDES TOWARD TPQ UNDER SARA SECTION 302

Question: SARA §302 requires owners and operators of facilities that have extremely hazardous substances (EHS's) present above the threshold planning quantity (TPQ) to participate in emergency planning (40 CFR §355.30). If a facility has a pesticide sprayed on its grounds without first being stored at the facility, must the amount of EHS present in the pesticide that has been applied be counted towards the TPQ?

Answer: Under SARA §302, an owner or operator must identify any EHS's that are present at the facility and, for each EHS, determine the amount present. If the amount present equals or exceeds the EHS's TPQ, then the facility is subject to emergency planning requirements. In this specific example, the facility would not count the amount of EHS present in the soil toward the EHS's TPQ because it is not present in a contained structure. The definition of facility (40 CFR §355.20) includes all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person. This includes man-made structures in which chemicals are purposefully placed or removed through human means such that it functions as a containment structure for human use. Once it is applied, the residual pesticide does not have to be applied toward the threshold determination. It can be considered no longer "present at the facility." This does not, however, exempt the owner or operator from emergency planning requirements for EHS's present above their TPQ at the facility, such as any EHS in a pesticide that is brought on-site prior to application, stored, or present anywhere else at the facility. (February 1992 Monthly Hotline Report)

CONSUMER PRODUCT EXEMPTION APPLIED TO §§311 AND 312

Question: Pennsylvania restricts the use of a product that is packaged for distribution and use by the general public by requiring users within the State to obtain a license. This product requires a material safety data sheet under OSHA, and thus may be subject to the reporting requirements of the Emergency Planning and Community Right-to-Know Act, EPCRA §§311 and 312. Does this product meet the consumer product exemption under the definition of hazardous chemical, which is "...any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public" (40 CFR §370.2)?

Answer: Any substance that is in the same form and concentration as a product packaged for distribution and use by the general public is exempt from the definition of hazardous chemical and is not reportable under EPCRA §§311 and 312. This exception to the definition of hazardous chemical under EPCRA has been referred to as the "consumer product exemption." If a license is required for use of a product, it may not be considered a consumer product. In this case, the determining factor is accessibility of the product by the general public. If any private citizen can obtain a license for use of the product, then it is considered a consumer product. If some private citizens cannot obtain the license, then the use of the product is limited to facilities that can obtain the license; thus the product does not meet the consumer product exemption. If the restricted product is present at a facility above the applicable reporting threshold, then it is reportable under EPCRA §§311 and 312. Reporting on this product may vary from State to State depending on the requirements and limitations in obtaining a license for use. (May 1992 Monthly Hotline Report)

CHEMICALS LISTED WITH MULTIPLE CHEMICAL ABSTRACT SERVICE NUMBERS

Question: The Chemical Abstract Service (CAS) maintains a computerized filing system that contains two main index files. The chemical abstract (CA) file provides bibliographic information referencing chemicals appearing in over 9,000 journals, papers, and symposiums from 1967 to the present. The CA file is an important tool for people interested in learning about the research, patents, and uses for specific chemicals. The chemical registry number file assigns CAS registry numbers to unique chemicals for purposes of identification. Assigning a CAS number to a particular chemical facilitates managing and regulating that chemical by universally identifying it with a specific number. Only one CAS number is assigned to each chemical. If chemicals are to be assigned only one CAS number, why are some chemicals listed with multiple Chemical Abstract Service (CAS) numbers in 40 CFR Table 302.4 and the Title III List of Lists?

Answer: There are two possible reasons for a chemical to have multiple numbers. The CAS numbers could refer to different forms of a chemical where each is considered unique for its particular properties and characteristics. The CAS registry number file includes the registry number, synonyms, chemical structure, and molecular formula for each chemical recorded in the file. If specific research has been done on a particular form of a chemical, a separate CAS number may be assigned to that particular form to facilitate the search process in the CA file. For example, sodium hypochlorite is listed with two CAS numbers, 7681-52-9 and 10022-70-5. The former refers to hypochlorous acid, the sodium salt form of sodium hypochlorite, while the latter refers to the pentahydrate form of sodium hypochlorite. Both forms could be called

sodium hypochlorite, thus sodium hypochlorite has, in effect, two CAS numbers. A chemical also may be listed with multiple CAS numbers when multiple numbers have been inadvertently assigned to the same chemical. This multiple assignment can occur when forms of a chemical are originally believed to be unique, but after further review by chemists are identified as the same chemical. In this case, all the CAS numbers are cross-referenced, allowing the chemical to be located with any assigned number. The misassigned numbers are deleted as registry numbers, but remain on file for referencing purposes. The CAS number first assigned is the more accurate number to use when denoting the chemical. Although all of the numbers will find the chemical, only the more accurate number will prompt the CAS registry file system to display the name, synonyms, and characteristics associated with the chemical. Chromic acid, listed with CAS numbers 11115-74-5 and 7738-94-5, illustrates this situation. After further review by chemists, the second CAS number, 11115-74-5, was deleted as a registry number, but remains on file for future reference. CAS number, 7738-94-5 is the more accurate number to identify chromic acid because it was the first registry number assigned. (February 1993 Monthly Hotline Report)

POLYMER PELLET REPORTING UNDER SECTIONS 311 AND 312

Question: If polymers are in pellet form and require material safety data sheets, are they exempt from the definition of hazardous chemical under SARA Section 311(e)(2)?

Answer: The Section 311(e)(2) exemption from the definition of hazardous chemical applies to "[a]ny substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use." Polymers in pellet form are manufactured items in a solid state and would not normally be a source of any hazardous chemical exposure, therefore the polymers in pellet form are normally exempt (52 FR 38344; October 15, 1987). Altering the solid state of the pellets (e.g., as part of a manufacturing process) creates a potential for exposure and would cause the polymers to become subject to the hazardous chemical threshold determinations (40 CFR Section 370.20(b)). When determining whether a threshold has been met, the weight of the polymer pellets "in process" are no longer exempted as solid manufactured items and should be added to the weight of the polymers not in pellet form and not otherwise exempt. If at any one time the polymers not subject to an exemption exceed the thresholds, then hazardous chemical reporting is required (40 CFR Part 370). (February 1993 Monthly Hotline Report)

DESIGNATION OF FACILITY EMERGENCY COORDINATOR

Question: According to EPCRA Section 303(d)(1) and 40 CFR Section 355.30(c), the owner or operator of a facility must designate a representative to participate in the local emergency planning process as a facility emergency coordinator. The regulatory deadline for notifying the Local Emergency Planning Committee (LEPC) of this representative is on or before September 17, 1987, or 30 days after establishment of the LEPC, whichever is earlier. If a facility first becomes subject to the emergency planning requirements after September 17, 1987, when must the owner/operator of this newly regulated facility provide notification designating the emergency response coordinator?

Answer: A facility that becomes subject to the emergency planning requirements of EPCRA

after September 17, 1987, must provide the name of its coordinator to the LEPC within 60 days. This is the same deadline provided under EPCRA Section 302(c) for a newly subject facility to notify the State Emergency Response Commission (SERC) and LEPC that it is subject to emergency planning. The different deadline under Section 303(d)(1) for providing the name of the emergency coordinator to the LEPC was only to provide for transition at the time EPCRA was enacted. The statutory deadline for the Section 302(c) emergency planning notification to the SERCs was May 17, 1987, a few months prior to the August 17, 1987, date on which the LEPCs were required to be operational. Thus, the emergency planning notification had to be given to the SERCs before the LEPCs were formed. Since notification of the designated facility emergency coordinator is provided to the LEPC and not the SERC, the statute provided a grace period for naming the emergency coordinator until September 17, 1987, or 30 days after the LEPC was formed. There is no longer any reason for this grace period and it is no longer applicable. At this time, the period for appointing the LEPCs has passed. Since the emergency planning notification for newly regulated facilities is to be provided to the SERC and the LEPC, the name of the facility coordinator should also be provided at the time the facility provides its emergency planning notification under Section 302(c). (July 1993 Monthly Hotline Report)

PROPRIETARY COMPOUNDS AND EPCRA §§311/312 REPORTING

Question: A facility is storing a product mixture on-site. Under OSHA regulations, the facility is required to retain a material safety data sheet (MSDS) for the mixture. According to the MSDS, the mixture contains a zinc compound, but no specific chemical identity or concentration information is provided. OSHA regulations allow chemical manufacturers to withhold this information from the MSDS under a trade secrecy claim (29 CFR § 1910.1200(i)). From the MSDS the owner/operator can not tell whether the proprietary compound is a hazardous chemical (such as zinc silicofluoride) or an extremely hazardous substances (EHS) (such as zinc phosphide). To comply with EPCRA §§311 and 312 reporting requirements, this facility must determine whether this mixture exceeds the appropriate inventory threshold levels. How would the facility make this determination? Once a quantity is calculated, should it be compared to the hazardous chemical threshold of 10,000 pounds, or should the facility owner or operator assume the compound is an extremely hazardous substance (EHS) and use the applicable lower threshold?

Answer: Pursuant to 40 CFR §370.28(a)(1) and (2), a facility may report on a mixture as a whole or on each hazardous component of the mixture. The option of reporting by components, however, is not available if components are not known. In this case, since the MSDS contains no information on the concentration of the proprietary zinc compound, the facility must report the mixture as a whole. The next step in evaluating whether a facility is required to report under EPCRA §§311 and 312, is to compare the quantities stored on-site to the appropriate threshold level codified in 40 CFR §370.20(b). For hazardous chemicals that are not EHSs, reporting is required if the facility has over 10,000 pounds on-site at any one time. For extremely hazardous substances, reporting is necessary if the facility has the chemical on-site in quantities over 500 pounds or the threshold planning quantity (whichever is lower). In this scenario, the specific identity of the chemical is not available to the facility owner or operator. Because the facility receives an MSDS for the mixture, the owner or operator knows that the mixture contains a

hazardous chemical. While the owner or operator has a duty to make all reasonable efforts to determine whether or not the substance is an EHS, if there is no information reasonably available to this facility owner or operator to make this determination, the regulations do not require reporting the mixture as an EHS. For the zinc compound mixture, the facility could assume the mixture is a hazardous substance and apply the 10,000 pounds threshold level to the overall weight of the mixture. In addition, the facility should state that it is "unknown" whether the mixture is an EHS by writing this in the appropriate box on the applicable form. (December 1993 Monthly Hotline Report)

SHEET METAL REPORTING AND THE EXEMPTION FOR MANUFACTURED SOLIDS UNDER §§311/312

Question: A facility stores and processes sheet metal that contains a hazardous chemical requiring a material safety data sheet (MSDS) under OSHA's Hazard Communication Standard (29 CFR §1910.1200(c)). The sheet metal, when in storage, is considered a manufactured solid and is therefore excluded from the definition of hazardous chemical under EPCRA §311(e)(2). Does this exclusion still apply when the sheet metal is cut, welded or brazed?

Answer: The exclusion for manufactured solids in EPCRA §311(e)(2) applies to "[a]ny substance present as a solid in any manufacturered item to the extent exposure to that substance does not occur under normal conditions of use." Sheet metal is considered a "manufactured item" which is typically present as a solid. To determine whether or not the sheet metal falls under this exemption, the owner/operator of the facility needs to determine the extent of exposure to the substance under normal conditions of use at that facility. Storing, welding, cutting etc. can all be considered "normal conditions of use" at a facility. In this example, only the sheet metal in storage is exempt under §311(e)(2) because it does not create a potential for exposure to a hazardous chemical. Cutting, welding, brazing, or otherwise altering the form of the sheet metal does create a potential for exposure, thus negating the exclusion under §311(e)(2) and subjecting the weight of the maximum amount used in this fashion at any time to reporting requirements under 40 CFR §370.20(b). The regulations at 40 CFR §370.20(b) state that a facility must submit an MSDS and a Tier I form (or Tier II form) for any hazardous chemical present at a facility in an amount greater than 10,000 pounds and for an extremely hazardous substance (EHS) as defined in 40 CFR Part 355, Appendix A, present at the facility in an amount greater than or equal to 500 pounds or the threshold planning quantity (TPQ), whichever is lower. The entire weight of the items to be altered (the non-exempt items), is counted toward the threshold, not just the weight of the hazardous chemical in the section of the sheet metal on which work is done. The weight of the entire piece of sheet metal is used because the sheet is the manufactured item; the exemption can not apply to a portion of the manufactured item. (December 1993 Monthly Hotline Report)

MEDICAL EXCLUSION UNDER EPCRA §§311 AND 312 AS IT APPLIES TO DOCTORS' OFFICES AND PHARMACIES

Question: EPCRA §§311 and 312 require facility owners or operators to file inventory reports detailing the name, amount, and location of hazardous chemicals present at a

facility in excess of the established threshold quantities. Hazardous chemicals are defined by OSHA's Hazard Communication Standard, found at 29 CFR §1910.1200(c), which requires facility owners or operators to maintain material safety data sheets for all hazardous chemicals present at the facility. EPCRA §311(e)(4) and 40 CFR §370.2 exclude from the definition of hazardous chemical, "any substance to the extent that it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual." The EPCRA program has adopted the definition of a technically qualified individual from the Toxic Substances Control Act (TSCA) regulations found at 40 CFR §720.3(ee); the term includes any person who, because of education, training, or experience is capable of understanding the health and environmental risks associated with the chemical under the individual's supervision. Does the EPCRA medical exclusion apply to chemicals stored and used at doctors' offices and pharmacies?

Answer: In order to be excluded from the definition of hazardous chemical, a substance must be both under the supervision of a technically qualified individual and present at a medical facility. EPA interprets technically qualified individual to refer to those persons who are adequately trained in the research or medical fields, including doctors, nurses, and pharmacists. Further, both doctors' offices and pharmacies are considered medical facilities. When a substance is used by a physician or a pharmacist at either a doctors' office or a pharmacy, it does not meet the definition of a hazardous chemical and therefore should not be included in threshold determinations under §§311 and 312. The exclusion also applies to the storage of chemicals at these facilities prior to their use. The medical exclusion applies only to the specific substances meeting the above criteria, and does not exempt the facility from the requirements of §§311 and 312; any hazardous chemicals not meeting an exclusion must be applied toward the inventory threshold. Other exclusions commonly applicable to doctors' offices and pharmacies include those found at EPCRA §311(e)(1) and (3) exempting chemicals which are present in consumer form or which are regulated by the Food and Drug Administration. (February 1994 Monthly Hotline Report)

AQUACULTURE EXEMPTION FOR EPCRA §§311 AND 312

Question: EPCRA §§311 and 312 require facility owners or operators to submit Material Safety Data Sheets (MSDSs) and annual inventory reports for any hazardous chemical subject to OSHA's Hazard Communication Standard (29 CFR §1910.1200(c)) which is present at a facility above a reportable threshold (40 CFR §370.20(b)). An owner or operator does not have to count toward threshold determinations the amount of a chemical exempt from the definition of a hazardous chemical under EPCRA §311(e) and 40 CFR §370.2. Pursuant to 40 CFR §370.2, any substance used in routine agricultural operations is exempt from the definition of hazardous chemical and therefore is not included in threshold determinations for reporting purposes. Would this agricultural exemption apply to chemicals used for fish farming (i.e., aquaculture)?

Answer: As defined by the National Aquaculture Act of 1980 in 16 U.S.C. §2802(1), aquaculture involves the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching. The agricultural exemption under EPCRA §§311 and 312 applies to a wide range of growing operations including livestock

production, nurseries, and other horticultural operations (52 FR 38344, October 15, 1987). Because aquaculture involves livestock and vegetation production, EPA considers it a type of agriculture, and thus the chemicals used for growing and breeding fish and aquatic plants in an aquacultural operation are excluded from EPCRA §§311 and 312 reporting requirements. (March 1994 Monthly Hotline Report)

COINCIDENTAL PRODUCTION OF HAZARDOUS CHEMICALS REQUIRES REPORTING UNDER EPCRA §304

Question: Pursuant to EPCRA §304(a)(2), the owner or operator of a facility must report to the State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) any releases of extremely hazardous substances (EHSs) or CERCLA hazardous substances which equal or exceed established reportable quantities (RQs). This requirement only applies, however, to owners and operators of facilities at which hazardous
chemicals are produced, used, or stored. For purposes of EPCRA emergency release notification, is a hazardous chemical considered "produced" if it is generated solely as a by-product which is immediately released to the air? Does the facility become subject to release reporting requirements even if this by-product is the only hazardous chemical present on-site?

Answer: Generation of a hazardous chemical as a by-product is considered "production" under EPCRA §304(a)(2), and any facility generating a hazardous chemical in this manner must evaluate EHS and CERCLA hazardous substance releases for EPCRA notification purposes. EPA considers the term "produce" to be synonymous with "manufacture" under EPCRA §313, and according to the definition in 40 CFR §372.3, manufacturing includes coincidental generation of a chemical by-product during the production, processing, use, or disposal of another chemical substance or mixture. Releasing the chemical by-product to the air immediately following production in no way alleviates the facility's reporting burden. Further, when a facility produces substances which themselves are not hazardous chemicals, but which after release rapidly form hazardous chemicals in the environment, the hazardous chemicals are also considered "produced" for purposes of EPCRA emergency release notification (51 FR 34534; September 29, 1986). Therefore, facilities at which hazardous chemicals are produced as a by-product of facility operations, including those rapidly formed in the environment subsequent to their release, are required to notify the SERC and LEPC of any EHS or CERCLA hazardous substance release which equals or exceeds an RQ within a 24-hour period. (April 1994 Monthly Hotline Report)

MSDS SUBMISSION FOR LEADED AND UNLEADED GASOLINE

Question: A service station stores both leaded and unleaded gasoline on-site. For the purpose of EPCRA §311 hazardous chemical inventory reporting, is the owner/operator of the facility required to submit separate material safety data sheets (MSDS) for each type of gasoline, or is a single MSDS sufficient?

Answer: Section 311 of EPCRA requires the owner/operator of a facility to submit a MSDS to

the state and local authorities for each hazardous chemical present at the facility above appropriate thresholds. A hazardous chemical is defined under Occupational Safety and Health Act (OSHA) regulations codified at 40 CFR §1910.1200(c) as any chemical which poses a physical or health hazard. This definition also applies to EPCRA §§311 and 312. A facility owner or operator is required under OSHA to prepare and maintain a MSDS for each hazardous chemical present on-site. The OSHA Hazard Communication Standard at 29 CFR §1910.1200(g)(4) specifies, however, that where complex mixtures have similar hazards and contents, it is sufficient to prepare one MSDS to apply to all similar mixtures. OSHA interprets this provision to permit the preparation of a single MSDS to cover all blends of leaded and unleaded gasoline, provided that hazards associated only with leaded gasoline, or only with unleaded gasoline, are identified separately on the MSDS. Consequently, the requirements under EPCRA §311 can be met either by submitting a separate MSDS for each type of gasoline if available, or by submitting one MSDS for all gasoline blends at the facility. (April 1994 Monthly Hotline Report)

PAINT MIXING AND THE CONSUMER PRODUCT EXEMPTION

Question: A store sells paint in five-gallon cans to the general public. Customers may purchase the paint as received from the manufacturer, or they may request a custom shade of paint. To attain the customer's desired shade, store employees will mix two or more base colors. This process involves opening the cans, mixing the colors together, and pouring the custom-made shade into a five-gallon can. EPCRA §§311 and 312 require facility owners and operators to report all hazardous chemicals as defined by 29 CFR §1910.1200(c) that exceed the applicable thresholds found in 40 CFR §370.20(b). EPCRA §311(e)(3) excludes from the definition of hazardous chemical any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public. For reporting under EPCRA §§311 and 312, will this paint qualify for the consumer product exemption found in EPCRA §311(e)(3), or must the store owner or operator report on the custom-mixed paint since it is processed to achieve the final form purchased by the consumer?

Answer: The paint is exempt from the definition of hazardous chemical under the consumer product exemption in 40 CFR §370.2 regardless of whether it is mixed on the premises or purchased by the consumer in the same form the store received it. Any substance that is found in the same form and concentration as a product packaged for general distribution qualifies for this exemption (52 FR 38344, 38348; October 15, 1987). Since both the manufacturer's premixed paint and the store's custom-made shades are in the same form and concentration as products packaged for distribution by the general public (indeed, they are in such products), none of the chemicals found in either type of paint are reportable under EPCRA §§311 and 312. (June 1994 Monthly Hotline Report)

NOTIFICATION REQUIREMENTS FOR AN EMERGENCY RELEASE ON A PUBLIC ROADWAY

Question: The EPCRA emergency notification regulations require facility owners and

operators to immediately report releases into the environment of extremely hazardous substances or CERCLA hazardous substances if the releases exceed specific reportable quantities (40 CFR §355.40(a)). The notification must be provided to the appropriate State Emergency Response Commission and Local Emergency Planning Committee, except in the event of a transportation-related release where only 911 notification is required. The EPCRA emergency notification requirements do not apply when a release generates no potential for exposure to persons outside the boundaries of a facility (40 CFR §355.40(a)(2)(i)). If there is a release from a facility onto a public roadway that runs through the facility, will that release be reportable?

Answer: A release onto a public roadway must be reported under 40 CFR §355.40(a), since the release may result in exposure to persons outside the boundaries of the facility, (i.e., on the public roadway). A release is defined as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment" of designated substances (EPCRA §329(8)). The environment includes, "water, air and land" (EPCRA §329(2)). Therefore, a release into the environment, as defined in EPCRA §329, onto a public roadway is potentially a reportable release. There is, however, a limited exemption under EPCRA that does not require reporting of any release which results in exposure to persons solely within the boundaries of a facility (40 CFR §355.40(a)(2)(i)). The definition of facility includes "all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and which are owned and operated by the same person" (40 CFR §355.20). Since the public roadway is not owned or operated by the facility that spans it, the roadway itself is not part of the facility. As a result there is exposure to persons outside the facility. Therefore, the exemption for the reporting of releases that result in exposure to persons solely within the boundaries of a facility does not apply. (June 1994 Monthly Hotline Report)

THRESHOLD PLANNING QUANTITY (TPQ) DETERMINATION FOR SUBSTANCES IN MOLTEN FORM

Question: Facilities are subject to emergency planning and notification requirements under EPCRA (also known as SARA Title III) when an extremely hazardous substance (EHS) is present at a facility in an amount equal to or in excess of its TPQ. For some EHSs that are solids, two TPQs are given (e.g., 500/10,000 pounds). The lower quantity applies only if the solid exists in powder form or is handled in solution or molten form (40 CFR §355.30(e)(2)(i)). Otherwise, the 10,000-pound TPQ applies. The amount of substance in molten form must be multiplied by 0.3 to determine whether the lower TPQ is met (40 CFR §355.30(e)(2)(iv)). What is the significance of multiplying by the fraction 0.3 and how was this fraction chosen?

Answer: Emergency planning for EHSs under EPCRA is based on estimates of the quantity of an EHS released to the air. One of the factors that affect the quantity that actually becomes airborne is the physical state of the substance. At molten temperatures, significant amounts of vapor are not likely to be generated. The Agency examined the fraction of volatilization expected from the solids on the EHS list and found that the amount of chemical that actually volatilizes ranges from 0.008 to 0.3 pounds per minute per pound spilled. Since information was

not available for all the solids on the EHS list, the Agency chose to incorporate the more conservative fraction of 0.3 for TPQ determination. As a result, a facility that handles an EHS in molten form must multiply the amount of molten material by 0.3 to determine the weight applied toward the TPQ. (July 1994 Monthly Hotline Report)

SUBMISSION OF DATA TO ON-SITE FIRE DEPARTMENTS UNDER EPCRA §§311 AND 312

Question: EPCRA §§311 and 312 apply to owners or operators of any facility that is required to have available or prepare a material safety data sheet (MSDS) for an OSHA-defined hazardous chemical present at the facility at any one time in amounts equal to or greater than established thresholds. If a facility meets the criteria, its owners or operators must file MSDSs and Tier I and II inventory forms with their State Emergency Response Commission, their Local Emergency Planning Committee, and their local fire department. May a facility which maintains an on-site fire department provide the information to that entity in lieu of making it available to the public fire department?

Answer: Whichever fire department may have responsibility for the facility, regardless of its affiliation, should receive the reports. The purpose of the requirement to provide local fire departments with MSDS and inventory information is to better enable them to respond to emergency situations. If the on-site fire department is primarily responsible for responding to such an incident, it is appropriate that covered facilities forward the required information to that department. Facility owners or operators should also forward copies of MSDSs and Tier forms to any other fire department that might be expected to respond to a chemical emergency at the facility. (August 1994 Monthly Hotline Report)

OSWER'S ENVIRONMENTAL JUSTICE INITIATIVE

From the time Carol Browner assumed her position as Environmental Protection Agency (EPA) Administrator in 1993, she has made the pursuit of environmental justice one of the Agency's top priorities. Although EPA has made considerable progress in protecting and cleaning up the environment, many poor and minority communities are burdened by pollution from threats such as landfills, municipal waste incinerators, and hazardous waste sites. In response to this problem, President Clinton signed Executive Order 12898 on February 11, 1994. This order requires each federal agency to develop an agency-wide environmental justice strategy to identify and address adverse human health and environmental effects that may result from its programs. How will EPA incorporate environmental justice issues into the Office of Solid Waste and Emergency Response's Superfund, RCRA, UST, and EPCRA programs? Executive Order 12898 requires each federal agency to include environmental justice as an integral part of its work. An interagency federal Working Group on Environmental Justice has been created to advise, coordinate, and provide guidance to each federal agency as it develops its environmental justice strategy. The Working Group is composed of representatives from various federal agencies and designated government officials. Each federal agency is required to provide a copy of their final environmental justice strategy to the Working Group for review to ensure that the administration, interpretation, and enforcement of programs, activities, and policies are undertaken in a consistent manner. To implement EPA's environmental justice

goals, OSWER established an Environmental Justice Task Force to broaden the discussion of environmental justice issues and make recommendations specific to waste programs. The Task Force met with representatives from citizen groups, industry, Congress, and state, local, and tribal governments, to identify environmental justice issues and influence OSWER's environmental justice strategy. On April 28, 1994, OSWER announced the availability of the OSWER Environmental Justice Task Force Draft Final Report which identified key environmental justice issues and recommendations. The recommendations outlined in the report are divided into those which cut across all waste programs (OSWER-wide) and others primarily directed toward specific regulatory areas. To implement the environmental justice goals, Elliott Laws, Assistant Administrator of OSWER, issued a memorandum on September 21, 1994, directing Regional offices to integrate environmental justice into all stages of OSWER policy, guidance, and regulatory development (OSWER Directive 9200.3-17). The major OSWER-wide environmental justice recommendations focused on the following categories: Title VI of the Civil Rights Act; communication, outreach, and training; economic redevelopment; cumulative risk; contract, grant, and labor issues; federal interagency issues; and Native American tribal issues. One of the most significant OSWER-wide recommendations made is to prevent and respond effectively to Title VI complaints affecting waste programs. The Task Force also focused substantially on ways to improve communications, develop trust and involve low-income and minority communities. Other recommendations applicable to all programs include assisting in economic redevelopment by expanding the current "brownfield" redevelopment pilot program aimed at identifying, decontaminating and redeveloping contaminated properties, identifying multiple sources of contamination through cumulative risk assessments, expanding employment of local labor in affected communities through the use of contractors, and identifying a mechanism to increase technical assistance to tribal governments and initiating environmental pilot programs on tribal lands. The Task Force also made recommendations specific to each OSWER program area to assess communities affected by OSWER programs and ensure appropriate emphasis on public participation. The following sections address the recommendations developed for the Superfund, RCRA, UST, and EPCRA programs. The Superfund program includes formal community relations provisions to encourage public participation throughout the decision making process. Community relations activities under Superfund include developing a site-specific community relations plan, establishing an information repository and administrative record, providing technical assistance, holding public meetings, and providing public comment periods. Although Superfund community relations provisions are in place, the Task Force identified recommendations to incorporate awareness of environmental justice issues into current procedures. Under the Superfund program, one of the major environmental justice recommendations includes developing Community Advisory Groups. These groups would act as site information clearinghouses for the affected community, assist in establishing land use expectations, and provide community support for remedial decisions. The Task Force recommends that the Office of Emergency and Remedial Response (OERR) work with the Regions to develop proactive site assessment efforts and incorporate issues such as multiple exposures and unique risk scenarios into risk assessment protocol. The most significant issue that the Task Force identified for the RCRA program concerned the siting of new hazardous waste facilities. Environmental justice groups have expressed concern that hazardous waste facilities may be sited disproportionately in low-income and minority communities. The Task Force found that under the current RCRA statute and regulations, EPA has limited authority to determine where a facility will be sited. Thus, OSWER established a

Siting Workgroup in April 1994. The Workgroup is developing recommendations regarding issues that impact technical location standards for sensitive geologic areas, cumulative risk, and expanded public involvement. The flexibility of the Underground Storage Tank (UST) program allows states to run programs based on the needs and demands of their own regulated communities. In the draft report, the Task Force recommends that states consider environmental justice as they set priorities for UST compliance programs and cleanup activities. States can apply for grants to develop outreach materials and compliance programs that address environmental justice issues specific to their state program. The states also play a significant role in the implementation of EPCRA. EPCRA created state emergency response commissions (SERCs) and local emergency planning committees (LEPCs) to inform the public about the storage and use of chemicals in their community and to develop emergency response plans for dealing with accidental releases of chemicals. Specifically, EPCRA §301 requires that, at a minimum, each LEPC include representatives from community groups or organizations, elected state or local officials, law enforcement offices, health officials, hospitals, and transporters. To ensure that SERCs as well as LEPCs are representative of the designated areas, recommendations in the Task Force report encourage the Chemical Emergency Preparedness and Prevention Office (CEPPO) to issue letters to SERCs, LEPCs, and Tribal Emergency Response Commissions (TERCs) explaining ways to address areas with environmental justice concerns. It is also recommended that EPA expand the availability of LandView, a PC program that contains information on sources of pollution from six EPA databases and demographic and economic data from the Bureau of the Census. LandView can be used to identify geographic areas and populations that may be subject to a disproportionate burden of pollution. The OSWER Environmental Justice Task Force establishes an ambitious timetable for the development of draft implementation plans in each of these program areas. The Task Force recommended that each OSWER program office and Region submit a draft implementation plan in June 1994, outlining an environmental justice strategy specific to its OSWER program. OSWER will coordinate the implementation of these plans with Agency-wide efforts to address environmental justice concerns in communities where OSWER-regulated facilities are located. Executive Order 12898 requires EPA to submit its finalized environmental justice strategy to the interagency Working Group by February 1995. (October 1994 Monthly Hotline Report)

DESCRIPTION OF THE TERMS "MOLTEN" AND "IN SOLUTION" UNDER EPCRA §302

Question: To assist state and local officials in the development of emergency response plans, EPA requires the owner or operator of each facility at which an extremely hazardous
substance (EHS) is present in an amount equal to or exceeding its threshold planning quantity (TPQ) to notify the State Emergency Response Commission (EPCRA §302). The list of EHSs (found in 40 CFR Part 355, Appendices A and B) whose presence may trigger an emergency planning notification indicates each chemical's threshold planning quantity. EHSs which are in solid form under standard conditions have two TPQs: a lower threshold, which applies to powders with a particle size less than 100 microns, certain reactive solids, chemicals in molten form, and solids in solution; and an upper threshold, which applies to all other forms of the chemical (40 CFR §355.30(e)(2)(i)). What does EPA mean by the terms "molten" and "in solution" when used to describe extremely hazardous substances, and how are these forms quantified for comparison to the appropriate

threshold planning quantity?

Answer: The term "molten" denotes the liquid form of an EHS which is a solid at standard temperature and pressure. EPA requires facilities to account for the potential volatility of molten chemicals by applying the lower of the two TPQs listed in 40 CFR Part 355, Appendices A and B, to EHSs present in molten form. Facilities need not, however, compare the entire weight of a molten chemical to the lower TPQ. The Agency examined the fraction of volatilization expected for the solids on the list and found that it ranges from 0.3 to 0.008 pounds/minute per pound spilled. Since data were not available for all solids and to be conservative, the Agency chose to incorporate the 0.3 fraction into the reporting requirements (59 FR 51819; October 12, 1994). To determine if the presence of a molten EHS triggers an emergency planning notification, the facility owner or operator should therefore multiply the weight in molten form by 0.3 and compare the resulting figure to the lower TPQ for the chemical in question (40 CFR §355.30(e)(2)(iv)). A solid EHS is present "in solution" when dissolved in a liquid. When determining if the presence of a dissolved EHS triggers an emergency planning notification, the facility owner or operator may compare the weight of the solid in solution (rather than the entire weight of the solution) to the lower TPQ for the chemical in question (40 CFR §355.30(e)(2)(iii)). (December 1994 Monthly Hotline Report)

APPLICABILITY OF EPCRA §§311/312 TO HORTICULTURAL OPERATIONS AND GOLF COURSES

Question: EPCRA §§311 and 312 require facility owners or operators to submit Material Safety Data Sheets (MSDS) and annual inventory reports (Tier I/Tier II Forms) for any hazardous chemical subject to OSHA's Hazard Communication Standard (29 CFR §1910.1200) when present at a facility above threshold amounts (40 CFR §370.20(b)). Under EPCRA §311(e)(5), any substance used in routine agricultural operations is exempt from EPCRA §§311/312 reporting requirements. Is the growing of turf by a nursery considered routine agricultural operations? Does this exemption apply if the turf is grown and maintained by a golf course?

Answer: The agricultural exemption found at EPCRA §311(e)(5) excludes fertilizers held for sale by retailers and any substance which is used in routine agricultural operations. Agricultural operations is a broad term which EPA has interpreted to apply to various types of facilities, including nurseries and other horticultural operations (52 FR 38344; 38349; October 15, 1987). Therefore, chemicals used in direct support of turf growing by a nursery are exempt under EPCRA §311(e)(5). In contrast, a golf course is not an agricultural operation. Golf courses derive their income from the playing of golf, not the sale of turf or other horticultural products. Therefore, all hazardous chemicals (e.g., pesticides, fuel for equipment) onsite must be reported under EPCRA §§311/312 if they exceed applicable thresholds. (January 1995 Monthly Hotline Report)

REPORTING REQUIREMENTS FOR CHEMICALLY TREATED WOOD UNDER EPCRA §§311 AND 312

Question: Until recently, OSHA exempted wood and wood products from the Hazard

Communication Standard (HCS) program. On February 9, 1994, OSHA amended its HCS to no longer exempt certain wood and wood products (59 FR 6126). The revised exemption found at 29 CFR §1910.1200(b)(6)(iv) applies only to wood and wood products for which the hazard potential is limited to its flammability or combustibility. Wood that has been chemically treated is now subject to the HCS and thus requires a facility to maintain a material safety data sheet (MSDS) for the wood product. In addition, the wood product is potentially subject to EPCRA §§311 and 312. A manufacturer of creosote-treated wood stores various sizes of treated lumber, which it sells to retailers and wholesalers. The facility never stores more than 10,000 pounds of creosote prior to being incorporated into the wood. Would the consumer product exemption found at 40 CFR §370.2 apply to the creosote-treated wood? If the treated wood in storage is subject to EPCRA §§311 and 312, does the facility apply the total weight of the wood products towards the 10,000 pound threshold, or just the weight of creosote contained in the wood?

Answer: EPCRA §§311 and 312 apply to any facility that is required to prepare or have available a MSDS and has a hazardous chemical, as defined by OSHA, present in excess of 10,000 pounds, or has an extremely hazardous substance in excess of 500 pounds or the threshold planning quantity (TPQ), whichever is lower (40 CFR §370.20). Despite the new applicability of OSHA's HCS to chemically treated wood, the wood may not be subject to EPCRA §§311 and 312 if certain exemptions apply. A manufacturer of creosote-treated wood would not have to count the wood products in storage towards the 10,000-pound threshold if the treated wood is in the same form and concentration as a product distributed to the general public (40 CFR §370.2). If, however, the wood products are treated with levels of creosote not typically used in consumer products, then the wood products in storage must be counted in the threshold determination. Likewise, any wood products in sizes not typically available to the general public must be counted towards threshold calculations. A facility subject to the requirements of EPCRA §§311 and 312 has two options for reporting mixtures. An owner or operator may meet the requirements by either providing the required information on each component of a mixture or by providing the information on the mixture itself (40 CFR §370.28(a)). If the manufacturer of creosote-treated wood knows the concentration of the creosote in the wood, the manufacturer can apply the weight of creosote contained in the wood along with any other creosote on site towards the 10,000-pound threshold. The owner or operator may prefer, however, to simply apply the total weight of the wood products towards the threshold. The owner/operator may choose which reporting option to use, but the option chosen must be consistently applied for purposes of reporting under EPCRA §§311 and 312 (40 CFR §370.28(a)(2)). (March 1995 Monthly Hotline Report)

FEDERAL FACILITIES AND THE CONSUMER PRODUCT EXEMPTION UNDER EPCRA §§311 AND 312

Question: Executive Order 12856 required federal facilities to comply with all aspects of EPCRA (58 FR 41981; August 6, 1993). Prior to this action, EPCRA did not apply to federal facilities. Consequently, interpretive language previously issued as guidance for non-federal facilities often does not address issues specific to federal facilities. For example, the federal government produces many of its own products (i.e., scouring powder, bleach) for use by its own service people. These products are similar in form and

concentration to analogous products manufactured by private companies for distribution to the general public. Many of the federal government's products are packaged in comparable quantities to those produced in the private sector. EPCRA provides an exemption at 40 CFR §370.2 for consumer products present in the same form and concentration as products packaged for distribution and use by the general public. The federal government's products, however, are not available to the general public. Would the federal products be exempt under the consumer product exemption if they are packaged in the same form and concentration as those manufactured in the private sector, even though they are not available for purchase by the general public?

Answer: Yes. Products manufactured by the federal government that are packaged in the same form (i.e., package size) and concentration as products manufactured by private industry are exempt from EPCRA §§311/312 reporting requirements. The federal products need not be available to the general public to meet this exemption. The exemption applies either to the extent a product is used for personal, family, or household purposes, or is present in the same form and concentration as a product used by the general public (whether or not it is actually used by the general public (40 CFR §372.2)). For further guidance on specific scenarios, federal agencies should look to their respective Executive Order implementing offices to determine the extent of reporting. Some federal agencies have agreed to disregard certain exemptions even though their facilities may qualify for them in order to demonstrate the Federal Government's leadership role in source reduction and pollution prevention. (March 1995 Monthly Hotline Report)

EPCRA SECTIONS 311/312 CONSUMER USE EXEMPTION AND BATTERIES

Question: EPCRA Sections 311 and 312 apply to owners or operators of any facility that is required to have available or prepare a material safety data sheet (MSDS) for an OSHA defined hazardous chemical present at the facility at any one time in amounts equal to or greater than established thresholds. Facility owners or operators must file MSDSs and Tier inventory forms for each hazardous chemical which meets the reporting criteria. A facility purchases non-industrial batteries in the same form as those packaged for use by the general public. Later, the facility services the batteries by adding water or sulfuric acid. Must the facility consider the batteries when calculating whether EPCRA Sections 311/312 thresholds have been triggered?

Answer: No. EPCRA Section 311(e), codified at 40 CFR Section 370.20(3), exempts "any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use for the general public." Because the public is generally familiar with the hazards posed by such materials, the disclosure of such substances is unnecessary for right-to-know purposes. The exemption extends to any substance packaged in the same form or concentration as a consumer product whether or not it is used for the same purpose as the consumer product (52 FR 38344, 38348 October 15, 1987). EPA interprets this exemption to enable the facility to service batteries which are in such forms without negating the exemption. Any chemicals used for servicing that are present at the facility in bulk form, however, would not fall under the exemption. (April 1995 Monthly Hotline Report)

EPCRA REQUIREMENTS FOR A FACILITY LOCATED WITHIN THE PLANNING DISTRICTS OF TWO LEPCS

Question: The reporting requirements of EPCRA §§303(d), 311, and 312 require covered facilities to provide information on the presence of extremely hazardous substances (EHSs) and hazardous chemicals to the Local Emergency Planning Committee (LEPC) for the purpose of preparing an emergency plan. In general, facilities are located within the boundaries of a single LEPC's emergency planning district, allowing all notification to be made to the same planning entity. A certain facility subject to EPCRA emergency planning requirements is located such that its perimeter extends across the planning jurisdiction boundaries of two LEPCs. In this case, which LEPC is responsible for including the facility in its emergency response plan? To which LEPC should the facility fulfill its reporting obligations under EPCRA §§303(d), 304, 311, and 312?

Answer: LEPCs who share jurisdiction over a facility should decide on how they will share responsibility for including the facility in their emergency planning activities and how they will accept information required under EPCRA §§303(d), 304, 311, and 312. With respect to §303(d), if the facility is located within two districts, it must provide the required notification to both LEPCs. Since EPCRA §304 requires facilities to notify the LEPC responsible for any area likely to be affected by a release of a reportable chemical (40 CFR §355.40(b)(1)), both LEPCs should receive release notification to ensure sufficient emergency response. EPCRA §§311 and 312 require information to be submitted to the appropriate LEPC (EPCRA §§311(a)(1)(A), and 312(a)(1)(A)). LEPCs may reach an agreement as to which is the appropriate LEPC, and thus determine which would receive information submitted under §§311 and 312. In the absence of such an agreement, the facility would need to report to both LEPCs. (July 1995 Monthly Hotline Report)

AMMONIA AND AMMONIUM HYDROXIDE REPORTING UNDER EPCRA §§302 AND 304

Question: Ammonia (CAS #7664-41-7) is listed on the Extremely Hazardous Substance (EHS) list found at 40 CFR Part 355 Appendix A and B, with a threshold planning quantity (TPQ) of 500 pounds. A facility stores ammonium hydroxide (CAS #1336-21-6), which does not appear on the EHS list, on site in excess of 500 pounds. Since ammonium hydroxide is essentially a mixture of ammonia and water, should the facility include the quantity of ammonia in ammonium hydroxide toward TPQ and reportable quantity (RQ) calculations for purposes of EPCRA §§302 and 304 reporting?

Answer: The quantities of ammonia in ammonium hydroxide should be considered separately when determining reporting requirements under EPCRA §§302 and 304. This is consistent with the listing under CERCLA (40 CFR Table §302.4), where ammonia and ammonium hydroxide are specifically and separately listed as hazardous substances. Thus, ammonia (CAS #7664-41-7) and ammonium hydroxide (CAS #1336-21-6) are considered different chemicals for EHS purposes. The notification requirement in EPCRA §302 applies to facilities with quantities of EHSs present on-site equal to or in excess of a TPQ. Ammonia is considered an EHS, therefore,

a facility with a TPQ or more of ammonia is required to provide EPCRA §302 notification. Since ammonium hydroxide is considered distinct from ammonia, and is not specifically listed as an EHS, it is not subject to emergency planning requirements. A facility storing a large quantity of ammonium hydroxide, however, may have free ammonia in the headspace of a storage tank. A facility must report the ammonia in the headspace of a storage tank under EPCRA §302 if this amount of free ammonia equals or exceeds the TPQ at any time. EPCRA §304 applies to chemicals listed as either CERCLA hazardous substances (40 CFR §302.4) or EHSs. Both ammonia and ammonium hydroxide are specifically listed as CERCLA hazardous substances and both chemicals, therefore, are subject to EPCRA §304 reporting requirements. Ammonia has a RQ of 100 pounds and ammonium hydroxide has an RQ of 1000 pounds. If either chemical is released to the environment above its designated RQ within a 24-hour period, the facility is subject to EPCRA §304 notification requirements (40 CFR §355.40). (July 1995 Monthly Hotline Report)

SARA TITLE III ON INDIAN LANDS

Question: In 1986, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act (SARA), to help local communities, including Indian reservations, protect public health and the environment from chemical hazards by informing citizens about the chemicals present in their communities. On July 26, 1990, EPA published a rulemaking in the Federal Register designating Indian Tribes and their chief executive officers as the implementing authority for SARA Title III on all Indian lands (55 FR 30632). What is EPA's policy regarding the implementation of the different provisions of SARA Title III on Indian lands?

Answer: EPA's policy is to work with Tribes on a "government to government" basis in implementing the requirements of SARA Title III. SARA Title III contains four major provisions: planning for chemical emergencies, emergency notification of chemical accidents and releases, reporting of hazardous chemical inventories, and toxic chemical release reporting. The emergency planning provisions of SARA Title III §§301-303 are designed to help Indian Tribes prepare for, and respond to chemical emergencies occurring on Indian lands that involve extremely hazardous substances (EHSs), found at 40 CFR Part 355, Appendix A and B. The chief executive officers of federally recognized Tribes must appoint Tribal Emergency Response Commissions (TERCs), responsible for carrying out the provisions of EPCRA in the same manner as State Emergency Response Commissions (SERCs). Alternatively, Tribal leaders can join a Tribal Coalition which functions as the TERC, or establish a Memorandum of Understanding with a State to participate under the SERC. TERCs establish emergency planning districts and can appoint Local Emergency Planning Committees (LEPCs) or act as TERCs/LEPCs, performing the functions of both. LEPCs use information collected under SARA Title III to develop local emergency response plans to respond quickly to chemical accidents. The chief executive officer should ensure that TERCs maintain a broad-based representation, including Tribal public agencies and departments dealing with environmental, energy, public health and safety issues, as well as other tribal community groups with interest in SARA Title III. The Tribal LEPC should also be representative of the community, and should include elected Tribal officials, fire chiefs, Indian Health Services officials, Bureau of Indian

Affairs officials, Tribal elders and leaders, representatives of industries on or near the reservation, and members of the general community. The emergency release notification provisions of SARA Title III §304 require facilities to immediately notify TERCs and LEPCs of releases in excess of reportable quantities of EHSs and CERCLA hazardous substances, found at 40 CFR §302.4. Facilities must also provide written follow-up reports on the actions taken to respond to releases and possible health effects of the released substances. The emergency release notification provisions cover releases from commercial, municipal, and other facilities on Tribal lands, including those owned by the Tribe, and those from accidents on transportation routes within the reservation. Substances covered by this section include not only EHSs, but also hazardous substances subject to the emergency release notification requirements of CERCLA §103. CERCLA requires notification of releases to the National Response Center. In cases where releases from facilities located on Indian lands may affect areas outside Indian jurisdiction, the legislation under SARA Title III §304(b)(1) requires that notice be provided to all SERCs and LEPCs likely to be affected by the releases. Response to such releases will be handled by cooperation between the affected jurisdictions. EPA encourages Indian Tribes, SERCs, and LEPCs to participate in joint planning efforts to prepare for such potential emergencies. The hazardous chemical right-to-know provisions of SARA Title III §§311 and 312, require facilities that prepare material safety data sheets (MSDSs) for hazardous chemicals under OSHA, and have hazardous chemicals or EHSs present above applicable threshold levels, to submit these MSDSs, or lists of such chemicals to TERCs, LEPCs, and local fire departments. Facilities are also required to submit hazardous chemical inventory forms which detail the amounts, conditions of storage, and locations of hazardous chemicals and EHSs to TERCs, LEPCs, and local fire departments. It is the responsibility of TERCs and LEPCs to make this information available to the public. Toxic chemical release reporting under SARA Title III §313, requires covered facilities to submit annual reports on routine and accidental toxic chemical releases to EPA and the Tribal environmental, health, or emergency response agency which coordinates with the TERC. TERCs and EPA make this information available to the community through the national Toxic Release Inventory (TRI) database. The data is also released to the public annually in national and state TRI reports. The information collected under SARA Title III enables TERCs and LEPCs to paint a picture of the hazardous substances, chemicals, and toxics found on Indian lands. It also allows the Tribal communities to work with industries to reduce the use and releases of toxic chemicals into the environment and prevent chemical accidents. EPA recognizes that resources are often limited on Indian lands, and is committed to helping Indian tribes comply with SARA Title III. EPA provides technical assistance, guidance, and training tailored to the needs and capabilities of Indian tribes. EPA's Office of Chemical Emergency Preparedness and Prevention (CEPPO) can provide TERCs with grants/cooperative agreements to aid in the implementation and effectiveness of their SARA Title III programs. To be eligible for consideration under this grant program, a tribe or Tribal Coalition must function as an independent TERC. To the extent that Tribes have these functions performed by states, they are not eligible for these grants. Tribal agencies can also apply for training grants provided by FEMA under SARA Title III §305(a) to gain or improve skills needed for carrying out emergency planning and preparedness programs. These grants are provided through the TERCs or other agencies. The Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTA) also includes funding grants for Indian tribes for training public sector employees in emergency response activities. HMTUSA provides planning grants for developing, improving, and implementing Title III plans, and for developing a training

curriculum for TERCs and LEPCs. Tribes should contact their EPA Regional office for information on how to apply for these grants. Enforcing the provisions of SARA Title III is key to providing Tribal communities with the information necessary to prepare for and prevent chemical accidents. EPA provides assistance to Tribal communities for specific enforcement actions against violators of §§302, 311, and 312. Since EPA does not receive or process information under these sections, actions should be initiated at the tribal and district levels. (August 1995 Monthly Hotline Report)

CERCLA §103(A) AND EPCRA §304 REPORTING REQUIREMENTS- AQUEOUS FILM FORMING FOAM

Question: Aqueous Film Forming Foam (AFFF), a substance commonly used by firefighters, contains ethanol, 2-(2-butoxyethoxy) which is categorized as a glycol ether. Glycol ethers meet the definition of hazardous substance in CERCLA §101(14) because they are hazardous air pollutants pursuant to §112(b) of the Clean Air Act. In 1990, the Clean Air Amendments added 47 individual hazardous air pollutants and 5 hazardous air pollutant categories, including the broad category of glycol ethers. These hazardous air pollutants newly identified as hazardous substances automatically received a reportable quantity of one pound (CERCLA §102(b)). On June 12, 1995, EPA published a final rule adjusting the reportable quantities for the CAA hazardous air pollutants, in particular, removing the one pound reportable quantity for the five broad generic categories (60 FR 30926). Do the notification provisions in CERCLA §103 and EPCRA §304 still apply to releases of AFFF?

Answer: CERCLA §103 and EPCRA §304 notification requirements no longer apply to releases of AFFF containing ethanol, 2-(2-butoxyethoxy), unless the AFFF released contains another listed CERCLA hazardous substance found at 40 CFR §302.4 or extremely hazardous substance found at 40 CFR Part 355 Appendix A. In the June 12, 1995, Federal Register, EPA decided not to assign reportable quantities to the additional five broad categories, but rather to identify, designate, and assign reportable quantities to certain specific substances within the categories at a later date. As a result, releases of AFFF containing only chemicals within the glycol ethers category no longer require reporting to the National Response Center pursuant to CERCLA §103(a) or the State Emergency Response Commission and Local Emergency Planning Committee pursuant to EPCRA §304. Owner/operators can still be held liable under CERCLA for clean-up costs or damages caused by a release of AFFF containing a glycol ether, even though the release itself is not reportable (60 FR 30926, 30933; June 12, 1995). (November 1995 Monthly Hotline Report)

NOTIFICATION REQUIREMENTS FOR TRANSPORTATION-RELATED RELEASES UNDER EPCRA SECTION 304

Question: In the event of a release of an extremely hazardous substance (EHS) or a CERCLA hazardous substance above its reportable quantity (RQ), a facility owner/operator must immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) of the incident (EPCRA Section 304(b); 40 CFR Section 355.40(b)) and for CERCLA hazardous substances, the National Response Center (NRC). As soon as practicable after the release occurs, the

facility owner/operator must submit a written follow-up emergency notice to the SERC and LEPC (EPCRA Section 304(c); 40 CFR Section 355.40(b)(3)). In the case of a transportation-related release, EPCRA Section 304(b) states that the emergency release notification requirements may be satisfied by providing notice to the 911 operator instead of the SERC and LEPC (40 CFR Section 355.40(b)(4)(ii)). Must the notifier submit a follow-up emergency notice after the initial 911 report?

Answer: Notification of a transportation-related release, including the requirement to submit a written follow-up notice, is satisfied by dialing 911 and providing the release information as described in 40 CFR Section 355.40(b)(2) to the operator (40 CFR Section 355.40(b)(4)(ii)). In the absence of a 911 number, the notifier may call the local operator to satisfy the emergency release notification requirements (EPCRA Section 304(b)(1)). (May 1996 Monthly Hotline Report)

EPCRA SECTIONS 311/312 HAZARDOUS CHEMICAL INVENTORY REPORTING FORMS

Question: An owner or operator of a facility that meets the applicability requirements of 40 CFR Section 370.20 must submit a hazardous chemical inventory form containing Tier I
information to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC), and the fire department with jurisdiction over the facility (EPCRA Section 312 (a)(1)). Reports are due by March 1 of each year and contain information from the preceding calendar year. An owner or operator of a facility must provide Tier II information upon the request of the SERC, LEPC, or the fire department (EPCRA Section 312(e); 40 CFR Section 370.25(c)). Do electronic versions of the Tier I or Tier II forms exist? May states or private companies develop electronic versions of the forms?

Answer: The Iowa SERC, in cooperation with EPA, has developed an electronic equivalent of the Federal Tier II form for both DOS and Windows operating systems. Both are available from the EPCRA Hotline on 3.5" diskette. States may adopt Iowa's electronic version of the Tier II form, or develop their own. Interested parties should check with individual SERCs to determine state policy on the use and submission of electronic inventory forms. Other states may develop and implement Tier I and Tier II electronic copies of inventory forms without formal approval by EPA, so long as the electronic version collects, at a minimum, the identical information required by 40 CFR Sections 370.40 and 370.41. In states which accept submission of inventory forms on magnetic media, the owner or operator or the officially designated representative of the owner or operator must certify a magnetic media submission by including a signed certification cover letter with the submission (40 CFR Sections 370.40 and 370.41). Private companies can also create electronic versions of inventory forms, subject to state approval. States may establish procedures for submission and receipt of electronic forms. The Agency encourages the use of electronic forms because it conserves resources, and may facilitate data management and exchange for SERCs, LEPCs, and covered facilities. (August 1996 Monthly Hotline Report)

EPCRA 311/312 AND COMPLIANCE WITH UNDERGROUND STORAGE TANK

REQUIREMENTS

Question: Are SERCs, LEPCs or fire departments now required to determine if facilities are in compliance with UST requirements?

Answer: No. SERCs, LEPCs and fire departments are not required to make the determination themselves on whether a facility is in compliance with UST requirements. They may obtain compliance information from state UST programs. (Q&A #1 February 1999)

EPCRA 311/312 AND COMPLIANCE WITH UNDERGROUND STORAGE TANK REQUIREMENTS

Question: Do facilities have to comply with the federal UST requirements or with state UST requirements to be eligible to use the new gasoline and diesel fuel thresholds?

Answer: Facilities must comply with either federal UST requirements (40 CFR part 280) or, if applicable, the requirements of the state UST program approved by EPA under 40 CFR part 281. (Q&A #2 February 1999)

EPCRA 311/312 AND COMPLIANCE WITH UNDERGROUND STORAGE TANK REQUIREMENTS

Question: How does temporary non-compliance with UST requirements affect applicability of the new EPCRA thresholds?

Answer: Retail gas stations that were not in compliance with all applicable UST requirements at any time during a calendar year may not apply the new thresholds for EPCRA reporting for that calendar year. The facility must be in compliance with UST requirements at all times during a particular calendar year to use the new thresholds for reporting for that year. (Q&A #3 February 1999)

EPCRA 311/312 AND COMPLIANCE WITH UNDERGROUND STORAGE TANK REQUIREMENTS

Question: For purposes of using the new EPCRA gasoline and diesel fuel thresholds, when is a retail gas station considered "not in compliance" with UST requirements?

Answer: A facility is not in compliance with the UST requirements (and therefore not eligible for the new EPCRA thresholds) when it first fails to meet the UST requirements. For example, if an owner or operator of a retail gas station has a tank system that was not in compliance with UST requirements that went into effect in December of 1998 (see 40 CFR 280.21(a) and 281.31), that owner or operator can not apply the new thresholds in today's rule for the EPCRA section 312 report that is due March 1, 1999.) (Q&A #4 February 1999)

EPCRA 311/312 AND APPLYING NEW GASOLINE AND DIESEL THRESHOLDS

Question: If a retail gas station stores gasoline or diesel fuel in both aboveground and underground tanks, what thresholds do they apply to determine if they have to report gasoline or diesel fuel? If they have to report, do they report all the gasoline and diesel fuel at the facility?

Answer: Any retail gas station that has at least 10,000 pounds of gasoline or diesel fuel stored in tanks that are not entirely underground must report on the total gasoline or diesel fuel at the facility, including any that is stored entirely underground. Similarly, any retail gas station that has at least 75,000 gallons of gasoline or 100,000 gallons of diesel fuel stored entirely underground must report on the total gasoline or diesel fuel at the facility, including any that is not stored entirely underground. In other words, whether the facility triggers the threshold for underground storage or for aboveground storage, they report on the total gasoline or diesel fuel at the facility. (Q&A #5 February 1999)

EPCRA 311/312 NEW GASOLINE AND DIESEL FUEL THRESHOLDS EFFECTIVE DATE

Question: Are the new gasoline and diesel fuel thresholds effective for the reports that are due March 1, 1999?

Answer: Yes. The new thresholds are effective beginning with the reports due on or before March 1, 1999, which cover 1998 calendar year inventories. (Q&A #6 February 1999)

EPCRA 311/312 AND UNDERGROUND STORAGE TANK REQUIREMENTS

Question: What do state UST offices need to know and to do?

Answer: In general, only the largest of retail gas stations will need to submit gas and diesel inventories for calendar year 1998 under this final regulation - most other owners/operators will no longer have to report under EPCRA Section 312. Regardless of whether retail gas stations qualify for the new gas and diesel EPCRA reporting threshold, these facilities must still report under state UST requirements. Because of this final regulation, UST offices may receive more requests for information and outreach assistance from SERCs. In turn, SERCs/LEPCs can be a valuable source of information on USTs not included in existing databases. (Q&A #7 February 1999)

EPCRA 311/312 AND UNDERGROUND STORAGE TANK REQUIREMENTS

Question: Where can state/local offices get contact names and addresses for their sibling agencies?

Answer: A list of state UST agencies can be found on U.S. EPA's Office of Underground Storage Tanks homepage at www.epa.gov/swerust1/states/statcon1.htm A list of SERCs and LEPCs can be found by going through CEPPO's webpage on partnering agencies at www.epa.gov/swercepp/partner.htm and scrolling down to the subsection entitled AState and Local Governments@. You can also call our hotline at 1-800-424-9346 if you'd prefer to have either the state UST agency or SERC list mailed to you. (Q&A #8 February 1999)

EPCRA 311/312 AND COMPLIANCE WITH UNDERGROUND STORAGE TANK REQUIREMENTS

Question: Must I have been in compliance with UST requirements for all of 1998 (in order to qualify for the new thresholds for the reports that are due March 1, 1999)?

Answer: Yes. A retail gas station must have been Ain compliance at all times during the preceding calendar year with all applicable UST requirements [40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281]@ in order to qualify for the new gas and diesel fuel thresholds. For reports due March 1, 1999, this means that the gas station must have been in compliance with applicable UST requirements throughout all of 1998 (including the requirement that not later than December 22, 1998, the gas station must have been in compliance with the new requirements for upgrading, replacing or taking tanks out of service). (Q&A #9 February 1999)