



## TRI Form R Reporting & Concrete Plants: Are You Doing TRI Form R Reporting?

By Doug Ruhlin

Concrete is one of the most versatile, durable building materials known to man - made from natural, basic materials of sand, stone, limestone cement, and water. Concrete producers don't like to think there is anything hazardous or toxic within concrete, and they're right. There really isn't anything in concrete that could interact in a negative way with the environment under nearly all applications of concrete.

However, concrete producers, like any other US industrial operation, is subject to chemical reporting regulations if they use, process, manufacture, or store certain chemicals above threshold quantities set by the USEPA. These reporting requirements are part of the SARA / EPCRA regulations, and have to do with letting the outside world know what types of chemicals are stored at industrial facilities, in what quantities, and if there have been any releases to the environment.

The most familiar of these programs is the Community Right to Know reporting, often called CRTK or Tier II Reporting, for the forms commonly used, which requires reporting of all MSDS materials which are present in quantities over 10,000 pounds (for most chemicals, some have lower thresholds). Common materials reported at concrete plants include fuels, admixtures, cement, and perhaps sand.

But this blog posting is about the "big brother" of reporting, which is for TOXIC chemicals (toxic chemicals are a subset of hazardous chemicals). This reporting is called TRI Form R Reporting, standing for Toxic Release Inventory Reporting, or Form R Reporting for the form that is used. Different than Tier II reporting - dif-



ferent deadline, chemicals, and reporting thresholds.

Concrete plants don't typically have any toxic materials present that would be required to be reported in TRI Form R Reporting, do they? The answer is yes and no.

The most commonly reported chemical that MAY be present at a concrete plant that appears on the USEPA's toxic chemical are nitrate chemicals. These MAY be present within certain non-chloride accelerator admixtures. How do you know? Check your MSDS, look for nitrates, then calculate how much you have used, stored, processed, or otherwise handled over the course of the past calendar year. Was it over 25,000 pounds? Then you have to report!

But is this every concrete plant? Absolutely not. In fact, it's probably not most concrete plants. My experience doing TRI Form R Reporting at concrete

*continued on page 3*

### in the mix ...

<b>8 Common Questions (and answers) About TRI Form R Reporting.....</b>	<b>3</b>
<b>Staunton Engineer Speaks to BRCAC .....</b>	<b>4</b>
<b>UVa Engineering Class Visits Allied Concrete .....</b>	<b>4</b>
<b>NVCAC Promotional Council's Festive 2012 Wrap Up .....</b>	<b>6</b>
<b>Hampton Roads Council Installs New Officers for 2013.....</b>	<b>8</b>
<b>PCA Cement Forecast Heavily Dependent on Congressional Fiscal Cliff Action .....</b>	<b>9</b>
<b>Sexual Harassment: A Continuing and Costly Issue in the Workplace</b>	<b>10</b>
<b>Calendar of Upcoming Events .....</b>	<b>11</b>

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Questions? Contact Christina Sandridge at 434/326-9815  
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## TRI Reporting *continued from page 1*

plants is that it's usually only either very high production plants, or those doing some sort of large cold-weather job that uses non-chloride accelerators. Usually, not all plants.

So, most concrete plants likely don't have to do this. But how do you know? You need to check! If you are unsure if you need to do TRI Form R Reporting, here's a great resource to check out.

What if you find out you were supposed to be doing TRI Form R Reporting, and haven't been? That's a very tricky question. I'd advise you consider qualified assistance in that instance. You may be facing a potential enforcement situation that could land you in a lot of hot water. The USEPA Audit Policy may be of help to you, but proceed very carefully!

What if there are toxic chemicals present at the concrete plant? Does that mean the concrete plant is a threat to the envi-

ronment? NO!! The admixture is kept in a storage container, mixed into new concrete, which then goes to a jobsite and hardens. The nitrate content, extremely small to begin with, is now bound into the concrete and unavailable for release to the environment. TRI Form R Reporting requires the estimation of releases of any toxic chemical to the environment, and most who do report indicate that there are no releases. So, no harm to the environment!

So is everyone reporting who's required?

I did a quick check today of one entire region of the US, by looking at the USEPA Echo database. It lists, among other things, how many plants are doing TRI Form R Reporting. I won't divulge what region of the country, or how many concrete plants came up, but I will let you know that only 8% of the plants listed appear to be doing TRI Form R Reporting. Multiple states, only

a handful are doing TRI Form R Reporting. Hmmmm...

That seems to be an awfully low percentage of facilities doing TRI Form R Reporting. Meaning what? Meaning a potentially high amount of non-compliance. And a high amount of potential liability.

I've been talking about TRI Form R Reporting for years now, and so has NRMCA. Is the message getting through? What should you do? Find out NOW if you should be doing TRI Form R Reporting. If you don't know how, or if it turns out you should be doing TRI Form R Reporting, seek expert help. Don't become an enforcement headline. 🚚

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## 8 Common Questions (and answers) About TRI Form R Reporting

- 1▶ Isn't TRI Form R Reporting the same as SARA Tier II / Community Right to Know Reporting, which I already do?** NO. They are different, in a few important ways. SARA Tier II Reporting covers hazardous materials used at your plant. So if you're doing those, great. But that doesn't cover you for TRI Form R Reporting if you're supposed to be doing that also, which covers a different group of chemicals.
- 2▶ What chemicals could I have at my site that need to be included in TRI Form R Reporting?** TRI Form R Reporting is for a subset of hazardous chemicals, those that are TOXIC and are present on a list put out by USEPA. Don't get offended - you probably don't make toxic or hazardous products, and don't like to think that your plant site contains toxic materials. What are likely report triggers? For concrete facilities, it would be the presence of nitrates in non-chloride accelerator admixtures (they have to be present as >1% of the mixture). Depending upon the volume present in the admixture, it might take only a few thousand gallons used at your plant over a year's time to trigger the need for TRI Form R Reporting due to the presence of more than 25,000 pounds. For asphalt plants, it could be the presence of PACs (polycyclic aromatic compounds) in the oil used, with a 100 pound reporting threshold. Determine where you stand by checking your MSDS for all your products you use at your plant, check the contents against the TRI list, and then calculate whether you exceed the reporting thresholds.
- 3▶ Do I have to report?** TRI Form R Reporting is required for any industrial facility (with a few restrictions, based on SIC/NAICS code and employee hours worked) that manufacturers, processes, or otherwise uses any chemical identified by the USEPA as toxic above reporting thresholds. It's simple - exceed the thresholds, you have to report.
- 4▶ What's the typical reporting threshold?** If you manufacturer or process a listed chemical, it's usually 25,000 pounds; if you "otherwise use" a listed chemical, it's 10,000 pounds. Some particularly nasty toxic chemicals, called the PBT chemicals (persistent, bioaccumulative, toxic) have much lower thresholds, some down to 50 pounds or less. If you're in the concrete or other construction materials industries, you likely process TRI chemicals, so the applicable reporting threshold is usually 25,000 pounds.
- 5▶ What does TRI Form R Reporting involve?** First off, it has to be done electronically. It isn't easy, but it isn't rocket science either. If you haven't done it before, you'd be better off hiring someone who knows the ropes (we do!). From then on, it's not that hard to do.
- 6▶ But what if I don't RELEASE any of these chemicals to the environment?** That's okay. Exceedance of the reporting thresholds is based on the volume you process at your plant, not the amount you release. You might have TRI chemicals at your plant (like nitrates), put them into your product (such as concrete), the ship them out for use elsewhere where the minute concentration of nitrates stays bound up in the concrete. So, you might not have ANY release to the environment. That's okay (in fact, better for the environment!) - but you still have to report.
- 7▶ What if I find out I have to report, and haven't been doing it in the past?** This is a tricky one. First off, if you have to do TRI Form R Reporting, DO IT. But if this might raise a red flag, you might be better off having an expert help, and consider using the USEPA Audit Policy for self-reporting of past potential violations (like not reporting) in order to avoid liability or penalty. We've done it before, and it works.
- 8▶ Can't I just keep my head down and ignore this?** Sure, but if you get found in violation, the penalties can be severe, including very large fines from the USEPA. Our advice? If you need to report, do it. 🚚

## Staunton Engineer Speaks to BRCAC


Steve Yancey, Superintendent of Streets for Staunton, VA, recently spoke to members of the Blue Ridge Concrete Advisory Council at their regular business meeting. Continuing the practice of having a brief educational program at each Council meeting, Yancey talked to the group about municipal funding practices and how various projects are paid for, about the prioritizing of street repairs and new projects, and about instances where municipal officials decide if concrete is the preferred paving material.

Members learned that paving decisions are frequently made by the local officials, even though the project may follow VDOT guidelines and specifications. Municipalities, just like VDOT, are interested in competitive bidding and life-cycle costs, and may even be more sensitive to public opinion.

Staunton is one of the few smaller communities in Virginia that currently has some concrete intersections and turning lanes, although most are now decades old.

Yancey discussed several local projects that interest Blue Ridge Council members, and pointed out some instances where a project in design could still be influenced by a concrete proposal. After the meeting Bob Neal and Bob Nablo met with Yancey to look at a specific intersection currently needing repair or replacement and made several recommendations.

Somewhat surprisingly, in Staunton the City Engineer does not work directly for the Director of Public Works, which can lead to some complications and delays, but all officials are now better informed about concrete paving and the advantages of competitive bidding.

With some promotional work by Blue Ridge Council members this may lead to new concrete paving in the region. 


## UVa Engineering Class Visits Allied Concrete



By Bob Nablo,  
Director of Industry Services

In mid-November Dr. Devin Harris of the University of Virginia's Civil and Environmental Engineering Dept. and Bob Nablo of VRMCA met to discuss possible classroom presentations to engineering students. During the talks the possibility of a visit by students to a ready-mixed operation came up, and Nablo assured Dr. Harris that producer members in the Charlottesville area would welcome such an opportunity. Harris noted that Allied Concrete's local plant was within walking distance for many of his students and asked about pursuing that avenue. Nablo contacted Gus Lorber, President of Allied Concrete, who readily agreed to arrange a visit.

Paul Grubb of Allied conducted the visit for about a dozen students on November 15 and according to Dr. Harris and Allied, everything went very well and the students were impressed by the scope of operations at the plant and learned more about batching and delivering ready-mixed concrete than they could ever learn in class.

Visits such as this to concrete plants and cement operations, while not unusual, are excellent opportunities for the industry to expose soon-to-be engineers to the realities of daily life in the construction business and makes them much more appreciative of the varied uses of concrete as they enter the business world. Thanks to Allied for making this successful visit possible in a very timely manner. 

### VRMCA Plans Legislative Visits

Please plan to join us to visit with your State Legislators at the Capitol in Richmond. We will gather together on the morning of Tuesday, January 15th at 8 a.m. at the Omni Richmond Hotel. We will enjoy a light breakfast and review talking points before proceeding to Capitol Hill at 9 a.m. to visit with the legislators.

If you need a room, a group rate is being offered at the Omni. To receive the \$179 group rate, call 800-THE-OMNI or 800-843-6664 no later than January 4th (*members are responsible for making their own reservations*).

Men should plan to dress in coat/tie and women in business attire.

If you have questions, contact Sherry Whiting at 434/977-3716 or [sherry.whiting@easterassociates.com](mailto:sherry.whiting@easterassociates.com).

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## NVCAC Promotional Council's Festive 2012 Wrap Up



### By Hessam Nabavi, Director of Industry Services

In the past few years, NVCAC has designated the December council meeting to be a holiday luncheon. This is to thank our members, to reflect back on the promotional effort and to celebrate another successful year. This year was no different. This year's luncheon took place in the beautiful Bull Run Golf Club in Haymarket on December 13th. The gathering started with festive music and assorted Italian hors d'oeuvres. Before lunch, Jeff Slagle, General Manager with Rowe Materials and the 2011 & 2012 NVCAC Council Chairman, gave his closing statement. In his remarks he credited the productivity of NOVA promotional council to the committee chairs and their members. He also talked about some of the noteworthy paving projects and the first concrete street project in Virginia after 20 years, "Amelia Square". After Jeff's remarks I gave a brief talk to the membership and thanked them for their continued support and participation in the objectives of the council. Jeff and I then recognized all the committee chairmen for their leadership

and effort, and presented each of them with a small gift as a token of appreciation for a job well done.

Finally, I concluded this segment by introducing the 2013 NVCAC leadership. Dave Snider with Vulcan Materials

and Incoming NVCAC Council Chairman; Kevin Terry with Vulcan Materials and Incoming Residential Committee Chairman; Patrick Sullivan with BASF and incoming Commercial Committee Chairman; James Murray with Rowe Materials and Paving Committee Chairman; Marc Granahan with Lehigh Cement and Educational Committee Chairman; and Zack Swanson with Grace and Secretary/Treasurer.

A festive Mediterranean Buffet was a very delicious wrap-up for the 2012 council.

VRMCA is very grateful to all the member companies for their support of the NVCAC promotional council. The council relies heavily on its members' participation and greatly appreciates their efforts to promote the council's promotional goals. 🚚



I then recognized Jeff for his outstanding service and leadership to NVCAC with a plaque and a small gift.

participation and greatly appreciates their efforts to promote the council's promotional goals. 🚚



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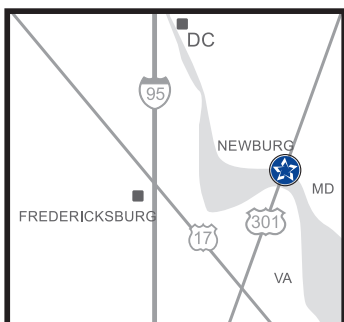
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### **NRMCA Accepting Nominations for Annual Concrete Cares Award**

The Manufacturers, Products & Services (MPS) Division of NRMCA is accepting nominations for the 2013 Concrete Cares Award, which recognizes outstanding contributions in community service by an NRMCA producer member company.


A donation, in the name of the selected honoree, will be made to the charity of the company's choice. The award will be presented at NRMCA's Annual Convention to be held in March 2013 in San Antonio, TX, during the Association's annual awards breakfast. All ready mixed concrete producers who are members of NRMCA are eligible for nomination.

To check past honorees and submit a nomination for consideration, please visit the [nrmca website](http://nrmca.com) to download a form. Nominations must be received by January 7, 2013 for consideration.



### **Hampton Roads Council Installs New Officers for 2013**

The Hampton Roads Advisory Council held an installation service for the chairmanship at its annual Christmas Party in December. The passing of the gavel from Chairman Joe Bradshaw to Barb Nelson, the new chairman, was part of the ceremony. The first organizational meeting will be conducted during the regular January meeting. Chairwoman Barb plans to establish marketing and promotional efforts which proved to be successful in previous years. Committees will be appointed for ICF construction, parking areas utilizing conventional and pervious paving, in addition to the plans for Local Street and Road marketing. The 2013 ACI Concrete Technician courses will be located at the Virginia Beach Municipal Government Center, which will offer improved classroom and testing locations. Members are encouraged to attend the first organizational meeting on January 8, 2013.

The VRMCA wishes to thank Chairman Joe Bradshaw for his service during the past two years. Joe has guided the council well during these challenging economic times. He was also responsible for securing our location for the monthly meetings. Joe will continue to serve and support council activities and Chairwoman Barb Nelson. 



## PCA Cement Forecast Heavily Dependent on Congressional Fiscal Cliff Action

Although cement consumption and overall U.S. construction activity increased significantly more than expected in 2012, these gains would be immediately erased in 2013 if the fiscal cliff is not resolved in a timely manner.

A forecast from the Portland Cement Association (PCA) expects a 7.5 percent jump in cement consumption in 2012, up 50 basis points from its summer forecast. However, the instability of the political landscape makes projecting 2013 consumption more challenging.

The “fiscal cliff” came about from dual economic objectives reflecting the need to inject fiscal stimulus into an inert economy and the need to deal with burgeoning federal debt. Packaged together as the


Budget Control Act of 2011, tax increases of \$400 billion coupled with \$200 billion in federal spending cuts are scheduled to go into effect January 1, 2013.

If Congress resolves the fiscal cliff during its lame duck session in 2012, PCA expects the economy to continue to grow and cement consumption in 2013 to increase 6 percent. Adversely, even if Congress addresses the policies by the first quarter of 2013, this delay will cause significant economic harm and cause a 2.7 drop in cement consumption.

“Because we believe the odds for either outcome are even, we have adopted a forecasting approach that minimizes up and downside risk,” Ed Sullivan, PCA chief economist, said. “Our baseline sce-

nario blends the two possible outcomes and projects a 1.8 percent increase in cement consumption in 2013.”

Sullivan also reported that the longer Congress delays in addressing the fiscal cliff, the greater the adverse affect on economic growth and construction activity in particular. “If no action is taken by mid-2013, the country could be headed into a severe recession.”

According to the PCA report, cement consumption through September 2012 had increased 10 percent compared to last year, with 16 consecutive months of growth. Sullivan attributes this growth to the return of consumer confidence, a strong housing market and most importantly, growth in employment. 

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Count on Concrete

## Sexual Harassment: A Continuing and Costly Issue in the Workplace

By John G. Kruchko and  
Kathleen A. Talty

The Equal Employment Opportunity Commission ("EEOC"), which is the federal agency that is responsible for the enforcement of a number of federal employment discrimination laws such as Title VII of the Civil Rights Act ("Title VII"), as amended, has in recent years taken a more aggressive stance in its enforcement efforts. In a recently released report entitled "Performance and Accountability Report under New Strategic Plan", the EEOC stated that in fiscal year 2012, which ended on September 30, 2012, the agency secured monetary recovery through its private sector administrative enforcement in the amount of \$365.4 million. According to the EEOC, the \$365.4 million was "historic" and represents the highest level of recovery ever received by the EEOC. In addition, the agency recovered \$44.2 million through its litigation efforts, which represents those cases in which the EEOC actually filed federal lawsuits against private sector employers.

Sexual harassment claims were the basis for some of the EEOC's significant monetary recovery. A review of some of the sexual harassment cases in which the EEOC has prevailed in establishing a violation of Title VII can be instructive to employers.

The EEOC settled one sexual harassment lawsuit against a restaurant chain for one (1) million dollars, as well as securing other relief through a consent decree. Therefore, in addition to the monetary payment, the employer/restaurant chain is now required to implement policies and practices that will provide employees with a work environment free of sex discrimination and retaliation, to provide anti-discrimination training and to post a notice of the settlement in the work place. In this case, a group of 22 women complained about the conduct of a male manager which included sexual comments, innuendo and unwanted touching. According to the EEOC, some women were forced to



quit their jobs because of the continued harassment and the employer's failure to respond affirmatively to the women's complaints.

In another case that was based on the complaints of four (4) women who worked in a warehouse and were subjected to sexual harassment by their male manager, the EEOC obtained an award of \$150,000. In that case, the women alleged that the male manager made inappropriate comments, displayed pornographic pictures and inappropriately touched them. Additionally, he asked them out on dates or invited them to hotels. When the women refused the advances, the EEOC alleged that the manager disciplined and terminated the employees. Although the women complained to upper management, the EEOC alleged that no steps were taken to stop the harassment.

The sexual harassment cases in which the EEOC is obtaining significant monetary recovery are not restricted to the "traditional" sexual harassment

cases in which the alleged harasser is the man and the victim of the harassment is a woman. According to the EEOC, the percentage of sexual harassment complaints filed by men who are alleging that they are the victims of harassment, has been steadily growing. Moreover, the EEOC stated that many of those charges include allegations of same-sex harassment. Under that theory of harassment, the alleged harasser and the victim are the same sex.

In one case that involved an upscale steakhouse, the employer agreed to pay \$600,000 and to provide other relief to settle a sexual harassment and retaliation lawsuit that was filed by the EEOC. The allegations in that case were based on the claims made by 22 male waiters who alleged that they were subjected to harassment based on their sex by one (1) male manager over an eight (8)-year period. The male waiters contended that they were subjected to groping, lewd comments and touching of their genitals. The waiters frequently complained


over the years to upper-level managers and the owner of the operation, but the harassment did not stop.

In another case involving a claim of same sex harassment that was filed by the EEOC, a jury awarded over \$450,000 in damages to a former male employee. In this case, the former male employee contended that a male superintendent harassed and taunted him by engaging in verbal abuse, taunting gestures of a sexual nature and by exposing himself. During the trial, the EEOC also presented evidence the supervisor harassed the employee because the supervisor didn't think that the employee conformed to the supervisor's gender stereotypes of a typical "rough ironworker." Further, the evidence showed that after the male employee complained about the supervisor's harassment the employee was transferred to another location, paid a lower hourly rate and then laid off because there was supposedly less work at the new location. This evidence formed the basis for the EEOC's retaliation claim and, based on the jury's award, the jury was influenced by the evidence in reaching its decision.

The EEOC is also pursuing actions against a car dealership and a farm operation which involve male employees' claims of same sex harassment by either male co-workers or supervisors. In these cases, the allegations involve inappropriate or lewd comments, touching and propositioning. The alleged harassment also existed for an extended period of time. In the car dealership case, the alleged same-sex harassment continued for a 10 year period. While in the farm operation case, the period of the harassment was for two (2) years. In both cases, the EEOC is contending that when the employees complained about the harassment that their complaints were

unheeded by management and, in some instances, the employees were forced to quit their jobs because they felt that their physical safety was in jeopardy.

While the same sex harassment cases often contain graphic allegations, these cases reveal some common themes, the existence of which frequently resulted in substantial employer liability. In all of the cases considered in this article, when the employee complained to management about the harassment, management failed to take steps to prevent or to end the that conduct. The failure to respond to the employee's complaint and to investigate the matter combined to place the employer in a situation where its ability to raise affirmative defenses was greatly limited or simply non-existent.

In order to minimize liability for claims of sexual harassment, it is critical that employers have an effective harassment policy that clearly spells out the employer's prohibition on any form of workplace harassment and that includes a mechanism for employees to come forward with harassment complaints. A well-drafted harassment policy alone will not immunize an employer from liability if the employer fails to respond when employees complain of harassment, however. All complaints of harassment should be thoroughly investigated by management. The process that the employer uses when investigating a harassment complaint should also be documented and appropriate action should be taken at the conclusion of the investigation. The employers referenced in this article refused to act when employees complained of harassment, and as a result the employers incurred significant monetary consequences. 

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## On the Horizon

### Calendar of Upcoming Events

**JANUARY 4, 2013**

**NVCAC Planning Meeting**  
Springfield, VA

**JANUARY 8, 2013**

**HRCAC Business Meeting**  
Surf Rider Restaurant  
Virginia Beach, VA

**JANUARY 10, 2013**

**NVCAC Business Meeting**  
7:30 AM - 9:00 AM  
Manassas, VA

**JANUARY 15, 2013**

**CVCAC Business Meeting**  
Meadowbrook Country Club  
Richmond, VA

**JANUARY 16, 2013**

**Concrete Promotion  
BOOT Camp**  
NRMCA Office  
Silver Spring, MD

**SWCAC Business Meeting**

8:00 AM - 9:30 AM  
Roanoker Restaurant  
Roanoke, VA

**JANUARY 24, 2013**

**Back to the Basics**  
5:30 PM - 7:30 PM  
Hotel Roanoke  
Roanoke, VA

**JANUARY 16, 2013**

**BRCAC SLR  
Subcommittee Meeting**  
12:00 PM - 1:00 PM  
Harrisonburg, VA

**JANUARY 23, 2013**

**NVCAC Meeting/Presentation**  
City of Alexandria Transportation &  
Environmental  
Alexandria, VA

**JANUARY 30-31, 2013**

**Energy & Sustainability  
Conference**  
Richmond, VA

Please visit the online calendar  
for an up-to-date list of events.  
[www.VRMCA.com/calendar](http://www.VRMCA.com/calendar)



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