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United States Senate

COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510-6350

MAY 2 4 2000

The Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Browner:

The purpose of this letter is to express my concern over the U.S. Environmental Protection Agency's (EPA/Agency) use of its limited enforcement resources to address nitrate reporting to the Toxic Release Inventory (TRI).

Earlier this month, EPA sent out nearly 600 "show cause" letters to facilities, which omitted entries for nitrate compounds on their TRI reporting forms. EPA determined that these facilities failed to report nitrates because they did report using nitric acid, which "coincidentally" produces nitrates upon treatment. EPA told the facilities to show cause why the Agency should not subject them to \$5,000 penalties for each "sin of omission," as EPA later described it, totaling up to \$20,000 for four reporting years.

According to EPA, over 50% of eligible facilities failed to report nitrates to TRI. Industry places noncompliance above 80% when facilities attempting to remedy their reports after the fact are excluded. This huge noncompliance rate reveals a problem more fundamental than a small number of "bad actors" intentionally ignoring Agency enforcement alerts. Instead, the most likely reason for this mass noncompliance was that facilities did not know or understand this obscure reporting requirement. This seems likely given that the reporting instructions for TRI run several hundred pages and instructions regarding this issue appear in different sections in different years. Indeed, professional consulting firms paid to know these requirements missed this obligation. Also telling was that over half of those failing to report are small businesses.

While these facilities did not report nitrates, the only way EPA identified them is because they were reporting to TRI. The Agency counter argument that these facilities were reporting while trying to hide the toxic nature of their activities does not make sense. These facilities omitted nitrates but reported nitric acid itself or in many cases more toxic substances such as trichloroethylene.

The argument that EPA took these actions for their deterrent effect is meaningless as well. In this case there is nothing to deter. Facilities were trying to do the right thing by reporting to TRI and would have done the right thing if they had known and understood their obligations. EPA efforts to inform the regulated community of this obscure requirement clearly failed in this case. That should be the paramount concern to EPA if compliance is the true goal of the Agency.

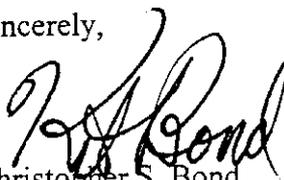
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Additionally, EPA indicated that these actions were part of an Agency strategy to address data quality concerns. EPA enforcement staff cited your commitment to bring high quality data to the public as justification for their use of enforcement resources to address these reporting mistakes. Certainly high quality data without gaps is an important and laudable goal for the Agency. However, enforcement actions are resource intensive. This case will include the show cause letter, follow-up settlement letter, review of submitted information, negotiation of settlement terms and follow-up inspections. Such a generous use of enforcement resources on a data quality concern with no direct impact to actual environmental conditions faced by communities suggests a surplus of enforcement resources. That the Agency has such an abundance of enforcement resources that it can devote enforcement attention of this magnitude to reporting data quality issues is an important fact to know as we continue through the Agency's appropriations season.

On the other hand, if EPA's enforcement resources are preciously limited, as it has publicly stated, then this initiative calls into question EPA's ability to prioritize and target its resources where the environment needs them most. As discussed above, those who omitted nitrates are already reporting much more toxic chemicals to TRI. This group, while technically in violation of the law, should be a lower priority for the Agency's attention than those intentionally violating the law by not reporting to EPA at all. To address this serious concern, industry groups themselves have offered to assist EPA in identifying those failing to report to TRI. An even higher priority would be those actually damaging the environment by releasing pollutants above their permit levels or not having permits at all. EPA currently is failing to renew a sizable percentage of expired pollutant discharge permits. EPA should be targeting these higher risk concerns with their limited resources.

A simple notice of violation or other similar warning letter would bring about a substantial amount of compliance with minimal effort. EPA could threaten future penalties for those who ignore the warning. EPA can then confidently assume that it gave all concerned more than fair and adequate notice of their omissions. EPA currently is taking this approach to address water systems' failure to submit consumer confidence drinking water reports to consumers. It is not too late for EPA to choose such a path. I urge you to reconsider your approach in this case to something more commensurate with the lack of culpability and risk to the environment involved in this case. If you have any questions, please contact John Stody at 224-5175. Thank you for your attention to this matter.

Sincerely,



Christopher S. Bond
Chairman