



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

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OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

Ms. Lynn L. Bergeson  
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Dear Ms. Bergeson:

Thank you for your most recent communication (19 September 2005 email to Neil Patel) summarizing key concerns of the Metals Chemistry Forum (the Forum) regarding the 2006 Inventory Update Reporting (IUR) requirements. In your email, you requested a meeting with EPA to discuss these issues. We would first like to address these issues in writing, since they were raised in previous communications (11 April 2005 email from the Forum to EPA in preparation for the 23 May 2005 meeting of the two parties, and in your 22 June 2005 letter to EPA) and discussed in a previous meeting (the 23 May 2005 meeting). After reviewing our responses below, if you still think a meeting is warranted, please let us know.

Your 19 September email summarized five areas of concern. Please note that our responses below address only part of these five issues. We will respond to the remaining issues shortly, as indicated below. Other specific issues raised in previous communications (most notably the 11 April 2005 email from the Forum to EPA) will be addressed by EPA in a separate document and sent to the Forum under separate cover.

*Issue 1:* The discussion of this issue was quite broad and has been broken down into smaller discussions.

*1a:* The existence of an Inventory name that may be applicable to a material does not determine whether that material must be reported.

*EPA response:* The determination of whether a chemical substance is reportable under the IUR begins with whether the substance is listed on the Toxic Substances Control Act (TSCA) Inventory of Chemical Substances (the Inventory). If a substance is listed on the Inventory, then the manufacturer/importer would need to review requirements for reporting the substance under IUR, such as production volume or exemption status. If a substance is not listed on the Inventory, then it is not subject to reporting under the IUR regulation.

*Ib:* When the original TSCA Inventory was created, chemical substances were added to the Inventory using names that frequently were not consistent with more recent interpretations of nomenclature policy.

*EPA response:* The Agency does not believe that the above statement is accurate as we have made efforts to maintain consistency in Inventory policies over the years. Do you have examples specific to the metals industry to share with us?

*Ic:* Depending on the particular context applicable to a reporter or site, a material that can be associated with a particular Inventory name nonetheless may not be reportable under the terms of the IURA requirements and exemptions.

*EPA response:* Not all chemical substances listed on the Inventory are reportable under the IUR rule. To find out whether a substance is reportable, a manufacturer would need to determine if any exemptions apply. There are exemptions based on business size, as delineated in 40 CFR 710.49, certain circumstances of manufacture of the substance, as described in 40 CFR 710.50, and chemical-specific exemptions, as described in 40 CFR 710.46. In addition, the production volume of the substance at the reporter's site affects the information required to be reported. The IUR regulations provide more detailed information on reporting requirements and exemptions.

*Id:* For example, a material may be a non-reportable mixture even though there is an Inventory name that could describe the material.

*EPA response:* EPA will respond to issues associated with mixtures in a separate letter.

*Ie:* During the meeting, however, some EPA representatives seemed to say that whether similar substances (e.g., that could be considered mixtures) would need to be reported would not depend on an equivalent and predictable application of the same rule, but might depend on whether an earlier manufacturer individually decided to specifically list a substance (that could now be described as a mixture) on the original Inventory.

*EPA response:* That description doesn't match EPA's development of the Inventory. There are very specific reporting requirements and rules for substances that are to be listed on the Inventory (see 40 CFR 710). Substances not currently on the Inventory are new chemicals and are therefore subject to TSCA section 5 notification. Note that EPA's decisions concerning the identification and Inventory listing of substance combinations has always depended on the commercial intentions of the manufacturers and those manufacturers' knowledge of the chemistry of the substance combinations.

*Issue 2:* Mixtures, including statutory mixtures, are not subject to IURA reporting requirements. The IURA reporting obligation for the components of a mixture accrues to the manufacturer or importer of those components. EPA has identified certain mixtures as "statutory mixtures." In these situations, EPA accepts the fact that some chemical bonding takes place among the components of the mixture. EPA has determined, however, that such bonding does not change the "mixture" status of the resulting material. EPA has elected to include its 1995 statutory mixture guidance as an appendix to the guidance document for the 2006 IURA reporting period. In doing so, EPA clearly

indicates that EPA's guidance should be followed; yet during the meeting, some EPA representatives suggested that Industry should not place "too much reliance on" EPA's long-standing written guidance. Industry needs to know which rules will apply when preparing its 2006 IURA reports, needs some clarification on aspects of EPA's existing statutory mixture policy, and should be able to rely on long-standing written guidance on which compliance programs have been based.

*EPA response:* EPA will respond to issues associated with mixtures in a separate letter.

*Issue 3:* According to 40 C.F.R. §§ 710.50(c) and 720.30(g), reporting is not required for a byproduct used to "extract component chemical substances from it for commercial purposes." EPA must apply a common industrial practice meaning of the term "extract" in interpreting this provision. In its comments, EPA has suggested that the term "extract" in this exemption has a narrow meaning -- removal from a mixture without chemical transformation. Yet, the rulemaking record of neither the IURA nor earlier TSCA rulemakings addresses the meaning of this term at all. During the meeting, EPA representatives pointed to comment 55 in the appendix to the original inventory update rule regulations (42 Fed. Reg. 64572, 64587) to support EPA's narrow interpretation. Yet, this comment indicates extraction may be accomplished "by heat or a chemical reaction, if the chemical substance that is recovered is actually present in the byproduct or was an intermediate used in the manufacture of the byproduct." This statement is inconsistent with the argument that extraction excludes removal involving chemical transformation. In the absence of other authoritative policy, grounded in explicit regulatory history, EPA should interpret the term "extract" based on common usage of the term, as reflected in industry practice.

*EPA response:* The citations of 40 C.F.R. §§ 710.50(c) and 720.30(g) do state that reporting is not required for a byproduct used to "extract component chemical substances from it for commercial purposes." A component chemical substance is a constituent or ingredient of that substance, and therefore must exist in the substance. Extraction may include the use of heat or chemical reaction if the resulting extracted substance was a component chemical substance of the byproduct.

*Issue 4:* The discussion of this issue has been broken down into smaller discussions.

*4a:* There are chemical processing practices unique to metals and inorganic chemicals that may make blanket application of IURA policies developed for organic chemicals unworkable for metals and inorganics. For example, if unused raw material is captured, such as baghouse dust, and reintroduced into the processing stream to obtain the metals contained therein, the benefit of reporting that baghouse dust is unclear and appears to pose a risk of double-counting. (Clearly, the metal, once removed, would be reportable.) If such raw material is recaptured in a continuous-cycle process, there are practical challenges in trying to estimate how much material has actually been recaptured

*EPA Response:* EPA does not consider recaptured raw material that has been transferred to a different location to be a manufactured substance or byproduct. Therefore, double counting of this material is not an issue.

4b: As a second example, metals and inorganics manufacturers often pay brokers to remove waste-streams. The brokers may dispose of the waste material, or they may seek to recover metals or materials contained therein, depending on market demand. According to EPA's comments, the second fact pattern could make the waste material a non-exempt reportable byproduct; yet, the manufacturers have neither knowledge of nor control over this outcome. EPA must recognize and address these unique issues to achieve success in IURA reporting.

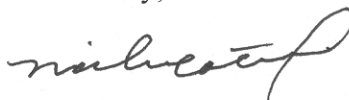
*EPA Response:* EPA will respond to this issue in a separate letter.

*Issue 5:* During the May 23, 2005, meeting, EPA appeared receptive to the following point regarding secondary aluminum process and subsequent dross recovery operations, but it would be appreciated if EPA would confirm its agreement. As discussed in the third bullet, above, we understand EPA's position to be that IURA reporting is not required for a byproduct used to "extract component chemical substances from it for commercial purposes." While the definition of "extract" appears to be in dispute, EPA has stated that, at minimum, extraction includes removal from a mixture by physical means without chemical transformation. The same regulatory provision, 40 C.F.R. § 720.30(g), states that a byproduct is not reportable if it is disposed of as a waste. During the secondary aluminum process, aluminum dross is produced as a byproduct. Aluminum is subsequently removed from the dross by physical means; the remainder of the dross is disposed of as a waste. Consequently, dross is a non-reportable byproduct.

*EPA Response:* Based on your description, elemental aluminum is extracted by physical means from the dross and the remainder of the dross is disposed of as a waste. In that circumstance, the dross is a byproduct used for a commercial purpose that is exempt from the IUR reporting because it is only being used to extract a component chemical substance from it as described in 40 CFR 720.30(g). Note that this exclusion only applies to the byproduct; it does not apply to any component substances extracted from the byproduct. Please keep in mind that if the aluminum dross is not disposed of as a waste, but rather is used for a commercial purpose, IUR reporting of the dross may be required depending on the particular circumstances.

Please do not hesitate to contact Susan Sharkey ([sharkey.susan@epa.gov](mailto:sharkey.susan@epa.gov); 202-564-8789) with any further questions or clarifications.

Sincerely,



Neil M. Patel, Acting Director  
Economics, Exposure, and Technology  
Division