



Memo

TO: Jay Hochmuth
FROM: Jeff Schoepke
CC: Lloyd Eagen, Caroline Garber, Robin Schmidt, Mark Thimke, Linda Bochert, Bob Fassbender
RE: Air Spill Reporting
DATE: February 8, 2002

WMC wants to thank the Department for clarifying its position on air spill reporting at the Dec. 3 meeting of the DNR Air Toxics Technical Advisory Group. We are relieved DNR reconciled its position with our understanding of reporting obligations under the Spill Law.

The confusion arose from your Sept. 12, 2001, memorandum that set forth the agency's decision not to quantify air spill reporting levels in the rewrite of NR 445. When explaining existing reporting obligations, you stated that "If the release is above an applicable de-minimis exemption, or if there is no de-minimis exemption, immediate notification is required." Taking that statement out of context from the Spill Law and existing NR 706 created certain misunderstandings.

Many in industry interpreted that statement to mean DNR will require reporting of **any** release of a NR 445 substance that does not have a federal RQ. Since most of the nearly 700 NR 445 substances under the revised NR 445 have no federal RQ, such a reporting obligation would prove unworkable.

At the Dec. 3 meeting, DNR's Robin Schmidt did a good job clarifying DNR position on air spill reporting. (Ref. DNR NR 445 TAG minutes) She referred to existing NR 706, which is interpretive of certain notification requirements under Wisconsin's Spill Law, s. 292.11, Stats. She explained that the Spill Statute only requires reporting of a "hazardous substance," which is also defined in the statutes at s. 299.01(6), Stats. as follows:

"Hazardous substance" means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or **which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or**

physical, chemical or infectious characteristics. This term includes, but is not limited to, substances, which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department. (Emphasis added)

Consistent with that definition, NR 706.05 (Discharger Responsibilities) provides:

For the purpose of determining if a substance is hazardous and whether its discharge is required to be reported, **responsible parties shall consider the quantity, concentration and physical, chemical and infectious characteristics of the substance and the location where the discharge occurred**, and whether the substance has been discharged to the environment. (Emphasis added)

DNR agrees that that proposition only applies to the extent the NR 445 substance is determined to be a hazardous substance under the Spill Law. Consistent with NR 706.05, that determination is made by the responsible party considering factors such as quantity, concentration, and location of the discharge.

Please let us know if we are incorrect in our interpretation of DNR's position. We intend to provide clarification on this issue to our members in the near future. In any event, we are confident that industry representatives will use sound professional judgment when determining whether to report a release of a NR 445 substance.