

16, 1996, and supplemented on September 23, 1997. The revision included Part 55 of Act 451 of 1994, the Natural Resources and Environmental Protection Act (Part 55). On December 30, 1997, Michigan Department of Environmental Quality (MDEQ) withdrew most of Part 55. In this action, the United States Environmental Protection Agency (USEPA) is proposing to approve sections 324.5524 and 324.5525 which contain control requirements and applicable definitions for fugitive dust sources.

In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received by March 12, 1998.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR-18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the USEPA's analysis are available for inspection at the following address: (Please telephone Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.) USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 12, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.
[FR Doc. 98-3176 Filed 2-9-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX82-1-7336a; FRL-5962-6]

Approval and Promulgation of Implementation Plan, Texas: 15% Rate-of-Progress Plan, 1990 Emission Inventory, Motor Vehicle Emission Budget, and Contingency Plan for the Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA proposes to approve revisions to the Texas State Implementation Plan (SIP) for the Beaumont/Port Arthur ozone nonattainment area for the purpose of satisfying the 15% rate-of-progress requirements of the Clean Air Act as amended in 1990, which will aid in ensuring the attainment of the National Ambient Air Quality Standard for ozone. The EPA is also proposing to approve the associated Motor Vehicle Emission Budget for the area.

In addition, EPA proposes to fully approve revisions to the 1990 base year emissions inventory and the contingency plan for this area.

This proposed action also replaces the proposed limited approval/limited disapproval of the Beaumont/Port Arthur 15% Plan and Contingency Plan published on January 29, 1996, 61 FR 2751. The May 22, 1997 (62 FR 27964), limited approval of the Volatile Organic Compound control measures continues in effect.

In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the Beaumont/Port

Arthur 15% Rate of Progress Plan and Contingency Plan.

DATES: Comments on this proposed rule must be postmarked by March 12, 1998. If no adverse comments are received, then the direct final rule is effective on April 13, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Donaldson of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665-7242.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 22, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98-3318 Filed 2-9-98; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS-400122; FRL-5760-2]

Emergency Planning and Community Right to Know; Section 313, Toxic Release Inventory Reporting; Notice of Receipt of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petition and request for comments.

SUMMARY: This notice announces the receipt of a petition from the Natural Resources Defense Council (NRDC), Defenders of Wildlife, National Audubon Society and the Humane Society of the United States, requesting EPA to initiate rulemaking to add Standard Industrial Classification (SIC) Code 45, Transportation by Air, to the list of facilities required to report releases under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). The petition was submitted pursuant to section 313(b)(1)(B) of EPCRA and sections 553(e) and 555(e) of the Administrative Procedure Act (APA). Also, as part of this notice, EPA, as requested by the petitioners, is publishing the petition in its entirety. Finally, EPA is seeking comments from interested or potentially affected parties concerning issues associated with adding airports to the list of facilities that must report under section 313 of EPCRA and section 6607 of the PPA, and the motor vehicle exemption under 40 CFR 372.38(c).

DATES: Written comments in response to this request for comments must be received on or before April 13, 1998.

ADDRESSES: Each comment must bear the docket control number "OPPTS-400122." All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G-099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this action. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality

claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Vicki Anderson at (202) 260-3544, e-mail: anderson.vicki@epamail.epa.gov. for specific information regarding this notice. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll-free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 800-553-7672.

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 1997, the EPA received a petition from the Natural Resources Defense Council, Defenders of Wildlife, National Audubon Society, and the Humane Society of the United States, requesting EPA to initiate rulemaking to add Standard Industrial Classification (SIC) Code 45, Transportation by Air, to the list of facilities required to report releases under section 313 of the Emergency Planning and Community Right-to-Know Act and section 6607 of the PPA. The petitioners also requested that the petition be printed in the **Federal Register**. The following is the complete text of the petition:

II. The Petition

April 16, 1997
The Honorable Carol Browner
Administrator
United States Environmental Protection Agency
401 M Street SW
Washington, D.C. 20460

Re: Petition to Add Standard Industrial Classification Code 45, Transportation By Air, to the List of Facilities Required to Report Releases of Chemicals

Dear Administrator Browner:

Pursuant to section 313(b)(1)(B) of the Emergency Planning and Community Right to Know Act (EPCRA) 42 U.S.C. § 11023(b)(1)(B), and sections 553(e) and 555(e) of the Administrative Procedure Act, 5 U.S.C. §§ 553(e), the undersigned groups hereby petition the United States Environmental Protection Agency (EPA) to initiate rulemaking to add Standard Industrial Code (SIC) 45, Transportation by Air, which includes airports, airline terminals, and aircraft maintenance facilities, to the list of facilities required to report releases of toxic chemicals listed on the Toxic Release Inventory (TRI). We also request that EPA immediately publish this petition in the Federal Register.

SIC Code 45 facilities are responsible for the release of millions of pounds of toxic chemicals into the environment each year. Nevertheless, EPA eliminated SIC Code 45 from its first industry expansion rulemaking,

despite EPA's own findings that show SIC Code 45 facilities release more toxic chemicals than do most of the facilities currently proposed for reporting.

For over three years, EPA analyses have shown that SIC Code 45 facilities should be required to report TRI chemical releases. SIC Code 45 was a "Primary Candidate" for inclusion in EPA's industry expansion rulemaking based on volume of TRI chemicals released.¹ In fact, SIC Code 45 ranked third among 25 SIC codes considered for inclusion in the rule. While SIC Code 45 facilities use TRI-listed chemicals for a variety of purposes, ethylene glycol is the TRI chemical used in the greatest quantities at these facilities. According to EPA's own estimates, during icing conditions at the 17 busiest airports in the United States, some 58 million pounds of ethylene glycol are released to the environment each year.² Thus, SIC Code 45 facilities clearly warrant listing.

The undersigned (Natural Resources Defense Council, Defenders of Wildlife, National Audubon Society, and the Humane Society of the United States), represent a group of environmental, wildlife, and humane organizations. The Natural Resources Defense Council (NRDC) is an environmental advocacy organization with over 350,000 members and contributors nationwide. Since 1970, NRDC's scientists and attorneys have been key players in virtually every critical environmental issue. Defenders of Wildlife, representing 200,000 members, is one of the leading national organizations fighting to preserve America's endangered species and biological diversity. National Audubon Society, representing 550,000 members works to conserve and restore natural ecosystems, focusing on birds and other wildlife for the benefit of humanity and the earth's biological diversity. The Humane Society of the United States, with 4.4 million members and constituents, is the largest animal protection organization in the United States. Collectively, the undersigned groups represent over 5 million members and constituents.

I. Introduction

The fundamental purposes of EPCRA are to inform citizens of toxic chemical use in their neighborhoods and to encourage industry to reduce toxic chemical use. Since its enactment in 1986, EPCRA has successfully achieved a significant reduction in toxic chemical use. As Administrator, you have noted, "the success of the program comes from the public's and industry's use of this information to motivate and empower initiatives at all levels; from facility teams, to community groups, to trade associations, and state and local government."³ EPA's failure to include SIC Code 45 in its facility expansion rule has achieved the opposite result; recent data demonstrates that ethylene glycol use at SIC Code 45 facilities is increasing. Because ethylene glycol is cheaper than less toxic alternatives, EPA's failure to include SIC Code 45 facilities in the facility expansion rule has eliminated a critical incentive for these facilities to use less toxic chemicals.

In order to fulfill EPCRA's source reduction and public information objectives, EPA must act to carry out its original intention to require SIC Code 45 facilities to

report TRI releases. As demonstrated below, adding SIC Code 45 to the list of industries required to report TRI releases achieves EPCRA's statutory purposes and satisfies EPA's decisional criteria for adding facilities under EPCRA.

II. SIC Code 45 Meets EPA's Criteria for Addition to the List of Facilities Required to Report TRI Releases

Under EPCRA section 313(b)(1)(B), EPA may add industry groups to the list of facilities required to report TRI releases where EPA determines that adding an industry to the list furthers the purposes of EPCRA.⁴ EPA established three criteria or factors for adding facilities under EPCRA section 313(b)(1)(B) in its first facility expansion rulemaking: (1) the "chemical" factor; (2) the "activity" factor; (3) the "information" factor. SIC Code 45 facilities satisfy each of these criteria and therefore should be required to report TRI releases.

A. The Chemical Factor

In addressing whether the chemical factor is met, EPA considers evidence that facilities within an industry group are reasonably anticipated to use one or more EPCRA 313 listed chemicals as part of its routine operations.⁵ There can be little question that substantial amounts of TRI chemicals are present at SIC Code 45 facilities. In its industry profile, EPA determined that toxic chemicals used by SIC Code 45 facilities include ethylene glycol, trichloroethylene, methylene chloride, acetone, chloroform, methyl ethyl ketone, isopropyl alcohol, glycol ethers, toluene, xylene, and other petroleum distillates.⁶

1. Ethylene Glycol is Toxic to Humans and Wildlife

The quantities of ethylene glycol used at SIC Code 45 facilities pose significant risks to humans, companion animals, and wildlife. Requiring airports to report ethylene glycol releases will encourage more extensive use of less toxic alternatives and will therefore reduce human and wildlife exposure to a toxic substance.

The acute oral toxicity of ethylene glycol in humans is well documented. Initially, ethylene glycol causes impairment of the nervous system, followed by cardiopulmonary toxicity and severe metabolic acidosis (i.e., the blood becomes unacceptably acidic). Kidney failure, major neurological disruption, and death can follow.⁷ The lethal dose of ingested ethylene glycol in humans is approximately 1.57g/kg body weight.⁸ For a 155 pound person, this dose is approximately equal to three ounces. In 1994, 4,792 cases of ethylene glycol ingestion were reported to poison control centers throughout the United States.⁹ Of these exposures, 106 cases were life-threatening or resulted in significant residual disability, and 34 cases resulted in death.¹⁰

Chronic effects from ethylene glycol ingestion include reproductive, developmental, and renal effects. Ethylene glycol was found to cause birth defects in mice.¹¹ EPA has recognized the heightened chronic toxicity of ethylene glycol by establishing Reference Doses (RfDs)¹² and long-term Drinking Water Health Advisories. The RfD of ethylene glycol is 2.0 mg/kg/day.¹³ The Drinking Water Health Advisory

for ethylene glycol is 5.5 mg/L for children and 19.25 mg/L for adults.¹⁴ The FDA has stated that drugs containing ethylene glycol are considered dangerous to health and are misbranded¹⁵ and that "under no circumstances [is ethylene glycol] to be used in any product, whether food, drug, or cosmetic that is likely to be taken internally or otherwise absorbed by external application."¹⁶

Ethylene glycol has also been shown to be toxic by inhalation. Inhalation, of course, is the likely exposure pathway for airport users such as passenger and flight crew as well as airport ground crews. Exposure to as little as 3 to 67 mg/m³ of ethylene glycol for a thirty-day period caused throat irritation and headaches in humans.¹⁷ Levels above 140 mg/m³ caused pronounced respiratory irritation, and subjects could not tolerate levels of 200 mg/m³.¹⁸ In animals ethylene glycol has been shown to cause irritation of the eyes and respiratory tract, as well as the intestine and lymph nodes. Further, inhalation of ethylene glycol has been shown to cause birth defects in laboratory experiments.¹⁹

Ethylene glycol is also extremely toxic to animals. Moreover, since it has a sweet taste, it is attractive to both wild animals and companion animals, thus increasing the likelihood of ingestion. A recent study of small practice veterinarians throughout the United States found that more than 90,000 dogs and cats die each year from ingesting ethylene glycol antifreeze.²⁰ Another study estimated that almost 30 percent of all documented dog and cat poisonings were due to ethylene glycol.²¹ Endangered species have also been poisoned. In 1992, a California Condor drank antifreeze and died.²² Migratory birds and large, as well as small animals have succumbed. In 1989, the remains of a polar bear were found on an Alaskan island; ethylene glycol was present in the soil under the carcass. The polar bear apparently ingested an ethylene glycol mixture that was used to mark the centerline of roads and runways covered with snow and ice.²³

2. Health Effects of Other Toxic Substances Used at Many Airports

While ethylene glycol appears to be the most prevalent toxic substance used at airports, maintenance facilities at many airports apply chemicals including trichloroethylene, toluene, methylene chloride, chloroform and glycol ethers, which can have serious human health implications. For example, breathing large amounts of methylene chloride for even short periods adversely affects the human nervous system and the heart, and repeated exposure to methylene chloride causes kidney and liver damage and cancer in laboratory tests-repeat exposure may likewise cause cancer in humans.²⁴ Very high levels of chloroform may result in unconsciousness and death, and in moderate amounts chloroform affected reproduction in animal studies. In addition, the Department of Health and Human Services has determined that chloroform may reasonably be anticipated to be a carcinogen.²⁵ Low-to-moderate levels of toluene from long-term exposure can cause memory loss, nausea, loss of appetite, and

hearing loss. Toluene also affects the kidneys. Repeated exposure to high levels of toluene can cause permanent brain and speech damage, vision and hearing problems, memory loss and decreased mental ability.²⁶

3. Significant Human and Wildlife Exposure Results From Deicing Operations

Release of very large volumes of ethylene glycol during deicing and anti-icing operations create the potential for human exposures that may have significant health consequences for airline passengers, employees, and other service personnel.²⁷ For example, ethylene glycol has been measured during deicing operations at levels up to 18 mg/L in ambient air.²⁸ One study showed that an airline deicing employee could be exposed to 104 mg/m³ of ethylene glycol through a saturated mask,²⁹ which would exceed the concentration of 100 mg/m³ in the current ACGIH TLV if the employee sprayed for eight hours. Ethylene glycol has also been measured inside aircraft during deicing operations at levels close to 2 mg/L.³¹

A recent survey found that 45 of the 50 busiest airports in the United States were located within three miles of an ocean, bay, lake, reservoir, river, wetland or stream.³² Ethylene glycol has the potential to enter drinking water supplies through discharges to surface waters or releases to ground water. Moreover, unless the ethylene glycol fluid is captured for recycling, which does not appear to be a common airport practice in the United States,³³ the fluid may puddle on-site, infiltrate soil, flow into creeks, streams, or rivers, or be retained in on-site retention basins. Wildlife forage in these environs. Migratory birds are particularly attracted to pooled water. SIC Code 45 facilities may be located adjacent to or in the vicinity of wildlife refuges. For example, John F. Kennedy International Airport in New York borders on the Jamaica Bay National Wildlife Refuge—a critical habitat for many species of migratory birds, waterfowl, and wildlife. Denver's airport is near the Rocky Mountain Arsenal National Wildlife Refuge.

Ethylene glycol has been measured in stormwater following deicing operations in concentrations as high as 19,800 mg/L,³⁴ and up to 13,200 mg/L in receiving waters.³⁵ Ethylene glycol in stormwater runoff at Salt Lake City International Airport was measured at 19,000 mg/L.³⁶ Levels of ethylene glycol at Denver's Stapleton Airport ranged from zero to 5,050 mg/L, with some later concentrations exceeding 100,000 mg/L.³⁷ These levels far exceed the EPA's one-day federal drinking water health advisory for ethylene glycol of 18.86 mg/L for children.

Because most ethylene glycol releases at airports occur during cold weather, significant concentrations of ethylene glycol will be present downstream from airports. Glycols do not rapidly biodegrade at low temperatures.³⁸ Since biodegradation of ethylene glycol occurs slowly at low temperatures, ethylene glycol travels farther down river ecosystems or through the soil before any biodegradation occurs. Further, biodegradation of ethylene glycol in ground water proceeds at a slower rate than in surface water because of the limited microbial populations and less available

oxygen in groundwater. Thus, there is a greater potential that humans and wildlife will be exposed to a toxic chemical.

In addition, both ethylene glycol and a less toxic alternative, propylene glycol, exert a strong biochemical oxygen demand (BOD) on receiving waters. This contributes to eutrophication (oxygen depletion), nuisance algal blooms, and fishery impacts.

Ethylene glycol releases are by no means the only threat to surface and groundwater that result from operations at SIC Code 45 facilities. Leaking underground storage tanks and pipes are a significant problem. For example, John F. Kennedy International, Dallas-Fort Worth, Atlanta, Los Angeles International, San Francisco, Cleveland, and Miami airports have all reported leaking underground tanks.³⁹ At John F. Kennedy International there are two underground plumes of aviation fuel beneath the airport, estimated to contain 3-5 million gallons of jet fuel, that resulted from leaking underground pipes.⁴⁰

B. The Activity Factor

Under the activity factor EPA considers evidence that facilities within an industry group manufacture, process, or otherwise use one or more TRI chemicals.⁴¹ EPA has determined that facilities in SIC Code 45 may process or otherwise use TRI chemicals, especially ethylene glycol, when conducting aircraft and ground surface deicing or anti-icing operations and maintaining, repairing, and cleaning aircraft.⁴²

During icing conditions, SIC Code 45 facilities apply ethylene glycol to aircraft using hand-held applicators that contain a volume of fluid in a canister connected to a hose and spray nozzle. In most cases, aircraft deicing is conducted at the terminal gate just prior to take-off. At some facilities, aircraft deicing is conducted away from the gate. Sometimes, if an aircraft is held too long at or away from the gate, more than one application of ethylene glycol will be required. Ethylene glycol use at SIC Code 45 facilities is probably unique among TRI chemical use in that its use requires ethylene glycol to be deliberately sprayed into the environment.

EPA determined that ethylene glycol was the chemical used in the largest quantities by SIC Code 45 facilities. During winter months when icy conditions exist, airports and airlines use deicing and anti-icing fluids to ensure passenger safety. If an airplane is covered with ice or snow, thousands of gallons of deicing solution may be necessary to deice just one aircraft. Salt Lake City Airport has reported using 175 to 600 gallons (1,300 to 4,460 pounds) per aircraft.⁴³ Depending on weather conditions, Detroit Metropolitan Airport reported that deicing may require 1,000 to 3,000 gallons (7,400 to 22,300 pounds) of deicing fluid for a commercial plane the size of a DC-8.⁴⁴ In a "worst-case" situation, as much as 4,000 gallons of a 50-50 mixture of glycol and water has been used at Detroit Metropolitan Airport on a large airplane when it was coated with one-half inch of ice.⁴⁵ Up to 1,000 gallons (7,400 pounds) has often been used to deice a single aircraft under severe weather conditions at Stapleton International Airport in Denver.⁴⁶

Per day and over a full season, airports use ethylene glycol in staggering amounts. Based on information filed with its NPDES permit, Chicago O'Hare International Airport reported that from July 1975 to June 1981, its average annual use of ethylene glycol deicing fluid was 348,500 gallons (almost 2.9 million pounds).⁴⁷ Assuming a 90 day de-icing season (undoubtedly longer than reality), this amounts to an average of over 3,800 gallons (36,000 pounds) per day. Similarly, a study at Baltimore Washington International Airport (BWI) estimated between 250,000 and 280,000 gallons (approximately 1,489,600 pounds) of ethylene glycol are used per year.⁴⁸ EPA reports that the 41st busiest airport in the United States (based on numbers of departures), Standiford Field in Louisville, Kentucky, used an average of 33,000 pounds of ethylene glycol per day in connection with its deicing operations in December 1991 and January and February 1992.⁴⁹ EPA also reports, based on a survey conducted by the Airports Council International (ACI), that annual ethylene glycol use at 35 SIC Code 45 facilities ranged from 1,500 to 4,491,400 gallons undiluted (13,965 to 41,814,934 pounds).⁵⁰

The vast majority of the ethylene glycol used is released directly into the environment as airport and runway runoff. Consistent with these reported volumes of ethylene glycol used for deicing operations, EPA's industry profile for SIC Code 45 estimated that 58 million pounds of ethylene glycol would be released annually during icing conditions at the 17 busiest airports in the United States. If these facilities had been required to report ethylene glycol releases in 1993, ethylene glycol would have ranked approximately 12th out of the 316 TRI chemicals reporting TRI release in 1993--outranking total reported releases of such TRI chemicals as sulfuric acid, manganese compounds, and trichloroethylene.⁵¹ If required to report, SIC Code 45 facilities would have ranked 9th in total volume of releases among 20 industries reporting under TRI.⁵²

Ethylene glycol releases from airports are already required to be reported in Canada and to some State agencies in the U.S. Experience under the Canadian National Pollutant Release Inventory (NPRI) generally confirms U.S. projections. The NPRI indicates that over one-half of the facilities with the largest releases of ethylene glycol were airports or aviation service companies.⁵³ In 1993, ethylene glycol ranked ninth in volume of total releases among all reported chemicals in Canada.⁵⁴ Moreover, of the top 10 facilities reporting ethylene glycol in 1993, six were airports, airbases, or aviation service facilities. Ethylene glycol releases for these facilities alone combined totaled 1,326 tons (2,652,000 pounds).⁵⁵ Similarly, SIC Code 45 facilities in Minnesota and Massachusetts report ethylene glycol use to state agencies.⁵⁶ In Minnesota, four facilities reported ethylene glycol use from 80,000 to 2.2 million pounds in 1993. In Massachusetts, one airline reported using 276,000 pounds or gallons (the report did not specify a unit) of ethylene glycol.⁵⁷

In addition to ethylene glycol releases from aircraft deicing, SIC Code 45 facilities use

ethylene glycol to maintain traction on runways during icy conditions. EPA reported, based on the ACI survey, that 4,000 to 36,000 gallons (37,240 to 335,160 pounds) of ethylene glycol was used by one airport to deice airfield surfaces each year.⁵⁸ At Chicago O'Hare International Airport 6.8 million pounds of a 60 percent ethylene glycol solution was applied to runways during the period July 1975 to June 1981.⁵⁹

Ethylene glycol is also a common base for automotive antifreeze. Airport ground service equipment and rental car parking lots may also release ethylene glycol.

Other airport operations use other toxic chemicals (see footnote 6). As EPA noted, cleaning is an essential process in the maintenance and repair of commercial aircraft.⁶⁰ Cleaning removes contaminants and prepares parts for subsequent inspection, repair, bonding, coating, and testing. Aircraft metals and electronics are the primary focus of cleaning activities. Metal cleaning removes oil, grease, and other contaminants from metal parts, while electronics cleaning removes of flux residues that remain after soldering operations and conducted. In both cases, SIC Code 45 facilities use TRI listed solvents in cleaning operations.

C. The Information Factor

Under the information factor, EPA considers evidence regarding whether requiring a candidate industry group to report is reasonably anticipated to increase the information made available pursuant to EPCRA section 313 or otherwise further the purposes of EPCRA section 313. In making this determination EPA considers evidence related to one or more of the following: whether a significant portion of facilities within the candidate industry group (1) are likely to exceed the 313 reporting thresholds, (2) are likely to be subject to an existing statutory or regulatory exemption, (3) are likely to contain release and waste management data, or (4) whether a significant portion of the facilities within the industry group are expected to file a TRI certification statement.⁶¹

1. Requiring SIC Code 45 Facilities to Report Will Increase the Information Made Available Pursuant to EPCRA section 313

EPA estimates that if SIC Code 45 facilities were required to report TRI releases, 824 facilities would submit 984 reports.⁶² EPA further estimates that 748 of these reports would be submitted based on ethylene glycol use in connection with deicing operations.⁶³ Given EPA estimates that ethylene glycol use may exceed 58 million pounds per year, requiring SIC Code 45 facilities to report ethylene glycol releases unquestionably increases the amount of information made available to the public pursuant to EPCRA section 313.

The public has no other means by which to learn that huge quantities of toxic ethylene glycol are being released in their communities. While section 103(a) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. § 9603(a); requires any person in charge of a facility from which CERCLA hazardous substances has been released in a quantity that exceeds its reportable quantity (RQ) within a 24 hour period to immediately

notify the National Response Center, few SIC Code 45 facilities have complied with CERCLA's requirements. For those that do, reports are not easily accessed by the public.

The Air Transport Association (ATA) reported to its members and to the Federal Aviation Administration that CERCLA section 103 reporting was not triggered by ethylene glycol use, because "ethylene glycol is typically discharged via storm sewers to a NPDES permitted outfall."⁶⁴ While it is true that CERCLA section 103(a) reporting contains an exemption for federally permitted releases, the ATA's analysis is nevertheless incorrect. To be exempt from CERCLA release reporting, ethylene glycol must be in stormwater discharged through an outfall and must either (1) comply with the effluent limits prescribed in the permit, or (2) be treated in an on-site treatment system as prescribed in the permit, or (3) be a continuous or anticipated intermittent discharge that is conveyed to a point source as provided in the permit or permit application.⁶⁵ Presently, not all SIC Code 45 facilities have NPDES permits that provide for the management or treatment of ethylene glycol. For those that do, the permit may not yet include effluent limitations for ethylene glycol.⁶⁶

Moreover, EPA's current permitting approach to airports, the industrial storm water NPDES program, is not structured to yield either consistent use and release data, or consistent pollution prevention technology implementation. TRI does not have similar exemptions and is therefore the most complete and accessible source of information for the public on toxic chemical releases. EPA's failure to require SIC Code 45 facilities to report toxic chemical use negates TRI's public informational purpose.

The EPA has stated that TRI reporting not only increases the public's knowledge of pollutants released to the environment, but also improves public understanding of the health and environmental risks of toxic chemicals, allows the public to make informed decisions on where to work and live, enhances the ability of corporate lenders and purchasers to more accurately gauge a facility's potential liability, and assists federal, state, and local authorities in making better decisions on acceptable levels of toxics in communities.⁶⁷ This is particularly important where there exist acceptable alternatives as in the case of ethylene glycol deicing. In light of this public informational purpose, EPA should be more inclusive, rather than less, when considering potential benefits of TRI reporting for particular industrial sectors. Including SIC Code 45 facilities would serve this public purpose by encouraging dissemination of information about releases of toxic substances such as ethylene glycol.

2. Requiring SIC Code 45 Facilities to Report Furthers the Purposes of EPCRA

When it appeared that EPA would require the reporting of ethylene glycol, SIC Code 45 facilities significantly reduced their use of ethylene glycol deicing fluids. Before ethylene glycol was considered for placement on the TRI, it was the leading constituent of deicing fluid. With the TRI listing, however, some product substitution with less toxic

alternatives occurred, although alternative deicing fluids cost somewhat more than ethylene glycol. As President Clinton recently stated, EPCRA is intended to "provide a strong incentive for businesses to find their own ways of preventing pollution."⁶⁸ However this promising trend has been reversed due to the exception of SIC code 45 facilities.⁶⁹

Using available alternatives to ethylene glycol avoids releases of TRI-listed toxic chemical without compromising aviation safety and passenger protection. In addition, because less toxic propylene glycol-based alternatives have a bitter taste, they are not attractive to birds and wildlife. (As noted above, ethylene glycol is sweet tasting and is attractive to birds and wildlife.) It is important to note that all glycols are toxic to aquatic life, as they place a high biochemical oxygen demand (BOD) on receiving waters. Using infra-red heat from aircraft deicing is one promising technique that offers the possibility of eliminating glycol use altogether.⁷⁰ Such less toxic alternatives are "environmentally preferable" to ethylene glycol fluids under criteria set forth in the Pollution Prevention Act of 1990 (the PPA).⁷¹ Encouraging product substitution achieves the important goal of source reduction under both TRI and the PPA.⁷²

By failing to include SIC Code 45 facilities in the proposed rule, EPA has sent the wrong message. The EPA has begun to convey the message to stakeholders that it is no longer concerned about ethylene glycol use at these facilities. Such a message weakens the incentive for SIC Code 45 facilities to voluntarily reduce ethylene glycol use. In order to continue decreasing the amount of ethylene glycol that is released from airport deicing operations, EPA must require airports to report ethylene glycol releases on an annual basis.

3. EPA Misapplied the Motor Vehicle Exemption to Exclude SIC Code 45 Facilities From the Industry Expansion Rulemaking

Based on its third place ranking for volume of toxic chemical releases, SIC Code 45 facilities were retained by EPA as a "Primary Candidate" for inclusion in the proposed rule.⁷³ Yet, without explanation, the Agency removed SIC Code 45 facilities from further consideration, asserting that operations at these facilities fall within the motor vehicle exemption.⁷⁴ There is no basis in the administrative record for EPA's application of the motor vehicle exemption. To the contrary, the record expressly indicates that the motor vehicle exemption should not apply to SIC Code 45 facilities because air transportation is the primary economic function.

By applying the motor vehicle exemption to airport deicing operations, EPA has misconstrued the purpose of the exemption. In order to place some limitations on the definition of "otherwise use" under section 313, EPA developed a list of certain exempt uses of toxic chemicals including the "use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility."⁷⁵ The motor vehicle exemption is not a statutory exemption under EPCRA.

In the proposed facility expansion rule, EPA explained that "the use of materials

containing listed section 313 chemicals for the purpose of maintaining motor vehicles is believed by EPA to be an incidental chemical use relative to the overall function of facilities currently covered under section 313."⁷⁶ The spraying of vast quantities of deicing fluids on aircraft at airports is neither a maintenance activity nor is it "incidental" to the overall function of airports.

The Air Transportation Association of America (ATAA) in comments submitted to the Agency made clear that "the use of deicing fluids is an integral aspect of ensuring aviation safety and a required component of FAA-approved airline deicing programs prescribed by FAA regulations."⁷⁷ While ATAA argued that the motor exemption should apply to the use of solvents in aircraft maintenance operations, ATAA did not describe deicing operations as part of those maintenance activities.⁷⁸ We, however, urge that all activities as SIC Code 45 facilities be listed. Consistent with ATAA's position, EPA's own economic analysis assumed correctly that the motor vehicle exemption would not apply to facilities at which air transportation is the "primary economic function."⁷⁹ Nevertheless, the Agency eliminated SIC Code 45 facilities from the proposed rule based on the motor vehicle exemption, without any supporting reasoning, either in the rule or in the documents supporting the rule.

IV. Conclusion

The undersigned organizations seek to make EPA aware of the health and ecological risks associated with ethylene glycol use at SIC Code 45 facilities and the need to require these facilities to report their releases under the TRI. By this petition, we request that EPA immediately initiate and promptly conclude rulemaking to require SIC Code 45 facilities report their toxic chemical use under the TRI. We also request that EPA immediately publish this petition in the Federal Register.

Respectfully submitted,

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Humane Society of the United States

Footnotes

¹ Environmental Protection Agency, Development of SIC Code Candidates: Screening Document (June 1996).

² Science Applications International Corporation, SIC Code Profile 45 Transportation By Air (1994).

³ EPA, Report to President Clinton, Expansion of Community Right-to-Know Reporting to Include Chemical Use Data: Phase III of the Toxics Release Inventory at 2.

⁴ 61 Fed. Reg. 33588, 33593 (June 27, 1996).

⁵ Id. at 33594.

⁶ Science Applications International Corporation, SIC Code Profile 45: Transportation By Air (1994). See also, EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-2 (facilities under SIC Code 45 are expected to report dichloromethane, ethylene glycol, methyl ethyl ketone, sulfuric acid, toluene, 1,1,1-trichloroethene, and trichloroethylene).

⁷ Agency for Toxic Substances and Disease Registry, Ethylene/Propylene Glycol: Case Studies in Environmental Medicine, US Department of Health and Human Services, prepared by DeLima Associates, San Rafael, California (Aug. 1992).

⁸ The estimate was derived from the lowest dose of ethylene glycol reported to cause death in humans, which was 100 ml of ethylene glycol. Laug, E.P., H.O. Calvery, H.J. Morris, and G. Woodard (1939), The toxicology of some glycols and derivatives, 21 J. Ind. Hyd. Toxicol. 173. On a body weight basis, ethylene glycol is more toxic in humans than animal species. Andrews, L.S. and R. Snyder (1991), Toxic effects of solvents and vapors, in M.O. Amdur, J. Doull and C.D. Klaassen, eds. Cassarett and Doull's Toxicology: The Basic Science of Poisons 4th ed. Pergamon Press, New York.

⁹ Litovitz, T.L., L. Felberg, et al., 1994 Annual Report of the American Association of Poison Control Centers for Toxic Exposure Surveillance System, reprinted in 13 Am. J. Emerg. Med. 551 (1995).

¹⁰ In 1991, 19 deaths were reported; in 1992, eight deaths were reported, and in 1993, 13 deaths were reported. Litovitz, T.L., L.R. Clark, and R. A. Soloway, 1993 Annual Report of The American Association of Poison Control Centers Toxic Exposure Surveillance System.,[sic] reprinted in 12 Am. J. Emerg. Med. 546 (1994); Litovitz, T.L., K.C. Holm, et al., 1992 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System, reprinted in 11 Am. J. Emerg. Med. 494 (1993); Litovitz, T.L., K.C. Holm, et al., 1991 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System, reprinted in 10 Am. J. Emerg. Med. 452 (1992).

¹¹ Ethylene Glycol was found to cause birth defects at doses of 1640 mg/kg/day. Lamb, J.C., R.R. Maronpot, D.K. Gulati, V.S. Russell, L. Hommel-Barnes, P.S. Sabharwal, Reproductive and developmental toxicity of ethylene glycol in the mouse, 81 Toxicol. Appl. Pharmacol. 110-112 (1985).

¹² An RfD is an estimate of the maximum lifetime daily dose of a substance that will not cause noncarcinogenic effects over a lifetime of ingestion.

¹³ The RfD is based on an oral feeding study in rats. See Depass, L.R., R. H. Garman, M.D., Woodside, W.E., Giddons, R.R. Maronpot, and C.S. Weil, Chronic toxicity and oncogenicity of ethylene glycol in rats and mice, 7 Fund. Appl. Toxicol. 547 (1986).

¹⁴ Ethylene Glycol Health Advisory, US Environmental Protection Agency, Office of Drinking Water (Mar. 31, 1987).

¹⁵ FDA correspondence with industry, TC-389, Aug. 6, 194, reprinted in Kleinfeld, V.A. and C.W. Dunn, Federal Food Drug and Cosmetic Act Judicial Administrative Record, 1938-1949, Food and Drug Law Institute, Commerce Clearing House, Chicago (1978) (FDA Trade Correspondence were pre-1946, informal opinions of the FDA based on replies to day-to-day inquiries; since 1946, the FDA has published Statements of General Policy or Interpretation in the Federal Register).

¹⁶ FDA Correspondence with industry, TC-402, May 14, 1943, reprinted in Kleinfeld, V.A. and C.W. Dunn, Federal food [sic] Drug and Cosmetic Act Judicial Administrative Record, 1936-1949, Food and Drug Law Institute, Commerce Clearing House Chicago (1978). Ethylene Glycol has limited approval as an indirect food additive. It may only be used as a component of food packaging adhesives. [sic] 21 C.F.R. §175.105 (1995) and in the manufacture of various coatings and components of food contact surfaces. 21 C.F.R. § 175.390, 175.300, 175.320, 175.1200, 177.1630, 177.1680, 177.2420, 176.2105 and 176.300 (1995).

¹⁷ Wills, J.H., E.S. Coulston, E.S. Harris, E.W. McChesney, J.C. Russell, and D.M. Serrone, Inhalation of aerosolized ethylene glycol in man, 7 Clin. Toxicol. 463 (1974).

¹⁸ Id.

¹⁹ Tyl, R.W., B. Ballantyne, et al., Evaluation of the developmental toxicity of ethylene glycol aerosol in CD-1 mice by nose-only exposure. 27 Fund. Appl. Toxicol. 49 (1995).

²⁰ American Society for the Prevention of Cruelty to Animals and Safe Brands (1996). LD₅₀ values for ethylene glycol range from 4.0 to 15.4 g/kg for rats, mice, and guinea pigs. Bornmann, G., Grundwirkungen der Glykole und ihre Bedeutung für die Toxizität, 4 Arzenimittelforschung 643 (1954) (mice); Clark, C.R., et al. Toxicological assessment of heath transfer fluids proposed for use in solar energy applications, 51 Toxicol. Appl. Pharmacol. 529 (1979) (rats); Smyth, H.F., Jr., et al., The single dose toxicity of some glycols and derivatives, 23 J. Ind. Hyg. Toxicol. 259 (1941) (guinea pigs).

²¹ Rowland, J., Incidence of ethylene glycol intoxication in dogs and cats seen at Colorado State University Veterinary Teaching Hospital, 29 Vet. Hum Toxicol. 41 (1987). The minimum lethal dose reported for ethylene glycol in rats is 3.8 g/kg and 7.3 g/kg in dogs. Clark, Marshal et al., supra note 35 (rats); Sanyer, J.L. et al. Systematic treatment of ethylene glycol toxicosis in dogs, 34 J. Amer. Vet. Med. Assoc., 527 (1973), as cited in National Toxicology Program, NTP Technical Report on the Toxicology and Carcinogenesis Studies of Ethylene Glycol (CAS No. 107-21) in B6C3F1 Mice (Feed Studies) NIH Publication No. 93-3144, US Department of Health and Human Services (Feb. 1993).

²² U.S. Fish and Wildlife Service, 17 Endangered Species Technical Bulletin 2 (1992). See also, U.S. Fish and Wildlife Services, Fact Sheet: California Condor, (*Gymnogyps Californianus*) (undated).

²³ S. Anstrup, C. Gardner, K. Myers, F. Oehme, Ethylene Glycol (Antifreeze) Poisoning in a Free-Ranging Polar Bear, 31 Vet. Hum. Toxicol. 317 (1989).

²⁴ U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Chemicals in the Environment: Methylene Chloride (Dichloromethane) (CAS No. 75-09-2) (1994).

²⁵ U. S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Fact Sheet on Chloroform (1993).

²⁶ U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Fact Sheet on Toluene (1995).

²⁷ In 1995, a pilot of a commuter flight was doused with deicer fluid while boarding the aircraft at Philadelphia International Airport. The Philadelphia Inquirer (December 21, 1995).

²⁸ Council of Environmentally Sound Deicing, Ethylene Glycol: The Scientific Basis for Its Retention on EPA's Toxics Release Inventory (Feb. 1996).

²⁹ Montgomery, J.F., A Discussion of the Toxicological and Biological Effects of Deicing Fluids, American Airlines Environmental Department, at 15 (Sept. 28, 1994).

³⁰ American Conference of Governmental Industrial Hygienists, 1995-1996 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (BEIs), Cincinnati, Ohio at 21 (1995).

³¹ Council for Environmentally Sound Deicing, Ethylene Glycol: The Scientific Basis for its Retention on EPA's Toxics Release Inventory (Feb. 1996).

³² Natural Resources Defense Council, Flying Off Course (1996) at 56.

³³ Id. at 69.

³⁴ MacDonald, D.D., I.D. Cuthbert, and P.M. Outridge, Canadian Environmental Quality guidelines for Three Glycols Used in Aircraft Deicing/Anti-icing Fluids: Ethylene Glycol; Diethylene Glycol; and Propylene Glycol, EcoHealth Branch, Environment Canada, Ottawa, Ontario, Canada, at 15, 76 (Table 10) (Sept. 1992).

³⁵ Ethylene Glycol levels, based on indirect measurements, reached peak concentrations as high as 59,360 mg/L. Id. at 15, 78 (Table 12).

³⁶ Sills, R.D., and P.A. Blakeslee, Environmental Impact of Deicers in Airport Stormwater Runoff at 324 in F.M. D'Irti, ed., Chemical Deicers in the Environment, Lewis Publishers, Boca Raton, Fla. (1992).

³⁷ U.S. EPA, Office of Water, Permits Division, Contractor Report — Guidance for Issuing NPDES Storm Water Permits for Airports, at 2-8 (Sept. 28, 1990).

³⁸ Klecka, G.M., C.L. Carpenter, B.D. Landenberger, Biodegradation of aircraft deicing fluids in soil at low temperatures, 25 Ecotoxicol. Environ. Safety 280-285 (1993).

³⁹ NRDC, Flying Off Course (1996) at 57.

⁴⁰ Id.

⁴¹ 61 Fed. Reg. at 33594

⁴² EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-1.

⁴³ ERC Environmental and Energy Services Co., EPA Contractor Report Guidance for Issuing NPDES Storm Water Permits for Airports (1990) at 2-4.

⁴⁴ Id. At 2-5.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Science Applications International Corporation, SIC Code Profile 45: Transportation by Air (1994) at 7.

⁴⁹ EPA, Office of Prevention, Pesticides and Toxic Substances, Expanded Exposure Assessment for Ethylene Glycol In Response to Delisting Petition (June 16, 1995).

⁵⁰ EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-4.

⁵¹ EPA, 1993 Toxics Release Inventory: Public Data Release (1995) Document No. 745-R-95-010.

⁵² Id.

⁵³ Twenty-seven airports reported ethylene glycol releases in 1993 with ethylene glycol releases totaling 2166.7 tons (4,333,400 pounds). This constituted 57 percent of all reported ethylene glycol release.

Environment Canada Summary Report of the 1993 National Pollutant Release Inventory at 28-29 (undated).

⁵⁴ Id. At 11.

⁵⁵ Id.

⁵⁶ EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-13.

⁵⁷ Id. If the unit reported was gallons, ethylene glycol releases exceeded 2.3 million pounds.

⁵⁸ EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-5.

⁵⁹ ERC Environmental and Energy Services Co., EPA Contractor Report Guidance for Issuing NPDES Storm Water Permits for Airports (1990) at 2-6.

⁶⁰ Science Applications International Corporation, SIC Code Profile 45: Transportation by Air (1994) at 14.

⁶¹ 61 Fed. Reg. at 33594.

⁶² EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-18.

⁶³ Id.

⁶⁴ ATA, Summary Report to the Federal Aviation Administration Regarding Environmental Issues Associated with Aircraft Deicing and the Use of Glycol-Based Fluids (undated).

⁶⁵ R. Van Voorhees and Green, C. EPA Clarifies Reporting Requirements for Ethylene Glycol Releases from Airport De-icing Operations, BNA, Analysis Perspective (August 30, 1996).

⁶⁶ See *Buchholz v. Dayton International Airport et al.*, (Magistrates Report and Recommendation), Case No. C-3-94-435 (S.D. Ohio, June 26, 1995) (citizen suit filed under the CWA and RCRA against the airport by residents who use a creek receiving airport deicing flows for drinking, bathing, washing clothes, and dishes).

⁶⁷ 60 Fed. Reg. 59664 (Nov. 28 1995).

⁶⁸ Report to President Clinton, Expansion of Community Right-to-Know Reporting to

Include Chemical Use Data: Phase III of the Toxics Release Inventory (EPA Report to the President) at 2 (undated).

⁶⁹ The trend away from ethylene glycol use, however, was superseded by an FAA safety rule in the early 1990's that effectively mandated a doubling in the volume of de-icing products applied at airports; thus we are still seeing the massive quantities of ethylene glycol in use that was documented earlier in this petition.

⁷⁰ NRDC, *Flying Off Course* (1996) at 63.

⁷¹ 42 U.S.C. §§13101-09 (West 1995).

⁷² Section 6603(5)(A) defines "source reduction" as any practice that reduces the amount of any hazard from any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment, including substitution of raw materials. 42 U.S.C. § 113102(5)(A).

⁷³ EPA Development of SIC Code Candidates: Screening Document (June 1996) at 13.

⁷⁴ Id. at 17.

⁷⁵ 53 Fed. Reg. 4506 (Feb. 16, 1988).

⁷⁶ 61 Fed. Reg. 33596 (emphasis added).

⁷⁷ ATAA Comments on EPA's Consideration of Airports for Inclusion in the TRI Program, May 25, 1995 (Docket #400104, D3-0010) at 4.

⁷⁸ See Id. at 11-12. 79 EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-1.

III. Issues

There are two issues that could potentially affect reporting by airports: (1) Whether airports would be exempt from reporting the majority of their toxic chemical releases because of the motor vehicle exemption, and (2) whether airports fit within the definition of facility under 40 CFR 372.1. In addition, there are issues relating to the application of the motor vehicle exemption as it pertains to motor vehicles used in industries recently added to the list of facilities subject to EPCRA section 313 reporting requirements. In light of these concerns, EPA is considering a modification in the motor vehicle exemption. The Agency is interested in receiving comments regarding these issues and other matters relevant to the petition and its response from potentially affected or interested parties. The comments will help EPA better understand relevant issues surrounding the addition of airports to the list of facilities required to report pursuant to section 313 of EPCRA, and the motor vehicle exemption in general.

A. Motor Vehicle Exemption

EPA is seeking comments from potentially affected and interested parties concerning whether the use of ethylene glycol and other EPCRA section 313 chemicals at airports would or should be exempt under the Motor

Vehicle Maintenance Exemption, 40 CFR 372.38(c).

In the February 16, 1988 Final Rule implementing the reporting requirements of EPCRA section 313 (53 FR 4500), EPA limited the definition of "otherwise use" by exempting certain uses of toxic chemicals. Section 372.38(c) states that if a toxic chemical is used at a covered facility for a purpose described in paragraph (c), a person is not required to consider the quantity of the toxic chemical used for such purpose when determining whether an applicable threshold has been met under § 372.25 or when determining the amount of releases to be reported under § 372.30. 40 CFR 372.38(c)(4) further states that "use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility" are exempted from reporting under 40 CFR 372.30.

In previous guidance, EPA has stated that airplanes are motor vehicles and that this exemption applies to fuels and other products containing toxic chemicals for the purpose of maintaining motor vehicles (see Toxic Chemical Release Inventory Reporting Package for 1990, January 1991, EPA 560/4-91-001, p. A-5). In keeping with this guidance, toxic chemicals found in gasoline, diesel fuel, brake and transmission fluids, oils and lubricants, antifreeze, batteries, cleaning solutions, and solvents in paints may be excluded from reporting under § 372.30 as long as a facility uses these products to maintain its motor vehicles. While motor vehicle maintenance may be an incidental activity at the facilities originally subject to EPCRA section 313 reporting requirements (i.e., the manufacturing sector), EPA believes that this is not the case at airports, where the maintenance of vehicles is integral to the activities at the airport. For example, use of ethylene glycol to de-ice planes and runways is essential for the operation of airplanes when icy conditions and inclement weather may hinder their safe operation. In such cases, the use of ethylene glycol is in no way "incidental" to the operation of airports. In addition, EPA believes that maintaining motor vehicles is integral to activities that occur at some of the industry groups recently added to the list of facilities subject to reporting under EPCRA section 313 and PPA section 6607 (see 62 FR 23834, May 1, 1997). For example, use of earth moving equipment is an integral part of the mining industry and use of tanker trucks is an integral part of the operation of bulk petroleum stations.

EPA, therefore, requests comments on a number of options to modify or eliminate the motor vehicle exemption at 40 CFR 372.38(c)(4). These options include:

1. Making no change to the motor vehicle exemption.

2. Not allowing certain industries, such as the transportation industry, in which motor vehicle use is the industry's main activity, to take the motor vehicle exemption. The motor vehicle exemption would continue to apply to other covered industries.

3. For covered industries, narrowing the motor vehicle exemption so that it would only apply to incidental motor vehicle use. It would not apply to any activity that is process-related. For example: the motor vehicle exemption would not apply to toxic chemicals used in jet fuel while a jet is at an airport, deicing, and other vehicle maintenance activities. As a second example, for covered industries such as metal mining and bulk petroleum stations, the motor vehicle exemption would no longer apply to vehicles used in processing activities (e.g., earth-moving equipment or trucks and transport vehicles at petroleum facilities which are maintained on-site), or

4. Eliminating the motor vehicle exemption entirely.

B. Definition of Facility under EPCRA

1. *Definition of facility.* Under EPCRA section 329(4) and 40 CFR 372.1, a "facility" means all buildings, equipment, structures and other stationery items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.

2. *Application of definition of facility to airports.* Airports typically operate under a single management organization known as the airport "authority" which, in most cases is a public agency. Airline carriers that have contracts with the airport authority to conduct business on airport property are commonly known as "tenants" of the airport. In order to comply with various state and Federal environmental regulations, an airline may require (as part of a lease agreement) a tenant to report its aggregate releases of toxic or hazardous chemicals directly to the owners or operators of the airport authority.

On the other hand, the Agency recognizes that if airports were required to report under section 313 of EPCRA and section 6607 of the PPA, there could be unique reporting issues

associated with their ownership, operation, and control. Therefore, the Agency is interested in receiving comments or information concerning how airports operate and the practical impacts of requiring airports to report under section 313 of EPCRA and section 6607 of the PPA. Information gathered from commenters will be used by the agency to determine whether airports fall within the definition of facility.

IV. Public Record and Electronic Submissions

The official record for this document, as well as the public version, has been established for this rulemaking under docket control number "OPPTS-400122" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS-400122." Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic substances.

Dated: January 29, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

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BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98-8, RM-9178]

Radio Broadcasting Services; Albion, Honeoye Falls, South Bristol Township, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Citicasters Co. requesting the reallocation of Channel 297A from Honeoye Falls, NY, to South Bristol Township, NY, the modification of Station WRCD's license to specify South Bristol Township as its community of license; the reallocation of Channel 236B from South Bristol Township to Honeoye Falls, NY, the modification of Station WNVE's license to specify Honeoye Falls as its community of license; and the substitution of Channel 271A for Channel 238A at Albion, NY. Channel 236B can be allotted to Honeoye Falls in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 16.5 kilometers (10.3 miles) northeast, to accommodate petitioner's desired transmitter site. This site is short-spaced to Stations CKQT-FM, Channel 235B, Oshawa, Ontario, and CKDS-FM, Channel 237C1, Hamilton, Ontario, Canada. Channel 297A can be allotted to South Bristol Township in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) northwest, to accommodate petitioner's desired transmitter site. Channel 271A can be allotted to Albion in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction. This allotment would be short-spaced to Station CFNY-FM, Channel 271C1, Brampton, Ontario, Canada, and to the vacant Channel 272B at Belleville, Ontario, Canada. Honeoye Falls, South Bristol Township and Albion are all located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, concurrence by the Canadian Government in the allotments is required. Concurrence by the Canadian Government in the Honeoye Falls and Albion allotments will be requested as specially negotiated short-spaced allotments. The coordinates for Channel 236B at Honeoye Falls are 43-02-00;