

# National Lime Association

200 N. Glebe Road  
Arlington, Virginia

Feb. 23, 2004

Mr. John M. Dombrowski  
2844T  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460  
[dombrowski.john@epa.gov](mailto:dombrowski.john@epa.gov)

Re: National Lime Association Question on Overburden

Dear Mr. Dombrowski:

I am writing this letter on behalf of the National Lime Association (NLA) to seek clarification of a point in the TRI reporting regulations. Specifically, we are seeking clarification that TRI chemicals contained in overburden at non-metal mines (such as limestone quarries) are not required to be included in threshold determinations or reports from affiliated facilities (such as lime plants) that are subject to TRI reporting.

## Background

Lime manufacturing facilities are subject to TRI reporting requirements because they are within SIC code 3274 (Lime). Stand-alone limestone quarries are not subject to TRI reporting requirements, because they are within SIC code 1422 (Crushed and Broken Limestone). However, EPA has stated that a multi-establishment facility must make threshold determinations and must report on releases, waste management activities, and source reduction activities for the entire facility, even from establishments that are not in covered SIC codes. (See EPCRA Section 313 Questions and Answers, Revised 1998 Version ("Q&A"), Question 68.)

Accordingly, at lime plants with a co-located quarry, owners have looked at chemicals in quarry operations as part of their overall reporting requirement. EPA's position is that TRI chemicals in waste rock should not be included in a threshold determination, but that they must be included in reports if the threshold is met elsewhere at the facility (unless they are present in the waste rock at de minimis levels). (See Q&A Question 341; EPA explanation of Barrick case, [http://www.epa.gov/tri/lawsandregs/barrick\\_lawsuit\\_epa\\_analysis.htm](http://www.epa.gov/tri/lawsandregs/barrick_lawsuit_epa_analysis.htm).)

## Overburden Exemption

In 1997, the TRI regulations were amended to add certain SIC codes, including metal mining operations. Non-metal mining operations, including limestone quarry operations,

remain excluded. At the time the metal mines were added, an exemption for overburden was included in 40 CFR § 372.38(h):

*Metal mining overburden.* If a toxic chemical that is a constituent of overburden is processed or otherwise used by facilities in SIC code 10, a person is not required to consider the quantity of the toxic chemical so processed, or otherwise used when determining whether an applicable threshold has been met under § 372.25 or § 372.27, or determining the amounts to be reported under § 372.30.

Overburden is defined in § 372.3 as follows:

*Overburden* means the unconsolidated material that overlies a deposit of useful materials or ores. It does not include any portion of ore or waste rock.

EPA explained this exemption in preamble language:

However, EPA believes, based on the Agency's current understanding, that overburden contains EPCRA section 313 chemicals in negligible amounts and that reporting is unlikely to provide the public with any valuable information... EPA believes that this action will reduce the compliance burdens on metal mining facilities while not depriving the public of any valuable information regarding toxic chemicals.

62 Fed. Reg. 23859 (May 1, 1997).

#### Applicability to Non-Metal Mining Overburden

NLA is seeking clarification from EPA that overburden from non-metal mining is also exempt from threshold consideration and reporting, for the following reasons.

First, it is clear that the language of the overburden exemption refers only to metal mining overburden for the simple reason that only metal mines were being added to the TRI system in the rule. (Coal mines were also added in that rule; they enjoy an even broader exemption for chemicals in extraction.) The drafters of the regulatory language apparently did not focus on the fact that certain non-metal mines would be included in the TRI system by virtue of the rules for multi-establishment facilities. NLA has not found any discussion of non-metal mining facilities in connection with the overburden exemption in the relevant preambles or background materials. Accordingly, it seems clear that there was no intent on the part of the regulatory drafters to include non-metal mining overburden in the TRI requirements, or to distinguish between metal and non-metal mining overburden.

Second, the rationale for exempting TRI chemicals in overburden from non-metal mining is the same as that for metal mining. Overburden in non-metal mining is also unconsolidated material not containing ore or waste rock, and is similarly unlikely to contain toxic chemicals at levels of concern. As with metal mining overburden, it would not be helpful to the public to receive information on the contents of this material—

especially given the fact that the vast majority of non-metal mines are not within the TRI reporting system at all.

Thus, the issue confronting the lime industry is that the technical language of the rule does not make it clear that the overburden exemption applies to non-metal mining, even though the justification is the same.

In the EPCRA Section 313 Questions and Answers, EPA has dealt with analogous situations in which the technical language of the rules does not specifically exempt certain chemicals. Thus, for example, EPA was asked in Question 237 whether office type products require reporting. EPA responded:

EPA does not intend to require covered facilities to account for listed toxic chemicals in typical office supplies such as correction fluid and copier machine fluids. Although not specifically exempted by the regulation, EPA interprets such mixtures or products to be equivalent to personal use items or materials present in a facility's cafeteria, store, or infirmary (40 CFR Section 372.38(c)(3)). [italics omitted]

In response to a similar question about "white-out" (Question 238), EPA responded even more succinctly that "[o]ffice products fall within the same realm as the personal use exemption."

Although these examples obviously deal with very different kinds of material from mining overburden, the situation is otherwise similar. Overburden from non-metal mining clearly falls within the same "realm" as overburden from metal mines, and the two types of overburden are "equivalent."

NLA requests that EPA follow a similar rule of reason with regard to non-metal mining overburden.

### Conclusion

NLA requests that EPA clarify that overburden from non-metal mining qualifies for the same exemption as overburden from metal mining.

Please let me know if we can provide any further information to assist you in addressing this issue. Thank you for your consideration.

Very truly yours,

Hunter L. Prillaman  
National Lime Association

Ex. 6

hprillaman@lime.org