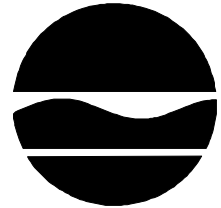


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Denise M. Sheehan  
Commissioner

January 13, 2006

EPA Docket Center (EPA/DC)  
Attn: Docket No. TRI-2005-0073  
U. S. EPA West  
Room B102  
1301 Constitution Avenue, NW  
Washington, DC 20004

**Toxics Release Inventory Burden Reduction Proposed Rule**

Dear Docket Administrator:

The New York State Department of Environmental Conservation (Department) appreciates the opportunity to comment on the above-referenced proposed rule (Proposed Rule) by the United States Environmental Protection Agency (EPA). The proposed rule is intended to reduce the burden on individual facilities currently meeting the applicability of submitting Toxic Release Inventory (TRI) data under §313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). While the Department could support changes to TRI to streamline reporting and reduce the burden on those facilities required to report, the Department does not support the current proposal because it will result in the loss of valuable data.

Currently, facilities meeting the applicability requirements under EPCRA need to file a Form R statement with the EPA for each listed §313 chemical. Under section 5, Part II of Form R, the facility operator or owner needs to report detailed information on each chemical's release to various media on-site. In 1994, EPA established an alternate reporting system - the Form A Certification Statement (59 FR 61488). Form A was established to reduce the burden on facility owners who, in EPA's opinion, had relatively low annual reportable amounts of TRI chemicals. Those facilities meeting the applicability requirements under EPCRA, but whose total annual reportable amount for a particular chemical was 500 pounds or less, excluding chemicals designated as chemicals of special concern (see 40 CFR 378.28), were able to use Form A. Form A does not have information on the chemical's release to the various media. The proposed rule intends to expand the total annual reportable amount for Form A filers from 500 pounds to 5000 pounds per year, resulting in a loss of information for additional chemicals. The proposed rule also expands Form A eligibility to chemicals of special concern (otherwise referred to as persistent, bioaccumulative, toxic chemicals or PBTs) to facilities that meet the applicability requirements under EPCRA, have no releases to the environment and have 500 pounds or less of total other waste management quantities. Other waste management quantities include recycling, energy recovery and treatment for destruction.

For chemicals reported on Form A, the Department and the public have no ability, using TRI information, to evaluate specific aspects of the chemical's release. For example, the information contained in Form A cannot be used to determine if the chemical was released to air, surface water or a

landfill or to determine if the release poses a potential inhalation or ingestion hazard. As discussed below, the Department opposes the increase in the threshold reporting requirement for non-PBT chemicals and also opposes the expanded Form A eligibility for PBT chemicals.

In Section I.E, *Why is EPA Proposing to Reduce Burden Associated with TRI Reporting Requirements,*” EPA indicates that one of the criteria it used in developing the proposal was “creating incentives for pollution prevention.” However, EPA fails to further describe how a change in the annual reportable amount from 500 to 5000 pounds for non-PBT chemicals will be a pollution prevention incentive. To the contrary, such a change is more likely to be a pollution prevention disincentive. For example, a facility may have implemented measures to maintain an annual reportable amount of 500 pounds or less for a chemical and if the proposed rule is promulgated, the facility may find the cost of such measures to be excessive and abandon them resulting in increased releases of the chemical to various media. Similarly, in Section III.C.2.c, in discussing other potential impacts of Form A eligibility for PBT chemicals EPA states that the “Agency feels this reporting option will provide an incentive to TRI facilities to eliminate releases and reduce the need for other waste management...” EPA provides no data or analyses to support this opinion and it is difficult to imagine that facilities would find it more cost effective to eliminate releases and/or change waste management practices than to simply file Form R.

The criteria EPA presents in Section I.E. also fail to account for potential impacts of the proposal on other EPA programs that rely upon TRI data. For example, EPA relies on TRI data (among other data sources) for developing the National Emissions Inventory which is used in projects such as the National-scale Air Toxics Assessment.

Under Section I.G, *Burden Reduction Methodology Used In Today’s Proposal,* EPA's assumption is that the proposed changes would substantially reduce the reporting burdens on applicable facilities. Reports and documents submitted to the docket all conclude that if a facility can file the Form A document as opposed to the Form R document, the amount of time to fill out the forms would decrease. EPA’s estimates of burden reduction appear to focus on the time needed to complete Form R vs. Form A. EPA’s estimated burden reduction ranges from 11.6 to 15.5 hours for PBTs, and from 5.7 to 7.6 hours for non-PBTs. Companies will still need to track data, keep records, etc., regardless of which form they complete. The burden reduction amounts may only be a small fraction of the total record keeping hours. The potential burden reduction to facilities clearly has some benefit, but EPA should give greater weight to the potential loss of information to the public and end-users of the data in developing proposals to streamline TRI reporting. EPA published a document in May of 2003 entitled How Are the Toxics Release Inventory Data Used? government, business, academic and citizen uses. This document details how the public uses the detailed emission release data to make informed decisions. A reduction in the data release information will likely result in greater uncertainty and inaccuracy in characterizations of chemical releases (e.g., through inaccurate assumptions). This could actually increase burdens on facilities that choose to correct such misinformation. Under Section 313(h) of EPCRA, Congress clearly provides for the wide distribution of the industry information gathered:

"The release forms required under this section are intended to provide information to the federal, state, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes."

Under Section III.C.1.c, the proposal states “Allowing the use of Form A for some PBTs is a departure from the current practice of excluding PBT reporters from Form A use.” The public perceives these compounds to be some of the most highly toxic compounds, and any departure from full disclosure may be perceived as an act of willful intent to hide their waste management practices. The EPCRA rules, known to the public as “Community Right-to-Know Laws,” were specifically designed to help the public understand the potential impacts of chemicals on their communities and to make informed decisions.

Under Section III.D., the change of the annual reportable quantity of 500 pounds to 5000 pounds is regardless of the toxicity of the chemical. The proposal predicts that 12,000 additional facilities will be eligible to use Form A, equating to less than one percent of total releases reported on Form R. In the absence of considering the toxicity of these compounds, a total mass increase or decrease in releases is irrelevant. The Division of Air Resources and agencies in other states are able to assign allowable stack emission rates based upon accepted reference concentrations (RfCs) developed by the USEPA. Allowable stack emissions can be derived using generic assumptions for stack height and stack flows, thus making it possible to compare toxic compounds based upon their emission rates. The following example shows that raising the annual reportable limit from 500 pounds to 5000 pounds, regardless of the toxicity of the chemical, is bad public policy and impedes the protection of public health. These three compounds could have air emissions that result in impacts greater than their respective RfCs at the facility fence line but with the submittal of Form A, the end-user will have no information on releases of these compounds.

Compound	RfC (ug/m <sup>3</sup> )	Allowable Emission Rate (lbs/yr)
Hydrogen Cyanide	3.0	1,360.0
Acrylic Acid	1.0	440.0
Hexachlorocyclopentadiene	0.2	88.0

**Note:** the allowable emission rates are based upon worst case assumptions for air modeling, short stacks, minimal stack velocity, and fence line concentrations. It does not assume multiple nearby sources.

Also, the proposal fails to address that the additional 12,000 small facilities tend to be located in dense urban areas where EPA and state agencies have been implementing Environmental Justice (EJ) programs. The majority of small facilities are classified as area sources under the EPA’s 1990 Clean Air Act National Emission Standard for Hazardous Air Pollutants (NESHAP) program and have no emission reporting requirements. Whereas some states keep track of these small facilities, the public uses TRI as a source of data for these small facilities. The loss of data for these size facilities will only make state and federal EJ programs difficult to implement.

Section III.D.2.b, *What are the Potential Impacts to Data Users*, fails to identify that data users count on the segregation of releases to the various media. The Division of Air Resources uses such data as a check on permitted air facilities. In Section III.D.3, *Rationale for Expanding Form A Eligibility for Non-PBT Chemicals*, regarding the potential loss of information on waste management activities (i.e., pounds recycled/treated/used for energy recovery), EPA indicates that data users should be able to make predictions about the waste management activity likely to be used at a facility by using

Form A information supplemented with information on typical industry practices and regulatory frameworks that might apply to a specific chemical. EPA essentially is requiring the public to make guesses about information. For a state agency this task is difficult, but for the public (for which this program was created) EPA is imposing an unreasonable burden.

EPA has also notified Congress (FR 70 57871) of its intent to initiate rulemaking to change the TRI reporting frequency from annual to biennial. EPA claims that the public will benefit from this change because of the “redirection of federal and state taxpayer dollars to improve the quality, clarity, usefulness and accessibility of TRI information products and services.” The basis for this claim is unknown given that EPA is not proposing anything specific on the programs that would be implemented, changes that would be made, work that would be done, etc., with those redirected dollars. Similarly, EPA claims that the proposal will “enhance data quality and user friendliness by supplementing existing data with additional analysis,” yet provides no specific proposals for the enhancements and supplements. These claims appear to be disingenuous given that the current proposal would reduce the availability, quality, clarity and usefulness of information to the general public.

The Department believes by requiring submittal of TRI information biennially instead of annually would create the following issues:

- (1) difficulty conducting trend analysis of TRI releases;
- (2) the possibility that facilities would stockpile wastes until the off-year and therefore appear to lower their releases without actually doing so; and,
- (3) citizens would not be able to obtain current and accurate data on toxic releases to their communities.

In conclusion, the Department believes there is great pollution prevention value in having companies evaluate and report TRI releases on an annual basis because it makes them aware of those releases and creates incentives for reducing them. To help facilities reduce their reporting burden, EPA should encourage facilities to reduce and eliminate their use of toxic chemicals through greater pollution prevention initiatives. The Department opposes the increase in the reporting thresholds to 5000 pounds and believes that the current threshold of 500 pounds should be maintained in the interest of protection of the environment and public health and welfare.

Sincerely,

/s/ - *David J. Shaw*

David J. Shaw  
Director, Division of Air Resources