



TOXICS RELEASE INVENTORY

Definition of Otherwise Use

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report the annual quantity of such chemicals entering each environmental medium. Such facilities must also report pollution prevention data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106. EPCRA section 313 is also known as the Toxics Release Inventory (TRI).

CONTENTS

SECTION 1.0 INTERPRETATION OF OTHERWISE USE PRIOR TO 1998.....	1
SECTION 2.0 CURRENT INTERPRETATION OF OTHERWISE USE (SINCE 1998).....	1
SECTION 3.0 EXAMPLES OF THE REVISED INTERPRETATION OF OTHERWISE USE	1

LIST OF EXAMPLES

Example 1: Treatment of a Listed Chemical Received from Off-Site.....	2
Example 1A: Stabilization of a Listed Chemical Received from Off-Site	2
Example 1B: Stabilization and Disposal of a Listed Chemical Received from Off-Site.....	2
Example 2: Manufacture and Disposal of a Listed Chemical during Treatment of a Chemical Received from Off-Site.....	2
Example 2A: Manufacture and Incorporation into a Product of a Listed Chemical During Treatment of a Chemical Received from Off-Site	2
Example 2B: Manufacture, Disposal, and Otherwise Use of a Listed Chemical During Treatment of a Chemical Received from Off-Site	2
Example 3: Manufacture and Disposal of a Listed Chemical During Treatment of a Non-Listed Chemical Produced On-Site.....	2
Example 3A: Manufacture and Disposal of a Listed Chemical During Treatment of a Non-Listed Chemical Received from Off-Site	2
Example 3B: Otherwise Use of a Chemical Manufactured During Treatment of a Non-Listed Chemical ..	2
Example 4: Manufacture and Disposal of a Listed Chemical During Processing of a Non-Listed Chemical	2
Example 5: Energy Recovery of a Listed Chemical.....	2

DISCLAIMER

This guidance document is intended to assist industry with EPCRA section 313 interpretation of otherwise use. These recommendations do not supersede any statutory or regulatory requirements, are subject to change, and are not independently binding on either EPA or covered facilities. Additionally, if a conflict exists between guidance on this site and the statutory or regulatory requirements, the conflict must be resolved in favor of the statute or regulation.

Although EPA encourages industry to consider these recommendations, in reviewing this document, industry should be aware that these recommendations were developed to address common circumstances at typical facilities. Facilities are encouraged to contact the Agency with any additional or clarifying questions about the recommendations in this document, or if the facility believes that EPA has incorrectly characterized a particular process or recommendation.

Additional guidance documents, including industry specific and chemical specific guidance documents, are also available on TRI's GuideME website:

https://ofmpub.epa.gov/apex/guideme_ext/f?p=guideme:gd-list

OVERVIEW

On May 1, 1997, EPA published a final rule to expand the universe of industry groups subject to EPCRA section 313 and PPA Section 6607 (62 FR 23834; May 1, 1997). In this rule, which became effective January 1, 1998 (for the 1998 reporting year, Form R reports due by July 1, 1999), EPA finalized a revised interpretation of the term otherwise use.

SECTION 1.0 INTERPRETATION OF OTHERWISE USE PRIOR TO 1998

Until January 1, 1998, the definition of otherwise use meant “any use of a toxic chemical that was not covered by the terms manufacture or process and included use of a toxic chemical contained in a mixture or trade name product. Relabeling or redistributing a container of a toxic chemical where no repackaging occurs did not constitute otherwise use or processing of the toxic chemical.” EPA had generally interpreted this term to include toxic chemicals that were not intentionally incorporated into a product distributed in commerce. This included any activity involving a listed toxic chemical at a facility that did not fall under the definitions of manufacture or process. Some examples of toxic chemicals otherwise used included solvents, catalysts, coolants, lubricants and fuels. Historically, EPA had instructed facilities that the disposal of a toxic chemical, in and of itself, did not constitute manufacture, process, or otherwise use.

SECTION 2.0 CURRENT INTERPRETATION OF OTHERWISE USE (SINCE 1998)

In the May 1, 1997 final rule, EPA modified its definition of activities considered otherwise used as it applies to EPCRA section 313 activity thresholds to include on-site treatment for destruction, disposal, and stabilization when the covered facility engaged in these activities receives materials containing any chemical (not limited to EPCRA section 313 listed toxic chemicals) from off-site (regardless of whether the generating and receiving facilities have common ownership) for the purposes of further waste management activities. Specifically, EPA has defined the term otherwise use to include “any use of a toxic chemical” contained in a mixture or other trade name product or waste, that is not covered by the terms manufacture or process. Otherwise use of a toxic chemical does not include disposal, stabilization (without subsequent distribution in commerce), or treatment for destruction, unless:

- The toxic chemical that was disposed, stabilized, or treated for destruction was received from off-site for the purposes of further waste management; or
- The toxic chemical that was disposed, stabilized, or treated for destruction was manufactured as a result of waste management activities on materials received from off-site for the purposes of further waste management activities. Relabeling or redistributing of the toxic chemical where no repackaging occurs does not constitute otherwise use or processing of the toxic chemical.

SECTION 3.0 EXAMPLES OF THE REVISED INTERPRETATION OF OTHERWISE USE

The following are examples of the revised interpretation of otherwise use as finalized in the May 1, 1997, final rule. These examples assume that the facility meets the EPCRA section 313 employee and NAICS code criteria.

Example 1: Treatment of a Listed Chemical Received from Off-Site

A facility receives a material containing 22,000 pounds of chemical A. Chemical A is an EPCRA section 313 listed non-PBT chemical. The facility treats chemical A for destruction. Included among the various activities covered by EPA's revised interpretation of otherwise use is the treatment for destruction of a toxic chemical received by the facility from off-site. Because the facility received and treated chemical A for destruction, the treated amount of chemical A would be included in the calculation of the amount of chemical A otherwise used at the facility. In this case, 22,000 pounds of chemical A would be considered otherwise used. Thus, because the facility otherwise used chemical A above the 10,000-pound statutory threshold for otherwise use, the facility would be required to report all releases and other waste management activities involving chemical A.

Example 1A: Stabilization of a Listed Chemical Received from Off-Site

A facility receives a material containing 22,000 pounds of chemical A, and chemical A is an EPCRA section 313 listed non-PBT chemical. The facility stabilizes chemical A. Stabilization is included among the various activities covered by EPA's revised interpretation of otherwise use of a toxic chemical received by the facility from off-site. Because the facility received and stabilized chemical A, the amount of stabilized chemical A would be included in the calculation of the amount of chemical otherwise used at the facility. In this case, 22,000 pounds of chemical A would be considered otherwise used. Thus, because the facility otherwise used chemical A above the 10,000-pound statutory threshold for otherwise use, the facility would be required to report all releases and other waste management activities involving chemical A.

Example 1B: Stabilization and Disposal of a Listed Chemical Received from Off-Site

A facility receives a material containing 18,000 pounds of chemical A, and chemical A is an EPCRA section 313 listed non-PBT chemical. The facility stabilizes 9,000 pounds of chemical A and disposes of the other 9,000 pounds of chemical A. Included among the various activities covered by EPA's revised interpretation of otherwise use are stabilization and disposal of a toxic chemical received by a facility from off-site. Because the facility received the 18,000 pounds of chemical A from off-site, the amount of chemical A that is subsequently stabilized or disposed is considered otherwise used, and would be included in the calculation of the amount of chemical A otherwise used at the facility for the purpose of threshold determination. The facility would need to add the amount of chemical A that is involved in all otherwise use activities to determine whether the otherwise use threshold of 10,000 has been exceeded. In this case, 18,000 pounds of chemical A would be considered otherwise used. Thus, because the facility otherwise used chemical A above the 10,000-pound statutory threshold for otherwise use, the facility would be required to report all releases and other waste management activities involving chemical A.

Example 2: Manufacture and Disposal of a Listed Chemical during Treatment of a Chemical Received from Off-Site

Assume now that the same facility, in treating chemical A for destruction, manufactures 11,000 pounds of chemical B. Chemical B is also an EPCRA section 313 listed non-PBT chemical. This manufacture of chemical B is below the manufacture reporting threshold. However, the facility disposes of chemical B on-site. Included among the various activities covered by EPA's revised interpretation of otherwise use is the disposal of a toxic chemical that is produced from the management of a waste that is received by the facility from off-site. In this example, because the facility received an off-site material containing a chemical that is treated for destruction (i.e., chemical A), and during that treatment produced and subsequently disposed of chemical B, the disposal of chemical B under EPA's revised interpretation would be considered otherwise used. Because the facility disposed of, or otherwise used, 11,000 pounds of chemical B, the 10,000-pound statutory threshold for otherwise use is met. Thus, the facility would need to report all releases and other waste management activities involving chemical B.

Example 2A: Manufacture and Incorporation into a Product of a Listed Chemical During Treatment of a Chemical Received from Off-Site

Now assume that the situation in Example 2 is the same (and the facility is still below the manufacturing threshold for chemical B) except that the facility does not dispose of chemical B on-site, but rather incorporates the entire 11,000 pounds of chemical B into a product that is sold to another facility. The facility neither treats for destruction, stabilizes, nor disposes of chemical B and, therefore, does not otherwise use chemical B. However, in this example, chemical B is also considered processed. Therefore, the 11,000 pounds of chemical B are counted towards the 25,000-pound process threshold for that chemical at the facility.

Example 2B: Manufacture, Disposal, and Otherwise Use of a Listed Chemical During Treatment of a Chemical Received from Off-Site

As in the above two examples, 11,000 pounds of chemical B are manufactured from the treatment of chemical A (and chemical A was received from an off-site facility). The facility is still below the manufacturing threshold for chemical B. However, the facility disposes of 6,000 pounds of chemical B and uses 5,000 pounds of chemical B in a nonincorporative manufacturing activity at the facility. Both of these activities are considered to be otherwise use activities. The disposal of chemical B is included among the various activities covered by EPA's revised interpretation of otherwise use described in the proposal to expand the types of facilities covered under EPCRA section 313. Any non-incorporative use of a toxic chemical at a covered facility that is not otherwise exempt is an otherwise use activity under the current interpretation. The facility would add the amounts of chemical B involved in both otherwise use activities at the facility to determine whether it exceeds the 10,000 otherwise use threshold. Since the total amount of chemical B that is otherwise used is 11,000 pounds, the facility would need to report all releases and waste management activity involving chemical B.

Example 3: Manufacture and Disposal of a Listed Chemical During Treatment of a Non-Listed Chemical Produced On-Site

A facility produces on-site a material containing 22,000 pounds of chemical C. Chemical C is not an EPCRA section 313 listed non-PBT chemical. Also, chemical C was not manufactured as a result of managing a waste received from off-site. The facility treats chemical C for destruction and during treatment, manufactures 11,000 pounds of chemical D. Chemical D is an EPCRA section 313 listed toxic chemical. The facility subsequently disposes of chemical D. In this example, although the facility disposes of chemical D, the 11,000 pounds of chemical D is not considered otherwise used under EPA's revised definition because the material from which chemical D was produced (i.e., the material containing the 22,000 pounds of chemical C) was not received by the facility from off-site. Thus, in disposing of chemical D, the facility does not exceed the 10,000-pound statutory threshold for otherwise use. The facility, however, must count the amount of chemical D manufactured toward the manufacturing threshold.

Example 3A: Manufacture and Disposal of a Listed Chemical During Treatment of a Non-Listed Chemical Received from Off-Site

Assume instead that chemical C (which is not an EPCRA section 313 listed toxic chemical) was received from off-site or was created in waste management activities conducted on materials received from off-site. In this situation, the disposal of chemical D would be considered an otherwise use activity involving chemical D. Therefore, the disposal of the 11,000 pounds of chemical D would exceed the 10,000-pound statutory threshold for otherwise use, and the facility would need to report all releases and waste management activities involving chemical D.

Example 3B: Otherwise Use of a Chemical Manufactured During Treatment of a Non-Listed Chemical

Chemical D is an EPCRA section 313 chemical that is manufactured from chemical C during a waste management activity at the facility. (Chemical C is produced on-site and is not an EPCRA section 313 listed toxic chemical.) In this example, the facility uses the entire 11,000 pounds of chemical D to neutralize a waste stream at the facility. Under the current definition of otherwise use, chemical D is considered otherwise used. Therefore, the facility exceeds the otherwise use threshold and the facility would report all releases and waste management activity involving chemical D.

Example 4: Manufacture and Disposal of a Listed Chemical During Processing of a Non-Listed Chemical

A facility receives 24,000 pounds of chemical E, which is not an EPCRA section 313 toxic chemical. Chemical E undergoes a processing activity at the facility. This activity is not a waste management activity. During the processing of chemical E, 11,000 pounds of chemical F is manufactured as a byproduct. Chemical F is an EPCRA section 313 listed non-PBT chemical. The 11,000 pounds of chemical F is then disposed. According to the current and the revised interpretation of the otherwise use definition, the facility has not otherwise used chemical F. Since chemical E was not received by the facility for the purpose of waste management, the subsequent disposal of chemical F is not an otherwise use activity under the revised interpretation of otherwise use. Under the current interpretation of otherwise use, the activity of disposal under these circumstances does not constitute a reportable activity for the purposes of threshold determinations. The facility, however, would have to count the amount of chemical F manufactured toward the manufacturing threshold.

Example 5: Energy Recovery of a Listed Chemical

A facility processes 24,000 pounds of chemical G, an EPCRA section 313 non-PBT chemical. This activity is not a waste management activity. During the processing of chemical E, 11,000 pounds of chemical G exits the process in the facility's waste. Because chemical E has a high BTU/lb value, the facility combusts the waste stream containing chemical G in an energy recovery unit on-site. Under EPA's current and revised guidance on otherwise use, an EPCRA section 313 toxic chemical that is a constituent of waste-derived fuel combusted in an energy recovery device is otherwise used by the facility, regardless of the origin of the waste-derived fuel. Therefore, when combusted for energy recovery on-site, chemical G, a constituent of the waste derived fuel, is considered otherwise used under the current definition of otherwise use. Because the facility combusts 11,000 pounds of the toxic chemical, the facility has exceeded the otherwise use activity threshold.