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|  | Waste Programs Division Substantive Policy Statement | Page 1 of 4 |
| | Interpretation of “use” of toxic substances in excess of 10,000 pounds for the Pollution Prevention Program | Rev. 000 |
| | | Effective: |

This Substantive Policy Statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

1.0 Purpose

This policy statement explains ADEQ’s current interpretation of *use* for determining when more than 10,000 pounds of a toxic substance is *used* in the previous calendar year under the Pollution Prevention (P2) Program thresholds.

2.0 Definitions

“Toxic Substance” or “toxics” means a toxic chemical listed pursuant to the pollution prevention act of 1990 (42 United States Code section 13102(3)) and on the EPCRA Section 313 toxic substance (or chemical) list.

“EPCRA” means the Emergency Planning and Community Right-to-Know Act.

“P2” means pollution prevention.

“P2 plan” means the required facility analysis and report for ADEQ on ways to reduce the use of toxic substances and the generation of hazardous waste as described in A.R.S. §49-961 et seq.

“Section 313” is a part of EPCRA that requires applicable facilities to submit a toxic chemical release form for any of the 600 chemicals that are manufactured, processed or otherwise used.

“TRI” means Toxic Release Inventory Program.

3.0 Directive Statement

A.R.S. § 49-963(D) requires a facility that used in excess of 10,000 pounds of a toxic substance in the previous calendar year, to prepare and implement a P2 plan that addresses a reduction of the use of the toxic substance.

ADEQ interprets *use* in A.R.S. § 49-963(D) to mean the manufacturing or processing of a toxic substance, as further described below.

Manufacturing means producing, preparing or compounding a toxic substance for sale, distribution into commerce, or on-site use or processing.

Processing means preparing a toxic substance for distribution into commerce after its manufacture where the same physical state and chemical form, as that received by the facility, of the chemical is maintained. This includes any toxic substance that is used as:

- As a reactant, such as using a toxic substance in chemical reactions for the manufacture of another chemical substance or product.
 - For example; feedstocks, raw materials intermediates and initiators
- As a formulation component which includes any toxic substance added to a product prior to further distribution of the product that acts as performance enhancer during use of the product.
 - For example; additives, dyes, solvents, inhibitors, emulsifiers and flame retardants
- As an article component that becomes an integral component of an article distributed for industrial, trade or consumer use.
 - For example; pigment components of paint applied to a chair that is sold

Exceptions: Toxic substances described in the following three categories do not count toward the 10,000 lb. "use" threshold:

1. Toxic substances that are:
 - Used for routine janitorial or facility grounds maintenance
 - Used to maintain motor vehicles operated by the facility
 - Used as a structural component of the facility
 - Contained in batteries (lead and sulfuric acid)
 - Contained in intake water (used for processing or non-contact cooling) or in intake air (used either as compressed air or for combustion)
2. The following activities:
 - Repackaging of a toxic substance
 - Storing a toxic substance
 - On-site recycling of a toxic substance
 - Personal use of a toxic substance by employees or other persons
 - Blending or burning a toxic substance for energy recovery
3. Any toxic substance use not described by a qualifier in Table II. EPCRA Section 313 Chemical List.
 - For example; aluminum oxide is only considered *used* if it is in a fume or dust form.

- Additionally, Persistent Bioaccumulative Toxic (PBT) chemicals, listed in Table II must be used in excess of 10,000 pounds to meet P2 program thresholds; even though the TRI program reporting threshold is lower. For example, the TRI program classifies lead and lead compounds as PBT chemicals which are subjected to the TRI program's lower use threshold of 100 pounds. However, if no TRI program thresholds are met, lead and lead compounds must be used in excess of 10,000 pounds to meet P2 program thresholds.

NOTE: Facilities that must file annual toxic release inventory forms (or TRI forms) for the toxic substance(s) used at the facility, and pursuant to Section 313 of EPCRA, are bound by the definition of *use* set forth by Section 313(a) and (b) of EPCRA.

A copy of Table II has been attached to this policy. Facilities must ensure to compare chemicals to the current list which can be found on the TRI web site.

4.0 Directive Owner (Person Responsible for Implementing & Maintaining the Directive – Title/Unit/Section/Division)

Waste Program's Permit Section Manager

5.0 Audience

Arizona facilities, as described above, that may have to file a pollution prevention plan and ADEQ employees who implement the Arizona Pollution Prevention Plan requirement.

6.0 Communication & Training

The Permits Section Manager and Sustainability Programs Unit Supervisor will review this statement annually to insure that relevant employees are aware of its content including procedures for compliance, audit and review.

7.0 Compliance & Audit Plan

Prior to each annual review, the Sustainability Programs Unit Supervisor will ensure that an inventory is conducted to determine number of potential filers that have been determined exempt under the policy. Each annual review shall evaluate whether applicable external stakeholders are aware of the policy and explore methods to increase awareness if needed.

8.0 Review & Revision

This directive will be reviewed on an annual basis.

9.0 Additional Documentation

None

10.0 Approved by:

| Title | Name | Signature | Date |
|------------------------|---------------|--|---------|
| Division Director | Laura Malone |  | 5/26/16 |
| Administrative Counsel | Sherri Zendri |  | 5/31/16 |

11.0 Historical Note

[Describes the changes or updates to a directive, which serves as a reference for the reader to understand any past changes.]

| Date | Change | Ref. Section |
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