QUESTIONS AND ANSWERS ON REPORTABLE QUANTITY ADJUSTMENTS AND CERCLA NOTIFICATION PROVISIONS

DRAFT NOTEBOOK

Prepared by

Emergency Response Division
Office of Emergency and Remedial Response
Office of Solid Waste and Emergency Response

August 1985

TABLE OF CONTENTS

1. INTRODUCTION

Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), immediate notification to the National Response Center (NRC) is required when a hazardous substance is released into the environment in an amount equal to or greater than its reportable quantity (RQ). Currently, there are 705 designated hazardous substances. CERCLA establishes a statutory RQ of one pound for each of these substances, except those for which an RQ was established pursuant to Section 311 of the Clean Water Act. Pursuant to Section 102 of CERCLA, EPA can adjust statutory RQs by regulation.

The RQs of 340 of these hazardous substances were recently adjusted by EPA in a final rule. These RQ adjustments were published in the Federal Register on April 4, 1985 (50 FR 13456-13513). RQ adjustments for an additional 105 substances were proposed in a Notice of Proposed Rulemaking (NPRM) published concurrently with the final rule (50 FR 13514-13522). RQ adjustments for the remaining 260 CERCLA hazardous substances will be proposed in an NPRM to be published at a later date.

The Agency is providing this question and answer notebook so that state and local officials, EPA regional personnel, and the regulated community may better understand these RQ adjustments and CERCLA notification requirements. Most questions are actual queries received by the NRC or the Agency's RCRA/Superfund Hotline. The questions and answers are organized according to the general format of the preamble to the April 4, 1985 final rule. Because many of the questions are broad, covering more than one distinct area, they may appear in this document more than once. The listing of questions and answers in more than one section, when appropriate, is intended to facilitate the use of this notebook for reference purposes.

The appendix to this notebook contains several forms that may be used to submit questions. EPA would very much appreciate receiving questions on RQ adjustments and CERCLA notification requirements that may be included in subsequent editions of this notebook.

Note: "He" and "she" are used interchangeably throughout this document.

2. ISSUES ADDRESSED IN THE MAY 25, 1983 NOTICE OF PROPOSED RULEMAKING BUT NOT RESOLVED IN THE APRIL 4, 1985 RULE

2.1 CONTINUOUS RELEASES

Q. A company maintains that releases of a CERCLA hazardous substance from an incinerator that it operates are stable in quantity and rate. Can the company take advantage of the limited reporting exemption provided in CERCLA Section 103(f)(2) for continuous releases?

A. Future RQ rulemakings will provide clarification of the limited reporting exemption for continuous releases. In general, this limited exemption applies to releases that are "continuous" and "stable in quantity and rate," and for which the appropriate initial reports have been submitted. Releases that meet these criteria need only be reported annually or when a "statistically significant" increase in the amount released occurs. The limited exemption does not apply to: releases resulting from start-up and shut-down; releases caused by malfunctions of reactors or control mechanisms; and releases that are not continuous, do not occur on a regular schedule, or are not frequent.

2.2 FEDERALLY PERMITTED RELEASES

Q. An interim status surface impoundment facility receives a CERCLA hazardous waste. The RQ for this particular waste is one pound. Because a call to the NRC is required for any release of an RQ into the environment, must the owner/operator of the surface impoundment call the NRC each time one pound of this hazardous waste is placed in the surface impoundment?

A. CERCLA Section 103(a) exempts federally permitted releases from reporting requirements. A federally permitted release, defined in CERCLA Section 101(10), includes releases in compliance with a legally enforceable final permit issued pursuant to RCRA Section 3005(a) through (d) when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure, or bioassay limitation or condition, or other control on the hazardous substances in such releases.

The April 4, 1985 final rule, (at 50 FR 13461-62) comments further on the intention of this exclusion to include interim status facilities. Specifically, it states that EPA believes that the disposal of hazardous substances at an interim status disposal facility in substantial compliance with applicable regulations and permit conditions is not subject to CERCLA notification provisions.

* * *

Q. A company incinerates hydrocarbons. Its incinerator has a State air emissions permit which limits hydrocarbons and carbon monoxide releases. Can the company claim that the emissions of hydrogen sulfide which are not included in its permit, fall under the CERCLA federally permitted release exemption?

A. No. Because hydrogen sulfide is not subject to a permit or control resolution, the hydrogen sulfide emissions are not excluded from the reporting requirements. But the company may be able to claim the limited exemption for continuous releases if its emissions of hydrogen sulfide meet the criteria of CERCLA Section 103(f)(2).

* * *

Q. EPA issued a permit to an existing RCRA landfill. The landfill does not have a liner and leachate collection system. If an RQ of a hazardous substance is released into the air or ground, is the owner/operator of the facility required to notify the NRC?

A. Yes. The release of hazardous substances to the air and ground would not meet the definition of "federally permitted release" because the release of these substances to these media likely would not be allowed under the terms of a RCRA permit.

2.3 RADIONUCLIDE RQs

To be added.

2.4 CARCINOGEN RQs

Q. A facility released an ignitable waste ink consisting of a mixture of toluene and pigments. This waste ink is not a RCRA-listed waste. The mixture exhibits the RCRA characteristic of ignitability. Is this release considered a release of toluene with an RQ of 1000 pounds, or a release of a RCRA hazardous waste due to the characteristic of ignitability with an RQ of 100 pounds?

A. The waste ink could have either RQ. If a complete chemical analysis is performed so that the concentration of each chemical compound comprising the waste ink is known, then the quantity of waste ink containing an RQ of each hazardous substance can be determined in accordance with the Clean Water Act mixture rule (see 50 FR 13463). The RQ of each hazardous substance which is a constituent of the mixture should be applied in determining whether a notification to the NRC is required. For example, if the waste mixture is 90 percent toluene, 5 percent trichloroethylene (RQ equals 1000 pounds), and 5 percent non-hazardous pigments, then an RQ for the waste mixture would be reached when 1000 pounds of either toluene or trichloroethylene had been released. In this case, because of the

relative concentrations, the toluene RQ would be reached first when 1,111 pounds of mixture had been spilled; i.e., 90 percent of 1111 pounds is 1000 pounds. However, if a complete chemical analysis is not performed, an RQ of 100 pounds would apply because the waste ink is a RCRA ignitable hazardous waste. 40 CFR 302.5(b) (50 FR 13513) establishes an RQ of 100 pounds for unlisted hazardous substances which are wastes prior to their initial release into the environment, except for those wastes exhibiting the characteristic of extraction procedure (EP) toxicity. (See also the discussion of ICRE wastes at 50 FR 13460).

3. NOTIFICATION

3.1 PURPOSES AND MECHANICS OF NOTIFICATION

Q. (A) Is information reported to the NRC confidential?
(B) Is such information available through the Freedom of Information Act?

A. (A) No. Once a release is reported to the NRC, the information is within the public domain.
(B) Yes. This information is available through the Freedom of Information Act.

* * *

Q. Mr. Jones manages a chlorinated organic chemical manufacturing plant. He is responsible for reporting releases of hazardous substances at his plant to the appropriate authorities. A tank storing trichloroethylene (TCE) ruptures and 5,000 gallons of TCE is released into the environment in one hour. Mr. Jones is required to report the spill to the NRC. What information will he be asked to provide when he notifies?

A. The NRC will ask Mr. Jones to supply the following information:

(1) His name, address and telephone number;
(2) The identity of the substance released (TCE), the cause (tank rupture), the quantity (5,000 gallons), and the duration of the release (1 hour);
(3) The name of the owner of the manufacturing plant;
(4) Any injuries or property damage that occurs;
(5) Other relevant information (e.g., weather conditions, local environment); and
(6) Any response actions taken, (e.g., containment of TCE).

* * *

Q. What will the NRC do with the information that Mr. Jones has supplied?

A. The NRC will immediately transmit the information to the predesignated federal On-Scene Coordinator (OSC) at an EPA regional or U.S. Coast Guard district office. The OSC informs state and local officials and decides whether and how the federal government should respond.

* * *

Q. A treatment, storage, and disposal facility releases a large quantity of a gaseous hazardous substance into the atmosphere. The emergency officer for the facility decides the release threatens the community. Who should be notified?

A. If the emergency officer suspects or knows that the quantity released equalled or exceeded the RQ for that substance, he must notify the NRC immediately. Watchstanders at the NRC would then relay the report to the predesignated federal OSC near the release.

* * *

Q. A manufacturing firm spills a hazardous substance and fails to notify the NRC for several weeks because of difficulty in calculating whether or not RQs of several hazardous substances in the spill were released. Has the company violated the CERCLA notification provisions?

A. No. Because CERCLA as presently written imposes only criminal penalties for failure to report, the company must actually know that it has released an RQ or more of a hazardous substance before it is required to report. However, the intent behind the notification provisions is to alert government officials to releases of hazardous substances that may require rapid response to protect human health and the environment. When in doubt as to whether or not a release is reportable, the NRC should be contacted. Furthermore, proposed amendments to CERCLA would authorize EPA to impose administrative civil penalties for failure to report. If these proposals are enacted into law, notification might be required as long as the releaser reasonably should have known that a reportable release has occurred, whether or not he has actual knowledge of such a release.

3.2 PERSONS COVERED

Q. If an employee of a company knew of a reportable release and did not notify his supervisor, is the employee or the company responsible for the failure to notify?

A. CERCLA Section 103(b) provides that the "person in charge" of a facility or vessel from which a hazardous substance is released (other than a federally permitted release) must notify the NRC. The determination of who is a "person in charge" depends on a number of variables including: the specific operation involved; management structure; and facility- and case-specific considerations. It appears, however, that an employee may be prosecuted for a failure to notify only if he is the "person in charge" of a facility or vessel at the time of the reportable release.

3.3 RELEASES COVERED

Q. An interim status surface impoundment facility receives a CERCLA hazardous waste. The RQ for this particular waste is one pound. Because a call to the NRC is required for any release of an RQ into the environment, must the owner/operator of the surface impoundment call the NRC each time one pound of this hazardous waste is placed in the surface impoundment?

A. CERCLA Section 103(a) exempts federally permitted releases from reporting requirements. A federally permitted release, defined in CERCLA Section 101(10), includes releases in compliance with a legally enforceable final permit issued pursuant to RCRA Section 3005(a) through (d) when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure, or bioassay limitation or condition, or other control on the hazardous substances in such releases.

The April 4, 1985 final rule (at 50 FR 13461-62) comments further on the intention of this exclusion to include interim status facilities. Specifically, it states that EPA believes that the disposal of hazardous substances at an interim status disposal facility in substantial compliance with applicable regulations and permit conditions regulations is not subject to CERCLA notification provisions.

* * *

Q. A facility released an ignitable waste ink consisting of a mixture of toluene and pigments. This waste ink is not a RCRA-listed waste. The mixture exhibits the RCRA characteristic of ignitability (D001). Is this release considered a release of toluene with an RQ of 1000 pounds, or a release of RCRA hazardous waste due to the characteristic of ignitability with an RQ of 100 pounds?

A. The waste ink could have either RQ. If a complete chemical analysis is performed so that the concentration of each chemical compound comprising the waste ink is known, then the quantity of waste ink containing an RQ of each hazardous substance can be determined in accordance with the Clean Water Act mixture rule (see 50 FR 13463). The RQ of each hazardous substance which is a constituent of the mixture should be applied in determining whether a notification to the NRC is required. For example, if the waste mixture is 90 percent toluene, 5 percent trichloroethylene (RQ equals 1000 pounds), and 5 percent non-hazardous pigments, then an RQ for the waste mixture would be reached when 1000 pounds of either toluene or trichloroethylene had been released. In this case, because of the relative concentrations, the toluene RQ would be reached first when 1,111 pounds of mixture had been spilled; i.e., 90 percent of 1111 pounds is 1000 pounds. However, if a complete chemical analysis is not performed, an RQ of 100 pounds would apply because the waste ink

is a RCRA ignitable hazardous waste. 40 CFR 302.5(b) (50 FR 13513) establishes an RQ of 100 pounds for unlisted hazardous substances which are wastes prior to their initial release into the environment, except for those wastes exhibiting the characteristic of extraction procedure (EP) toxicity. (See also the discussion of ICRE wastes at 50 FR 13460).

* * *

Q. If a hazardous substance listed under CERCLA is deleted from its statutory sources, for example, Section 307(a) of the Clean Water Act, is it then deleted as a hazardous substance under CERCLA?

A. Yes. If a hazardous substance is deleted under applicable statutory source(s), then it is no longer considered a CERCLA hazardous substance.

* * *

Q. According to the final rule, releases "into the environment" include spills from tanks or valves onto concrete pads or 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. If these releases occur in an amount that equals or exceeds an RQ (e.g., evaporation of an RQ into the air from a dike or concrete pad) they must be reported. This definition suggests that even though the substance has been released onto a concrete pad (outside of a facility) that it would have to evaporate into the air in a RQ amount before it is "reportable." Is this interpretation correct?

A. No. If a hazardous substance is released outside of a facility in a reportable amount (RQ) it must be reported, because it is then considered to have entered the environment.

* * *

Q. For the Hazard Ranking System (HRS), does the Agency consider only hazardous substances, or pollutants and contaminants as well?

A. EPA evaluates sites using the HRS for any substance that has a hazardous component. The substance can be any pollutant or contaminant and does not necessarily have to appear on the list of 705 CERCLA hazardous substances.

* * *

Q. (1) For CERCLA Section 103(a) notifications, must releases of all chlorinated benzenes be reported?
(2) Does the listing for chlorobenzene include only monochlorobenzene?

A. (1) No, releases of only those compounds specifically listed must be reported. However, all chlorinated benzenes are hazardous substances and therefore their release can subject the releaser to liability for clean-up costs or natural resource damages.

(2) Yes, the listing for chlorobenzene includes only monochlorobenzene.

* * *

Q. If a corrosive mixture of ferrous sulfamate (corrosive but not listed) and nitric acid (RQ of 1000 pounds), containing no other hazardous substances, is spilled does the 100 pound RQ for a RCRA waste apply or the 1000 pound RQ for nitric acid?

A. If the concentrations of the two hazardous substances in this mixture are known, then the CWA mixture rule applies. This rule provides that the release of this mixture only needs to be reported if 1,000 pounds or more of nitric acid was released. If the concentrations of the two substances in the mixture are not known, then the RQ of the waste stream as unlisted waste applies. In this case, an unlisted waste exhibiting the characteristic of corrosivity has an RQ of 100 pounds.

* * *

Q. Eight hundred pounds of methyl ethyl ketone (MEK) is used to clean out a tank. Eleven hundred pounds of waste is produced. The entire mixture is dumped on the ground. The RQ for MEK is 5000 pounds. Is the release reportable?

A. Based on the information given, this question cannot be answered with certainty. If the additional 300 pounds of tank waste does not contain any hazardous substances, then the incident is not reportable, because the RQ of MEK is 5000 pounds and only 800 pounds has been released. If, on the other hand, the additional 300 pounds is hazardous, then we cannot make a determination because we do not know the identity (and RQ) of this additional waste. Notification would be required if the RQ for at least one of the component wastes has been equalled or exceeded. The question of whether or not to notify the NRC is complicated further by the ambiguity of the phrase "dumped on the ground." If the dumping occurred at a plant or installation and the waste remained within the actual facility (meaning it did not

escape into the environment) then notification is not necessary. Only if the substance is released into the environment in an RQ or more is notification required.

* * *

Q. If the tank cleaner mentioned above was made of a mixture of ignitable solvents of unknown identity, was there a reportable event?

A. Again, based on the information given, we cannot answer this question with certainty. Assuming that 800 pounds of ignitable solvents were used in the cleaning process and 1100 pounds of waste was produced, the analysis presented in the previous example still would apply. If the additional 300 pounds of waste is non-hazardous, and the composition and concentration of the solvents are known, we can make a decision based on the RQs of the individual components: report if the RQ for at least one of the components has been equalled or exceeded. If the mixture's components and their respective concentrations are not known, then the RQ to be used is 100 pounds (the RQ for unlisted ICR wastes). In the latter case, notification is required if the 1100 pounds of waste produced is still ignitable (1100 pounds is greater than 100 pounds). If the additional 300 pounds is itself hazardous on some other basis than ignitability, we cannot make a determination until we know the identity (and RQ) of the additional waste. Reporting is required if the RQ for at least one of the component wastes has been equalled or exceeded.

* * *

Q. A company has tanks of hydrocarbons at its plant. The tanks emit one-half of an RQ of gaseous emission each day and leak three-fourths of an RQ of liquid hydrocarbons each day. Should the company notify?

A. It depends on the hydrocarbons and on other factors. "Hydrocarbons" as a category are not hazardous substances. A few specific ones, e.g., benzene, 1,3-pentadiene, toluene, and xylene, are hazardous substances. If the releases of those hydrocarbons that are hazardous substances occur regularly, the company may seek the limited exemption provided under CERCLA Section 103(f)(2) for continuous releases that are "stable in quantity and rate." If the hydrocarbons in the tanks are petroleum fractions (e.g., gasoline, kerosene, crude oil) they are not CERCLA hazardous substances, and are completely exempt from CERCLA notification requirements.

* * *

Q. A company spills a solution of sodium hypochlorite onto concrete and neutralizes it immediately. Is the release reportable?

A. If the release was spilled onto concrete that was wholly-contained within a building or structure, then the release would not have to be reported. If, however, the release entered the outside air or an unlined open ditch or a pond or lagoon in a quantity equal to or greater than the RQ for the substance, then the release would have to be reported (50 FR 13462).

* * *

Q. A forklift operator inadvertently punched holes into two drums of waste sodium hydroxide pellets, releasing 800 pounds of sodium hydroxide. Is this a reportable event?

A. No, because the RQ for sodium hydroxide is 1,000 pounds. RQs do not vary depending on the form of the substance released (i.e., whether it is a solid, a liquid, or a gas).

* * *

Q. A small quantity generator pours more than 100 pounds of spent corrosive waste down the drain to the city sewer. Does the generator have to report this as a release even though the generator is in compliance with RCRA?

A. Yes. By passing the waste down the drain to the city sewer, the generator is discharging into a publicly owned treatment works (POTW). If, as stated in Section 101(10)(J) of CERCLA, the pollutant discharged is specified in and in compliance with (1) applicable pretreatment standards of Section 307(b) or (c) of the Clean Water Act; and (2) enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under Section 402 of the CWA, then the release is federally permitted and exempt from CERCLA notification requirements. If, however, the pollutant discharged into the POTW is not specified in and in compliance with (1) and (2) above, then the release (100 pounds) would necessitate NRC notification if it is equal to or greater than the substance's RQ. In this particular case, the waste released is an unlisted ICRE waste. As such, it has an RQ of 100 pounds and would need to be reported, unless it is extraction procedure (EP) toxic, in which case the RQ is determined by the RQ of the contaminant on which the characteristic of EP toxicity is based.

* * *

Q. At a refinery, the crude oil storage tanks are cleaned out. When a tank is siphoned out, 10 gallons of waste (K052) spills onto the ground. Is this spill excluded from notification because it is a petroleum-based waste stream?

A. This spill is not excluded from the notification requirements because it is a listed RCRA waste. As more than 1 pound (the statutory RQ for K052) of the substance has been released, the release must be reported.

* * *

Q. If a compound is not specifically listed but falls under a generic listing, how do the Section 103 requirements apply to it?

A. The release of a substance with no RQ need not be reported under Section 103; however, the party responsible for the release may be subject to other CERCLA provisions, including liability for cleanup costs and natural resource damages. See Section IV.D.1.e. of the preamble to the final rule (50 FR 13461) for further discussion of generic classes.

* * *

Q. A company blends different ignitable products together to form a new product. The 55 gallon drums which hold some residues but which are "empty" by RCRA definition, are given to the employees for their personal use. One of the employees decides to make a barbeque grill out of his "empty" drum. If he dumps any remaining residue from the drum, is he subject to the notification requirements of CERCLA?

A. Yes, if the substance released is a designated hazardous substance under CERCLA. Release of any CERCLA-listed substance into the environment is subject to notification requirements. Although the CERCLA section 101(9) definition of "facility" excludes consumer products in consumer use (therefore releases from consumer products by consumers are not releases from a facility into the environment and, consequently, do not have to be reported), an empty industrial drum probably would not qualify as a consumer product. CERCLA does not define the term "consumer product" but the Consumer Product Safety Act defines the term as, generally, any article sold to a consumer for the person's use, consumption or enjoyment in or around a household, residence, school, in recreation, or otherwise (15 U.S.C. 2052). This definition applies for notification under CERCLA.

* * *

Q. Should all isomers of the chemicals listed in 40 CFR 116.4 be included as hazardous substances under CERCLA? The May 25, 1983 FR does not list all isomers but Part 116.4 suggests that all isomers and hydrates of those listed chemicals are hazardous substances.

A. Any substance designated pursuant to Section 311(b)(2)(A) of the CWA is a hazardous substance under CERCLA according to CERCLA Section 101(14). Hence, because 40 CFR Section 116.4 "includes any isomers and hydrates, as well as any solutions and mixtures containing" the substances listed in Table 116.4 as hazardous substances in accordance with Section 311(b)(2)(A) of the CWA, these isomers, hydrates, solutions and mixtures are also hazardous substances under CERCLA. Their omission from Table 302.4 of the Federal Register notice does not exclude them from being designated hazardous substances. Some isomers that were omitted from the May 25, 1983 FR notice were explicitly listed in the April 4, 1985 Final Rule, e.g., the m-, o-, p-, isomers of Nitrotoluene and the 1,1- and 1,3-isomers of Dichloropropane. Many hazardous substances are components of commercial products and these commercial products are also hazardous substances although their names are not listed explicitly in Table 302.4.

* * *

Q. If a truck dumped two pounds of scrap lead destined for disposal and the lead was EP toxic and over 100 micrometers in diameter, would the release be reportable under CERCLA?

A. No, the release is not reportable. A release of scrap lead in massive form (with particles larger than 100 micrometers) is no more hazardous than a release of an equal quantity of lead destined for use in some application. The EPA toxicity test is intended for use on solid wastes within which the presence of some specific hazardous components could be determined most directly by means of that test; it is not meant to be applied to a waste of known composition as in this case.

* * *

Q. A farmer, to protect soybean crops, applies a carbaryl-containing pesticide in concentrations greater than that specified on the label directions, exceeding the 100 pound RQ for carbaryl. Does the farmer have to notify the NRC?

A. No. EPA has eliminated the definition of a "normal application of pesticides" from the April 4, 1985 Final Rule (see 50 FR 13464). The pesticide exemption to reporting releases applies to the application of a pesticide generally in accordance with its purpose.

* * *

Q. A company incinerates hydrocarbons. Its incinerator has a State air emissions permit which limits hydrocarbons and carbon monoxide releases. Can the company claim that the emissions of hydrogen sulfide which are not included in its permit, fall under the CERCLA federally permitted release exemption?

A. No. Because hydrogen sulfide is not subject to a permit or control resolution, the hydrogen sulfide emissions are not excluded from the reporting requirements. But the company may be able to claim the limited exemption for continuous releases if its emissions of hydrogen sulfide meet the criteria of CERCLA Section 301(f)(2).

* * *

Q. Hydrogen sulfide is a CERCLA hazardous substance. Is its release into the air exempt from notification under CERCLA?

A. No. As authorized by Section 102 of CERCLA and as noted in the preamble to the final rule (50 FR 13466), the RQ of all hazardous substances applies to all releases, regardless of medium.

* * *

Q. A company has tanks of hydrocarbons at its plant. The tanks emit one-half of an RQ of gaseous emission each day and leak three-fourths an RQ of liquid hydrocarbons each day. Should the company report the releases?

A. It depends on the hydrocarbons and on other factors. "Hydrocarbons" as a category are not hazardous substances. A few specific ones, e.g., benzene, 1,3-pentadiene, toluene, and xylene, are hazardous substances. If the releases of those hydrocarbons that are hazardous substances occur regularly, the company may seek the limited exemption provided under CERCLA Section 103(f)(2) for continuous releases that are "stable in quantity and rate." If the hydrocarbons in the tanks are petroleum fractions (e.g., gasoline, kerosene, crude oil) they arenot CERCLA hazardous substances, and are completely exempt from CERCLA notification requirements.

* * *

Q. A company spills nine pounds of a hazardous substance with an RQ of 10 pounds. Later that day the company spills two more pounds of the same substance. Should the company notify the NRC?

A. Yes. The company released a reportable quantity of a hazardous substance in a 24-hour period.

* * *

Q. Since the company above notified the NRC, does it retain any liability for harm the release may cause?

A. Yes. Notification under CERCLA Section 103(a) does not eliminate liability for response costs or natural resource damages associated with the release.

* * *

Q. If I spill a certain material, is it reportable under CERCLA?

A. If you are a consumer using a consumer product at home, release of an RQ or more of a CERCLA hazardous substance does not need to be reported to the NRC. If you are a "person in charge" of a facility or vessel, you must report such a release into the environment to the NRC.

CERCLA provides four types of exemptions from the notification requirements applicable to releases of hazardous substances in reportable quantities. These are: (1) federally permitted release as defined in CERCLA Section 101(10); (2) application of pesticide products registered under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"); (3) certain releases of hazardous wastes which are required to be reported under provisions of the Resource Conservation and Recovery Act (RCRA) and which are reported to the NRC; and (4) certain releases which are determined to be "continuous" under the provisions of CERCLA Section 103(f)(2).

3.4 EXEMPTIONS FROM THE CERCLA NOTIFICATION REQUIREMENTS

Q. A homeowner uses chlordane around his house improperly. More than one pound is applied to the grounds of the home. Is this use reportable since the RQ is one pound?

A. No. As defined in CERCLA Section 101(9), the "facility" from which a release has entered or may enter into the environment excludes, specifically, consumer products in consumer use.

* * *

Q. A small quantity generator pours more than 100 pounds of spent corrosive waste down the drain to the city sewer. Does the generator have to report this as a release even though the generator is in compliance with RCRA?

A. Yes. By passing the waste down the drain to the city sewer, the generator is discharging into a publicly owned treatment works (POTW). If, as stated in Section 101(10)(J) of CERCLA, the pollutant discharged is specified in and in compliance with (1) applicable

pretreatment standards of Section 307(b) or (c) of the Clean Water Act and (2) enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under Section 402 of the CWA, then the release is federally permitted and exempt from CERCLA notification requirements. If, however, the pollutant discharged into the POTW is not specified in and in compliance with (1) and (2) above, then the release (100 pounds) would necessitate NRC notification if it is equal to or greater than the substance's RQ. In this particular case, the waste released is an unlisted ICRE waste. As such, it has an RQ of 100 pounds and would need to be reported, unless it is extraction procedure (EP) toxic, in which case the RQ is determined by the RQ of the contaminant on which the characteristic of EP toxicity is based.

* * *

Q. A company has had its petition to delist its chrome pigment wastes approved by the EPA. If the company releases this material in excess of its 1 pound RQ, is it required to notify the NRC?

A. A specific waste (generated at a particular facility) that has been delisted by the EPA or an EPA-approved state RCRA program is no longer a listed waste under Section 3001 of RCRA. Restated, "the waste has been shown not to contain constituents or exhibit characteristics that are considered hazardous under RCRA" (50 FR 13460). Thus, the company is not required to notify the NRC of the release. If, however, the released waste contained an RQ of any other listed CERCLA substances, the release would need to be reported.

* * *

Q. A truck carrying solid zinc metal is involved in a traffic accident. Five pounds of the zinc ends up in a nearby stream and is not recovered. Is this release reportable? (Zinc has an RQ of 1 pound.)

A. Although the RQ has been exceeded, the Agency allows a reporting exception for massive forms of metals when the diameter of the released metal is 100 micrometers (0.004 inches) or greater. This exception is allowed because the metal is neither respirable nor will it quickly react with air or water (see 50 FR 13513).

* * *

Q. A company fills its tank truck with heating oil. The hose from the storage tank is not fitted properly and 100 gallons of fuel oil spills onto the ground. The company contains the spill and cleans it up. Is this a reportable release?

A. No. EPA interprets CERCLA Section 101(14) to exclude petroleum, including crude oil, petroleum feedstocks, and refined petroleum products even if a specifically listed or designated hazardous

substance is contained in the petroleum. However, the final rule notes that waste oil to which listed hazardous substances have been added are not considered part of this exclusion. (See 50 FR 13460.)

* * *

Q. At a refinery, the crude oil storage tanks are cleaned out. When a tank is siphoned out, 10 gallons of waste (K052) spills onto the ground. Is this spill excluded from notification because it is a petroleum-based waste stream?

A. This spill is not excluded from the notification requirements because it is a listed RCRA waste. As more than 1 pound (the statutory RQ for K052) of the substance has been released, the release must be reported.

* * *

Q. A farmer, to protect soybean crops, applies a carbaryl-containing pesticide in concentrations greater than that specified on the label directions, exceeding the 100 pound RQ for carbaryl. Does the farmer have to notify the NRC?

A. No. EPA has eliminated the definition of a "normal application of pesticides" from the April 4, 1985 Final Rule (see 50 FR 13464). The pesticide exemption to reporting releases applies to the application of a pesticide generally in accordance with its purpose.

* * *

Q. A company incinerates hydrocarbons. Its incinerator has a State air emissions permit which limits hydrocarbons and carbon monoxide releases. Can the company claim that the emissions of hydrogen sulfide, which are not included in its permit, fall under the CERCLA federally permitted release exemption?

A. No. Because hydrogen sulfide is not subject to a permit or control regulation, the hydrogen sulfude emissions are not excluded from the reporting requirements. But the company may be able to claim the limited exemption for continuous releases if its emissions of hydrogen sulfide meet the criteria of CERCLA Section 103(f)(2).

* * *

Q. Hydrogen sulfide is a CERCLA hazardous substance because it is listed under Section 311 of the CWA and Section 261.33(f) of RCRA. Shouldn't its release into the air be exempt because the release is into another medium?

A. No. As specified in Section 102 of CERCLA, the RQ of all hazardous substances applies to all releases, regardless of medium.

3.5 DUPLICATE REPORTING

Q. A trucking company has had a major accident. One of its tankers carrying a corrosive hazardous waste jackknifes, spilling its contents onto a roadway. Since the spill seriously endangers area property and other motorists, a company representative notified the relevant state agency and the DOT. Did the company representative err in not notifying the NRC?

A. Yes; assuming the amount of waste released was 100 pounds or more, the NRC should have been notified. Currently, one call to the NRC fulfills the requirement to report releases of hazardous substances under CERCLA Sections 103(a) and (b) and several other regulatory programs (CWA and RCRA).

3.6 REGULATORY CONSISTENCY

To be added.

3.7 PENALTIES

Q. What are the elements of the crime which must be proved under CERCLA Section 103(b)?

A. The elements (each of which must be established beyond a reasonable doubt) are as follows:

(1) A person [which includes a corporation or other organization, as well as an individual];

(2) In charge of a facility (or vessel);

(3) From which a hazardous substance is released;

(4) In a quantity equal to or greater than a reportable quantity;

(5) Fails to notify immediately;

(6) The appropriate agency of the United States Government (i.e., the National Response Center).

* * *

Q. What level of knowledge or intent must the person in charge of a facility or vessel possess to be subject to criminal liability?

A. This is a difficult question, subject to the interpretation of the courts as cases are brought under CERCLA Section 103(b) and this issue is litigated. However, the Agency takes the position that only general intent (and no specific intent) to violate the statute is required. Thus, a defendant need only have knowingly committed each of the acts comprising all of the elements of the crime, but need not have had specific knowledge of the existence of the statute or the reporting requirement. There is support for this position in a line of cases on the intent issue, the major ones being United States v. International Minerals & Chemical Corp., 402 U.S. 558 (1971); and, by implication, United States v. Liparota, _____ U.S. _____, 53 U.S.L.W. 4530 (May 13, 1985).

Q. What criteria are employed in determining whether a particular case should be referred to the Department of Justice for prosecution?

A. Assuming that all elements of the crime can be established, the following factors are the major considerations to be weighed:

(1) Quantity released and relative toxicity of the hazardous substance;

(2) Actual or threatened human health hazard or environmental damage;

(3) Criminal intent/egregiousness of conduct;

(4) Compliance history/response by violator to release;

(5) Impact of type of violation upon regulatory program; and

(6) Expected deterrent effect of prosecution.

* * *

Q. Does the Agency refer for criminal prosecution all cases meeting the criteria?

A. That will depend upon available investigative, technical and legal resources, taking into account as well the overall enforcement objectives of the Agency under all federal environmental statutes. Although cases under CERCLA Section 103(b) are generally considerably less resource-intensive than criminal enforcement matters under other statutory provisions (such as RCRA or TSCA), it is not anticipated that EPA ever will be capable of referring all potential cases. Therefore, careful efforts will be taken to refer for prosecution those cases which present the greatest likelihood for successful results. In particular, attention will be given to those cases the prosecution of which will offer the maximum deterrent effect upon the

violator and upon the regulated community at large. Ultimately, legislative amendments to CERCLA now pending in the Congress establishing administrative penalties for violation of Section 103(b) to supplement the present criminal sanctions will provide a much expanded full-spectrum array of remedies. This expansion will allow an appropriate enforcement response in virtually all instances of violation of the reporting requirement.

* * *

Q. Who decides whether a particular case is to be prosecuted?

A. The factors (describing a failure to report a release in excess of an RQ) that appear to meet generally the criteria for criminal prosecution under Section 103(b) should be referred to the field office of the Office of Criminal Investigations within the EPA region. If preliminary screening indicates that the criteria for criminal enforcement action are likely to be met, a criminal investigator from that field office will be assigned to develop the available facts and a referral package will be prepared. Upon concurrence by the Office of Regional Counsel and approval by the Office of Criminal Enforcement, the case will be referred to the Department of Justice for prosecution (conducted by the Office of the local United States Attorney or by the Environmental Crimes Unit of the Land and Ntural Resources Division headquartered in Washington). Final discretion whether to file criminal charges rests with the Department of Justice, which also has full authority with respect to plea bargaining, if any. Presumably, however, Department attorneys handling the case will consult with the agency prior to reaching a decision on such matters.

4. REPORTABLE QUANTITY ADJUSTMENTS

4.1 NUMBER OF REPORTABLE QUANTITY LEVELS AND THEIR VALUES

To be added.

4.2 METHODOLOGY USED TO ADJUST REPORTABLE QUANTITIES

To be added.

4.3 CRITERIA USED TO ADJUST REPORTABLE QUANTITIES

To be added.

4.4 FUTURE RQ ADJUSTMENTS

Q. The final RQs for ammonia and phenol were listed in the final rule (50 FR 13456) as 100 and 1000 pounds, respectively. However, the proposed RQ adjustments for these two substances are the same as the final RQs. What is the status of these two substances?

A. The April 4, 1985 Federal Register publication of the final rule for RQ adjustments lists all of the CERCLA hazardous substances, together with a statutory RQ and a final RQ for each. Neither ammonia nor phenol had RQ adjustments proposed in the May 25, 1983 proposed rule; however, both have final RQs listed in the aforementioned final rule. All final RQs listed can be placed in one of two categories: (1) finalized, adjusted RQs for substances proposed for adjustment in the May 1983 proposed rule; or (2) statutory RQs that will remain in effect until any adjustment to an RQ is finalized. Both ammonia and phenol fall into the second category and both substances' RQs are footnoted to indicate that "an adjusted RQ is proposed in a separate NPRM." It so happens that the proposed RQs for ammonia and phenol in the concurrent NPRM are the same as their statutory RQs. Thus, the current status of both ammonia and phenol is that their statutory RQs of 100 and 1000 pounds, respectively, will remain in effect until the promulgation of the final rule that will adjust their RQs.

* * *

Q. Can a company, on the basis of the April 4, 1985 final rule, assume that the CERCLA list of hazardous substances will not change?

A. No. The list of CERCLA hazardous substances can change when the list of substances developed under the statutes incorporated in CERCLA Section 101(14) changes. These statutory lists are: (1) Section 311 of the Clean Water Act; (2) Section 3001 of RCRA (except waste excluded by Congress); (3) Section 307(a) of the Clean Water Act; (4) Section 112 of the Clean Air Act; (5) Section 7 of the Toxic Substances Control Act; and (6) substances designated pursuant to Section 102 of CERCLA. When a substance is added to one of these lists it becomes a CERCLA hazardous substance if it is not already present on one of the other lists. Deletion of a substance from a list will remove the substances from CERCLA authority provided that it does not appear on one of the other lists. Additions to or deletions from the list of CERCLA hazardous substances will appear in Federal Register notices and final rules, and will be subsequently reflected in the Code of Federal Regulations (40 CFR Section 302.4).

* * *

Q. How many RQs is the Agency proposing to change, what kind of changes is it proposing, and what are the Agency's plans for adjusting RQs not changed by this proposal?

A. The Agency has completed scientific and technical analyses of 445 of the 705 substances designated as hazardous under CERCLA. Final adjusted RQs now appear for 340 of these substances; statutory RQs appear for the remaining substances in Table 302.4 of the final rule. An NPRM proposing RQ adjustments for 105 of the hazardous substances was published concurrently with the final rule. RQs of the remaining 260 substances (primarily potential carcinogens) are being adjusted and will form the basis of an NPRM to be published at a later date.

4.5 APPLICATION OF METHODOLOGY AND CRITERIA

Q. What is the RQ for PCBs?

A. The RQ for PCBs was originally established under the Clean Water Act at 10 pounds. The Agency proposed in the May 25, 1983 NPRM to lower the RQ to one pound based on more recent aquatic toxicity data. The Agency received numerous comments on the proposed lowering of the PCB RQ and, as a result, decided to postpone establishing a final RQ until further evaluations are completed. The existing RQ of 10 pounds for PCBs, as established under the Clean Water Act, will therefore remain in effect until a final RQ is promulgated.

4.6 SUMMARY OF RQ CHANGES FROM THE MAY 25, 1983 NPRM

Q. A municipal district is writing a hazardous waste ordinance and wants to use CERCLA hazardous waste RQs in its regulations. What is the status of the proposed RQs in the May 25, 1983 Federal Register, and is there a more complete list?

A. The May 25, 1983 NPRM proposed RQ adjustments for 387 of the then 696 CERCLA hazardous substances. Since that time, nine additional substances have been designated by EPA as hazardous, bringing the total number of CERCLA hazardous substances to 705. The final rule published in the Federal Register on April 4, 1985 finalized the RQs for 340 of the 387 adjustments proposed in May 1983. A concurrent NPRM, published with this final rule, proposed RQ adjustments for another 105 of the CERCLA hazardous substances. RQ adjustments for the remaining 260 substances will be proposed in a third NPRM to be published at a later date. Statutory RQs for these 365 hazardous substances remain in effect until adjustments become final. The final rule published in the April 4, 1985 Federal Register provides the most complete and current listing available of CERCLA hazardous substances and their RQs.

* * *

Q. Have any new hazardous substances been listed since the hazardous substances/RQs were presented in the Federal Register dated May 25, 1983?

A. Yes, nine additional substances have been designated as hazardous by the EPA Administrator since May 1983, raising the total number of CERCLA hazardous substances from the then 696 to the current 705. Waste stream F024 was listed as hazardous under Section 3001 of RCRA in February 1984. In September 1984, coke oven emissions were listed as a hazardous air pollutant under Section 112 of the Clean Air Act. The most recent additions occurred in January 1985 when seven more waste streams (F020, F021, F022, F023, F026, F027, and F028) were listed as hazardous under Section 3001 of RCRA.

* * *

Q. Have the proposed reportable quantities for CERCLA hazardous substances been finalized?

A. RQs for 340 substances have been finalized (50 FR 13456-13513) and RQs have been proposed for an additional 105 CERCLA hazardous substances in the April 4, 1985 NPRM (50 FR 13514-13522). RQ adjustments for the 260 remaining substances are being evaluated and will form the basis of an NPRM to be published at a later date. Until final RQs are promulgated for the 365 hazardous substances without final RQs, notification is required when releases occur at the statutory RQ levels.

4.7 RETENTION OF STATUTORY RQ FOR METHYL ISOCYANATE

To be added.

4.8 TABLE 302.4

Q. If a compound is not specifically listed under Table 302.4 but fits the generic class listed in the table, must a one pound release be reported under Section 103(a) of CERCLA?

A. No. The April 4, 1985 final rule (at 50 FR 13461), states that notification requirements apply only to these specific compounds for which RQs are listed in Table 302.4, not to the generic listings. However, the release of a substance belonging to a generic class listed in Table 302.4 but not otherwise specifically listed is still liable for cleanup costs or natural resource damage.

* * *

Q. Does the new RQ Table 302.4 in the April 4, 1985 final rule (50 FR 13456) include or delete hazardous substances listed under Section 117.3 of the Clean Water Act?

A. This question apparently refers to Table 117.3 in 40 CFR Section 117.3 entitled, "Reportable Quantities of Hazardous Substances." The hazardous substances listed in Table 117.3 were designated as hazardous under Section 311(b)(2)(A) of the Clean Water Act. Table 117.3 provides the CWA Reportable Quantities for the substances. Substances designated under this section of the CWA are also CERCLA hazardous substances by virture of the provisions of CERCLA Section 101(14). Therefore, all of the hazardous substances in Table 117.3 (40 CFR Section 117.3) are also in Table 302.4, the list of CERCLA hazardous sustances. Table 302.4 identifies by the digits "1" and "2" in the statutory code column those substances listed pursuant to Sections 311(b)(2)(A) and 307(a) respectively of the CWA.

* * *

Q. Can a company, on the basis of the April 4, 1985 final rule, assume that the CERCLA list of hazardous substances will not change?

A. No. The list of CERCLA hazardous substances can change when the list of substances developed under the statutes incorporated in CERCLA Section 101(14) changes. These statutory lists are: (1) Section 311 of the Clean Water Act; (2) Section 3001 of RCRA (except waste excluded by Congress); (3) Section 307(a) of the Clean Water Act; (4) Section 112 of the Clean Air Act; (5) Section 7 of the Toxic Substances Control Act; and (6) substances designated pursuant to Section 102 of CERCLA. When a substance is added to one of these

lists, it becomes a CERCLA hazardous substance if it is not already present on one of the other lists. Deletion of a substance from a list will remove the substance from CERCLA authority provided that it does not appear on one of the other lists. Additions to or deletions from the list of CERCLA hazardous substances will appear in Federal Register notices and final rules, and will be subsequently reflected in the Code of Federal Regulations (40 CFR Section 302.4).

5. REPORTABLE QUANTITY ADJUSTMENTS UNDER SECTION 311 OF THE CLEAN WATER ACT

To be added.

6. SUMMARY OF SUPPORTING ANALYSES

6.1 REGULATORY IMPACT ANALYSIS

To be added.

6.2 REGULATORY FLEXIBILITY ANALYSIS

To be added.

6.3 INFORMATION IMPACT ANALYSIS

To be added.

7. OTHER

To be added.

APPENDIX: QUESTION FORM

EPA would very much appreciate any contributions that you might make to this Questions and Answers Notebook. If you have any questions on RQ adjustments and CERCLA notification requirements, please write the questions below and send with your name and address to:

Dr. K. Jack Kooyoomjian
Response Standards and Criteria Branch
Emergency Response Division (WH-548B)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Name: _____

Address: _____

APPENDIX: QUESTION FORM

EPA would very much appreciate any contributions that you might make to this Questions and Answers Notebook. If you have any questions on RQ adjustments and CERCLA notification requirements, please write the questions below and send with your name and address to:

Dr. K. Jack Kooyoomjian
Response Standards and Criteria Branch
Emergency Response Division (WH-548B)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Name: _____

Address: _____

APPENDIX: QUESTION FORM

EPA would very much appreciate any contributions that you might make to this Questions and Answers Notebook. If you have any questions on RQ adjustments and CERCLA notification requirements, please write the questions below and send with your name and address to:

Dr. K. Jack Kooyoomjian
Response Standards and Criteria Branch
Emergency Response Division (WH-548B)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Name: _____

Address: _____