ATTACHMENT A

DEFINITIONS FOR NEW JERSEY'S RELEASE AND POLLUTION PREVENTION REPORT

RPPR or DEQ-114

[Based on Toxic Chemical Release Inventory Reporting Form (Form R) Instructions]

[Current as of May, 1998]

A. Full-Time Employee Determination (B.1 of Form R Instructions)

A "full-time employee," for purposes of Section 313 reporting, is defined as 2,000 work hours per year. The number of full-time employees is dependent only upon the total number of hours worked by all employees for the facility during the calendar year, not the number of persons working. To determine the number of full-time employees working for your facility, add up the hours worked by all employees during the calendar year, including contract employees and sales support staff working for the facility, and divide the total by 2,000 hours. In other words, if the total number of hours worked by all employees is 20,000 hours or more, your facility meets the 10 employee threshold.

B. Facility-Related Exemptions (B.2(c) of Form R Instructions)

Laboratory Activities: Listed toxic chemicals (see Table II of Form R instructions for listed chemicals) that are manufactured, processed, or otherwise used in laboratory activities under the direct supervision of a technically qualified individual do not have to be considered for threshold and release calculations for a facility covered by this rule. Research and development laboratories and pilot plant scale activities are included in the New Jersey definition of "research and development (R&D) laboratory" (see N.J.A.C. 7:1G-1.2). However, specialty chemical production does not qualify for this laboratory activities exemption.

Property Owners: You are not required to report if you merely own real estate on which a facility covered by this rule is located; that is, you have no other business interest in the operation of that facility (e.g., your company owns an industrial park). The operator of that facility, however, is subject to reporting requirements.

C. Activity Determination (B.3(a) of Form R Instructions) - Definitions of "Manufacture," "Process," and "Otherwise Use"

Manufacture: The term "manufacture" means to produce, prepare, compound, or import a listed toxic chemical. (See Part II, Section 3.1 of Form R instructions for further clarification.) Import is defined as causing the toxic chemical to be imported into the customs territory of the United States. If you order a listed toxic chemical (or a mixture containing the chemical) from a foreign supplier, then you have imported the chemical when that shipment arrives at your facility directly from a source outside of the United States. By ordering the chemical, you have "caused it to be imported," even though you may have used an import brokerage firm as an agent to obtain the toxic chemical.

The term manufacture also includes coincidental production of a toxic chemical (e.g., as a by-product or impurity) as a result of the manufacture, processing, otherwise use, or treatment of other chemical substances. In the case of coincidental production of an impurity (i.e., a toxic chemical that remains in a product that is distributed in commerce), the de minimus limitation, discussed in Section B.4(b) of Form R instructions, applies. The de minimus limitation does not apply to by-products (e.g., a toxic chemical that is separated from a process stream and further processed or disposed). Certain listed toxic chemicals may be manufactured as a result of wastewater treatment or other treatment processes. For example, neutralization of acid wastewater can result in the coincidental manufacture of ammonia and/or solutions. The de minimis limitation would not apply to such by-products.

Process: The term "process" means the preparation of a listed toxic chemical, after its manufacture, for distribution in commerce. Processing is usually the intentional incorporation of a toxic chemical into a product (see Part II, Section 3.2 of Form R instructions for further clarification). Processing includes preparation of the toxic chemicals in the same physical state or chemical form as that received by your facility, or preparation that produces a change in physical state or chemical form. The term also applies to the processing of a mixture or other trade name product (see Section B.4.b of Form R instructions) that contains a listed toxic chemical as one component.

Otherwise Use: The term "otherwise use" encompasses any activity involving a listed toxic chemical at a facility that does not fall under the definitions of "manufacture" or "process." A chemical that is otherwise used by a facility is not intentionally incorporated into a product distributed in commerce (see Part II, Section 3.3 of Form R instructions for further clarification).

D. Activity Exemptions (B.3(b) of Form R Instructions)

Use Exemptions

Certain uses of listed toxic chemicals are specifically exempted:

Use as a structural component of the facility;

Use in routine janitorial or facility grounds maintenance;

Personal uses by employees or other persons;Use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility; or

Use of toxic chemicals contained in intake water (used for processing or non-contact cooling) or in intake air (used either as compressed air or for combustion).

Article Exemptions

Quantities of a listed toxic chemical contained in an article do not have to be factored into threshold or release determinations when that article is processed or otherwise used at your facility. An article is defined as a manufactured item that is formed to a specific shape or design during manufacture, that has end-use functions dependent in whole or in part upon its shape or design during end-use, and that does not release a toxic chemical under normal conditions of the processing or otherwise use of that item at the facility.

If the processing or otherwise use of similar articles results in a total release of less than 0.5 pounds of a toxic chemical in a calendar year to any environmental medium, EPA will allow this release quantity to be rounded to zero, and the manufactured items remain exempt as articles. EPA requires facilities to round off and report all estimates to the nearest whole number. The 0.5-pound limit does not apply to each individual article, but applies to the sum of all releases from processing or otherwise use of like articles.

The article exemption applies to the normal processing or otherwise use of an article. It does not apply to the manufacture of an article. Toxic chemicals processed into articles produced at a facility must be factored into threshold and release determinations.

A closed item containing toxic chemicals (e.g., a transformer containing PCBs) that does not release the toxic chemicals during normal use is considered an article if a facility uses the item as intended and the toxic chemicals are not released. If a facility services the closed item (e.g., a transformer) by replacing the toxic chemicals, the toxic chemicals added during the reporting year must be counted in threshold and release calculations.

When the processing or otherwise use of an item generates fumes, dust, filings, or grindings, the article exemption is not applicable. The toxic chemical(s) in the item must be counted toward the appropriate threshold determination, and the fumes, dust, filings, and grindings must be reported as releases or wastes. Scrap pieces that are recognizable as an article do not constitute a release.

E. De Minimus Exemption (B.4(b) of Form R Instructions)

A listed toxic chemical does not have to be considered in threshold and release calculations if it is present in a mixture at a concentration level below a specified de minimus level. The de minimus level is 1.0 percent, or 0.1 percent if the toxic chemical is considered a carcinogen under OSHA. See Table II of Form R instructions for the de minimus value associated with each listed toxic chemical. For mixtures that contain more than one member of a listed toxic chemical category, the de minimus level applies to the aggregate concentration of all such members and not to each individually. EPA included the de minimus exemption in the rule as a burden-reducing step, primarily because facilities are not likely to have information on the presence of a toxic chemical in a mixture or trade name product beyond that available in the product's MSDS. The de minimus levels are consistent with OSHA requirements for development of MSDS information concerning composition.

For threshold determinations, the de minimus exemption applies to:

A listed toxic chemical in a mixture or trade name product received by the facility that is processed or otherwise used by the facility.

A listed toxic chemical manufactured during a process where the toxic chemical remains in a mixture or trade name product distributed in commerce.

The de minimus exemption does not apply to :

A toxic chemical manufactured at the facility that does not remain in a product distributed by the facility. A threshold determination must be made on the annual quantity of the toxic chemical manufactured regardless of the concentration. For example, quantities of formaldehyde created as a result of waste treatment must be applied toward the threshold for "manufacture" of this toxic chemical, regardless of the concentration of this toxic chemical in the waste.

Figure 1 provides a flow chart for determining applicability of the de minimus threshold.

In general, when the de minimus exemption applies to threshold determinations and the concentration of the toxic chemical in the mixture is below the de minimus limitation, then you are not required to report releases associated with the processing or otherwise use of the toxic chemical in that mixture. Note that it is possible to exceed the threshold for a toxic chemical on a facility-wide basis, but not be required to calculate releases from a particular process because that process involves only mixtures containing the toxic chemical below the de minimus level.

Application of the de minimus exemption to process streams must also be reviewed. Mixtures containing toxic chemicals can be added to a process or generated within a process. A facility is required to consider and report releases from the process once the de minimus concentration level has been exceeded. All releases of the toxic chemical from the process that occur after the de minimus exemption has been exceeded are then subject to reporting, regardless of whether or not the toxic chemical concentration later falls to a level below the de minimus exemption.

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