

National Nitrate Initiative Compliance Assistance Outreach Survey

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Executive Summary

This survey was commissioned by the Environmental Protection Agency, Region 3, Office of Enforcement, Compliance and Environmental Justice to determine the effectiveness of compliance outreach materials and the influence of the self audit policy within the metal finishers sector. This survey is structured around the National Nitrate Compliance Initiative which recognizes the production of coincidentally manufactured chemicals and requires the inclusion of these chemicals within a facility's Toxic Release Inventory. The initiative was introduced in April 2000, when EPA issued Show Cause letters to facilities thought to be in violation of the Emergency Planning and Community Right to Know Act (EPCRA), Section 313, for failing to report nitrate compounds. Included in the original mailing was a description as to why EPA believed the facility to be non-compliant and a variety of settlement options for the facility to adopt. Facilities were given a deadline of July 14, 2000 to respond to these options or be subject to further EPA investigation.

This survey was administered to 18 facilities in the metal finishing sector within the states of Region 3. All facilities surveyed received the National Nitrate Compliance mailing. Results from the survey were used as a follow up method to determine the effectiveness of outreach efforts, compliance assistance materials and the self audit policy. Highlights from the survey can be found below:

Changes in Awareness

- 77.7% of Participants surveys stated that the National Nitrate Initiative was the first time they became aware of the potential for Nitrate Compound Violations and the first time they became aware of the Audit Policy Penalty Reduction for Self Disclosing option.
- 88.8% of participants have shared information gained from outreach with others in their organization.

Behavioral Changes

- As a result of the initiative, over half of the participants surveyed indicated that

changes have been made or are planning to be made which increase compliance. These changes include conducting a self audit, creating an internal system to meet reporting requirements and implementing process, operational and mechanical changes to reduce the overall amount of nitrates produced.

- 17.6% of participants indicated that they had made process changes as a result of the initiative to reduce the overall amount of nitrates produced, 11.8% have implemented material changes, 5.9% have incorporated material, operating and process changes, 11.8% report that no changes have been made as a direct result of the initiative and 24% indicated that the changes made fall under the “other” category and this represents research for alternatives and substitutions..
- When asked if the mailing provided enough understandable information, 72.2% responded that they found the mailing provided enough information for compliance with the initiative while 94.4% indicated that the mailing provided enough information for them to use the audit policy as an option.
- A number of participants stated that, as result of this initiative, multiple representatives from a facility will be sent to workshops so a greater understanding of regulation change and compliance assistance can be delivered back to the facility.

Participant Comments

- One of the main comments throughout the survey was that although facilities recognized the need for the Nitrate Initiative, they felt that the initiative was implemented about three years too late. And further, as coincidentally manufactured nitrates were a mistake that had been overlooked for years, EPA needs to recognize that it was not something that could be fixed with a crash course on reporting requirements.
- A majority of facilities also stated that they would like to see increased communication between EPA and the sector. Facilities understand the need for corrective action but feel that compliance assistance activities are closely linked to the potential for inspections and penalties.
- A majority of facilities commented that the flat rate penalty served as a big incentive for compliance. Facilities were aware that the initiative was not

voluntary, and favored the flat rate method. With this option, being non compliant provided no economic benefit to facilities..

- In addition to increasing communications between EPA and the sector, suggestions were made to create outreach and informational sources that reflect requirements and regulation changes. Facilities do not see a need to actively track regulation changes, and as a result, they may review regulations every few years rather than on a yearly basis. A good tool for compliance would be the creation of a newsletter that highlights major regulation changes within sectors.
- Facilities also stated that the initiative created confusion in many areas. Most specifically, facilities found it difficult to interpret EPA's definition of Coincidentally Manufactured as the phrase was not supported by a set point or definition when nitrates can be declared "coincidentally manufactured."

Introduction

This survey was commissioned by the Environmental Protection Agency, Region 3 Office of Enforcement, Compliance and Environmental Justice through a grant from the National Network for Environmental Management Studies. The purpose of this study is to determine the effectiveness of compliance outreach materials and the influence of the self audit policy within the metal finishers sector. This survey is structured around the Nitrate 313 Compliance Initiative which recognizes the production of coincidentally manufactured chemicals and requires the inclusion of these chemicals within a facility's Toxic Release Inventory Report.

Introduction

Beginning in April 2000, the Environmental Protection Agency (EPA) implemented a Nitrate Reporting Initiative that was directed toward facilities thought to be in violation of the Toxic Release Inventory Nitrate Reporting Enforcement Initiative. This initiative focused on those facilities who produce coincidentally manufactured chemicals, or chemicals that are a byproduct result of normal productions within the facility. Included in the initiative is an allotted

time period where non-compliant facilities have the opportunity to correct their non-compliance and to disclose any violations to EPA. In response, these facilities will be given significant penalty reductions and time to fix their violations without the threat of inspection.

EPA issued Show Cause letters to facilities thought to be in violation of the Emergency Planning and Community Right to Know Act (EPCRA), Section 313 for failing to report nitrate compounds. Included in the original mailing was a description as to why EPA believed the facility to be non-compliant and a variety of settlement options for the facility to adopt. Facilities were given a deadline of July 14, 2000 to respond to these options or be subject to further EPA investigation.

Methodology

The eighteen question survey instrument was administered by phone to those facilities classified by SIC codes as belonging to the metal finishing sector and that were within the coverage area of Region 3. Eligibility of the survey was dependent upon a facility's familiarity and inclusion in the EPCRA 313 Nitrate Initiative mailings. EPA's Office of Enforcement and Compliance Assurance issued 629 show cause letters to facilities nationwide, 44 of these facilities are located in Region 3. To maintain anonymity within the survey and for the results generated, a code was assigned to each facility contacted, allowing all personal information regarding the facility or the individual participating in the survey to be destroyed. This ensured complete confidentiality for the facilities surveyed and in no way could an individual's response be linked back to the person or the representative facility.

Variables

The survey instrument sought to determine the effectiveness of compliance outreach

materials and the impact of the self audit policy as a compliance incentive option. The goal of the survey was to determine the role of compliance assistance materials and to further determine if compliance incentive options are an effective tool for encouraging and maintaining compliance.

Survey participants were gathered from a list of recipients of EPCRA 313 Nitrate Initiative direct mailings. These recipients were members of the metal finishing sector as defined by Sector Industrial Codes and were thought to be those facilities who were exceeding acceptable TRI limits for nitrate compounds.

Summary

EPA introduced the EPCRA 313 Nitrate Initiative in response to coincidentally manufactured chemicals. The original show cause letters were sent to facilities within the region who were thought to be in violation for EPCRA reporting of nitrate compounds. A large portion of the facilities are metal finishers who use a variety of chemicals in their trade. When neutralized in the wastewater treatment process however, these chemicals create nitrate compounds that must be included within a facility's Toxic Release Inventory (TRI). Thus, a nitrate compound is coincidentally manufactured when nitric acid is neutralized during wastewater treatment and must be counted toward the manufacture threshold within a facility's TRI. Although the nitrate compounds that are created are not a direct result of the metal finishing process, they are considered to be coincidentally manufactured chemicals that are covered under TRI threshold limits.

As part of the initiative, facilities were offered three settlement options. The first option includes disclosing all violations to EPA and a flat rate fine of \$5,000 for the violation. The second option, includes the \$5,000 fine in addition to an EPCRA 313 audit. The third option is for facilities who can demonstrate that they are in compliance and are meeting TRI requirements

for nitrate compounds. If found to be in compliance, these facilities are exempt from all penalties. Also included is the small business option where those facilities having less than 100 employees are eligible to make small business policy disclosures and are then subject to a \$1,000 flat rate fine for the violation. To qualify for the small business audit, the total number of employees within a company, including parent or subsidiary companies, must be less than 50 employees or have less than \$10,000,000 in annual sales. The number of employees cannot be applied to individual facilities that are part of a larger company. Both of the flat rate options can be used regardless of the number of years the facility has been in violation for nitrate compounds, regardless of the number of violations held by a facility and regardless of the number of facilities owned or operated by the company. All of the settlement options are dependent on meeting the criteria described for each option within the original EPCRA 313 Nitrate Initiative mailing.

Announcement of the initiative was included in the metal finishers sector trade publications and through a series of workshops offered within Region 3. The compliance workshops were offered during the months of April and May 2000 and served to address the EPCRA 313 Nitrate Initiative as well as other TRI reporting requirements and Clean Air Act 112(r) Accidental Release Requirements. Attendees to the workshop were introduced to the initiative and attendance to the series of workshops was open to all facilities and further publicized in a variety of locations.

It is important to note that the metal finishing sector strongly opposed EPA's initial handling of this initiative. As represented by a variety of sectors and trade association, members of the metal finishing sector, the surface finishing sector and similar organizations, stated that they were, in effect, being misrepresented. Failure to report nitrate compounds was not the result of poor recording and reporting skills but a misunderstanding from the sector as a whole to the

coverage of TRI thresholds. An agreement was reached between EPA and the surface finishing sector that reflects the three disclosure options as stated above. The original penalties, as designed by EPA, included a penalty that would have been assessed per violation regardless of the number of violations or the size of the facility. This settlement option was amended to reflect the three flat rate options and the small business option that were described above. Facilities were given until July 14, 2000 to commit to a settlement option or be subjected to further investigation.

In order to meet compliance, facilities were asked to submit all outstanding EPCRA 313 reports for the years 1995-1998 that were discovered during their audit. Facilities were then required to comply with 1999 EPCRA 313 reporting requirements. Facilities were given until October and July respectively, to complete these stages of the compliance process. Facilities meeting all compliance requirements will receive a penalty reduction. Those facilities, however, who fail to meet reporting and auditing requirements will be subject to stipulated penalties of \$500 per day for each day over the due date for audit reports and EPCRA 313 reports.

Limitations

When conducting this survey, a number of limitation arose that may have altered the total number of eligible participants. For example, the researcher discovered that at least three companies have either closed or changed names from the time of the original Nitrate Mailing. This served to create a potential problem as some facilities no longer existed and others had grown into different facilities. When the researcher contacted a facility other than the specific location mentioned in the Nitrate mailing, all efforts were made to contact an individual who was familiar with the facility in question. This proved to be an effective method and participants were able to comment on both the specific facility addressed by the nitrate mailings and on actions

taken at the present facility to address coincidentally manufactured nitrates.

Another limitation faced by the researcher were staff changes that resulted in unfamiliarity or an unawareness of the nitrate initiative and mailings. In some of the facilities contacted, staff changes had been made where the present individual responsible for environmental compliance or TRI issues may not have been at the facility during the time the nitrate initiative was being addressed. This resulted in an unfamiliarity with the initiative and prevented the individual from participating in the survey.

Findings

General findings from this survey indicate that the sector was well informed of the initiative and that they would have preferred more outreach and increased communication before the initiative became effective. Eligibility for this survey was dependent on the contacted facility's receipt of the Nitrate Initiative outreach mailings. A narrative of findings for each question can be found below and frequency data for each scaled question can be found in Appendix B.

The first question in the survey asked participants if they had received the Nitrate Outreach mailings. This question was used to determine eligibility for the survey and to determine a general level of understanding from the participant being surveyed. As expected, of the 18 facilities surveyed, all 18 responded that they were familiar with and had received the EPA outreach mailings concerning the Nitrate Initiative. Questions 2-5 reflected the information received from the mailings and attempted to determine if the information from the mailings was the first time facilities became aware of the EPCRA 313 requirements to report, the potential of nitrate compound violations and the option of audit policy penalty reductions for self disclosure. In response to question 2, awareness of EPCRA 313 requirements to report, 11 facilities (61.1%)

indicated that the mailings were their first exposure while 6 indicated that they had prior knowledge of this issue. For nitrate compound violations however, 14 participants (77.7%) responded that the mailings were the first time they became aware of the potential for violations and 3 reported that they had received prior knowledge of these violations. Similarly, when asked about audit policy penalty reductions, 14 (77.7%) participants indicated that they first became aware of this option through the outreach mailings while 2 had prior knowledge and 1 respondent could not recall if the outreach mailings were his first introduction to the self audit policy.

Questions 6-8 sought to determine any improvements facilities have made, or are planning to make as a result of the nitrate initiative. Question 6 asked if facilities have shared information from the initiative with others in their organization; 16 participants (88.8%) responded that yes information has been shared while 1 facility stated that they had already been sharing information related to this initiative within the facility and 1 facility reported that they had not shared any additional information within their facility. In accordance to the outreach material provided on the self audit policy, question 7 asked if facilities have conducted a self audit solely based on this initiative. 14 (77.7%) participants stated that as a result of the initiative they conducted a self audit within their facility while 2 facilities responded that they had already conducted self audits based on other issues. The final question in this section asked if facilities have developed an internal system to meet reporting requirements. 11 (61.1%) facilities responded that as a result of the nitrate initiative they did develop an internal system while 6 facilities stated that they already had a system in use but changes were made to reflect this initiative.

Questions 10,12,14, and 16 explored the level of understanding presented in the outreach mailings and sought to determine if the time period allotted for the initiative was acceptable. More specifically, question 10 asked if the mailing provided enough information for the

participants to comply with the National Nitrate Initiative. 13 (72.2%) participants felt the information included was sufficient for complying with the issue while 5 participants needed to gather additional information in order to comply. Many participants also stated that consultants were used to help meet reporting deadlines associated with this initiative. In addition to question 10, question 12 asked if the mailing provided enough information in regards to the audit policy and using the self disclosure rule as an option. For this question, 17 (94.4%) participants felt the information was sufficient while 1 found the need to use additional information. Question 14-16 reflected the relative urgency of the initiative and the time period allotted for compliance to occur within the initiative. When asked if the mailing conveyed a sense of urgency for a timely response, 16 (88.8%) participants stated that there was no question as to the urgency of the issue while 2 participants abstained from answering this question as they were fined for nitrate violations prior to the outreach mailings and responding to this portion of the initiative was not applicable for these facilities. Outreach information indicated that the Nitrate Initiative allowed 12 weeks for facilities to respond. Participants in the survey were asked if this was an appropriate time period for response. 15 (88.8%) facilities felt the time period was adequate while 2 would have preferred a longer period in which to comply. Facilities seeking a longer time period for compliance indicated that they were larger facilities and that they felt the issue was geared toward smaller facilities who could meet shorter deadlines and who could implement changes faster within their facilities.

The remaining questions in the survey were designed to allow participants to expand on issues presented and to describe any changes they have implemented in order to reduce the production of nitrates. The first of the open ended questions was question 5 that sought to determine where prior information of the initiative was obtained if participants indicated that they were familiar with the issue. As the majority of participants indicated that the outreach

mailings were their first experience with this initiative, only a few participants cited outside sources for their familiarity with the Nitrate initiative. The most popular outlets mentioned by participants were other EPA guidance documents and state mailings or publications. A total of five participants indicated that prior to the outreach mailings, they had received information regarding the initiative from either EPA or state materials. Other sources of information used by facilities in response to this question were newsletters and internet sites of trade organizations associated with the metal finishing sector.

Question 9 asked facilities if they had taken any actions as a result of the initiative to reduce the overall amount of nitrates produce by the specific facility. The majority of respondents indicated that they had not made any changes as the production and use of nitric acid was critical to their business. Many of the facilities surveyed, selected the option for other, as they felt researching alternatives fell under this category One facility, however, indicated that they had made a process change to using citric acid instead of nitric acid in the metal stripping portion of their business. Total responses from this question can be found below in Table 1.

| Table 1 Actions Taken to Reduce the Overall Amount of Nitrates Produced | | |
|--|---------------|------------------|
| Changes Made | Actual Number | Percent of Total |
| Process Changes | 3 | 17.6% |
| Operating Changes | 0 | 0 |
| Material Changes | 2 | 11.8% |
| Incorporated process, operating and material changes | 1 | 5.9% |
| No Changes | 2 | 11.8% |
| Other | 4 | 24% |

Question 11,13,15,17 and 18 were opened ended questions that allowed participants to express their feelings and opinions toward the level of understanding generated by the mailings, on the time period allotted for compliance and to further express their general feelings toward the initiative and towards EPA's communications to the sector based on the initiative. When asked about the general understanding provided by the mailings in terms of the initiative and using the self audit policy as an option, (questions 11 and 13) the majority of respondents indicated that they felt the mailings provided an appropriate amount of information. Many participants commented however, that although the information was helpful it was delivered to the sector too late. Participants indicated that the time period between receiving the compliance assistance material and when reporting requirements were due for the initiative was too short and that they did not have adequate warning for the specific requirements associated with the Nitrate initiative. Questions 15 and 17 focused on the time period allotted for response within the initiative. Question 15 along with question 14 asked participants if they felt the mailing conveyed a sense of urgency for a timely response. All participants surveyed responded that the mailing did convey a sense of urgency and that they were aware that this was a mandatory initiative and not a voluntary program. The majority of respondents stated that the time period was adequate but that a longer period for response is always better. For question 17, participants were asked if the predetermined twelve week period was an adequate time for response to this initiative. Although they found the time period to be adequate, many participants commented that they felt rushed because the initiative included the need to backlog violations that may have occurred. Participants felt that this portion of the initiative was time consuming and that an extended time period would have been helpful to increase awareness and understanding toward nitrate that had been produced in previous years.

The final question in the survey allowed participants the chance to comment on the

initiative as a whole and to provide suggestions based on this initiative. Many participants used this time to comment on EPA's communications and to express their dissatisfaction with portions of the initiative. One of the major concerns expressed about the initiative was confusion over double counting of nitrates and the years required in the initial phases of the initiative. Respondents to the survey indicated that they were aware of the requirements within the initiative to report nitrate violations for the present year but were unsure as to how far these violations needed to be backlogged. Many feared double counting and that if they fell under the requirements for de minimus reporting for one year, would reporting additional years force them to no longer fall under the de minimus ruling. Participants indicated that de minimus rulings should not apply for this specific initiative. Facilities also reported frustrations over the definitions of water soluble and coincidentally manufactured. The most common complaints regarding these definition were when a nitrate becomes reportable and when is it just a nitrate? Nitric acid is not always a reportable nitrate and the broad definition as used in the initiative created confusion for facilities. Interpreting Coincidentally Manufactured became problematic, there was no set definition or point when the nitrates can be declared "coincidentally manufactured."

Another comment frequently stated was that facilities would like to see an increase in communications from EPA. Many respondents indicated that they were grateful to have received the outreach mailings but would have preferred some type of pre-mailing before the penalty period. Facilities understand the importance of compliance assistance and feel that through more frequent communication, either directly with EPA or through trade organizations, it will be easier to remain in compliance with changing regulations. Facilities also stated that the workshops and other compliance assistance activities offered within the region tend to be focused around major metropolitan areas. Those facilities located on the fringes of the region would like to see more

workshops and outreach occurring in various areas around the region.

Conclusions

Based on this initiative, it can be observed that facilities respond favorably to compliance assistance activities and want to see an increase in EPA communications. Frequent mailings and communications will create a better relationship between EPA and the regulated community. Frequent communications also serve to reduce the thought that reporting requirements and information gained from initiatives are compliance tools that in turn are used to trap companies. Comments from this initiative also indicate that before creating specific response times for initiatives, EPA should provide some type of widespread communication that alerts affected sectors to the initiative and to potential changes in regulations or reporting requirements. Many facilities responded that they were surprised by the Nitrate initiative and although they were able to complete the reporting requirements in the allotted time period, the initiative should have come with some prior announcement or warning.

Responses gathered from this survey indicate that facilities view EPA as a resource but feel that EPA assistance includes the potential of being targeted for inspections. Many facilities have requested increased communication and say they turn to outside information sources because they fear the threat of inspections from EPA. Open dialogue between sectors and EPA would create a better relationship where facilities would be more likely to turn to EPA for compliance assistance.

Appendix A
Survey Document

National Nitrate Initiative Compliance Assistance Outreach Survey

1. To begin, please indicate if you have received EPA mailings focused on reporting Nitrate Compound Releases under EPCRA 313. (Yes / No / Don't Know)

1 2 3

(If no, that participant for their time and discontinue survey)

If yes, was this the first time you became aware of the:

- | | |
|--|-----|
| 2. EPCRA 313- Requirements to Report | 1 2 |
| 3. Nitrate Compound Violations | 1 2 |
| 4. Audit Policy Penalty Reduction for Self Disclosures | 1 2 |

(If yes, skip 5. If no, continue to question 5)

5. If you had prior knowledge of the Nitrate reporting requirements, from where did you receive this information. Please check all that apply

- ☐ EPA guidance documents
- ☐ State mailings or publications
- ☐ Internet
- ☐ EPA
- ☐ Other _____
- ☐ Trade organizations
- ☐ Please indicate which organizations _____
- ☐ Other _____

Please indicate any changes or proposed improvements that may have occurred as a result of EPA's Nitrate Compliance mailings. (Yes, No, Plan To, Already in Use, Not Applicable)

1 2 3 4 5

Have You:

- | | |
|--|-----------|
| 6. Shared information and awareness from mailing with others | 1 2 3 4 5 |
| 7. Conducted a self audit | 1 2 3 4 5 |
| 8. Developed an internal system to meet reporting requirements | 1 2 3 4 5 |

9. Please indicate actions taken to reduce the overall amount of nitrates produced by your facility.

- ☐ Process Changes
- ☐ Operating Changes
- ☐ Material Changes
- ☐ Incorporated material, operating and process changes
- ☐ No Changes
- ☐ Other _____

10. Did the mailing provide enough understandable information for you to comply with the National Nitrate Compliance Initiative? (Yes/ No)

1 2

11. Please Explain:

12. Did the mailing provide enough understandable information on disclosing and the audit policy for you to consider this option? (Yes/ No)

1 2

13. Please Explain:

14. Did you feel that the mailing conveyed a sense of urgency for a timely response? (Yes / No)

1 2

15. Please explain:

16. The Nitrate Initiative allowed approximately 12 weeks for facilities to respond. Do you feel the time frame for responding to the initiative was adequate? (Yes/ No)

1 2

17. If you felt this time period was not appropriate, what length of a response period would have been more beneficial? _____

18. In what ways could EPA improve communications based on your experiences with the Nitrate Compliance Initiative? _____

Comments:

Appendix B
Corporate Pulse Frequency Data

Nitrate Initiative Survey Frequency Data- Responses from Scaled Questions Only
 Responses Represent Actual Number Surveyed
 Total Number Surveyed: 18

1.To begin, please indicate if you have received EPA mailings focused on reporting Nitrate Compound Releases under EPCRA 313?

| Yes | No | Don't Know |
|-----|----|------------|
| 18 | 0 | 0 |

If yes, was this the first time you became aware of the:

| Issue: | Yes | No | Don't Know |
|--|-----|----|------------|
| 2. EPCRA 313 Requirements to Report | 11 | 6 | 1 |
| 3. Nitrate Compound Violations | 14 | 3 | 1 |
| 4. Audit Policy Penalty Reduction for Self Disclosures | 14 | 2 | 2 |

Please indicate any changes or proposed improvements that may have occurred as a result of EPA's Nitrate Compliance Mailings:

| Potential Changes: | Yes | No | Plan To | Already in Use | Don't Know |
|---|-----|----|---------|----------------|------------|
| 6. Shared information and awareness from mailings with others | 16 | 1 | 0 | 1 | 0 |
| 7. Conducted a Self Audit | 14 | 1 | 0 | 2 | 1 |
| 8.Developed an internal system to meet reporting requirements | 11 | 1 | 0 | 6 | 0 |

10. Did the mailing provide enough understandable information for you to comply with the National Nitrate Compliance Initiative?

| Yes | No |
|-----|----|
| 13 | 5 |

12. Did the mailing provide enough understandable information on disclosing and the audit policy for you to consider this option?

| Yes | No |
|-----|----|
|-----|----|

| | |
|----|---|
| 17 | 1 |
|----|---|

14. Did you feel that the mailing conveyed a sense of urgency for a timely response?

| | |
|-----|----|
| Yes | No |
| 16 | 2 |

16. The Nitrate Initiative Allowed approximately 12 weeks for facilities to respond. Do you feel the time frame for responding to this initiative was adequate?

| | |
|-----|----|
| Yes | No |
| 16 | 2 |

Nitrate Initiative Survey Frequency Data- Responses from Scaled Questions Only
 Responses Represented as Percentage of Total Number Surveyed
 Total Number Surveyed: 18

1.To begin, please indicate if you have received EPA mailings focused on reporting Nitrate Compound Releases under EPCRA 313?

| Yes | No | Don't Know |
|------|----|------------|
| 100% | 0 | 0 |

If yes, was this the first time you became aware of the:

| Issue: | Yes | No | Don't Know |
|--|-------|-------|------------|
| 2. EPCRA 313 Requirements to Report | 61.1% | 33.3% | 5.5% |
| 3. Nitrate Compound Violations | 77.7% | 16.6% | 5.5% |
| 4. Audit Policy Penalty Reduction for Self Disclosures | 77.7% | 11.1% | 11.1% |

Please indicate any changes or proposed improvements that may have occurred as a result of EPA's Nitrate Compliance Mailings:

| Potential Changes: | Yes | No | Plan To | Already in Use | Don't Know |
|---|-------|------|---------|----------------|------------|
| 6. Shared information and awareness from mailings with others | 88.8% | 5.5% | 0 | 5.9% | 0 |
| 7. Conducted a Self Audit | 77.7% | 5.5% | 0 | 11.1% | 5.5% |
| 8.Developed an internal system to meet reporting requirements | 61.1% | 5.5% | 0 | 33.3% | 0 |

10. Did the mailing provide enough understandable information for you to comply with the National Nitrate Compliance Initiative?

| Yes | No |
|-------|-------|
| 72.2% | 27.7% |

12. Did the mailing provide enough understandable information on disclosing and the audit policy for you to consider this option?

| Yes | No |
|-------|------|
| 94.4% | 5.5% |

14. Did you feel that the mailing conveyed a sense of urgency for a timely response?

| Yes | No |
|-------|-------|
| 88.8% | 11.1% |

16. The Nitrate Initiative Allowed approximately 12 weeks for facilities to respond. Do you feel the time frame for responding to this initiative was adequate?

| Yes | No |
|-------|-------|
| 88.8% | 11.1% |

Appendix C
National Nitrate Compliance Initiative- Mailing Document

Dear:

On or about April 28, 2000, the United States Environmental Protection Agency (EPA or Agency) issued a Show Cause Letter to you stating that we believed your facility to be in violation of the Emergency Planning and Community Right to Know Act (EPCRA), Section 313, for failing to fully report nitrate compounds. The Show Cause Letter described why we believe your facility is in violation of EPCRA 313 and offered you the opportunity to either demonstrate there were no violations as alleged, or to reach settlement for a reduced penalty by signing and returning an enclosed compliance agreement.

The purpose of this letter is to inform you of an additional settlement option available to you, even if you have already signed and returned the compliance agreement included with the Show Cause Letter, and to advise you of the following options which we will consider responsive to the April 28, 2000 Show Cause Letter: 1) you may settle violations as originally proposed in the April 28, 2000 Show Cause Letter (option I); 2) you may settle violations under the alternative described below (Option II); or 3) you may demonstrate that you are not in violation of EPCRA Section 313 if you have not already done so (Option III). Regardless of the option you may choose, you must respond postmarked by July 14, 2000, in order to resolve these issues without further investigation by EPA.

Alternative Settlement Option (Option II)

_____ All Show Cause recipients may settle nitrate compound violations for a flat rate of \$5,000, regardless of the number of years of nitrate compound violations and regardless of the number of facilities owned or operated by the company, provided the conditions specified below are met. Further, Show Cause recipients with 100 or fewer employees may settle nitrate compound violations for \$1,000, regardless of the number of years of nitrate compound violations and regardless of the number of facilities owned or operated by the company, provided the conditions specified below are met. The total number of employees at all facilities within a company, including any parent or subsidiary company, must be counted towards the 100 employee threshold. In order to qualify for this settlement alternative, Show Cause recipients must agree, by signing the enclosed National Nitrate Compliance Agreement-Option II (Option II Agreement), to a Consent Agreement and Final Order (CAFO) containing all of the following primary terms:

1. Conduct an Audit: Show Cause recipients must conduct an audit of all EPCRA Section 313 obligations for reporting years 1995 through 1998. Companies must audit those facilities that received Show Cause letters dated April 28, 2000. Also, companies may audit additional facilities that did not receive the April 28, 2000, Show Cause Letter as indicated in the attached Option II Agreement. The following resources may be of assistance in conducting audits:
 - Audit Guidance: The EPA guidance document "Protocol for Conducting Environmental Compliance Audits under the Emergency Planning and Community Right-to-Know Act" (December 1998), provides guidance on TRI

auditing. This document is available at <http://es.epa.gov/oeca/ccsmd/epcra.pdf>

- Other Guidance Documents and Regulator Information: For EPCRA Section 313 guidance on specific chemicals or industries, as well as other regulatory information, visit The Toxics Release Inventory Regulatory Program Home Page at <http://www.epa.gov/tri>
 - The EPCRA Hotline: For technical guidance on TRI Reporting issues call the EPCRA Hotline at 1-800-424-9346 between the hours of 9 a.m. and 6 p.m. Eastern Time.
- 2) Submit an Audit Report by October 27, 2000: The audit must be completed, and a final report identifying all EPCRA Section 313 violations discovered and reported must be submitted to EPA, postmarked by October 27, 2000. The Audit Report must be signed by the same company official or successor authorized to sign the Consent Agreement and Final Order (CAFO). The Audit Report must also contain a certification that all facilities audited are in full compliance with EPCRA Section 313.
 - 3) Settle Violations for Reduced Penalties: Reporting years 1995 through 1998 violations involving nitrate compounds disclosed in the attached Option II Agreement will be eligible for settlement penalties of either \$5,000 or \$1,000 per company in the CAFO as described above. All other non-reporting or data quality violations for reporting years 1995-1998, discovered during the audit, timely disclosed in the Audit Report, and timely corrected (EPCRA Section 313 forms filed by October 27, 2000) will not result in additional penalties. However, any violations for reporting years 1995 through 1998 that are not disclosed by October 27, 2000, may be subject to a further enforcement action by EPA and /or stipulated penalties as described in the enclosed Option II Agreement. This settlement option does not cover reporting year 1999, other than for nitrate reporting forms submitted by July 31, 2000 as described below.
 - 4) Timely Report Non-Nitrate Chemicals for Calendar Year 1999 by July 1, 2000: Under all options EPCRA reporting forms for all non-nitrate chemicals due July 1, 2000, for calendar year 1999, must be completed on schedule. However, nitrate reporting forms for reporting year 1999 may be submitted, postmarked by July 31, 2000, without additional penalty
 - 5) Submit Reports for All Other Chemicals by October 27, 2000: EPCRA reporting forms for chemicals discovered during the audit for reporting years 1995 through 1998, must be submitted and postmarked by October 27, 2000.
 - 6) Abide by the Terms of the CAFO: Facilities that violate any term of the CAFO will be subject to stipulated penalties or a further enforcement action as described in the Option II Agreement.

Procedure to Respond to the April 28, 2000, Show Cause Letter

_____To settle nitrate violation under Option I, complete and return the “National Nitrate Compliance Agreement,” which was included with the Show Cause Letter mailed on April 28, 2000, postmarked by July 14, 2000, if you have not already done so. To settle nitrate violations under Option II, regardless of whether you already signed and returned the original compliance agreement, complete and return the enclosed Option II Agreement to the applicable Agency contact postmarked by July 14, 2000. To rebut Agency’s belief that your facility is in violation as alleged in the Show Cause Letter (Option III), submit your analysis and any supporting documentation postmarked by July 14, 2000, if you have not already done so. Companies desiring to settle or rebut nitrate violations among facilities in a single EPA Region should direct all correspondence to the regional contact described in the enclosure “EPCRA Section 313 Contact List” (Contact List). Companies desiring to settle or rebut nitrate violations among facilities in multiple EPA Regions should direct all correspondence to the headquarters contact described in the Contact List. For technical EPCRA Section 313 reporting questions, direct your inquiry to the EPCRA Hotline at 1-800-424-9346.

Please note that if you have already signed and submitted the National Nitrate Compliance Agreement enclosed with the original Show Cause Letter and do not contact the Agency and indicate that you prefer another option as described above postmarked by July 14, 2000, we will process your settlement under the terms described in the signed Agreement. However, if you did sign the original agreement and now wish to proceed under Option II, Please sign the enclosed agreement and indicate in a cover letter that you are withdrawing your earlier agreement.

Sincerely,

Jesse Baskerville, Director
Toxics and Pesticides
Enforcement Division