



Department of Energy
Washington, DC 20585
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OPPT Document Control Officer (7407)
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
401 M St, SW, Room G-099, East Tower
Washington, DC 20460

Attention: Docket Control Number OPPTS-400117

Dear Sir or Madam:

Re: 62 FR 54847, "Public Meetings on the Toxic Release Inventory Reporting Form"

On October 22, 1997, the Environmental Protection Agency (EPA) published a notice of public meetings to solicit comments relating to the Toxic Release Inventory (TRI) reporting form, Form R. The purpose of the meetings is to obtain comments from stakeholders on ways to improve the type of right-to-know information available to communities and to help streamline right-to-know reporting to ease the paperwork burden for businesses affected by the requirements. At the same time, EPA formed the Toxics Data Reporting (TDR) Committee to advise EPA on changes to the Form R. This Committee has been meeting bi-monthly since September 1997.

The Department of Energy (DOE) has complied with the reporting requirements of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) since its promulgation in 1986, first through reporting by "covered" Government-Owned Contractor-Operated (GOCO) facilities and then by all of our federal facilities as required by Executive Order 12856. Thus, the Department has a wealth of experience in applying the requirements of EPCRA 313 to federal facilities.

In November 1997, DOE's Office of Environmental Policy and Assistance established a DOE TRI Focus Group, composed of DOE and contract employees with experience in completing Form Rs. This Group has conducted monthly conference calls to discuss the various changes that EPA and the TDR Committee are proposing for the Form R. The enclosed comments include issues identified by the Focus Group and are submitted for EPA's consideration in improving EPCRA 313 reporting.

Sincerely,

Raymond F. Pelletier
Director
Office of Environmental Policy and Assistance

Enclosure

cc: Maria Doa, Chief, TRI Branch, EPA

**UNITED STATES DEPARTMENT OF ENERGY
COMMENTS ON CHANGES TO THE TOXIC RELEASE INVENTORY (TRI)
FORM R REPORT**

**NOTICE OF PUBLIC MEETINGS
(62 FR 54847; October 22, 1997)**

1. REPORTING TOXIC CHEMICALS CONTAINED IN PRODUCTS SENT OFFSITE

At the January 29-30, 1998, meeting, the TDR Committee discussed the issue of adding a data element to Section 8 regarding toxic chemicals in products sent offsite.

The Department of Energy (DOE) is concerned that such a requirement will adversely affect its lead (Pb) recycling program. The Department currently operates a lead shop at one of its facilities which re-forms lead for use at other DOE facilities. Although the cost of reporting such activities (estimated at \$3000-\$5000 per year) is not significant to the Department's budget, those costs, along with the perception that DOE is releasing large quantities of lead into the environment, may prompt the cessation of the lead recycling program.

Also, the Department sees no "right-to-know" value in reporting lead in these lead products on the Form R. The users are well aware of the fact that the lead product "contains" lead. This is analogous to manufacturers of copper tubing having to report on the copper contained in the tubing. The lead remains within the DOE complex as long as it can be used. In the event disposal is required, that activity would likely be reported on a Form R under the current system.

If EPA decides to add such a data element to Section 8, DOE recommends that EPA develop an exemption for products where the toxic chemical itself is the product, such as in the examples above.

2. HOW TOXIC CHEMICALS TRANSFERRED TO POTWs COULD BE REPORTED IN SECTION 8 OF THE FORM R

Current TRI Form R instructions direct facilities to report the total quantity of a toxic chemical transferred to a publicly owned treatment work (POTW) in section 6.1, "Discharges to POTW," and section 8.7, "Quantity treated off-site." Exceptions are made for metals and metal compounds which are reported in section 8.1, "Quantity released."

In the Issue Paper released for the January 29-30, 1998, TDR meeting, EPA stated that in the case where toxic chemicals are less than completely destroyed by the POTW, the ultimate disposition of those chemicals may be inaccurately reported. This is because some toxic chemicals may not be 100 percent "treated" by a POTW, resulting in releases of that toxic chemical by the POTW. EPA discussed various options to address this information gap. One option was that EPA could provide a list of chemicals and the expected treatment (destruction) efficiencies that a reporter would use to determine amounts "treated" and "released" by their POTW. A second option was to consider a toxic chemical "treated" if the POTW treatment efficiency is 50% for that chemical, or "released" if the POTW treatment efficiency is less than 50%. However, in both cases the onus would be on facilities, not the POTW, to report these numbers on their Form R.

The Department is concerned about EPA's proposed use of treatment efficiencies for estimating quantities "released" versus quantities "treated". Without POTW-specific and constituent-specific information upon which to base treatment efficiencies, it is unlikely that the resulting information will be significantly more accurate than with the current process. For example, one of our facilities found eleven basic wastewater

treatment methods in use. Development of a treatment efficiency for all 313 listed toxic chemicals for each of these eleven methods would require a large amount of work by EPA. Also, in addition to developing treatment efficiencies, EPA would have to address where the remaining waste went, i.e., the amount of releases to the air or deposited in sludge.

EPA has stated that, in the case where toxic chemicals are less than completely destroyed, *ultimate* disposition of those chemicals may be inaccurately reported (emphasis added). A reporting facility has no control over the ultimate disposition of toxic chemicals in waste transferred offsite for treatment or disposal. Rather, the reporting facility is required to report on what is directly released or transferred offsite from its boundaries. Additionally, certification of Form R suggests a responsibility and includes liability for civil and/or criminal penalties associated with the accuracy of the information entered into the form. It is not possible for reporting facilities to certify the treatment efficiencies of POTWs. The Department believes that EPA should not put the burden on reporting facilities to determine and report releases from another facility (i.e., a POTW) on their Form R.

If EPA is interested in tracking and reporting on the ultimate disposition of toxic chemicals from a specific facility to a POTW, EPA could calculate and provide this information to users in the TRI Public Data Release and in the public TRI database (TOXNET). EPA could develop a list of treatment efficiencies for the chemicals reported on the Form R by the various types of wastewater treatment methods. From each Form R, EPA could determine which POTW received the chemical, contact the POTW to determine the treatment method used and calculate how much of the material was released to the water. This would solve the certification and liability issue, as EPA would be making the calculations, and is probably the least burdensome method (for both the reporting facility and the POTWs) of collecting this information and presenting it to the public.

Alternately, if EPA is interested in collecting and reporting on the ultimate disposition of toxic chemicals in wastewater discharged from POTWs, EPA could collect that information from the permits issued under the National Pollutant Discharge Elimination System (NPDES) program and make it available in the Public Data Release and the public TRI database (TOXNET).

3. THE ADDITION OF A NEW REPORTING DATA ELEMENT, "TOTAL WASTE MANAGEMENT ACTIVITIES"

At the March 19-20, 1998, meeting, the TDR Committee considered recommending that EPA consider the addition of a new reporting element to section 8 of the Form R, "Total Waste Management Activities," that would represent the sum of the current sections 8.1 - 8.7 of the Form R.

The Department believes that the addition of this new reporting element has the potential to be misunderstood by users of the information from several perspectives. The tendency will be for some information users to look at this summed number exclusively, rather than the individual data elements themselves and make erroneous assumptions about waste management activities at a facility. For example, suppose a facility reports in year one that they recycled a material containing 40,000 pounds of a toxic chemical (representing 10,000 pounds recycled 4 times) and they report that same number in the new data element, "total waste management activities." In year two this facility recycles the material containing 10,000 pounds of a toxic chemical 6 times and reports 60,000 pounds recycled and 60,000 pounds as "total waste management activities." An information user looking exclusively at the "total" number may assume that this facility is managing more waste than the previous year, when in reality they have just increased their recycling efforts.

Another area for potential misunderstanding is what this number is intended to represent. It could be interpreted to mean the total waste *generated* at the reporting facility, or it could be interpreted as the total amount of waste *handled* at the facility (waste generated off-site, but managed at the facility.) The first

interpretation could greatly exaggerate the amount of waste a reporting facility actually generates. While this problem also pertains to each individual data element, it would be even more greatly exaggerated in a “total” number.

In addition, materials reported in sections 8.1 - 8.7 are not necessarily wastes. EPA has not provided a definition for waste under EPCRA. Some materials reported in section 8, such as spent solvents sent to recycle or energy recovery, are not considered wastes by the industries performing these activities. As long as these streams have economic value, the Department does not believe they should be classified as wastes.

In conclusion, the Department believes that the individual data elements should stand on their own and no summing of these elements should occur. In this way, stakeholders would not have the potential to misunderstand a summed number.

4. THE ADDITION OF A SERIES OF CHECK BOXES TO EXPLAIN YEAR-TO-YEAR DATA CHANGES IN THE PRODUCTION RATIO OR ACTIVITY INDEX

At the March 19-20, 1998, meeting, the TDR committee considered recommending that EPA consider adding a series of check boxes in Section 8 to explain why the amount of toxic chemical reported by a facility changed from year to year. This recommendation focuses on the fact that EPA has not yet developed clearly defined and consistent ways to estimate production for purposes of calculating the production activity or activity index in Section 8.9 of the Form R.

The Department supports the use of check boxes to assist data users in understanding why the production ratio or activity index (PR/AI) has changed from year to year. However, the Department is concerned that some of the reasons may not be represented in the check box categories and result in an overuse of an “other” check box. Interested data users would then have to contact facilities for more specific information. In order to assist the EPA in developing the check boxes, the Department recommends that EPA use the upcoming notices of proposed rulemaking on revisions to the Form R to request comments on how reporters currently develop the activity index and production ratio, and then use this information in their development of the checkboxes.

The Department also suggests that EPA expand its Form R guidance to discuss different PR/AI calculation methods, including the benefits and uses of the PR/AI and examples.