



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 25 2007

OFFICE OF  
SOLID WASTE AND  
EMERGENCY RESPONSE

**MEMORANDUM**

SUBJECT: Lead Acid Battery Reporting Under EPCRA Sections 311 and 312 - REVISED

FROM: *Deborah Y. Dietrich*  
Deborah Y. Dietrich, Director  
Office of Emergency Management

TO: Regional Division Directors, Regions I-X

Questions have been raised recently about how to calculate the threshold and to report lead acid batteries under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). These batteries contain both an extremely hazardous substance (EHS) and other hazardous chemicals. The purpose of this memorandum is to provide guidance for the calculation of reporting thresholds under Sections 311 and 312 of EPCRA for non-consumer type lead acid batteries, such as those used in telephone switching stations or in forklifts

**BACKGROUND**

EPCRA sections 311 and 312 generally apply to the owner or operator of a facility that must prepare or have available a Material Safety Data Sheet (MSDS) for each "hazardous chemical" as required by the Occupational Safety and Health Act (OSHA) of 1970. EPA's regulations published in 40 CFR Part 370 establish minimum threshold levels that govern EPCRA reporting requirements for facilities covered by EPCRA sections 311 and 312. In addition, these regulations provide instructions on how to report if threshold levels are exceeded.

OSHA has determined that lead acid batteries are hazardous chemicals under the OSHA definition since there are chemical and physical hazards associated with them. Lead acid batteries have the potential to emit hydrogen gas which, upon ignition, may result in a fire or explosion. Furthermore, OSHA's Directive on Inspection Procedures for the Hazard Communication Standard (CPL 02-02-038, March 20, 1998), states that lead acid batteries do not fall under the article exemption because they have the potential to leak, spill, or break during normal conditions of use, including foreseeable emergencies.

## GUIDANCE

Under EPCRA sections 311 and 312, a lead acid battery would be considered a mixture, containing both sulfuric acid, an extremely hazardous substance (EHS), and other hazardous chemicals such as lead, lead oxide, and lead sulfate. Since a lead acid battery contains sulfuric acid, an EHS, the regulations at 40 CFR § 370.28 require an owner or operator of a facility to aggregate the sulfuric acid present in all lead acid batteries as well as in any other mixture or in pure form at the facility, in order to determine if the threshold has been met or exceeded. If the aggregated amount of sulfuric acid present at the facility equals or exceeds the minimum EHS reporting threshold of 500 pounds, the sulfuric acid is reportable (see 40 CFR §370.20(b)(1)).

With regard to the non-EHS chemicals, the owner or operator of the facility is not required to aggregate those chemicals to determine threshold and reporting. Instead, the facility has two options. In the first option, the owner or operator would add the total weight of the lead acid batteries and if the reporting threshold has been met (which is 10,000 pounds for non-EHS hazardous chemicals), would report the lead acid batteries. In the second option, the owner or operator would add the total weight of each of the individual hazardous chemicals in the lead acid batteries as well as the amount of those chemicals present throughout the facility to determine if the threshold has been met. The owner or operator would then report each of the individual chemicals which have met the threshold.

Once the facility determines it needs to report the batteries, it has two primary choices under the regulations regarding the manner in which it reports. The facility may either list the sulfuric acid separately on the Tier II form or it may list the lead acid batteries, indicating that sulfuric acid, an EHS, is a component of the mixture.

It should be noted that the regulations at 40 CFR § 370.28(a)(2) state that reporting a mixture, such as the batteries, under both sections 311 and 312 must occur in the same manner, where practicable. Since MSDSs are commonly published for the lead acid batteries and not the individual components of the batteries, we anticipate a facility would typically submit a copy of the MSDS for the batteries to meet the requirements of section 311 and list the batteries on the Tier II form to meet the requirements of section 312.

## CONCLUSION

To the extent there could be confusion regarding the Agency's views on aggregation of the hazardous chemicals in lead acid batteries, I want to clarify that the aggregation of non-EHSs for threshold determination is not required under EPCRA sections 311 and 312. See 55 Fed. Reg 30,640 (July 26, 1990). Aggregating a chemical is required only for the EHSs present at the facility.

For any questions regarding this memo, please contact Sicy Jacob at (202) 564-8019.

cc: Earl Salo, OGC  
Rosemarie Kelley, OECA  
EPCRA Coordinators