



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF  
PREVENTION, PESTICIDES AND  
TOXIC SUBSTANCES

JAN 19 2006

Ms. Lynn L. Bergeson  
Bergeson & Campbell, P.C.  
1203 Nineteenth Street, N.W.  
Suite 300  
Washington, D.C. 20036-2401

Dear Ms. Bergeson:

This letter continues to address the key concerns of the Metals Chemistry Forum (the Forum) identified in your September 19, 2005, email to me. My letter, dated October 27, 2005, addressed most of your concerns. This letter addresses the remaining issues.

*Issue 1d:* For example, a material may be a non-reportable mixture even though there is an Inventory name that could describe the material.

*EPA response:* With the exception of a very limited number of listings, the Inventory does not include substances that EPA considers to be mixtures. Certain substances, identified as mixtures in the Note to 40 CFR 710.4(c)(2), were included on the Inventory largely for information purposes. In the guidance concerning mixtures, available at [www.epa.gov/oppt/newchems](http://www.epa.gov/oppt/newchems), EPA refers to these substances as statutory mixtures. As with simple mixtures, these statutory mixtures themselves are not IUR reportable, but the discrete chemical components comprising the mixtures are reportable<sup>1</sup> when the substances are manufactured or imported. As these few mixture listings seem to have created confusion among the regulated community, EPA is considering removing them from the Inventory at the next opportunity.

*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

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<sup>1</sup> The substances are reportable as long as other reporting requirements are met, such as production volume.

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:* As stated above, mixtures, including those listed in the Note to 40 CFR 710.4(c)(2), are not subject to IUR requirements. However, the component chemical substances of mixtures are reportable under the IUR regulation. You are correct in stating that the reporting obligation for the component substances accrues to the manufacturer or importer of those components. Please note that, in the case of the importer, the component substances are reportable even when imported as part of a mixture. EPA's mixtures guidance document, available at [www.epa.gov/oppt/newchems](http://www.epa.gov/oppt/newchems), provides general guidance for the New Chemicals Program to help determine if a substance is a mixture. If the substance is a mixture, it is not to be added to the TSCA Inventory. As noted earlier in this letter, the only exceptions are the mixtures included on the Inventory for informational purposes. These mixtures are identified in the Note to 40 CFR 710.4(c)(2). The Agency intends to provide clarification on the statutory mixture guidance as specific questions are asked, and will do so in response to questions from the Metals Chemistry Forum or others. EPA's clarifications are based on the regulatory language, as final determinations regarding reporting obligations reside in the regulation.

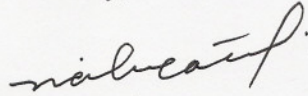
*Issue 4b:* As a second example, metals and inorganics manufacturers often pay brokers to remove waste-streams. The brokers may dispose of the waste material, or they may seek to recover metals or materials contained therein, depending on market demand. According to EPA's comments, the second fact pattern 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:* Manufacturers are responsible for reporting basic manufacturing information for substances they manufacture or import, to the extent that the information is known to or reasonably ascertainable by the manufacturer. As you identified in your question, by-products may be used directly for a commercial purpose, or may be used by a third party for a commercial purpose. By-products without a commercial purpose are not reportable. The decision concerning whether to report a substance when you paid a broker to haul it away is an individual determination. EPA believes that there are circumstances where it will be known to or reasonably ascertainable by the manufacturer that the substance is

being used for a commercial purpose. In those cases, the manufacturer is responsible for reporting the substance.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Neil M. Patel". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping underline.

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