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U.S. Department of Energy Congressional Priorities for 1996

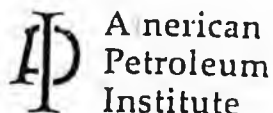
Dirk Forrister
Assistant Secretary for Congressional
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Clearly one of the primary energy issues facing Congress this year is the debate over electric restructuring, although the outlook for completion of such legislation is far from certain. The U.S. Department of Energy will also be addressing its budget before the Congress in the coming weeks, impacting Department activities ranging from the fossil energy program to the national labs. Finally, the intersection of electric restructuring, Clean Air Act amendments and the debate over global climate change is sure to draw attention.

Toxic Release Inventory - One Size Does Not Fit All

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Upcoming U.S. Environmental Protection Agency (EPA) regulations could impose a major new reporting burden on the oil and gas exploration and production (E&P) industry. If covered by the expansion of the Toxic Release Inventory Program (TRI), thousands of E&P facilities encompassing over 40 percent of the oil and gas wells in the U.S. will have to report their discharges to air, water, land, and even underground oil and gas reservoirs. The result: significant costs to the E&P industry, misleading press reports, duplicative reporting, inefficient use of company resources -- and no environmental benefits.



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TRI – One Size Does Not Fit All

Why Expanding the Toxic Release Inventory to the Oil and Gas Exploration and Production Industry Doesn't Make Sense

Upcoming U.S. Environmental Protection Agency (EPA) regulations could impose a major new reporting burden on the oil and gas exploration and production (E&P) industry. If covered by the expansion of the Toxic Release Inventory Program (TRI), thousands of E&P facilities encompassing over 40% of the oil and gas wells in the U.S. will have to report their discharges to air, water, land, and even underground oil and gas reservoirs. The result: significant costs to the E&P industry, misleading press reports, duplicative reporting, inefficient use of company resources -- and no environmental benefits.

What is TRI?

The Toxic Release Inventory is EPA's program for providing information to the public on releases of toxic chemicals into the environment. Each year, industries covered by the program must report releases of over 600 toxic chemicals. Most of these reported "releases" are safe, legal, permitted disposal, recycling, and air emissions.

Currently, only manufacturing facilities must report under TRI. However, during the next year, EPA may expand the program to cover a host of additional industries -- including E&P facilities.

Why E&P?

Last year, EPA prepared "profiles" of 25 industries not currently reporting under TRI to determine whether their releases warrant inclusion in the program. Based on these profiles, EPA has targeted 14 industries, including E&P, for the program expansion.

EPA's goal in expanding TRI to additional industries is to "provide the public with a more comprehensive picture of toxic releases." In the case of E&P, however, expansion will only give

the public an inaccurate impression of an industry that is already regulated according to the low risk posed by its operations.

One of the most misleading and inappropriate requirements for E&P facilities would be reporting underground injection as a "release" to the environment. Because produced water and associated wastestreams are injected thousands of feet below drinking water zones -- and usually into oil and gas reservoirs -- there is practically no potential for public exposure from these operations. In addition, because the vast majority of E&P facilities are in remote, rural areas -- or are far offshore -- they are miles from the nearest community. Reporting E&P releases, therefore, provides little, if any, environmental benefit.

EPA's profiles assume that "typical" releases for a given industry remain constant. This assumption is wrong for E&P operations, where the concentrations of chemicals in wastestreams change constantly. Because of this variability in the streams, the *only* way for E&P facilities to ensure accurate reports is for operators to perform regular, expensive wastestream tests. The accounting burden for collecting this virtually valueless data is huge.

EPA wants to expand the TRI program to give the public better information about toxic chemicals in their communities. The truth is, however, that E&P facilities have fundamentally different operations than the manufacturing facilities already covered by TRI. E&P facilities would be forced to spend a substantial amount of time and manpower trying to figure out how to make their operations "fit" into the TRI program. In short, TRI reporting just doesn't make sense for the E&P industry.

What Would Expansion to E&P Facilities Mean?

Expansion of the TRI program to E&P facilities would impose an expensive, unnecessary paperwork requirement on an already economically distressed industry.

Specifically, TRI expansion would result in a **costly reporting burden** for E&P facilities. According to a recent study by the American Petroleum Institute, the potential costs of such an expansion would be over \$200 million in the first

year alone. This money would be spent testing wastestreams, filling out forms, and figuring out how to report under an inappropriate program. Over 4,700 facilities, encompassing over 40% of the oil and gas wells in the U.S., would be subject to this unnecessary requirement. In addition, an independent study by the U.S. Department of Energy estimates that the costs could be even higher -- with impacts into the billions of dollars.

Tragically, companies would be spending this money to provide virtually *no* environmental benefit, since the remoteness of E&P facilities means that their "releases" pose minuscule risks to the public. In addition, because TRI reporting requirements would require a great deal of interpretation for the E&P industry, expansion could expose facilities to substantial liability for administrative errors in reporting. Penalties for such unintended violations could reach up to \$25,000 a day!

The potential to mislead the public is another negative result of E&P reporting under TRI. A recent *Bakersfield Californian* headline, "Elk Hills Tops Kern's List of Toxic Polluters," illustrates the kind of confusion and misinformation that results when the media take release data out of context. In this case, the U.S. Department of Energy's Naval Petroleum Reserve voluntarily reported release information from its Elk Hills production facility in Kern County, California.

At Elk Hills, 99% of the reported releases were strictly regulated underground injection. When the public and the press received the data about these releases, no one told them that the "pollution" from the facility was being injected into oil and gas reservoirs with no possibility of public exposure.

TRI expansion to the E&P industry also would divert company resources away from pollution prevention efforts toward expensive testing and release calculation activities. For example, in its second year of reporting, Elk Hills devoted additional resources to characterizing its variable product streams in order to do more accurate calculations that would show how low its releases really are. Had such recalculation not been necessary, this money could have been spent

on more productive environmental protection activities.

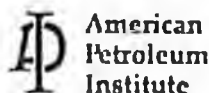
Proponents of expanded TRI reporting argue that public attention to the volumes and types of chemicals released into the environment provides an incentive for companies to prevent pollution. For E&P facilities, "release" reduction can only be achieved through reductions in the amount of oil and gas produced. The TRI program will create perverse incentives for E&P operators to eliminate so-called "releases" by shutting in oil and gas production wells.

Conclusion

At a time when Congress and the public favor relief for industry and the states from costly and bureaucratic reporting and recordkeeping requirements and when the Administration is encouraging "common sense" regulation, EPA is threatening to impose a needless, unreasonable burden on the domestic oil and gas production industry. Communities have the right to know about potential threats to their health and the environment. But there is *no* reason to mislead the public with confusing information on releases that pose virtually no threat.

Right-to-know laws should not be used as a right to mislead. The public has a right to expect that taxpayer money is going to protect human health and the environment against *real* threats. Held up to the lens of cost-effectiveness, environmental benefits, and appropriateness, EPA's proposed expansion of the TRI program to the E&P industry is not sound public policy.

If you would like further information on how TRI expansion could affect the E&P industry, please call Mark Rubin of the American Petroleum Institute at (202) 682-8057.



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103. FACILITY COVERAGE AMENDMENT; TOXIC CHEMICAL RELEASE REPORTING; COMMUNITY RIGHT-TO-KNOW

Agency: Environmental Protection Agency/Office of Prevention, Pesticides, and Toxic Substances

Priority: Other Significant

Legal Authority: 42 USC 11013; 42 USC 11023; 42 USC 11048; 42 USC 11076; EPCRA 313

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The original Toxics Release Inventory (TRI) required reporting from facilities in Standard Industrial Classification (SIC) codes 20-39. These SIC codes cover manufacturing facilities only. This requirement was imposed under the Emergency Planning and Community Right-To-Know Act (EPCRA) section 313(b)(1)(A). The Environmental Protection Agency (EPA) is considering expanding this original list. EPCRA section 313(b)(1)(B) and (b)(2) provide the Administrator with the authority to add or delete SIC codes and the discretion to add particular facilities based on a broad set of factors. EPA is currently conducting analysis to determine which SIC codes (or portions thereof) should be considered for coverage in TRI. Facilities in a broad set of industries are under consideration, including but not limited to, electric utilities, waste management facilities, mining, oil and gas production, materials recovery and recycling, and some warehousing activities.

Statement of Need: TRI is the most complete and accessible source of information for the public on toxic chemical releases in communities across America. The intention of Congress was for TRI, and indeed all of EPCRA, to provide information to local communities. Communities need this information to better understand the nature of the releases at the local level. The intent of TRI has been to share information on releases with local communities to help in their assessments of the risks. This basic local empowerment is the cornerstone of the right-to-know program. Yet TRI collects data from only the manufacturing sector, and for only a subset of toxic chemicals that are introduced into the environment. Congress gave EPA the authority to expand TRI, both in terms of the chemicals reported and the facilities required to report, because it recognized that the American public has a right to know what is happening to the environment near their homes, schools, and businesses. Manufacturing facilities account for only a portion of the toxic chemicals released in the United States. EPA recognizes the reporting burden inherent in TRI, and is continuing to take every reasonable opportunity to reduce this burden. The industries under consideration for addition to TRI would conceivably add significantly to the data available to the public on toxic chemical releases. For this proposal, industries will be selected based on a number of factors including the importance of the releases to the community, the relative rank of release estimates, the relationship of activities in these industries to manufacturing, and the compatibility of these activities with current reporting requirements.

Alternatives: Although data on releases from many of the facilities under consideration can be found, there is no centralized, publicly available, comprehensive, easily understandable, or consistently collected source of information for the public on toxic chemical releases from facilities outside of manufacturing. EPA has examined all available data sources, including information reported under the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act, as well as other sections of EPCRA, State data collection programs, and available data provided by industry. EPA can find no information comparable to the data which TRI provides the American public. Consequently, there are only two alternatives to the expansion of TRI reporting requirements to cover additional facilities: voluntary reporting by facilities or a determination that any additional information TRI might collect from these facilities is of little or no value in terms of community right-to-know.

Anticipated Costs and Benefits: The anticipated costs of this action are unknown at present. The addition of facilities to TRI is intended to expand upon the past success of the program in enabling all interested parties to establish credible baselines and to set realistic goals over time. The information reported in TRI increases knowledge levels of pollutants released to the environment and pathways to exposure, improving scientific understanding of the health and environmental risks of toxic chemicals; allows the public to make informed decisions on where to work and live; enhances the ability of corporate lenders and purchasers to more accurately gauge a facility's potential liability; and assists Federal, State, and local authorities in making better decisions on acceptable levels of toxics in communities.

Risks: Manufacturing facilities, which are currently required to report to TRI, represent only a portion of the facilities that release toxic chemicals in the United States. Although what portion of releases these facilities represent is uncertain, the Congressional Office of Technology Assessment has estimated that the original chemical and facility coverage of TRI in 1987 resulted in data on only 5 percent of releases in the U.S. EPA believes that the public has a right to know about such releases and about what facilities are doing to manage wastes. The public can then use this data to evaluate potential risks from these facilities and to determine how to avoid these risks.

Timetable:

Action	Date	FR Cite
NPRM	03/00/96	

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Analysis: Regulatory Flexibility Analysis

Additional Information : SAN No. 3034.

Agency Contact: Susan B. Hazen Environmental Protection Agency Office of Prevention, Pesticides, and Toxic Substances (7408) Washington DC 20460 Phone: 202 260-1024

RIN: 2070-AC71



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3419. CHEMICAL LIST EXPANSION; EMERGENCY PLANNING AND COMMUNITY RIGHT-TO- KNOW ACT SECTION 313

Agency: Environmental Protection Agency/Office of Prevention, Pesticides, and Toxic Substances

Priority: Other Significant

Legal Authority: 42 USC 11013; 42 USC 11023; 42 USC 11048; 42 USC 11076/EPCRA 313

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The original Toxics Release Inventory (TRI) chemical list consisted of 320 chemicals and chemical categories. In an effort to provide the public with a broader picture of chemicals that will have to submit information for the Toxics Release Inventory in their communities, EPA is expanding the original TRI chemical list. On January 12, 1994 (59 FR 1788), EPA published a proposed rule to add 313 chemicals and chemical categories to the TRI chemical list. Of the 313 chemicals and chemical categories proposed, there are approximately 160 pesticide active ingredients. The chemicals and chemical categories being proposed were selected from numerous other regulatory lists and meet the criteria for human health and environmental toxicity and in addition are extremely toxic to aquatic organisms, EPCRA section 313(d)(2). In addition, the chemicals passed a production volume screen to ensure that reports would be received if the substance is added to the TRI chemical list. Part of this activity included the review of 17 chemicals, previously described in RIN 2070-AC40, 16 of which are from a list of hazardous air pollutants subject to the requirements of the Clean Air Act Amendments of 1990, and one of which was considered for addition due to its extreme aquatic toxicity. Of these 17 chemicals, nine were included in the proposed rule. Linked to this rule is a possible small-source exemption that will provide some measure of relief to the reporting community. This exemption will allow facilities releasing small amounts of listed chemicals to be exempt from full TRI reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/12/94	59 FR 1788
Final Rule	11/30/94	59 FR 61432
Final Action Deferred Chemicals	03/00/96	

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Analysis: Regulatory Flexibility Analysis

Additional Information: SAN No. 3007.

Agency Contact: Susan B. Hazen, Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances, 401 M ST SW (7408), Washington, DC 20460 Phone: 202 260-1024