

STATEMENT BY
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STRONGSVILLE, OHIO
ON THE
ENVIRONMENTAL JUSTICE ACT OF 2007
AND
THE TOXIC RIGHT-TO-KNOW PROTECTION ACT
BEFORE THE SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS
MATERIALS
OF THE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND
COMMERCE

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Good Morning. My name is Alan Finkelstein, and I am the Assistant Fire Marshal for Strongsville Fire and Emergency Services in Strongsville, Ohio. Thank you for the opportunity to discuss H.R. 1055, the Toxic Right-to-Know Protection Act. I am pleased to be here today to share with you my views on the Toxics Release Inventory program, and the recent changes to reporting requirements. Before I begin, I do want to clarify that I am appearing here today in my personal capacity and not as a representative of Strongsville Fire and Emergency Services.

Part of my responsibilities in addition to firefighting and paramedic skills include hazardous materials and disaster planning. Since 1992, I have been a certified hazmat technician/specialist. In 1993, I received certification as a CAMEO Suite instructor by USEPA and NOAA. I also chair the Emergency Response Subcommittee of the Cuyahoga County Local Emergency Planning Committee. As a member of this committee, I have been involved with the integration of GIS and various environmental software packages for use by responders and planners. As another facet of my work life, I teach CAMEO for Louisiana State University in conjunction with the Department of Homeland Security. In addition, I have done hazardous materials training in India.

Uses of TRI

The Toxic Release Inventory provides a great deal of information to those that know how to interpret the data. Although it was not designed exclusively for use by responders or planners to plan for releases, the data can be used to form a complete picture of a facility's status. One of the first things that we learn in fire school is the importance of preplanning for incidents. Accessing TRI chemical data is just one piece of the puzzle for preplanning. Sections 311 and 312 of EPCRA are more appropriate for use on their own, especially in conjunction with the CAMEO Suite. However, data from TRI can be used to generate information on facilities including regulatory compliance, which assists in other areas such as fire safety.

Another way TRI data can be used is to help characterize an area using EPA's own databases. Chemical releases that do occur are cataloged and can be reviewed to form a better picture of how a facility can improve environmental performance, and

possibly even devise a methodology to improve the economics associated with handling chemicals. The TRI can also be used when no other information is available at the local level, such as the aftermath of a Hurricane Katrina or a WMD incident when all local resources are tied up. At the least, TRI provides the basic information necessary to know what toxics may be present and possibly released.

In my experience, chemical facilities and large hazmat transporters such as railroads are located in areas where the population is economically challenged and politically ignored. Even without other information, we can get data regarding populations surrounding facilities from the EPA databases. Should we be called into an unfamiliar area where we have no preexisting knowledge of the hazards, such as New Orleans after Katrina, TRI provides information that can be used to characterize the area and determine how best to protect the population from exposure to hazardous chemicals.

In order to have the most accurate representation of the toxic chemical hazards presented by individual facilities, it is critically important to know what and how much they store or release into the environment. Please keep in mind that some chemicals and materials are toxic at the microgram level.

The EPA's recent tenfold increase of TRI reporting thresholds, from 500 to 5000 pounds annually, ignores the risks to the surrounding population. As a result of EPA's actions, many facilities are now relieved of reporting toxic chemical management and releases, effectively removing these facilities from available and reliable database access. The increase has therefore resulted in the loss of data useful to fire and other responders. Keep in mind that people live in the immediate areas of these facilities, including the elderly and children who are more vulnerable to the effects of toxics. The TRI program

was created to help protect their health and safety. Any change to the program should not impede this ultimate goal.

Importance of Toxics Goes Beyond Pounds

EPA's determination that raising the TRI reporting threshold will have a small impact on available data, and that losing this data is worth the limited burden reduction benefits, is misleading and contrary to congressional intent. The primary purpose of TRI is to make information about hazardous chemicals in the local environment available to the public so that they can take appropriate steps to protect themselves. EPA's main argument is that the rule change is insignificant in that it will result in the loss of only one percent of the national chemical data reported to TRI. Although this argument is factually correct, focusing on national aggregate numbers belittles the importance of TRI to communities – the entities that Congress sought to empower with EPCRA. The significance of lost TRI information at the community level can be significant, especially when you consider that the differences of toxicity among chemicals and their proximity to populations are crucial factors in understanding local impacts.

In February 2007, the GAO provided a preliminary analysis and found that the TRI threshold change “will have a significant impact on the amount and nature of toxic release data available to some communities.” Though even a few communities would be problematic, the majority of states in the US stand to lose *all* quantitative information for more than fifteen percent of chemicals used in the state. For instance, Georgia will lose information on 60 chemicals, and 36, 34 and 30 chemicals will be lost to California, New Jersey and Pennsylvania, respectively.

Which chemicals will be lost are also crucial. EPA calculated that 98% of potentially lost information about waste other than releases is for lead and lead compounds, polycyclic aromatic compounds (PAC) and mercury/mercury compounds. These are some of the most toxic chemicals that persist in the environment for long periods of time and are well known as probable carcinogens to which children are particularly vulnerable. A reduction in any information about these chemicals will be harmful and is wholly inconsistent with the aims of EPCRA. The law is very clear about the importance of making information public, meanwhile there is no charge for burden reduction. A policy advancing a cause that is nowhere specified as a goal *and* that flies in the face of the overriding purpose of a program is bad policy.

TRI is Not a Burden

EPA, and the few supporters of the reporting threshold changed, argues that the rule making was necessary to reduce burden on companies. I would like to dispel this myth. First, reporting companies do not face significant burden. By EPA's own estimates the amount of money reporting companies will save is between \$400 and \$700 per form. In testimony before the Senate Environment and Public Works Committee, the GAO estimated that the threshold changes would save facilities, on average, less than \$900 per year. This is not a significant amount of money, equaling about a cup of coffee a day.

Second, contrary to what many have said, there is an opinion within the industry sector that the reporting requirements under the TRI program are not burdensome. Some companies go so far as to say that they will continue reporting the full amount to EPA,

because it serves a public good and they won't save that much money. Unfortunately, not all companies are such good actors.

Here is a selection of statements from newspaper articles from across the country:

- Ameron Pipe Group in Tracy, CA states, "I don't think reporting the requirements as they exist now [in 2005] is a significant burden." "You have a computer system, and you're simply updating what you do. As somebody in the industry... I find most of the complaints about the significant costs associated with reporting specious and without significant merit."¹
- "'There's no question that [the TRI reporting] process improves efficiency,' said Scott Langdon, spokesman for Indalex Aluminum Solutions Group [in Oakwood, TX], which has a 350,000-square-foot plant in Oakwood. 'We don't really see [the record-keeping] as all that burdensome,' Langdon said. 'It was a huge chore back when it all had to be done manually, but now we have computer software to help streamline the process.' He said Indalex doesn't plan to relax its standards, regardless of what the EPA does. 'We take environmental health and safety very seriously,' Langdon said. 'We would do this even if it didn't cut costs.'"²
- "John Mandel, spokesman for US Gypsum Co., which has a Santa Fe Springs facility that manufactures sheetrock and cement board and would not be affected by the proposal, said the change would not affect how the plant is run."³
- "Chris Dartez, environmental supervisor for Benchmark Energy [in Midland, TX], said the TRI reporting is 'not that big a deal' and typically takes only a

¹ Hank Shaw, "EPA proposal would ease regulation of toxin releases," *Contra Costa Times*. December 19, 2005.

² Debbie Gilbert, "EPA Set to Relax its Pollution Laws," *Gainesville Times* [Gainesville, GA]. November 21, 2005.

³ Shirley Hsu, "EPA proposal has local impact," *Whittier Daily News* [Whittier, CA]. December 18, 2005.

couple of hours to complete. 'Doing it electronically makes it a little less of a hassle,' he said."⁴

- "Fox Industries [of Baltimore, MD] vice president Edye Fox Abrams, like many industry representatives, says the current reporting requirements are not unduly burdensome and that her company will do whatever the law requires."⁵
- "Forrest Paint [in Eugene, OR] employs one full-time worker to generate the reports, and proposed federal rule would mean a 'tiny reduction' in her work load, Mark Forrest said. 'Other than that, I don't think it will have any substantial impact on the tracking and reporting we do on the materials we use,' he said."⁶

EPA's Poor Job

Unfortunately, it is difficult to conclude much from the rulemaking other than the fact that EPA has done a poor job of pursuing burden reduction for the TRI program. Examination of the options considered, review and selection of proposals, agency analysis performed, and response to comments reveal serious flaws in the EPA's approach. The EPA repeatedly missed opportunities to direct the process to constructive burden reduction and ignored overwhelming feedback detailing the problems and concerns with a flawed approach.

EPA's November 2003 white paper offered five specific burden reduction options for consideration. Unfortunately, all of these options achieved reduced burden by

⁴ Colin Guy, "Proposed rule change may limit availability of toxic emissions," *Midland Reporter-Telegram*. December 15, 2005.

⁵ Lacey Phillabaum, "You Don't Wanna Know, Proposed Changes to a Federal Toxic Inventory Could Leave Industry's Neighbors In Dark," *Baltimore City Paper*. December 7, 2005.

⁶ Diane Dietz, "EPA Seeks to Ease Toxics Reporting Rules," *The Register-Guard* [Eugene, OR]. October 28, 2005.

collecting less information or lowering the quality of information collected.. The five options were:

1. higher thresholds for small businesses,
2. higher thresholds for some industries or chemicals,
3. expanding use of the Form A (essentially higher thresholds for everyone),
4. allowing companies to file 'no significant change' statements rather than full reports, and
5. allowing companies to report pollution in ranges rather than specific amounts.

Not one of these options would have made it easier to track the information or calculate amounts or provided resources or tools to small businesses to help them comply with this important environmental program. Despite getting feedback in comments and at stakeholder meeting where participants urged EPA to find methods to reduce burden without sacrificing accuracy or completeness of data, EPA continued to solely pursue this flawed list of options.

According to the initial findings discussed in GAO's testimony on February 6th, 2007, an investigation of the rulemaking process revealed that EPA failed to follow its own rulemaking guidelines when developing the new TRI reporting requirements. Specifically, the TRI workgroup charged with identifying options to reduce reporting burdens on industry identified three possible options. Though raising the reporting threshold for non-PBT chemicals from 500 to 5,000 pounds had been suggested by the Office of Management and Budget (OMB), the TRI workgroup had eliminated it as a viable option. The agency did not even include the option in the July 2005 economic

analysis. Despite agency experts striking this option as a poor choice to pursue and a complete lack of analysis, the option was reinserted by senior EPA officials for the Oct. 2005 proposed rule and is now the basis for the changes in place.

In response to the proposed rule EPA received an overwhelming amount of responses, more than 122,000, almost all of which were in opposition of the proposed changes. According to analysis by OMB Watch, the vast majority of commenters, 99.97%, strongly opposed the changes, and only 34 commenters (0.03%) expressed some degree of support for the proposals. The opposition came from over 120,000 average citizens, 23 state governments, more than 60 members of Congress, more than 30 public health organizations, more than 40 labor organizations and more than 200 environmental and public interest organizations. Support for the proposals came almost entirely from companies and industry associations in addition to a handful of government agencies and individuals.

Comments opposing the changes most commonly cited concerns about threats to public health and the environment from increased, unmonitored pollution, the reduced ability of government agencies to make sound decisions about toxic pollution and the lack of burden reduction that will result from the changes. The health concerns raised by public health officials and organizations, the safety concerns raised by local, state and federal governments and the environmental concerns raised by public interest groups bring into question the sensibility of EPA's actions and strongly suggest that, from a public health and safety perspective, the proposal should never have been implemented.

Despite the nearly uniform opposition from almost every stakeholder group, the EPA pressed forward in December 2006 to finalize the threshold changes with only

minor revisions. The rule increased the reporting threshold for the majority of the 650-plus TRI chemicals tenfold, from 500 lbs. to 5,000 lbs., with a newly added restriction that only 2,000 lbs. of the chemical may be released directly to the environment. Also, for the first time in the 18-year history of TRI, EPA established reduced reporting for the most dangerous category of toxic chemicals, persistent bioaccumulative toxins (PBTs).

The best solution would have been to make the program easier for companies to comply with, such as improved electronic reporting or a TRI reporting help hotline. Electronic reporting would make it faster and easier for everyone to report, and would probably result in improved data quality as it could significantly cut down on data entry problems. An EPA help hotline could walk facilities through reporting questions with no risk of enforcement action, a service most useful to small businesses as they are the ones less likely to have full-time environmental compliance staff. As these examples demonstrate, there are solutions to make the TRI program simpler and easier for companies that do not sacrifice the critical information provided by the program. Regrettably, the threshold changes adopted by EPA significantly limit public access to toxic chemical information, while doing little to reduce regulatory burden..

Why EPA never considered the other options is unclear. What is clear is that Congress should demand more from EPA when it comes to a successful program like TRI. The program should be returned to its original structure and EPA should be tasked to only examine burden reduction options that maintain the quantity and quality of information that made the TRI program such a success story.