UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 13, 2001

OFFICE OF
ENVIRONMENTAL INFORMATION

Margaret Yowell Hall
Marten Brown
Attorneys at Law
1191 Second Avenue
Suite 2200
Seattle, WA 98 101

Dear Ms. Hall:

This letter responds to your September 26, 2000 letter, as well as a couple of follow up telephone conversations, requesting guidance regarding the reporting requirements of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). Specifically, your letter states that your client operates a nitrogen and phosphate fertilizer production facility (hereafter "Fertilizer Plant"). Your letter provides an entire overview of your understanding of the application of the EPCRA section 313 reporting requirements. This response only addresses those issues raised in your letter that appear to need clarification. In short, this letter is intended as guidance to help the Fertilizer Plant determine how it needs to comply with the EPCRA section 313 reporting requirements.

According to your letter, as part of its fertilizer production the Fertilizer Plant produces a separate nitrate-laden and phosphate-laden liquid stream, which it sells to farms for use as fertilizer. However, your letter clarifies that the Fertilizer Plant's nitrate-laden and phosphateladen effluent is first sent to a city operated wastewater land treatment system. According to page 2 of your letter:

> The City and Fertilizer Plant mutually determined that a waste water land treatment system constructed to transport the combined effluents discharged from the City and Fertilizer Plant to a resource recovery area with Fertilizer Plant's effluent being stored in an impoundment during the non-irrigation months of the year, was a suitable project to accomplish the objectives of the City and Fertilizer Plant.

The farms purchase the discharge from the City and the Fertilizer Plant for application to the farmlands for either irrigation or fertilization or a combination of both to aid the growing of crops. Based on this general background information you are requesting guidance regarding the EPCRA section 313 reporting requirements for this nitrate-laden and phosphate-laden effluent.

First, you should note that phosphate is not a TRI listed toxic chemical (*See* 40 CFR section 372.65), and that, beginning with the 1999 reporting year, phosphoric acid has been deleted and is no longer a toxic chemical subject to the EPCRA section 313 reporting requirements. *(See* 65 FR 39552. June 27, 2000)

Accordingly, based on the information you have provided, nitrate compounds appears to be the only listed toxic chemical at issue here.

Next, as you correctly indicate in your letter, the manufacturing activity threshold needs to be considered. Based on the information you have provided, your client should consider tile nitrate compounds manufactured during the fertilizer production toward the facility's manufacturing threshold determination for nitrate compounds.

Finally, with regard to threshold activities being performed on the nitrate-laden effluent transferred to the City, as you correctly note, the following *Question & Answer* makes clear that if a facility is transferring a byproduct off-site for direct reuse as a fertilizer the facility should not consider this particular transfer an off-site waste management activity, but rather should consider any toxic chemicals in the byproduct fertilizer toward the appropriate processing activity thresholds:

> Facility A produces a byproduct containing a toxic chemical. Tile facility gives some of the byproduct away, and sells some of the byproduct. In both cases, the off-site facility uses the byproduct as fertilizer for farming. Should Facility A report the amount of toxic chemical in the byproduct given away or sold, on the Form R?
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> If the toxic chemical in the byproduct is sent off-site to be directly reused as a fertilizer, then the transfer would not be considered a transfer off-site for waste management purposes, and Facility A would not report, as a transfer off-site for waste management, the amount sold/given away. However, because tile facility distributed the toxic chemical into commerce, the facility must consider the quantity of toxic chemical shipped off-site for direct reuse (*i.e.*, both the amounts given away and sold) as fertilizer as processed for threshold determinations.

(1998 Q&A 560 in the 1998 EPCRA Section 313 Questions and Answers document. December 1998, EPA 745-B-98-004.)

Based on the limited information provided in your letter, the nitrate-laden effluent separated from the facility's fertilizer product does not appear to be a byproduct of the Fertilizer Plant's production operations. As you recognize on page 5 of your letter. a byproduct is a toxic chemical that is "produced coincidentally during the manufacture, processing, or otherwise use of another chemical substance or mixture and. following its production, is separated from that other chemical substance or mixture...(*See* p. 31 of the 1999 Toxic Chemical Release Inventory Reporting Forms and Instructions, EPA 745-B-00-001, February 2000.) Tile nitrate compounds present in the effluent transferred off site to the City are not the result of coincidental manufacturing. Instead, the nitrate compounds are a component of the facility's product, a small portion of which ends up in wastewater. Page 4 of your letter states, "Some of the product ends up in the wastewater, which is later sold as Water and Nutrients." Accordingly, tile effluent sent to the City is not a byproduct but rather is a wastestream being managed as such. In fact, page 2 of your letter indicates that this nitrate-laden wastewater is mixed with the City's wastewater prior to being sold to the farms. As quoted above,

> The City and Fertilizer Plant mutually determined that a waste water land treatment system constructed to transport the combined effluents discharged from the City and Fertilizer Plant to a resource recovery area with Fertilizer Plant's effluent being stored in an impoundment during the non-irrigation months of the year, was a suitable project to accomplish the objectives of the City and Fertilizer plant.

[Emphasis Added.] In short, the Fertilizer Plant's nitrate-laden effluent does not appear to be a byproduct subject to the analysis provided in Q&A 560, *supra*. Instead, this effluent is being managed as a waste and should be reported as such in Section 6 and Section 8 of tile Form R.

I hope this information is helpful to you in understanding the reporting requirements of section 313 of EPCRA. If you obtain additional information from your client that may impact this guidance or you have any other questions, please call Larry Reisman, of my staff, at 202.260.2301.

Sincerely,

Maria J. Doa, Ph.D., Director
Toxics Release Inventory Program Division