Toxic Debate

Industry associations and watchdog groups butt heads over EPA's proposal to reform its chemical inventory program

Since the inception of EPA's Toxics Release Inventory program, emissions and releases from chemical plants have declined significantly. Despite this success, EPA wants to change the program so that less data collection is required. But the proposed reforms have sparked an uproar that is gathering momentum

By Joy LePree

KEY POINTS

For nearly 20 years, EPA's Toxics Release Inventory (TRI) program has provided a publicly available database that contains detailed information about chemical releases and waste management as reported by industry annually. However, detailed reporting &#151 think mounds of paperwork and accumulated labor hours &#151 for the 650-plus regulated toxic chemicals has proven burdensome to the facilities required to track them each year. To ease the pain, EPA recently proposed its Burden Reduction Rule, which would change the threshold from 500 to 5,000 lbs for chemicals requiring detailed release reporting. At nearly the same time, EPA announced its desire to change the reporting frequency from annually to every other year. These reforms have spurred a heated debate between industry associations and watchdog groups. Industry feels the changes would have no adverse impact and would help the manufacturers they represent. Opposing groups believe there would be damaging consequences to the environment and public health.

Too Much of a Good Thing?

EPA released the TRI database for 2004 in April, which showed a 4 percent decrease in the amount of toxic chemicals released to the environment compared to the previous year. It also demonstrated significant decreases in some of the most toxic chemicals. Dioxin and dioxin compounds had been lowered by 58 percent, mercury and mercury compounds had been reduced by 16 percent and PCBs had been cut by 92 percent. This downward trend has been prevalent for years. "We've seen a 45 percent decrease in toxic releases since 1998," says Suzanne Ackerman, an EPA

spokesperson. American Chemistry Council (ACC) statistics also show radical improvements. “Since the first database in 1988, emissions and releases from chemical facilities have declined by 65 percent and from ACC member company facilities by 75 percent,” says Mike Walls, managing director of the ACC. “We believe TRI information is so valuable that it is a performance indicator under our Responsible Care program, and we post our member companies’ TRI data on our Web site.” Why does EPA want to change a program with such successful results? “For years we’ve looked at streamlining the process,” says Ackerman. “It requires a huge amount of data collection and retrieval for EPA and the facilities that report. We want to make life easier for the reporters, many of whom can’t handle the paperwork, because we want that data and we want it on time.” As a result, the agency proposed the Burden Reduction Rule last fall in an effort to expand the use of the short reporting form, known as Form A, which does not include specific, detailed information about releases. If the proposal is passed, facilities that release less than 5,000 lbs would now report these releases via Form A. (Currently, 500 lbs is the threshold limit for short form reporting.) Releases in excess of 5,000 lbs would be reported on the longer, more detailed Form R. “The proposal is expected to save 165,000 man hours a year, while still ensuring full Form R reporting on over 99 percent of toxic releases and other waste management activities,” says Ackerman. “It is not carte blanche for facilities not to report. Facilities must still document management of chemicals in amounts less than 5,000 lbs but are not required to provide detailed information about the release. Form A has been available for years for releases of 500 lbs or less. The only difference is that the threshold has been increased to 5,000 lbs,” explains Ackerman. In a separate but related action, EPA notified Congress that it plans to modify the frequency of reporting under the TRI program from annual reporting to every other year. At the moment, this move is not an official proposal but a notification that the agency is thinking about making such a proposal, says Ackerman.

In This Corner…

These moves have created a boxing match of sorts in the chemical industry. In one corner are industry associations that want to see their members able to keep their heads above regulatory water. In the other corner are environmental groups concerned with how the loss of detailed reporting might adversely impact the environment and public health. “While we fully support TRI and find that emissions inventory information is useful in determining where there are opportunities for reducing or eliminating releases or emissions, it is a burden,” says Walls. “EPA estimates that TRI monitoring and data collection costs the regulated community about $650 million per year. Therefore, we support EPA’s efforts to discuss areas where efficiencies could be gained in the TRI reporting process.” He says raising the threshold from 500 to 5,000 lbs for Form A reporting would change reporting for less than 1 percent of total emissions and believes many ACC members wouldn’t even make use of Form A. “ACC companies may not take advantage of the change because if facilities are reporting 20 chemicals, 19 of which have to be reported on Form R and one of which is now eligible to be reported on Form A, the potential burden reduction is so slight that most companies will probably continue to report with Form R,” says Walls. “But the principle that’s embodied in this proposal is absolutely right. We want EPA to be thinking about how they can most efficiently

get and report the information to the public. In our view, raising the Form A threshold from 500 to 5,000 lbs does not diminish the utility or accessibility of the data." However, not everyone agrees. "We feel these proposed reforms are a significant step backwards with regard to community right to know and the capability of providing pollution prevention technical assistance to industry," says Liz Tennant, policy analyst with the North American Hazardous Materials Management Association (NAHMMA). "We are very opposed to this change because we think it will have a lot of adverse effects, particularly at the state and local level." Specifically, Tennant says NAHMMA believes that on a state-by-state basis the impact could be drastic. "For example, in Washington state approximately one-third of the reporters would qualify for the more general Form A, so the state would lose detailed information on one-third of the reports. Fifty of 350 current TRI facilities would move completely to Form A and no longer provide details about the chemicals they manage. Eight of these facilities were among the highest-risk facilities in the 2002 reporting year. "There are similar statistics for states around the country. A recent fact sheet from another organization showed that nationally at least 3,800 facilities would no longer be required to provide detailed reporting. The loss of detailed information could undermine the quality of state and local data used to track, target and provide technical pollution prevention assistance." Tennant goes on to say that NAHMMA is particularly concerned with the "damaging effects on pollution prevention programs because the tenfold increase in reporting thresholds would directly undercut and perhaps ruin state pollution prevention programs. "Based on the lack of detailed reporting, some states would lose funding for pollution prevention programs. For example, officials in Minnesota use details from Form R TRI reporting to collect revenue that funds pollution prevention technical assistance for industry. When reporting shifts to Form A, officials will lose the detailed monitoring and, with it, the revenue that's linked to it, which would in turn undercut the ability of those programs to provide technical assistance. It is my understanding that, in addition to Minnesota, Colorado, Maine, Massachusetts and Mississippi have similar mechanisms for funding pollution prevention programs."

Time Is of the Essence

While EPA has not officially proposed changing the frequency of reporting, the suggestion that it is thinking about doing so is also creating an uproar. "A lot of groups are complaining about changing the frequency of reporting to every two years and jumping to the premature conclusion that they will lose one year's data because facilities will only report every other year," says Ackerman. "If it ever becomes a real proposal, it could be that EPA will ask for two years of data at once

and take the average. Nothing has been determined yet." Watchdog groups such as the Environmental Working Group (EWG) aren't buying the goods. "The thing about EPCRA [the Emergency Planning and Community Right-to-Know Act of 1986, which gave birth to TRI] is that it is explicit in defining that reporting is to be done for a 12-month period," says Kristan Markey, research analyst with EWG. "In order for EPA to make good on the claim that they might ask for two years of data, they'd have to go to Congress and have the statute modified. So, EPW's take on this is that data is going to be reported for one year every other year." He continues to say that this might be a dangerous change. "A number of environmental groups have found that individual release information can vary from 50 percent to 75 percent on the local, state and facility level," says Markey. "This means that many communities would lose relevant data if reporting requirements are dropped from one to two years. In addition to losing variations in emissions data, it could open the door for facilities to start dumping in the off years and essentially not report it." Even if EPA finds a way to collect two years' worth of data every other year, Tennant says, the situation is still not satisfactory. "Because it is really important for the public to have access to as close to real-time data as possible, this scenario just doesn't work," she says. "We are already in a situation where it's often close to two years after the release before the data is provided to the public. So, from the user standpoint, switching to every-other-year reporting renders the data close to meaningless because it is so far out from what was actually happening."

Long Arm of the Law

Lawmakers, namely the ones who hold the purse strings for EPA funding, are adding fuel to the fire. In May, the House of Representatives passed the Pallone-Solis Toxic Right-to-Know Amendment to the Interior Appropriations Bill, which will decide Fiscal 2007 funding levels for EPA. This amendment, sponsored by Democratic Reps. Frank Pallone of New Jersey and Hilda Solis of California, prevented the Bush Administration from moving forward with reform of EPA's TRI program by prohibiting EPA from spending any money to implement the suggested changes. While the move is promising for groups that oppose the proposal, it is still too early to begin celebrating. The Senate still has to create a bill and convene a conference committee, and any resulting laws would have to be signed by President Bush. There is speculation that there won't be a final Senate bill until after elections in November. Groups such as the National Association of Manufacturers (NAM) are hoping the tide will change in the Senate. "We would like for the administration to move forward with the Burden Reduction Rule," says Bryan Brendle, NAM spokesperson. "TRI was originally conceived to encompass reporting of releases and does not have any environmental or health impacts. It has just created a large amount of paperwork and burden for a lot of industries. The streamlined approach would focus reporting on toxic releases that have an impact on the environment and public health and would allow the EPA to create an inventory or database on which to judge whether or not there should be future regulations on certain toxins." "We oppose the suggestion that taking away the detailed reporting will have no impact on the environment," argues Tennant. "It is important to have detailed information for good planning and effective technical assistance efforts to reduce pollution. Pollution prevention is so much more than simply reporting what is released. It is an effort to look at the whole system and prevent problems

throughout the lifecycle of the chemical. “Not only does the shift of information out of the public realm hurt pollution prevention programs, it also affects environmental monitoring programs, programs that evaluate the effectiveness of public and private sector toxic reduction initiatives, university- and community-based research and community efforts to monitor certain facilities,” Tennant continues. “We see EPA and supporting organizations considering only the reporters and failing to acknowledge the burden that is placed on the public by the presence of chemicals in our environments, communities and bodies. The reporting changes proposed by EPA create an imposed burden on citizens, health professionals and researchers to track pollution by state and local neighborhoods. It is not burden reduction. It is burden shifting.” Obviously in the case of EPA’s TRI reform, the devil really is in the details &#151 or proposed lack thereof. While the decision regarding increased thresholds will not be made before December, the next few months are sure to be fraught with heated debates from concerned parties. Right now, no one can say how it will end. *Joy LePree is a contributing writer for CHEM.INFO. She has worked as a journalist for 13 years, covering a variety of issues and trends involving chemicals, processing, engineering and maintenance. To share your comments about the content of this article, send an e-mail to Lisa Arrigo, editorial director, at* lisa.arrigo@advantagemedia.com *[1].*

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