COURTNEY M. PRICE
VICE PRESIDENT
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American Chemistry Council
Good Chemistry Makes It Possible

February 24, 2005

Information Quality Guidelines Staff
Mail Code 28221T
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Request for Correction - Toxics Release Inventory Listing of Isopropyl Alcohol (Manufacturing - Strong Acid Process)

Dear Sir or Madam:

The American Chemistry Council Isopropanol Panel submits this Request for Correction to the EPA under the Data Quality Act and the Office of Management and Budget (OMB) and EPA Information Quality Guidelines. This Request seeks the correction of information resulting from the erroneous listing on the Toxics Release Inventory (TRI) pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) of "CAS #67-63-0: Isopropyl alcohol (only persons who manufacture by the strong acid process are subject, supplier notification not required)." 40 C.F.R. § 372.65(b).

This listing is incorrect and misleading – resulting in incorrect and misleading information being reported to and disseminated by the Agency. Specifically, the listing misstates the substance of Congress' original listing in EPCRA Section 313 by confusing emissions of isopropyl alcohol itself with emissions of other chemicals resulting from one particular method of producing isopropyl alcohol. It identifies isopropyl alcohol – both by its CAS number and its name – as a substance listed on the TRI. However, no matter what method is used to manufacture it, isopropyl alcohol itself does not fit the TRI listing criteria, as EPA has acknowledged.[1] Instead, it is only certain chemically distinct emissions produced by the strong acid process—a long-abandoned method of manufacturing isopropyl alcohol—that meet the TRI listing criteria and are thus subject to reporting under EPCRA.[2] This has been the consistent understanding of both Congress, which relied on data and analysis supplied by the International Agency for Research on Cancer ("IARC"), and EPA. However, the current formulation of the listing not only fails to make this understanding clear, it appears to contradict it – resulting in incorrect and misleading information being submitted to and disseminated by the Agency. The incorrect listing has caused numerous adverse effects for the Panel and its member companies – including incorrect and improper EPA enforcement initiatives and the listing of isopropyl alcohol (rather than strong acid process emissions) on various state regulatory lists, based on these agencies' understandable but erroneous assumption that isopropyl alcohol is listed on the TRI. Moreover, by

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1 "Isopropyl alcohol (IPA) itself does not meet the toxicity criteria for listing on the Toxic Release Inventory (TRI). It is the strong acid process itself which is associated with an increased cancer incidence." 59 Fed. Reg. 21064 (April 25, 1994).

2 *Id.*

disseminating clearly incorrect information to the public, EPA has violated the information quality guidelines adopted by the OMB and the EPA itself.

Accordingly, the Panel requests that EPA do the following: 1) refrain from including any future isopropanol emissions report data on the TRI, since any such data is erroneous; and 2) correct all historic TRI reports and the TRI database itself by removing incorrectly reported isopropanol data.[3]

A. Data Quality Requirements: OMB and EPA Guidelines

The Data Quality Act required OMB to issue guidelines, applicable throughout the government, ensuring and maximizing the quality, objectivity, utility and integrity of all information disseminated by federal agencies.[4] The OMB guidelines, under the Data Quality Act, require agencies subject to the Paperwork Reduction Act to issue their own information quality guidelines. Agencies are directed to "treat information quality as integral to every step of an agency's development of information, including creation, collection, maintenance and dissemination."[5] The EPA Guidelines have adopted this sentiment in the following statement: "[t]he principles of information quality should be integrated into each step of EPA's development of information, including creation, collection, maintenance, and dissemination."[6]

The guidelines disseminated by agencies are also to "establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply" with the OMB guidelines.[7] In compliance with this mandate, the EPA has published its own data quality guidelines. These guidelines require that a Request for Correction (RFC) include: (1) the name and contact information of the individual or organization requesting the correction; (2) a description of the information believed not to comply with the OMB guidelines; (3) an explanation of how the information does not comply with the OMB guidelines; and (4) an explanation of how the alleged error affects, or how a correction would benefit, the requestor.[8]

The OMB and EPA guidelines both emphasize that data collection systems should maximize the quality, objectivity, utility and integrity of information. These terms encompass the ideas

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3 In the alternative, although it is beyond the scope of this request for correction, EPA could simply remove the listing from the TRI altogether, pursuant to its authority under 313(d) or other similar provision, in light of the unreliable and inaccurate data it produces and contains, and the fact that the strong acid process has not been used for at least twenty-five years.

4 Section 515(a), Treasury and General Government Appropriations Act for Fiscal year 2001; Public Law 106-554; 44 U.S.C. § 3516(a), Footnote 1.

5 Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8459 (February 22, 2002).

6 Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency, US EPA Office of Environmental Information, October, 2002, §1, *available at* http://www.epa.gov/quality/informationguidelines/. Hereinafter "EPA Guidelines." *Ibid* §1.

7 Section 515(b)(2)(B), Treasury and General Government Appropriations Act for Fiscal year 2001, Public Law 106-554.

8 EPA Guidelines, §8.2.

that the data should be useful, accurate, unbiased and reliable.[9] The TRI's dissemination of information on emissions reporting on isopropyl alcohol, rather than emissions from the strong acid process, results the publication of data that is inaccurate and unreliable. Indeed, the listing itself as currently worded conveys inaccurate information about the substance of the underlying requirement, by mistakenly stating that isopropyl alcohol is a TRI listed substance, when it is not.[10] Moreover, this mistake results in further dissemination of inaccurate and unreliable information as regulated parties, relying on this listing, report emissions of isopropanol and their reports are summarized by EPA and redistributed to the public. The regulated parties' reports are themselves misleading and non-useful because 1) the parties who report isopropanol emissions are not manufacturers using the strong acid manufacturing process; and 2) even if they were, they would be reporting the wrong data—if they were using the strong acid process, they should have reported their emissions of carcinogenic by-products from the strong acid process, not their emissions of isopropanol itself, which is not listed as a toxic chemical on the TRI. As a result, the information disseminated to the public is essentially meaningless, since only parties who have been misled by the TRI listing report their isopropanol emissions. The publicly disseminated information thus represents neither dangerous emissions from the strong acid process, nor the emissions of isopropyl alcohol. Instead, while it is represented to the public as the amount of toxic emissions due to the strong acid process, it actually represents the amount of a harmless substance, isopropyl alcohol, emitted by a random set of companies who have been misled by the TRI listing as to the substance of their EPCRA reporting obligation.

B. Name and Contact of Organization Requesting the Correction

American Chemistry Council Isopropanol Panel
1300 Wilson Blvd.
Arlington, VA 22209

Contact: Sarah McLallen
Manager of the Isopropanol Panel
703-741-5607

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9 Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8459 (February 22, 2002).

10 Even EPA has occasionally been confused by the language of the listing. In authoritative Federal Register statements, EPA has correctly explained "Isopropyl alcohol (IPA) itself does not meet the statutory criteria for listing on the Toxic Release Inventory (TRI)," and that "[i]t is the strong acid process itself which is associated with an increased cancer incidence," 59 Fed. Reg. 21064 (April 25, 1994). On the other hand, the 2000 TRI reporting form says that isopropanol releases need to be reported "if [isopropanol] is being manufactured by the strong acid process." EPA, "Toxics Release Inventory Reporting Form and Instructions" p. II-1 (2000) (emphasis in original). In fact, since isopropanol "does not meet the statutory criteria for listing on the Toxic Release Inventory," isopropanol emissions, whatever their source, cannot be the target of the current TRI listing. Instead, since it is "the strong acid process *itself* which is associated with an increased cancer incidence," (emphasis added) the listing must be taken to refer to the carcinogenic by-products of the strong acid process. The potential contradiction between different versions of EPA guidance on this point serves to further illustrate the need not to disseminate isopropanol emissions on the TRI. As the Panel points out on pages 9-10, *infra*, there has been similar confusion among EPA enforcement personnel about the meaning of this TRI listing.

C. EPA's Dissemination Of Erroneous TRI Reports On Isopropanol Does Not Comply With the OMB Guidelines

When Congress enacted EPCRA, it included "Isopropyl alcohol (manufacturing -- strong acid process)" on the original Section 313 list[11], in reliance on IARC's classification of the strong acid manufacturing process as a Group 1 carcinogen (*i.e.,* sufficient evidence of carcinogenicity in humans).[12] Because none of the data upon which Congress relied had ever linked isopropyl alcohol emissions to deleterious health effects, Congress specified only the strong acid manufacturing process for listing on the TRI. However, when EPA listed substances pursuant to EPCRA Section 313, EPA's regulations included the following listing: "CAS #67-63-0: Isopropyl alcohol (only persons who manufacture by the strong acid process are subject, supplier notification not required)." 40 C.F.R. § 372.65(b). The formulation of these listing is erroneous, for reasons explained below. In promulgating this listing, EPA did not accurately reflect Congress' mandate under EPCRA Section 313, resulting in misleading, unreliable and useless information being disseminated to the public. The information that results from the listing is "information disseminated to the public" within the meaning of EPA Guidelines because their very purpose is to be disseminated and make communities aware of "toxic" emissions in their areas.[13]

The listing – and the information disseminated from the listing – is erroneous because: (1) the CAS number 67-63-0 specifically refers to the *chemical* isopropyl alcohol while Congress' original listing under EPCRA Section 313 refers to certain other chemicals emitted as a result of the strong acid process;[14] (2) although strong acid process emissions meet the statutory listing criteria, the strong acid process has not been used in this country for at least 25 years; and (3) even if the strong acid process were still in use, the listing criteria, as written, would *not* require the reporting of those emissions from the strong acid process which meet the statutory listing criteria – it would require the reporting of isopropyl alcohol emissions, which, regardless of the process by which they are produced, do not meet the listing criteria. As a result, the TRI reports compiled for isopropyl alcohol emissions – information

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11 Senate Committee on Environmental and Public Works, Print No. 99-169, 99th Cong., 2d Sess. (August 1986). In the final rule that implemented Section 313, EPA set forth its interpretation of this listing: "For isopropyl alcohol the qualifier reads 'mfg. -- strong acid process'. . .EPA proposes to interpret the qualifier to mean that only persons who manufacture isopropyl alcohol by the strong acid process are required to report. . .A facility that processes or otherwise uses [the] chemical would not be required to report." 53 Fed. Reg. 4500, 4519 (Feb. 16, 1988).

12 The classification of the strong acid process is based on epidemiology data showing an increased incidence of cancer of the paranasal sinuses and a possible increase in the risk for laryngeal cancer. Weil, C.S., Smyth, H.F. Jr., and Nale, T.W. (1952). Quest for a suspected industrial carcinogen. *Arch. Industr. Hyg. Occup. Med.*, 5: 535-547; Hueper, W.C. (1966). Occupational and environmental cancers of the respiratory system. *Recent Results Cancer Res.*, 3: 105-107, 183.

13 EPA Guidelines, § 5.3. "Information" includes "any communication or representation of knowledge such as facts or data, in any medium or form...[information] includes material that the EPA disseminates from a web page." To be clear, the Panel is not requesting that EPA change the substance of any regulation or any listing pursuant to any regulation. Instead, the Panel requests that the TRI listing, which EPA has said (*see* note 9, *supra*) is intended only to indicate the toxicity of strong acid manufacturing process by-products, be altered to clearly reflect EPA's already-existing regulatory stance.

14 Indeed, EPA has acknowledged that the *chemical* isopropyl alcohol does *not* meet the statutory listing criteria under EPCRA Section 313. *See* note 16 and accompanying text, *infra*.

disseminated to the public – are not useful and are inaccurate, contrary to the EPA and OMB Guidelines for data quality.

The CAS Number Specifically Refers To The Chemical Isopropyl Alcohol, Which Does Not Meet The Section 313 Listing Criteria.

The CAS – Chemical Abstract Service – number that is assigned to a chemical substance is a unique identifier that refers to that chemical substance and *only* that substance. CAS numbers are not designed to distinguish between different methods of manufacture and the TRI listing of "CAS #67-63-0" refers to isopropyl alcohol itself; this CAS number has no relation to the strong acid process emissions which Congress listed on the TRI. Indeed, since the TRI is a list of purportedly toxic chemicals, the release of which is reportable, and not a list of "processes," the listing of the CAS number for isopropyl alcohol on the TRI is reasonably taken to mean that isopropyl alcohol is such a chemical, at least by those not aware of EPA's guidance on the subject. As a result, despite the TRI's attempt to distinguish between production processes, on its face the listing at issue does not regulate the emissions from the strong acid process or the strong acid process itself – it regulates isopropyl alcohol. The Panel does not believe that this result is proper, or even that EPA intends this result—indeed, EPA itself has acknowledged this, stating, "*Isopropyl alcohol (IPA) itself does not meet the toxicity criteria for listing on the Toxic Release Inventory (TRI)*. It is the strong acid process itself which is associated with an increased cancer incidence."[15] However, the TRI listing for isopropyl alcohol does not reflect this guidance, and is thus an inaccurate statement of both Congress' original listing and EPA's own assessment with respect to isopropyl alcohol.[16]

The Emissions From The Strong Acid Process Meet The Statutory Listing Criteria, But This Process Has Not Been Used For Over 25 Years.

While the original Section 313 listing has confused the issue for some, on a scientific level there has never been any confusion between harmful strong acid process emissions and essentially harmless isopropanol itself. Emissions from the now-obsolete strong acid process have shown significant indications of carcinogenicity. However, this information has no relevance, since the strong acid process has not been used for over 25 years, having been replaced by "weak acid" or "non-acid" processes that make isopropyl alcohol cheaper, per unit, to produce.

Three primary processes exist by which isopropyl alcohol can be produced: a strong acid process, a weak acid process, and a non-acid process. In the strong acid process, 88-93% sulphuric acid is reacted with propylene gas at 25-60°C for an extended time, producing diisopropyl sulfate as an isolated intermediate.[17] The International Agency for Research on Cancer has classified the strong acid manufacturing process as a Group 1 carcinogen (*i.e.*, sufficient evidence of carcinogenicity in humans).[18] Diisopropyl sulfate has been identified by the World Health Organization as the "likely causative agent"

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15 59 Fed. Reg. 21064 (April 25, 1994) (emphasis added).

16 Although it is beyond the scope of this request for correction, EPA could – and should – issue a direct final rule correcting its regulation that erroneously includes the isopropyl alcohol CAS number as part of the TRI listing. See footnote 3.

17 *See* World Health Organization, Environmental Health Criteria 103 "2-Propanol" at 27-28 (1990).

18 *IARC Monograph of Isopropyl Alcohol and Isopropyl Oils*, pp. 225-226 (1977).

of increased cancer incidence reported in studies involving workers in facilities that produced isopropanol by the strong acid manufacturing process.[19]

Utilized principally during the first half of the 20th century, the strong acid process was discontinued at an undetermined date in the United States that was at least 25 years ago.[20] A review of the Toxic Substances Control Act (TSCA) Inventory, which was established in 1978, confirms that the strong acid process has not been in use since that time. EPA's regulations under TSCA require that the production of an intermediate must be reported on the TSCA Inventory if the intermediate is isolated.[21] Diisopropyl sulfate is created as an *isolated* intermediate in the strong acid process; however, it is formed as a *non-isolated* intermediate during the weak acid process. Because the compound is an isolated intermediate in the strong acid process, diisopropyl sulfate would have been reported in the TSCA Inventory if the strong acid process had been used to manufacture isopropanol in the U.S. at any time since the first TSCA Inventory was established in 1978. A review of the public TSCA Inventory (current as of May 2004) indicates that diisopropyl sulfate has not been reported.[22]

Technological improvements in the isopropanol manufacturing process caused the strong acid process to be replaced with "weak acid" and "non-acid" processes. Today, all isopropanol manufactured in the U.S. and imported to the U.S. is produced by either the weak acid or non-acid process. In the weak acid process, propane gas is absorbed in, and reacted with, 60% sulfuric acid, with the resulting sulfates hydrolyzed in a single step process. Isopropanol is then stripped and refined from the condensate, which contains diisopropyl ether, acetone and polymer oils of low molecular mass.[23] The weak acid process is entirely enclosed, and therefore the diisopropyl sulfate created during the process is a non-isolated intermediate. The non-acid process – which is used primarily in Europe and Japan – involves the catalytic hydration of propane with water. Hydration can be gas-phase with a phosphoric acid catalyst, mixed phase with a cation-exchange resin catalyst, or liquid phase using a tungsten catalyst. The isopropanol is then purified by distillation.

Neither the weak acid manufacturing process nor isopropanol itself have been linked to any increased incidences of cancer. IARC classifies isopropanol as Group 3 (not classifiable as to its

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19 World Health Organization, Environmental Health Criteria 103 "2-Propanol" at 27 (1990).

20 *See, e.g., IARC Monograph of Isopropyl Alcohol and Isopropyl Oils*, pp. 225-226 (1977) (describing the weak acid process as having "replaced" the strong acid process in the United States).

21 *See* 40 C.F.R. §§ 710.4(d) & 710.4(d)(8) (exempting only chemicals that are "manufactured or processed for a commercial purpose for the purpose of section 8 of the Act . . . [that] are not manufactured or processed for distribution in commerce as chemical substances per se and have no commercial purpose separate from the substance, mixture, or article of which they may be a part," including "[c]hemical substances which are not intentionally removed from the equipment in which they were manufactured.")

22 The strong acid process has also been discontinued outside the U.S. Information from foreign isopropanol producers and the European Isopropanol Producers Association indicates that isopropanol manufacturers in the following countries outside the U.S. do not currently employ the strong acid process to manufacture isopropanol: Canada, Mexico, Western Europe, Latin America, Japan, Taiwan, Korea, and China. Although it is possible that isopropanol may be manufactured utilizing the strong acid process in other countries or regions, no isopropanol produced outside of the U.S. or the countries previously identified is imported into the U.S.

23 World Health Organization, Environmental Health Criteria 103 "2-Propanol" at 27 (1990).

carcinogenicity in humans), recognizing that isopropanol has tested negative for carcinogenicity in rats and mice, but noting "some limitations in design and adequacy" in those studies.[24] In 1987, IARC noted that the epidemiological data on isopropanol manufacturing by the weak acid process "are insufficient for an evaluation of carcinogenicity."[25] In a 1992 study, however, researchers evaluated ethanol and propanol production workers employed at two chemical plants. The workers were followed from the early 1940s (when the strong acid process was still in use) to 1983. Although the linkage between the strong acid process and upper respiratory cancers was confirmed, the weak acid process showed no evidence of excess cancer incidence.[26]

In short, certain emissions of the strong acid manufacturing process for isopropyl alcohol– which is no longer in use – have been linked with an increased incidence of upper respiratory tract cancers. The currently-used weak acid process in the U.S., however, has *not* been associated with an increased risk of cancer, nor has the chemical isopropanol itself, no matter how produced, ever been linked with any increased incidence of cancer.

The Listing – And The Information Disseminated From The Listing – Would Be Erroneous Even If The Strong Acid Process Were Still In Use

The TRI listing and the information disseminated as a result of that listing, however, would be erroneous, inaccurate and not in accord with the EPA and OMB Guidelines *even if* the strong acid process were still in use, because the TRI list identifies the isopropyl alcohol created by the strong acid process – and *not* the carcinogenic emissions from the process – as the substance to be reported. If the strong acid process were still in use, companies using it would be obliged to report their emissions of isopropyl alcohol, *not* the carcinogenic emissions from the manufacturing process, based on the current erroneous formulation of the TRI listing. Thus, EPA's TRI listing would require companies manufacturing by the strong acid process to report emissions of isopropyl alcohol – which EPA itself acknowledges does not meet the TRI listing criteria – while simultaneously *not* reporting the carcinogenic emissions that Congress intended to be reported and that are the basis for the listing on the TRI. Clearly, even if the strong acid process were still in use, the listing and the information disseminated from the listing would be collecting non-useful, inaccurate and unreliable information, counter to the OMB and EPA guidelines.[27]

D. EPA's Dissemination of Erroneous TRI Information On Isopropyl Alcohol Has Significant Adverse Consequences

In spite of the Agency's efforts to clarify the scope and meaning of this listing, it is apparent that the listing and the dissemination of the erroneous TRI reports resulting from the listing

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24 *IARC Monograph for Isopropanol*, 71: 1027-1036 (1999).

25 *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans*, Supplement 7 (1987).

26 Teta, M.J., Perlman, G.D. and Ott, M.G. (1992). Mortality study of ethanol and isopropanol production workers at two facilities. *Scand. J. Work. Env. Health*, 18: 90-96.

27 Although it is beyond the scope of this request for correction, EPA could – and should – issue a direct final rule that rephrases the listing to clearly state that the TRI only lists the distinct emissions caused by the strong acid process for manufacturing isopropanol, and not isopropanol emissions themselves. For example, EPA could change the listing to "emissions from isopropyl alcohol manufacturing by the strong acid process" or "emissions by manufacturers of isopropyl alcohol who use the strong acid process." Such alternatives would better communicate the intent of the original listing, help prevent erroneous reporting and help ensure against inappropriate enforcement actions.

continue to engender significant confusion and wasted resources, and impede the purposes of EPCRA. For example, every year a substantial number of facilities that "process" or "otherwise use" isopropanol submit erroneous TRI reports. For several years, the Panel has sent letters to persons incorrectly reporting isopropanol emissions on the TRI to remind them that only manufacturers using the strong acid process are required to report. Nonetheless, every year a substantial number of facilities who "process" or "otherwise use" isopropanol submit erroneous TRI reports.[28] These companies and the EPA are put to significant expense in preparing and processing these reports.

The money spent in this fashion is needless, because the data obtained do not reflect the amount of toxic emissions from the strong acid process. Instead, they reflect nothing at all – not even isopropyl alcohol emissions, because only those emitters who have misunderstood the regulations will report their emissions. But this data collection is more than merely unnecessary. It is also positively harmful, in that it reports false information to the public, undermining confidence in EPCRA and inducing fear of what are actually harmless emissions. EPA publishes these reports even though they incorrectly suggest that a large number of facilities employ the strong acid manufacturing process and release thousands of pounds of carcinogens through that process.[29] This does a serious disservice to the public, which relies on these reports for accurate information about toxic releases in specific geographic regions.

Unnecessary confusion over the listing status of isopropyl alcohol also incurs costs to the EPA and private parties through mistaken enforcement. Indeed, even other offices within EPA do not understand that the TRI listing is limited to the emissions produced by a specific manufacturing process, and does not include the chemical isopropanol. In 1999, a company in Region VI received a pre-enforcement ("show cause") letter from EPA alleging, among other things, that the company did not comply with TRI reporting requirements because it failed to report releases of isopropanol.[30] Upon further investigation, the Panel discovered that this letter was part of a national enforcement initiative instigated by EPA Headquarters and involving all ten EPA Regions. Apparently, Headquarters prepared lists of facilities and the chemicals they allegedly failed to report, provided that information to the Regions, and recommended that the Regions instigate investigations and, as necessary, follow-up enforcement actions. In other words, *even the EPA personnel working on TRI enforcement did not know that the chemical isopropanol is required to be reported under TRI.* This enforcement initiative further demonstrates that EPA and the Panel have not been successful in their efforts to clarify the meaning of this TRI listing. Indeed, EPA's own office responsible for implementing the TRI program added *isopropyl alcohol* to its "TRI Indicators Program," showing that even people working on TRI implementation were unaware of the distinction between the chemical isopropyl alcohol and the strong acid process that is listed on the TRI. EPA and industry time and resources were wasted resolving these issues, and this will undoubtedly happen again unless EPA takes action.

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28 The Panel is certain that none of the companies currently reporting isopropanol emissions to the TRI actually use the strong acid manufacturing process. All of the companies who manufacture isopropanol are members of the Panel, and none of them use the strong acid process. Accordingly, the companies reporting isopropanol emissions to the TRI are either processors or users of isopropanol who are not required to report such emissions.

29 Furthermore, results are reported only for those companies who do not understand the listing, *not* for those companies that do understand the listing. So these reports in fact mean nothing at all – not only do they not reflect the release of toxic emissions from the strong acid process, they *also* do not record the release of isopropyl alcohol. They reflect *only* the release of isopropyl alcohol by companies who misunderstood the listing.

30 A copy of the letter is provided as Attachment 1.

In addition, the confusing TRI listing has resulted in adverse state regulatory actions. The inclusion of isopropyl alcohol on the TRI list is copied by states seeking to identify toxic chemicals, and results in the waste of state and private resources on what should be a low-priority substance. For example, isopropyl alcohol (*not* the strong acid process) was added to California's Air Toxics "Hot Spots" list based solely on its purported inclusion on the TRI, resulting in significant costs to the state and industry with no corresponding environmental benefits. California's South Coast and Rhode Island have both imposed limitations on the allowable levels of isopropanol emissions, based solely on the Air Toxics "Hot Spots" listing, which in turn was based on the TRI listing. The inclusion of isopropyl alcohol thus creates unnecessary costs for states (because states rely on the TRI listing to include those substances that are dangerous and only those substances) with no corresponding health or environmental benefit.

In addition to causing confusion and imposing substantial costs on state and regulatory agencies, the continued dissemination of isopropyl alcohol emissions reports on the TRI actually hinders, rather than promotes, the goals of community right-to-know. Rather than informing the public, it confuses the public by causing alarm over the release of a safe substance. This sort of confusion impedes the efficacy of EPCRA, because once a supposedly harmful emission is shown to be safe, the public may be less concerned when faced with the emission of a substance that actually is harmful.

EPA Guidelines indicate corrective action will be given in response to RFCs on the basis of the nature and timeliness of the information involved, the significance of the error on the use of the information and the magnitude of the error.[31] In this case, the information time frame of the information is that it is collected, compiled, and distributed on a yearly basis – such that the incorrect dissemination of isopropanol emissions reports is a continuous, ongoing, and annually repeated error. The nature of the information is highly important – both to EPA and the public. The TRI has been a flagship Agency program in disseminating information about toxics to the community. It is widely used by state and local agencies, public interest groups, the press and the public to identify facilities that should be targets for cleanup. For example, Environmental Defense makes the Toxic Release Inventory publicly available through its own data access tool, Scorecard. Scorecard allows members of the public to identify the "toxic chemical releases from industrial facilities" in their vicinity by providing their zip code. Through the website, members of the public can send a form letter by facsimile to the facilities responsible for the releases (*i.e.*, facilities reporting to the TRI) objecting to each facility's use of those allegedly toxic chemicals.[32] And the significance and magnitude of the error in the information is high, in that it renders information disseminated through the flagship TRI program completely meaningless.

There are significant public policy reasons for correcting this error. The importance of quality data in the area of pollution monitoring and compliance cannot be overstated, particularly where, as here, one of the primary purposes of the underlying statute is the provision of accurate data to the public. Indeed, the stated goals of the Office of Environmental Information – including enhancing information quality, fostering better information-based decision-making, and reducing the burden of information collection – would seem to require this correction.

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31 EPA Guidelines § 8.4.

32 Unlike EPA, which has failed to correct its listing, Environmental Defense has now altered its isopropanol listing to accurately reflect the correction the Panel is urging EPA to adopt. *See* Chemical Profile for Isopropyl Alcohol, *available at* http://www.scorecard.org/chemical-profiles/summary.tcl?edf_substance_id=67%2d63%2d0). The form states that "[t]his is not a TRI chemical even though TRI uses this CAS." To date third parties such as the Panel and Environmental Defense have had to be responsible for correcting EPA's erroneous listing.

Conclusion

EPA's publication of reports from the "Isopropyl alcohol (manufacturing - strong acid process)" TRI listing fails to reflect the intent of Congress and conflicts with the OMB and EPA Data Quality Guidelines by disseminating information that is unreliable, un-useful and inaccurate, and wasting public and private resources. The listing relates to a manufacturing process that, although linked to an increased cancer risk, is no longer in use in the U.S. or anywhere else in the world. In spite of the fact that the strong acid process is no longer used in the U.S., thousands of pounds in isopropanol releases are erroneously reported each year on the TRI list, causing confusion, wasting resources, producing absolutely no useful information, and in fact disseminating inaccurate and unreliable information. As a matter of public policy, incorrect information about substances that do not meet the EPCRA Section 313 listing criteria should not be disseminated to the public. It increases unnecessary alarm in communities, diluting the impact of reporting made on other substances that do meet the listing criteria. It wastes the time and energy of the EPA in enforcement, and of the private sector in reporting.[33]

In light of the foregoing, the Panel respectfully requests that EPA take the following corrective action: 1) refrain from including any future isopropanol emissions report data on the TRI, since any such data is erroneous; and 2) correct all historic TRI reports and the TRI database itself by removing incorrectly reported isopropanol data.[34]

Thank you for your consideration of this matter. If you have any questions, or would like any additional information, do not hesitate to contact Sarah Loftus McLallen, Manager of the Isopropanol Panel, at 703-741-5607.

Sincerely yours,

Ted Mauck (for)

Courtney M. Price
Vice-President, CHEMSTAR

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[33] If the emissions resulting from a certain method of manufacture are of concern, then those emissions should be reported, or the process should be reported, but not the product of manufacture itself.

[34] In the alternative, because the current isopropanol listing can never result in any correct reporting, provides misinformation to the public, undermines the goals of community right-to-know and violates the Information Quality Guidelines laid down by the OMB and EPA, EPA could simply remove the listing from the TRI altogether, pursuant to its authority under EPCRA.

ATTACHMENT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAY 28 1999

CERTIFIED MAIL RETURN RECEIPT REQUESTED

RE: Proposed Registration Agreement for Resolving Alleged Violations of the Emergency Planning and Community Right to Know Act (EPCRA) Section 313

Dear Mr. Kover:

The U.S. Environmental Protection Agency (EPA) has recently completed an audit on facilities submitting reports to EPA pursuant to § 313 of EPCRA, 42 U.S.C. § 11023, describing quantities and types of chemicals for toxic chemical release inventories. The EPA conducted its audit by compiling various data sources which included both EPA-compiled and commercially available data. Based on the findings from this audit, EPA has reason to believe that your facility did not comply with the 1994 Toxic Release Inventory (TRI) reporting requirements and potentially did not comply with reporting requirements in subsequent years as well. In particular, EPA has reason to believe that your facility did not report the following chemical(s) for the 1994 reporting year:

Isopropyl Alcohol (Mfg); N-Butyl Alcohol; Ethylene; 1,3-Butadiene; and Propylene

The purpose of this letter is to bring this alleged violation(s) to your attention and to propose an equitable means of settlement, conducive to both EPA and your facility. The EPA would prefer to resolve any alleged violation(s) without onsite inspections, or other more detailed investigations which would lead to high transaction costs. By offering significant incentives, EPA wishes to encourage you to resolve the described violation(s), in addition to any other EPCRA 313 violation(s) or compliance issue(s), discovered by a "proposed audit" of your facility. If you are willing to conduct an EPCRA 313 compliance audit, then EPA is willing to substantially reduce the civil penalties it will propose for the violation(s) cited above and any others that may be identified by an audit, in order to achieve settlement.

When contemplating whether or not to accept EPA's offer, please remember that EPCRA § 325, 42 U.S.C. § 11045, authorizes the assessment of a civil penalty of up to $25,000 per day for each violation of EPCRA 313 ($27,500 per day for each violation for violations occurring after January 30, 1997, 61 Fed. Reg. 69630, December 31, 1996). Please note, each year and each chemical is considered a separate violation. When EPCRA 313 violations are discovered by EPA, penalties are calculated based on the degree of chemical usage above threshold , the number of employees, and annual sales of the company. Penalties can be substantially increased if the facility has had a history of prior EPCRA 313 violations. The EPA's assessed penalties are consistent with EPA's *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act*, (August 10, 1992) (EPCRA ERP), a copy of which is enclosed for your reference.

For your company to obtain the reduced penalties, it must agree, by signing the enclosed EPCRA § 313 TRI Enforcement Compliance Review (ECR) Registration Agreement, to conduct an audit of the facility, with due diligence. If your company agrees to and signs the ECR, and carries out its obligations thereunder, EPA will assess substantially reduced civil penalties, for the violation(s) cited above, and for the violations you disclose as a result of the audit, as described in the penalty matrix table below. As in the ERP, the matrix below is based on:

"Extent Levels:"

- Whether or not the chemical in question was "manufactured, processed or otherwise used" at more than or less than ten times (10 x) threshold for the year in question.
- Whether or not the total corporate entity sales was more than or less than $10,000,000 dollars for the year in question.
- Whether or not the total number of employees was more than or less than 50 for the year in question.

and "Circumstance Levels:"

- The type and severity of the violation.

See top of next page for Penalty Matrix Table.

EPCRA 313 PENALTY MATRIX

	A	B	C
1	$5,000 ($25,000)*	$3,400 ($17,000)	$1,000 ($5,000)
2	$4,000 ($20,000)	$2,800 ($13,000)	$600 ($3,000)
3	$3,000 ($15,000)	$2,000 ($10,000)	$300 ($1,500)
4	$2,000 ($10,000)	$1,200 ($6,000)	$200 ($1,000)
5	$1,000 ($5,000)	$600 ($3,000)	$100 ($500)
6	$400 ($2,000)	$260 ($1,300)	$40 ($200)

*Figures in parentheses are the "normal" penalty values found in the ERP for violations occurring before January 30, 1997. Penalties occurring after January 30, 1997, would be 10 percent higher, across the board. The higher penalties would have been assessed had the EPCRA 313 violation(s) occurred after January 30, 1997, and had been discovered through a federal compliance inspection.

The EPA wishes to stress the importance of accepting this proposal, and for your facility to come into compliance with EPCRA 313 on its own accord. The normal penalty increase for a history of prior EPCRA 313 violations, should there be any, will not be applied to facilities accepting this proposal.

If you wish to accept this proposed settlement structure, please have a corporate officer execute the enclosed ECR Registration Agreement and return it to us in accordance with the ECR's terms within ten (10) business days from receipt of this letter. If you do so, you will have agreed with EPA to the following process, as set forth in the ECR Registration Agreement:

- The EPA will review and execute the ECR Registration Agreement and return a copy, along with reporting information for the 1994 TRI reporting year via certified mail.
- Your facility will review its EPCRA 313 compliance and will report back to EPA with its findings within three weeks from receipt of the executed ECR, unless an extension has been granted by EPA.
- The EPA will review your company's report and will prepare a Consent Agreement and Consent Order (CACO) consistent with the terms of the ECR, citing the penalty amount obtained by application of the matrix above for the identified violations.
- The CACO will be sent to your facility. Upon receipt your facility will execute the CACO and return it to EPA by overnight mail.
- The EPA will then file a Complaint to initiate the matter, citing the penalty amount obtained by application of the matrix above, and submit the CACO for Regional approval.

Copies of the executed Complaint and CACO will then be sent to your facility.

- Your facility will have 30 days from receipt of the executed CACO to pay any penalty.

Please review the ECR Registration Agreement for more detail on the your facility's potential obligations under the agreement and the timing of all actions.

The EPA understands that there may be limitations to the data compiled in its audit. Accordingly, if you do not believe that your company was obligated to report under EPCRA 313 for the 1994 reporting year, please inform us of your conclusion and document the facts on which it is based. However, in the event additional violations are discovered, other than those described from EPA's audit, and you wish to receive the same reductions in penalties, please execute the enclosed ECR Registration Agreement and return to EPA. The EPA reserves the right to independently verify any conclusion on the applicability of EPCRA 313 or its regulations to any facility or Respondent. Please carefully consider accepting this opportunity to come into compliance with EPCRA 313 with significantly reduced penalties. Should you decline to accept this offer, EPA reserves the right to follow a standard investigatory path for the violation(s) alleged above which may result in EPA filing a Civil Administrative Complaint against you.

In the event you should have any questions about this audit and settlement offer or other issues regarding EPCRA 313, please contact my enforcement coordinator, Morton E. Wakeland, Jr., at 214.665.8116. Your attention to this matter is appreciated.

Sincerely yours,

Robert E. Hannesschlager, P.E.
Acting Director,
Multimedia Planning & Permitting Division
EPA, Region 6

Enclosures

ECR Registration Agreement
EPCRA 313 ERP
Sample reporting letter