

## ***EPA Reduces Penalties for Nitrate Reporting Violations***

The United States Environmental Protection Agency (EPA) has scaled down a controversial enforcement initiative that targeted facilities with wastewater treatment operations that neutralize nitric acid.

As reported in Vol. 11, No. 2 of the *Michigan Environmental Compliance Update*, during April 2000, EPA sent letters to approximately 600 facilities in the United States who reported neutralizing 18,000 pounds per year or more of nitric acid in on-site wastewater treatment processes, but had not reported the production of water dissociable nitrate compounds in annual "Form R" Toxic Release Inventory (TRI) reports under the Emergency Planning/Community Right to Know Act (EPCRA). According to the April 2000 letter, the production of these nitrate compounds has been subject to reporting requirements since 1996 if more than 25,000 pounds of water dissociable nitrate compounds were manufactured in a year. The most controversial aspect of the EPA letter was EPA's interpretation that the creation of nitrate compounds as a by-product of neutralizing nitric acid in wastewater was "manufacturing" for purposes of the EPCRA reporting requirements. EPA calculated that neutralizing 18,000 pounds of nitric acid with sodium hydroxide would yield 25,000 pounds of water dissociable nitrate compounds, the threshold quantity for the EPCRA reporting requirement.

The April 2000 letter offered companies the opportunity to resolve the alleged violations either by submitting information to EPA to demonstrate that the reporting requirement had not been violated, or agreeing to pay a penalty of \$5,000 per facility per year (since 1997) that water dissociable nitrate compounds had not been reported. Because most of the facilities that received the letter had not reported water dissociable nitrate compounds in any of the four years from 1997 through 2000, the typical penalty amount would have been \$20,000 per facility. Facilities that received the April 2000 letter were required to respond by May 26, 2000 or face possible EPA inspections and enforcement actions.

A number of industry organizations, including several metal plating industry associations, the Chemical Manufacturers Association, and the National Association of Manufacturers objected to this enforcement initiative. United States Senator Christopher Bond (R-Mo.) and the Small Business Administration also wrote letters to EPA objecting to the enforcement action.

As a result of these protests, EPA has agreed to modify the nitrate compound enforcement initiative, according to a June 7, 2000 press release from **the American Electroplaters and Surface Finishers Society** (AESF). According to AESF, EPA has agreed to reduce the penalty for failure to report nitrate compounds to a flat penalty of \$5,000 per company regardless of how many facilities owned by that company were alleged to be in violation and regardless of the number of years nitrate compounds had not been reported. Businesses with 100 or fewer employees would qualify as small businesses and would be subject to a penalty of \$1,000 per company.

The proposed settlement would also require participants to conduct a TRI audit covering all chemicals subject to TRI reporting requirements, including nitrate compounds, since 1995.

Facilities would be allowed 120 days to complete the audits and submit any necessary corrections to past TRI reports. Any other TRI violations that are discovered and corrected as part of these audits would not be subject to any further penalties by EPA, according to the AESF press release.

EPA is expected to send new letters outlining this agreement to all persons who received the original April 2000 letters.

This article was prepared by S. Lee Johnson, a partner in our Environmental Department, and previously appeared in the July, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.