United Egg Producers

UEP Member Alert

Confidential and Internal

February 22, 2019

Tier II EPCRA Reporting of Combustible Dust, March 1 Deadline

A new federal environmental reporting requirement involving "combustible dust" has come to UEP's attention. These are "Tier II" EPCRA reports and they are provided to local emergency planning committees (LEPC) and first responders. **Given that dust formation occurs as part of feed milling, some egg operations may need or want to file a report** that identifies the presence of "combustible dust." Below is key information for you to consider as you make your decision.

- The reporting deadline is March 1, 2019.
- UEP believes it is highly likely that your operation can legally and professionally choose to **NOT** report by the March 1 deadline, and instead use 2019 to decide if and how you want to handle this new requirement.
- The reasons why UEP believes it is unlikely your operation needs to report combustible dust by the March 1 deadline are as follows:
    - It is highly unlikely that any animal operation with a feed mill will have the reporting threshold of 10,000 pounds of "fugitive" dust that escapes the milling process at any one time to make the reports mandatory. Reporting combustible dust is optional if you do not exceed this threshold.
    - If you are among most egg operations that we estimate are already in regular communication with your local first responder, this kind of information is probably already being shared.
    - It is unlikely that any rural fire department is unaware of the hazards created by grain dust at farming facilities.
- US EPA's EPCRA office just released new guidance on Tier II reporting of combustible dust that is focused on feed-related dusts. Click <here> if you would like to read this guidance.
- US Poultry and Egg Association issued yesterday (Thursday, February 21, 2019) a member alert on this reporting. A copy is attached.
- If you decide you want to report, leaders in the grain milling business recommend not trying to make estimates of the pounds present, and instead note in the report that this dust is not present at any one time in the Tier II "reportable quantity" (10,000 lbs.).

FURTHER QUESTIONS?

Please contact Tom Hebert (tom.hebert@bayardridge.com) if you have any questions about this matter or the above materials. Please see the FAQ material below if you would like more detail.

WHAT IS A TIER II EPCRA REPORT?

The Emergency Planning and Community Right-To-Know Act (EPCRA) includes provisions that require organizations and businesses that have at facilities hazardous chemicals **above certain quantities** to fill out and submit a Tier II report. The reports are submitted annually by March 1 to local fire departments, Local Emergency Planning Committees (LEPC) and State Emergency Response Commissions (SERCs) to help those agencies plan for and respond to chemical emergencies. The program is implemented in every state by state agencies acting on behalf of US EPA, and states provide standard paper and/or e-forms online to use for this purpose. The Tier II form captures information about the types, quantities and locations of hazardous chemicals at a given facility. The form also lists contact information for the facility's designated emergency point-of-contact.

Some egg producers already are filing Tier II reports for certain hazardous chemicals that are used on their operations.

ARE TIER II REPORTS PUBLICLY AVAILABLE?

To the best of our knowledge, these reports are available to the public upon request. The reports are not compiled and available in any federal electronic database available to the public. We are not aware of any state-level public electronic databases containing these reports.

WHY DO TIER II REPORTS NOW INCLUDE COMBUSTIBLE DUST?

US EPA updated safety standards regarding hazardous chemical reporting (Tier II) and adding combustible dust to that list, in a final rule issued in June of 2016. The rule became effective on January 1, 2018. Reporting of combustible dust began on March 1, 2018 for dust in quantities in excess of 10,000 lbs at any one time on a facility in 2017. The revisions made to the rules are intended to better align EPCRA with the revised OSHA Hazard Communication Standard and facilitate safer management of hazardous materials.

WHAT DOES US EPA's TIER II GUIDANCE ON COMBUSTIBLE DUST SAY?

US EPA's guidance document can be found by clicking on the following link: https://emergencymanagement.zendesk.com/hc/en-us/articles/360023910171-Tier-II-reporting-for-agricultural-dusts-and-agricultural-products-handled-in-powdered-form-i-e-combustible-dust-. In summary, the guidance says that:

- Tier II annual chemical inventory reports are required for any OSHA defined hazardous chemical subject to OSHA's Hazard Communication Standard when present at a facility **above threshold amounts** at any one time during the previous calendar year.
- OSHA identifies certain agricultural dusts as combustible dusts which may have a potential for explosion. If a facility handles such substances, those substances must be reported on the Tier II form if they equal or exceed the applicable threshold.
- Facility operators can use their best professional judgment to determine the amount of dust present at their facility when making threshold determinations and when calculating amounts to include on the Tier II form.
- Even if a facility determines the substances are below the applicable threshold for combustible dust (10,000 lbs at any one time), EPA **encourages** facilities to submit reports voluntarily to help inform emergency planners and responders of the presence of dusts at the facility.
- Facilities voluntarily reporting combustible dust do not need to report any amounts on the Tier II form.

WHAT "DUST" DOES THIS APPLY TO?

Tier II reporting of combustible dust does **NOT** apply to dust **in** food and animal feed. So the dust generated in the grain grinding process that remains with the feed does not need to be considered in the estimates of reportable quantities. But any dust that escapes the milling process and falls onto or around the exterior of the milling machinery is no longer considered "feed" and is therefore included in the estimates of reportable quantities.

HOW TO ESTIMATE POUNDS OF "FUGITIVE MILLING" DUST?

There are no accepted methods for estimating how many pounds of such fugitive milling dust might be present at any time around a milling facility. Tier II reporting expects the reporters to use their best professional judgment in making these estimates. Most grain milling experts believe it unlikely that a milling operation would have more than 10,000 lbs of fugitive milling dust at their facilities.

WHY MIGHT I REPORT THIS DUST IF IT IS BELOW THE REPORTABLE QUANTITY?

US EPA is encouraging operations to report the presence of combustible dust, even it is below the reportable quantity, as a safety precaution for and courtesy to your local first responder who would want to be aware of the potential hazards associated with this dust.

WHERE CAN I FIND TIER II REPORTING FORMS?

The Tier II reporting program is handled in your state by a state agency. Click on the following link to find your state and their associated reporting information and forms: https://www.epa.gov/epcra/state-tier-ii-reporting-requirements-and-procedures.

USPOULTRY
U.S. POULTRY & EGG ASSOCIATION

MEMBER ALERT ON EPCRA TIER II REPORTING FOR COMBUSTIBLE DUST

As the March 1, 2019 reporting deadline approaches for facilities to submit Tier II reports under the federal Emergency Planning and Community Right to Know Act (EPCRA), please review the alert and discussion below to ensure your operations are current on the latest guidance that EPA has just released this week.

There is No Uniform Method for Tier II Reporting of Combustible Dust

There is currently no uniform approach or methodology for reporting of combustible dust among Local Emergency Planning Committees (LEPCs), states and EPA. However, agency officials have been clear that facilities should submit a Tier II report for combustible dust to their LEPCs and states. Keep in mind that facilities are not required to submit Tier II forms directly to EPA.

The agency's brief guidance (highlighted with links below) emphasizes the flexibility that facilities have regarding methods for reporting combustible dust for feed and grain operations. Moreover, U.S. Poultry & Egg Association has met with the national association for LEPCs, whose leadership is in agreement with industry and EPA that there is not an accepted, single approach or calculation methodology currently in use and the recommended method used in a few jurisdictions is an arbitrary calculation that has no technical basis. Because no single approach to reporting is available, companies are using various estimation methods.

EPA's New Guidance: Summary and Link for Your Operations

After months of discussion with EPA officials regarding the proper protocol for reporting combustible dust as a physical hazard under Sections 311 and 312 of the Emergency Planning and Community Right-to-know Act (EPCRA), the agency recently released guidance titled "Tier II reporting for agricultural dusts and agricultural products handled in powdered form (i.e. combustible dust)."

The guidance document can be found by clicking on the following link:
https://emergencymanagement.zendesk.com/hc/en-us/articles/360023910171-Tier-II-reporting-for-agricultural-dusts-and-agricultural-products-handled-in-powdered-form-i-e-combustible-dust-

EPA agrees that Tier II reporting of combustible dust poses unique challenges for facilities. First, due its nature it is not a typical Tier II reportable hazardous chemical. Second, three separate agencies (FDA, OSHA and EPA) have complex, overlapping and, in certain instances, potentially conflicting requirements and exemptions associated with feed and grain products and combustible dust.

Because there is no widely accepted method for calculating the amount of combustible dust that may exist in the raw ingredients that are used to produce poultry feed rations or in the various feed products themselves, the agency's FAQ and our association discussions indicate that it is acceptable for facility owners and operators to use their best professional judgement to determine the amount of dust present at their facility when making threshold determinations or calculating amounts to include on the Tier II chemical inventory form (e.g., maximum amount and average amount on site).
Consequently, if facilities determine that combustible dust at their operations may exceed the 10,000 lb threshold and therefore your operation opts to calculate a mass estimate for reporting, EPA's FAQ reinforces that (1) the use of best professional judgment is appropriate, and (2) a wide variety of estimation methods can be used. The agency,

in various discussions, has pointed to the 1990 EPCRA rule preamble language when specific questions have been raised about whether any of various calculation methods are acceptable:

"[E]ach owner or operator must use the best information available, knowledge of the operating processes of the facility, and engineering judgment to estimate the quantities of hazardous chemicals present…"

Some USPOULTRY member companies have inquired about whether specific calculation methods would be acceptable under EPA's approach in the FAQ/. One example suggests following a protocol similar to how EPA previously suggested reporting acid that may be contained in batteries stored at a facility. Rather than attempting to calculate the amount of acid the batteries may contain, EPA indicated it would be within the bounds of using best professional judgement to provide a count of the number of batteries stored on site and list acid as the potential hazard.

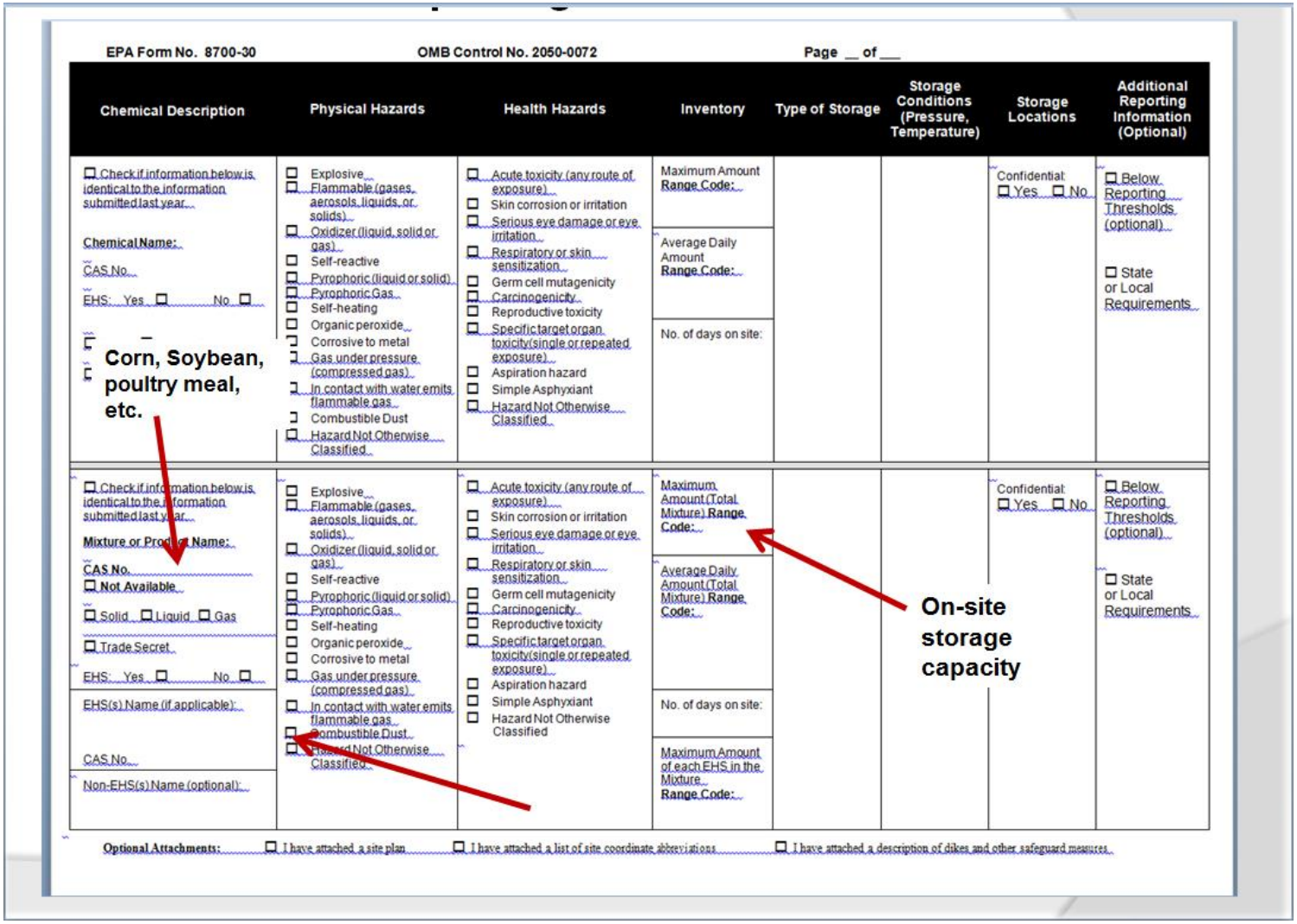
Applying this approach to combustible dust, it would be an acceptable application of best professional judgment to list a material (corn, soybean, poultry meal, etc.) that could create the physical hazard of combustible dust. On the Tier II reporting form, a facility could check the combustible dust box under the "Physical Hazard" column and provide the appropriate range code under the "Inventory" column according to the maximum onsite storage potential.

In some instances, your facility may have material on site that could create a combustible dust physical hazard. However, your best professional judgement can inform you that it is below the 10,000-pound reporting threshold. In this instance, you may voluntarily report these materials/mixtures in order to provide the Local Emergency Planning Committee and emergency first responders with emergency planning information about your facility. However, you would need to check the "Below the Reporting Threshold" box in the "Additional Reporting Column" on the right side of the reporting document.

Please take special note of EPA's reference to some state's requirement to report the actual amount of chemical present on site instead of reporting the amount in ranges. Be sure to check for state specific requirements. If state requirements exist, you are urged to contact them for specific reporting requirements.

While some have indicated that these materials are exempt from Tier II reporting because they are regulated by the Food and Drug Administration, the Occupational Safety and Health Administration has indicated they present a physical hazard under their hazard communication standard. This is indicated in the following link that EPA provided in their recent guidance addressing Tier II reporting for agricultural dusts and agricultural products handled in powdered form (i.e. combustible dust): https://www.osha.gov/Publications/combustibledustposter.pdf . While there are several interpretations on the need and methodology of reporting, our communication with EPA and the LEPC's have suggested the methodology is secondary to reporting as the true goal is to provide LEPC's and emergency response personnel with information that supports emergency response efforts as well as providing our industry with protection against liability that could result in the event of an accident.

The following page provides an image of the reporting form with the directions depicted:



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Chemical Description	Physical Hazards	Health Hazards	Inventory	Type of Storage	Storage Conditions (Pressure, Temperature)	Storage Locations	Additional Reporting Information (Optional)
☐ Check if information below is identical to the information submitted last year. Chemical Name: CAS No. EHS: Yes ☐ No ☐ ☐ _ ☐ _	☐ Explosive ☐ Flammable (gases, aerosols, liquids, or solids) ☐ Oxidizer (liquid, solid or gas) ☐ Self-reactive ☐ Pyrophoric (liquid or solid) ☐ Pyrophoric Gas ☐ Self-heating ☐ Organic peroxide ☐ Corrosive to metal ☐ Gas under pressure (compressed gas) ☐ In contact with water emits flammable gas ☐ Combustible Dust ☐ Hazard Not Otherwise Classified	☐ Acute toxicity (any route of exposure) ☐ Skin corrosion or irritation ☐ Serious eye damage or eye irritation ☐ Respiratory or skin sensitization ☐ Germ cell mutagenicity ☐ Carcinogenicity ☐ Reproductive toxicity ☐ Specific target organ toxicity(single or repeated exposure) ☐ Aspiration hazard ☐ Simple Asphyxiant ☐ Hazard Not Otherwise Classified	Maximum Amount Range Code: Average Daily Amount Range Code: No. of days on site:			Confidential ☐ Yes ☐ No	☐ Below Reporting Thresholds (optional) ☐ State or Local Requirements
☐ Check if information below is identical to the information submitted last year. Mixture or Product Name: CAS No. ☐ Not Available ☐ Solid ☐ Liquid ☐ Gas ☐ Trade Secret EHS: Yes ☐ No ☐ EHS(s) Name (if applicable): CAS No. Non-EHS(s) Name (optional):	☐ Explosive ☐ Flammable (gases, aerosols, liquids, or solids) ☐ Oxidizer (liquid, solid or gas) ☐ Self-reactive ☐ Pyrophoric (liquid or solid) ☐ Pyrophoric Gas ☐ Self-heating ☐ Organic peroxide ☐ Corrosive to metal ☐ Gas under pressure (compressed gas) ☐ In contact with water emits flammable gas ☐ Combustible Dust ☐ Hazard Not Otherwise Classified	☐ Acute toxicity (any route of exposure) ☐ Skin corrosion or irritation ☐ Serious eye damage or eye irritation ☐ Respiratory or skin sensitization ☐ Germ cell mutagenicity ☐ Carcinogenicity ☐ Reproductive toxicity ☐ Specific target organ toxicity(single or repeated exposure) ☐ Aspiration hazard ☐ Simple Asphyxiant ☐ Hazard Not Otherwise Classified	Maximum Amount (Total Mixture) Range Code: Average Daily Amount (Total Mixture) Range Code: No. of days on site: Maximum Amount of each EHS in the Mixture Range Code:			Confidential ☐ Yes ☐ No	☐ Below Reporting Thresholds (optional) ☐ State or Local Requirements

Optional Attachments: ☐ I have attached a site plan ☐ I have attached a list of site coordinate abbreviations ☐ I have attached a description of dikes and other safeguard measures