

4/95

OPPT-2003-0071-0049



Rich Leukroth

01/06/04 06:51 PM

To: David.Menotti@shawpittman.com

cc: Greg Fritz/DC/USEPA/US@EPA, John Blouin/DC/USEPA/US@EPA

Subject: Re: Incineration ECA/ language inserts and deletions

After today's phone call I spoke with Greg to clarify the materials he volunteered to share with the Drafting Committee regarding the OPPTS CBI manual text regarding sharing TSCA CBI with other Federal Agencies. The first excerpt comes from the current CBI manual. This reads as follows:

**b. TSCA CBI ACCESS AT OTHER FEDERAL AGENCIES.** Before EPA will grant access at another agency's facility, a facility DCO must be in place. The requesting official or the facility manager in charge of the facility to which TSCA CBI will be transferred must nominate a facility DCO and an alternate DCO. The nomination, submitted in writing to the OPPT DCO, must include the name, telephone number, electronic mail number, fax number, and mailing address of both nominees. The OPPT DCO will decide whether to approve the nomination. The requesting official or the facility DCO can also nominate document control assistants (DCAs) to assist the DCO in his or her day-to-day duties. Other provisions that must be in effect are the following:

- The Federal agency must have security procedures and standards in place that equal or surpass those set forth in this manual.
- EPA's TSCA security staff must inspect and approve the TSCA CBI storage facilities at the Federal agency. The inspection is to be arranged by the official requesting TSCA CBI clearance for his or her agency.
- The Federal agency must appoint a facility DCO before documents will be transferred.
- The official requesting TSCA CBI access authority for his or her agency must provide a written statement of the agency's security procedures for handling TSCA CBI. The statement should state whether (1) the security procedures in this manual have been adopted by the agency without change or (2) how the security procedures being used at the agency differ from those set forth in this manual. The written statement must be provided to the TSCA security staff.

What follows below the asterisk is text, "final" draft language, from the soon to be released revised OPPTS CBI manual. I hope you will agree that we are headed in the right direction with these revisions to the manual and that the additional sentence which I included at the end of the paragraph on page 17 of the 1/6/04 draft ECA document captures your concern about CBI releases to other agencies.

P.S. I just received your e-mail regarding two additional sentences that industry wants to include in Part XV and I will pass this along to my council / managers for their consideration.

\*\*\*\*\*

## **2.3 TSCA CBI Access Certification for Other Federal Agencies**

Access to TSCA CBI data may be granted to other federal agencies under the following circumstances:

1. TSCA CBI data is required to perform work for EPA.
2. TSCA CBI data is required to perform the agency's legal duties to protect health or the environment.
3. TSCA CBI data is required for specific law enforcement purposes.

All persons contemplating disclosure of TSCA CBI to federal agencies should review the regulations at 40 CFR Sections 2.209 and 2.306.

### **2.3.1 Procedures for Other Federal Agencies to Obtain TSCA CBI Access**

Other federal agencies may obtain TSCA CBI access by submitting a written request to the IMD Director at least one month before access is to begin. The request must specify the following:

4. Information to which access is requested.
5. Reason(s) why access is necessary (including the official purpose).
6. Supporting details.

The request must be signed by an agency official whose authority is at least equivalent to that of an EPA division director.

The IMD Director reviews the TSCA CBI access request and notifies the agency's requesting official of his/her decision. If access is approved, the IMD Director informs the agency of the following stipulations:

7. TSCA CBI is being disclosed under TSCA authority.
8. Unauthorized disclosure of the information may subject the agency's employees to criminal penalties in Section 14(d) of TSCA (see Section 5.0).
9. Agency seeking TSCA CBI access must provide written agreement that it will not disclose TSCA CBI, except in the following situations:
  - The agency has statutory authority both to compel production of the information and to make the proposed disclosure, and it has furnished affected businesses with at least the same notice that EPA would provide under EPA regulations.

– The agency has obtained the consent of each affected business prior to the proposed disclosure.

– The agency has obtained a written statement from the EPA general counsel, or an EPA regional counsel, that disclosure of the information is authorized under EPA regulations.

Once access has been granted, designated employees of the other federal agency can obtain access to specified TSCA CBI on EPA premises. The procedures for individual employees to obtain certification for TSCA CBI access are explained in Section 2.1. Employees of other federal agencies are not allowed to remove from EPA premises any documents, notes, or correspondence containing TSCA CBI, and must not discuss TSCA CBI with unauthorized individuals. TSCA CBI must be transferred from an EPA DCO to a Facility/Agency DCO.

When a programmatic need can be demonstrated, expedited approval may be granted by the IMD Director which will allow a federal agency access to TSCA CBI before receiving final approval from the OPPT DCO.

### **2.3.2 Notice to Affected Businesses**

Before granting TSCA CBI access to another agency, in order to do work for EPA, IMD provides written Notice to affected businesses, except as stated in Section 2.2.1 above. The Notice must be given at least 10 calendar days before access can be granted via publication in the *Federal Register*, telegram, or certified mail (return receipt requested). No Notice to affected businesses is required however, when EPA discloses TSCA CBI to another agency to perform work for EPA, as described in 40 CFR Sections 2.209(c) and 2.306(h).

IMD will prepare the Notice, which must include the following:

10. Identity of the agency to which TSCA CBI access is granted.
11. Official purpose for the access.
12. If access is authorized on EPA premises, and at the other agency's facilities (see Section 2.3.3).
13. Type of information to be disclosed.
14. Period of time for which access to TSCA CBI is authorized.
15. In the event expedited approval has been granted in accordance with 2.3.1, the notice shall reflect the date such access was granted.

### **2.3.3 Security Requirements at Other Federal Agencies**

In order for the other agency to obtain access to TSCA CBI on its own premises, the requesting official, to whom TSCA CBI is to be transferred, must nominate at least two people as a DCO and an Alternate DCO (ADCO). The nomination, submitted in writing to the OPPT DCO for

approval, must include the names, telephone and fax numbers, and e-mail and mailing addresses of the nominees. The requesting official or the DCO can also nominate ADCOs to assist the DCO in day-to-day operations. ADCOs can perform the same duties as DCOs, including signing EPA Form 7740-28.

The following are required for TSCA CBI access on the other agency's premises:

16. Agency security procedures and standards that equal or surpass those set forth in this manual. The requesting official must provide to TSS a written statement of the agency's security procedures for handling TSCA CBI. The statement should state that the security procedures in this manual have been adopted or, how the security procedures used by the agency differ from those in this manual.

17. EPA TSS inspection and approval of the agency's TSCA CBI storage facilities. The inspection is to be arranged by the requesting official.

[NOTE: TSS will not be required to inspect facilities in other federal agencies where CBI is stored in approved storage containers as referenced in Section 4.3.3.]

\*\*\*\*\*

Richard W. Leukroth, Jr.  
Environmental Scientist / Toxicologist  
Chemical Control Division  
U.S. Environmental Protection Agency  
Mail Stop 7405; Room 4328 S  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Phone: 202-564-8167  
FAX: 202-564-4765  
E-mail: leukroth.rich@epa.gov

Deliveries:  
EPA-East Building  
1201 Constitution Avenue, NW  
Room 3166A (7401M)  
Washington, DC 20004