ENVIRONMENTAL JUSTICE AND THE TOXICS RELEASE INVENTORY REPORTING PROGRAM: COMMUNITIES HAVE A RIGHT TO KNOW

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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SUBMITTED MATERIAL

ENVIRONMENTAL JUSTICE AND THE TOXICS RELEASE INVENTORY REPORTING PROGRAM: COMMUNITIES HAVE A RIGHT TO KNOW

THURSDAY, OCTOBER 4, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT
AND HAZARDOUS MATERIALS,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:02 a.m., in room 2322 of the Rayburn House Office Building, Hon. Albert R. Wynn (chairman) presiding.

Members present: Representatives Solis, Capps, Baldwin, Barrow, Pallone, Pitts, Terry, Murphy, and Barton.

Also present: Representative Shimkus.

Staff present: Caroline Ahearn, Ann Strickland, Mary O'Lone, Dick Frandsen, Rachel Bleshman, Lauren Bloomberg, Jodi Seth, Jerry Couri, Garrett Golding, and Mo Zilly.

OPENING STATEMENT OF HON. ALBERT R. WYNN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. WYNN. Good morning. I would like to call the hearing to order. Today we have a hearing on H.R. 1103, the Environmental Justice Act of 2007, introduced by the distinguished vice chair of the subcommittee, Ms. Hilda Solis, and a hearing on H.R. 1055, the Toxic Right-to-Know Protection Act, introduced by another distinguished member of this subcommittee, Representative Frank Pallone.

For purposes of making opening statements the Chairs and ranking members of the subcommittee and the full committee will each be recognized for 5 minutes. All other members of the subcommittee will be recognized for 3 minutes, however, those members may waive the right to make an opening statement and when first recognized to question witnesses instead, add those 3 minutes to their time for questions.

Without objection all members have 5 legislative days to submit opening statements for the record.

The Chair would now recognize himself for an opening statement.

As I indicated, we are here to hold a hearing on two very important bills, the Environmental Justice Act of 2007, and also the Toxic Release Inventory Right-to-Know Act sponsored by Mr.

Pallone. That is H.R. 1055. It restores the requirements for reporting toxic emissions data from polluting facilities and assures that the information is reported annually to the EPA.

With respect to environmental justice, many people believe that the movement began in Warren County, NC, a poor, predominantly African-American community where I lived as a child. In 1978, transformer oil contaminated with cancer-causing PCBs was illegally dumped over 210 miles of North Carolina roadsides. The roadsides were listed as an EPA Superfund site, and EPA approved a landfill to dispose of the contaminated soils.

In 1982, dump trunks containing this waste rolled into Warren County and more than 6 weeks of marches and non-violent street demonstrations followed.

In 1993, the community's greatest fear was realized, however. The landfill seal began to fail, threatening to contaminate drinking water. Decontamination of the landfill was not completed until 2003.

The national attention given to Warren County resulted in a landmark study. In 1987, the United Church of Christ study, "Toxic Waste and Race in the United States," found that race, more than income or home values, was the main predictor for the location of hazardous waste facilities. In fact, people of color were 47 percent more likely to live near hazardous waste facilities than white Americans.

To focus the Federal Government's attention on environmental and human health conditions in minority and low-income communities, in 1994, President Clinton issued the Environmental Justice Executive order. Environmental justice strategies and policies were issued, and EPA created the Office of Environmental Justice.

But more than a decade later, where are we? In a 2004 report, the EPA Inspector General determined that EPA needs to consistently implement the intent of the Executive order on environmental justice. In a 2006 report the EPA Inspector General concluded, EPA needs to conduct environmental justice reviews of its programs, policies, and activities, and finally in 2005, the Government Accountability Office determined that EPA should devote more attention to environmental justice when developing clean air rules.

In the United States today minorities are exposed to higher levels of air pollution. These exposure levels negatively affect the health of infants, are associated with higher rates of infant mortality, and also result in higher prevalence of death rates from asthma.

For example, Puerto Rican children have an asthma rate 140 percent higher than non-Hispanic white children and African-Americans, only 12 percent of the population, constitute 25 percent of all deaths from asthma.

H.R. 1103 directs EPA to, one, conduct environmental justice reviews of its program and policies to determine whether they may have a disproportionately high and adverse human health or environmental affect on minority or low-income populations.

Second, it requires EPA to analyze new rules to identify potential environmental justice issues to see if such disproportion affects will be created.

Third, it requires EPA to fully respond to public confidence that raise environmental justice issues, and fourth, requires the EPA to provide emergency planning procedures. And fifth, creates Congressional reporting requirements to provide for oversight of EPA's implementation of the Act.

Interesting, to add insult to injury, in December of this past year EPA adopted a new rule that reduces the amount of information on toxic chemical management and releases that is provided to EPA and the public. Under the Emergency Planning and Community Right-to-Know Act of 1986, EPCRA, facilities that manufacture, process, or otherwise use more than the specified amounts of nearly 650 toxic chemicals are required to report their releases to water, air, and land. This information is compiled in the Nation's Toxic Release Inventory.

However, under EPA's new rules, for the first time, facilities will not have to provide detailed information about persistent bio-accumulative and toxic PBT chemicals. PBTs are long-lasting toxics such as lead, mercury, and PCPs that can build up in the body.

In addition, for non-PBT chemicals, the EPA has significantly raised the threshold before facilities are required to report detailed information on releases or waste management. The impact of these data reporting changes is significant to minority and low-income communities. According to GAO nearly 22,000 detailed TRI reports containing information on the amounts of chemicals released and managed in some 3,500 facilities will no longer be required.

EPA received over 120,000 comments about these changes; 99 percent oppose the changes—including 23 States, 30 public health organizations, 40 labor organizations, and more than 200 environmental and public interest groups. Even the EPA's Science Advisory Board objected to the changes.

The Toxic Right-to-Know Protection Act will maintain the annual reporting requirements and provide the community with information it needs to assess the potential affects of toxic emissions from polluting facilities.

At this time I recognize my distinguished ranking member, who is waiting eagerly, for 5 minutes.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman. Thanks for recognizing me, and thanks for listening to me on the floor about one of the concerns about the hearing.

These are really two distinct issues, and as the Senate had an opportunity to hold hearings, add comments and ask questions on environmental justice and the toxic release inventory, and I understand scheduling and committee rooms and all that stuff, but I don't think we do justice to both these issues by clomping them and putting them together.

Having said that, here we are, and we will continue to move forward. We, but we owe it to our constituents and all Americans to be thorough, balanced, and thoughtful.

First of all, on the H.R. 1055, the Toxic Right-to-Know Act, amends one sub-section of one section of the environmental law. It will have impact on thousands of small businesses across this coun-

try, many in my district, and several, I suspect, in every member of Congress's district.

For example, today on the second panel we will hear testimony from Andy Bopp, who will be representing Baltimore Glass Decorators. Here is one of the products Baltimore Glass decorates, and I think there is some in their gift shop, too. This business does not have the financial or the manpower resources to comply with unnecessary regulations, and as you follow their testimony, we will see how stringent and just bureaucratic they are.

I worry that small business benefits and employees rise or fall depending upon the layers of regulations they are subjected to, and it is our duty to insure that our Nation's small businesses are not being crippled for little to no public benefits.

Highlighting this is the troublesome word of "release." As part of this program it is extremely misleading and harmful, and I have got Webster's Dictionary to—and what happened in the passage of this law, we redefined the word, "release," to not mean release. And I, the one thing I will do when we bring this bill to the floor is try to clarify what this bill actually does. And I would just refer, I don't have time to read the Webster's Dictionary, but most people when they hear, release, will think of stuff like emit or discharge.

Well, according to TRI, release could mean manage, use, or recycle. A lot different than emitting or discharging. So that is problematic in the legislation just to begin with.

Does filling out more paperwork improve the health of our constituents? I don't believe it does, but I am interested to learn more today about this proposal.

I would also like to highlight the testimony of the first responder on the second panel, who a fire marshal, Mr. Finkelstein. Sir, first of all, I would like to thank you for your service, and many of us work with our local firefighters through the Fire Act Grant, but in his testimony I think there is going to be an attempt to connect TRI with emergency planning and responding, but since this data is 18 months old, any first responder who is using 18-month-old data to enter a facility has bigger concerns than just TRI. Because they use other sections, especially sections 311 and 312, for more appropriate use in managing emergency information and data as far as entry into facilities.

The other bill on environmental justice, I think we just have a long way to go to understand, and the Clinton order says let us address this, and the real question is is the EPA moving in a way in which, that is part of the hearing process today, we will take the comments and hopefully be able to work with you as we are having good success in the elemental mercury debates. I hope that we can move both these pieces of legislation with like effort so that when we get to the floor, that we have got the big kumbayah movement, and we can move quicker rather than slower.

And with that I yield back my time.

Mr. WYNN. I thank the gentleman. I am also in favor of kumbayah.

At this time I would like to recognize the vice chair of the committee, Representative Hilda Solis, who is also the sponsor of H.R. 1103, the Environmental Justice Act, and I would like to com-

pliment her for her leadership on this issue over the years. Ms. Solis, the floor is yours.

OPENING STATEMENT OF HON. HILDA L. SOLIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. SOLIS. Thank you so much, Mr. Chairman, and I thank the ranking member also.

Believe it or not, this is a very historical moment. In the last several years that I have been serving on this committee, I can't recall ever having a hearing on this particular subject. So I applaud our chairman and thank goodness for the changes that occurred this last fall because otherwise we wouldn't be sitting here today. And I really want to thank the members that worked with us very closely on this and really salute our chairman for the work that he has done.

This isn't just an idea that was hatched yesterday. We have been talking about environmental justice issues for many, many years, only we never had the ability to have a formal hearing on it. Today is that day. So I really want to say how pleased and thankful many, many communities, communities of color, that are disadvantaged, that are looking for our leadership here in the House of Representatives. And I have worked tirelessly throughout my career before I came here to the Congress, passing and codifying the Executive order that Clinton had introduced in 1994, back then, to talk about environmental justice.

And I guess today what we are going to try to find out is how well the administration has been doing in implementing that Executive order and then focus on this piece of legislation, which I really believe will provide a better path to where we need to go to understand how we implement this Executive order that we hope to one day soon see codified. And this is the first beginning for that.

And I want to just cite that there are many, many advocates that are supporting us on this mission today, and according to a recent report released by the United Church of Christ titled, "Toxic Waste and Race at Twenty," people of color make up the majority of those living in neighborhoods within 2 miles of the Nation's commercial hazardous waste facilities. These communities have been under attack under the policies of the present administration, and since 2004, the administration has requested at least a 25 percent cut in the environmental justice budget.

And in early 2005, the EPA released a draft strategic plan on environmental justice, which had disregarded race, of all things, race, as a consideration for determining environmental justice, in direct contradiction to the Executive order. Despite reaffirming its commitment to environmental justice in November 2005, in this memo, the administration finalized weakening changes to the toxic release inventory program in December 2006.

A proposed rule on locomotive emissions released this April failed to mention environmental justice even one time, despite the promises to include environmental justice considerations in proposed and final rules. In 2004 the IG reported that EPA had not consistently implemented the Executive order, and in 2006 reported that

the EPA did not know the impact, the impact of these policies and what they were having on environmental justice communities.

In 2005, the GAO found that EPA failed to consider the impact of its air regulations on communities of color and underrepresented areas. And, during budget hearings in March, Acting Inspector General Roderick testified that the EPA had yet to establish a plan of action for implementation of recommendations on environmental justice.

Absent a real commitment to environmental justice, the health and well being of our communities will continue to suffer. H.R. 1103 and H.R. 1055 will do better for the health of all of our communities, regardless of where you live. H.R. 1103 will significantly, in my opinion, advance environmental protections in communities of color and low-income communities by requiring the implementation of the Executive order and the implementations of recommendations that go along with that in the IG and the GAO report.

More than 50 organizations and Congress are on record in support of that Executive order, and it is time that we give real protections to our communities by codifying this legislation. We must reinforce the community right to know by reinstating the Toxic Release Inventory Program, a successful program for more than 21 years.

And I yield back the balance of my time.

Mr. WYNN. I thank the gentlelady, and again, compliment and commend her for her passion and her leadership on this issue. I think she is right, we wouldn't be here without her efforts, and I am very pleased that we are here today.

At this time I would be happy to recognize Mr. Barrow, the distinguished gentlemen from Georgia.

OPENING STATEMENT OF HON. JOHN BARROW, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BARROW. Thank you, Mr. Chairman, and I, too, want to commend my colleague and my hero, Ms. Solis, for her authorship of the Environmental Justice Act for 2007, my friend and colleague, Mr. Pallone. He is not my hero yet, but he is working on it. I appreciate your authorship of the Toxic Right-to-Know Act.

Mr. Chairman, thank you for calling this hearing. There is more than one way to repeal a law. There is more than one way to repeal an Executive order. There is the up and up way, out front and in the open where everybody can see it, and there is another way, by neglect. You can repeal a lot of things by neglect. I feel like there has been some neglect of Congress's responsibility in overseeing the implementation of the Executive order in question. There has been some neglect on the part of the executive branch of the Government in implementing the order, and this hearing is an opportunity for us to shine a light on that and try and get things going back in the right direction.

I know a little something about this. Back in Augusta, GA, we have a community that is living smack dab on top of a brownfield. Hyde Park in Augusta is an area that is on the industrial edge of town, and there are people who are deeply tied to the land. They got their lifetime's investment in the homes in that area, and they

don't know whether to stay, they don't know whether to leave, we haven't got the money to buy them out, a lot of folks don't want to be bought out. They are attached to the community and the sense of community they have and yet they are stuck with all of these issues.

And I sort of feel like it is important for us to kind of add another element to this, try to build some support, but getting going on this, you realize this isn't just some vast environment conspiracy against poor folks.

You know, economic development in general fuels environmental injustice.

There is a penalty to pay for going first in economic development. In my part of the country, in Augusta, for example, it was an industrial crossroads. It was a commercial town. The railroad came. After the railroad, at the point where the river crosses the fall line, and there is a lot of business to be done, and a lot of folks did business in the old days without much regard to the environmental consequences. And as a result that area is pretty fouled up, and the economic development just naturally moves onto the next area. It moves onto the greenfield just beyond. And it leaves these brownfields back to fester and to swelter and indecision and indifference.

The point I want to emphasize is not only is that wrong, not only is it unjust, it is expensive. It is wasteful. There are reasons that some places develop first. There are reasons why economic and transportation infrastructure grows there, and it is there. It is incredibly wasteful for us to leave areas basically undevelopable or unusable and to move onto the next greenfield. It is expensive, because it adds to the transportation costs for all concerned, it leaves these pockets of economic stagnation behind. All that adds to the cost of doing business for everybody.

And so one thing I want to try and add to the mix as we talk about the injustice of this, is the stupidity of it. It is like the French diplomat said, it is worse than a sin. It is a mistake. And what I think we ought to recognize is cleaning up the mess that has been made and stopping the messing from going on any further is not only the right thing to do, it is the smart thing to do. And I hope we can focus on that and build support for this, because we got huge economic development potential right in these brownfield backyards of ours.

And with that, Mr. Chairman, I thank you again for your leadership on this issue, and I yield back.

Mr. WYNN. I thank the gentleman from Georgia.

At this time I would recognize the gentleman from Pennsylvania, Mr. Murphy.

OPENING STATEMENT OF HON. TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. MURPHY. Thank you, Mr. Chairman. I was on the floor giving a speech, and I appreciate your indulgence in allowing me to be a few minutes late.

The issue of environmental justice brings to light a community in my district, Jeannette, PA, once home to a thriving glass indus-

try, where some years ago someone bought that plant, and it remains a rusted heap that is surrounded by an area that is becoming less and less desirable for people to live there.

Low-income families face in their backyards an area that is soon to be high in a number of pollutants in this brownfield, and nothing is done about it. It is a place that I think breeds less economic development and poverty rather than being an economic engine for that embattled community.

That is why legislation that looks at environmental justice is so important. We have to recognize a responsibility over time for those who are involved with development and manufacturing to make sure we are doing all we can to keep that environment clean, create jobs, and make sure that we understand the long-term legacy of responsibility to the communities that those are in.

Today we are also going to be dealing with some issues involving the burden of paperwork, and I know that we are going to have people of divergent opinions on that, but it is important for the future of all business, small and large, that EPA is working with employers to making sure that we find ways that work towards keeping our communities and our air and our soil and our water clean but also working towards those, working with those industries so that we find ways of making sure we achieve that.

The issue is to keep the air, the water, the land clean and not just to create more rules and not just to create mounds of paperwork and polluting our desks with paperwork. Let us find ways of solving these problems so we can really work towards the protection of our environment and our communities and work towards other jobs.

And I yield back my time, Mr. Chairman.

Mr. WYNN. I thank the gentleman. At this time it gives me great pleasure to recognize a gentleman from New Jersey, Mr. Pallone, who is a leader on these issues and is the author of H.R. 1055, Toxic Right-to-Know Protection Act.

Mr. Pallone.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman, and I am trying to be good this morning but with the other side but I just want to commend you because the fact of the matter is that we couldn't have even had a hearing on these issues in the previous Congress, and I am not just saying that to be bad, because I often requested this and other hearings when I was the ranking member, and we weren't able to get them. In fact, it was very difficult, even impossible to get somebody from the EPA to come in and be questioned at all because for whatever reason the previous majority just didn't want them to be questioned. And I will leave it at that, but I do want to mention that, because I think it is important that under your leadership we are able to do this today.

I wanted to focus on the Toxic Release Inventory issue and its relationship to environmental justice. Toxic Release Inventory or TRI was actually authored by my Senator, Frank Lautenberg, of New Jersey, and passed into law in 1986, as part of the Emergency

Planning and Community Right-to-Know Act or EPCRA. After a tragic disaster at a Union Carbide facility in Bhopal, India, that killed thousands of people, Congress passed it to ensure that communities know how much the most dangerous industrial chemicals are being released into the air, water, and the ground, and for a decade it worked.

However, in December 2006, the EPA announced final rules that loosen reporting requirements for the TRI. With these rules, the Bush administration has undermined this critical program in two ways. First, it eliminates detailed reports for more than 5,000 facilities that release up to 2,000 pounds of chemicals every year. And second, it eliminates detailed reports from nearly 2,000 facilities that manage up to 500 pounds of chemicals known to pose some of the worst threats to human health, including lead and mercury.

Now, this new rule adversely affects communities around the Nation. Without accurate and detailed TRI data, communities have less power to hold companies accountable and make informed decisions about how toxic chemicals are to be managed. As the GAO said in a recent report, and I quote, "EPA's recent changes to the toxic release inventory significantly reduce the amount of information available to the public about toxic chemicals in their communities." The changes mean that over 3,500 facilities nationwide, including more than 100 in my State, will not have to submit detailed information about their chemical use. In 75 counties around the country communities will no longer have access to detailed information about the status of toxic chemicals in their backyards.

The bottom line, Mr. Chairman, is that EPA's TRI Burden Reduction Rule makes less information available that was previously available to the public. Now, this is all about right to know, which to me is so important. Communities have a right to know what kinds of chemicals are being released in their backyards. This information was also useful to workers who could be affected on the jobsite and first responders who need to plan for incidents at specific high-risk facilities.

It is also an environmental justice issue. According to the GAO report many of the facilities that will no longer be reporting detailed toxic and chemical release info, are located in low-income and high-minority areas, and with that in mind I look forward to hearing from EPA today on how much analysis went into the agency's conclusion that the new rule would not, and I quote, "disproportionately impact minority or low-income communities."

I believe that today's testimony by GAO strongly rejects such a notion. And in response to this ill-advised and potentially harmful rule and process in which it was finalized, myself and Congresswoman Solis, because I know she is a co-sponsor, and she has had a lot to do with this, we introduced together the Toxic Right-to-Know Protection Act, and that Act codifies the stronger reporting requirements that were in place before the Bush administration weakened them late last year by codifying these requirements.

Neither the current administration nor future administrations, because I don't trust anybody in the future either, could again change the guidelines without the approval of Congress.

And I look forward to hearing from our witnesses about this issue. But thank you, again, Mr. Chairman, for even having this hearing. I do appreciate it.

Mr. WYNN. Thank you, Mr. Pallone, and you were not being bad. I do want to, again, compliment you for your leadership on this particular issue. It is a critical and important thing. You have done a great job over the years.

At this time I would recognize the gentleman, Mr. Terry, for an opening statement.

Mr. TERRY. Thank you, Mr. Chairman. I wish to waive to reserve enough time for questions.

Mr. WYNN. All right. Thank you. At this time I would like to recognize Ms. Baldwin.

OPENING STATEMENT OF HON. TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Ms. BALDWIN. Thank you, Mr. Chairman. I am very pleased that the committee is holding this hearing today on two very important measures, and I want to begin by commenting on H.R. 1055 and say that I am encouraged that today we will be examining the EPA's decision to weaken the community right-to-know rules.

Congress, as we have just heard discussed, created the Toxic Release Inventory Program under the premise that communities should know what toxic chemicals are being dumped in their backyards. Over the years the program has also been effective in protecting public health and urging businesses to voluntarily reduce chemical releases, as no business wants to be on the top of an EPA polluter list.

Given the successful nature of the program, it is really difficult for me to comprehend EPA's justification for altering the TRI rules. Yet, in changes that the EPA argues were necessary to ease paperwork, the agency has weakened reporting requirements.

The result is a quadrupling of the amount of toxic pollutants that companies can release before they have to tell the public. In my home State of Wisconsin EPA's rule allows 113 facilities to no longer have to notify my constituents of their harmful releases. Clearly, at stake is our public health, but EPA's rule also jeopardizes our communities' access to critical information used by emergency responders, academics, public interest groups, State agencies, and labor groups among others.

Emergency responders, for instance, use this data to protect the public against chemical spills or situations where toxic waste is released into the water supply. Similarly, public interest groups use the data to push for environmental policy changes, and labor groups use the data to evaluate hazards to workers.

TRI data is so important that the EPA should be evaluating ways to refine the data and make it available faster, rather than coming up with ways to stifle the information and protect the polluters. At least 305 community, environmental, faith-based, investor, labor, public health, and science organizations have called upon Congress to restore toxic chemical reporting.

And I am hopeful that today's hearing will highlight the importance of a strong TRI and demonstrate the need for passage of Con-

gressman Pallone's Toxic Right-to-Know Protection Act so that the EPA can return to an agency that protects the public interest rather than the polluting businesses.

I also want to commend Congresswoman Solis's efforts to bring environmental justice to those in minority and low-income populations who disproportionately bear the burden of our Nation's pollution. These pollutions face higher rates of low birth weight, greater risk of asthma, and increased occurrences of infant mortality.

The good news is that together focused attention, increased research, and public access to information can all help improve the environment and human health conditions facing minority and low-income communities. In the end environmental justice is not just about cleaning up toxins, but rather it is about insuring a healthy and bright future for generations to come.

So thank you, Mr. Chairman, for this very important and historic hearing, and I yield back the balance of my time.

Mr. WYNN. Thank you very much, Ms. Baldwin. I appreciate your comments and your insightful remarks.

At this time the Chair would recognize Mr. Pitts from Pennsylvania.

Mr. PITTS. I will waive.

Mr. WYNN. The gentleman has waived. Are there any further opening statements?

If not, at this time the Chair would like to acknowledge a distinguished visitor from Maryland who has joined us for today's hearing. He is Division Chief Michael Love of the Montgomery County Fire and Rescue Service.

Chief Love, we are delighted to have you here. In addition to service on Montgomery County's Fire and Rescue Service, Chief Love is also a member of the Local Emergency Planning Commission, which is the local government organization that receives TRI data and uses it in planning for chemical spills, accidents, and other emergencies.

Thank you again for being with us.

That concludes all opening statements. Other statements for the record will be accepted at this time.

[The prepared statement of Mr. Green follows:]

PREPARED STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you, Mr. Chairman, for holding this hearing on the Environmental Justice Act of 2007 and the Toxic Right to Know Act.

My district includes part of Houston, the fourth largest city in the United States, and over 65 percent of the population is Hispanic.

The 29th district also includes the Port of Houston and is the home of many petrochemical companies.

Both of this bills that we are discussing today are of importance to the 29th district.

Houston has its fair share of environmental problems. We have higher than average levels of air toxics, which may be related to adverse health effects in the population.

We also have our fair share of environmental waste sites. On September 29, an abandoned waste site on the San Jacinto River that is leaking toxic levels of dioxin into Galveston Bay was placed on the National Priority List short list.

I have worked in conjunction with the EPA, the State of Texas, and the Texas Commission on Environmental Quality to have the site placed on the National Priority List.

I am hopeful that we will be able to work together and begin cleaning up this site soon.

I support the industry in my district. They employ many of my constituents. However, letting communities know what chemicals are being released and disposed of in their backyard is a responsibility these companies must uphold.

The current Toxic Release Inventory Program reporting requirements, in an effort to reduce paperwork, have the potential to endanger communities such as my own.

Companies that work with chemicals should be required to report in detail their use and disposal of these chemicals.

Also, the EPA has a responsibility to practice environmental justice. Just because my constituents live close to where they work does not mean they should suffer from health effects.

Communities that are heavily minority populated and lower income areas should not be subjected pollution just because of their race and economics.

I support both of these bills and I urge my colleagues to do the same.

Thank you Mr. Chairman.

Mr. WYNN. We are going to move into the testimony of our witnesses. I think we have an excellent panel. The first panel is a governmental panel, and I would like to introduce them at this time.

First we have Mr. Granta Nakayama, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency.

We also have Mr. Wade Najjum, Assistant Inspector General for Program Evaluation, Office of Inspector General, U.S. Environmental Protection Agency.

We have with us also Ms. Molly O'Neill, Assistant Administrator, Office of Environmental Information, U.S. Environmental Protection Agency.

And also we have with us Mr. Thomas, the Honorable Thomas Sullivan, Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

And Mr. John B. Stephenson, Director, Natural Resources and Environment, Government Accountability Office.

Thank you all for coming. We are going to now have 5 minutes opening statements from the panel, and your prepared testimony in full will be, which you submitted in advance, will be made a part of the hearing record.

Mr. Nakayama.

STATEMENT OF GRANTA Y. NAKAYAMA, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC

Mr. NAKAYAMA. Thank you. Good morning, Chairman Wynn, Ranking Member Shimkus and Vice-Chair Solis, and distinguished members of the subcommittee. I am Granta Nakayama, Assistant Administrator for the Office of Enforcement and Compliance Assurance at the United States Environmental Protection Agency. My office is responsible for enforcing the Nation's environmental laws, as well as serving as EPA's National Program Manager for environmental justice.

Thank you for inviting me to the hearing today on environmental justice legislation including the pending bills, H.R. 1055 and H.R. 1103, the Environmental Justice Act of 1007. I am pleased to discuss the environmental justice accomplishments of the agency,

what we have learned from our efforts, and how we will continue to pursue the cause of environmental justice.

Insuring environmental justice means not only protecting human health and the environment for everyone but also insuring that all people are treated fairly and given the opportunity to participate meaningfully in the development, implementation, and enforcement of environmental laws, regulations, and policies.

EPA has learned that addressing environmental justice issues is everyone's shared responsibility. We also recognize that environmental justice issues are complex and multi-faceted. While no single tool or approach along may provide the solution, EPA continues to believe that using the range of our existing statutory, regulatory, and enforcement tools for protecting the environment and public health is a sound approach. These tools coupled with building the capacity of communities and other stakeholders to participate meaningfully in the environmental decisions that affect them is an effective way to protect the health and environment of all our Nation's people and communities.

EPA is committed to comprehensively integrating environmental justice considerations into its programs, policies, and activities. EPA is the lead for implementing Executive order 12898, Federal actions to address environmental justice in minority populations and low-income populations. This Executive order directs Federal agencies to make achieving environmental justice part of its mission. EPA works to comply with this Executive order and has taken significant and meaningful steps to integrate environmental justice into its mission.

In 2005, Administrator Johnson reaffirmed EPA's commitment to EJ. The Administrator also identified national EJ priorities such as reducing asthma and elevated blood lead levels. For 2008, the agency's national program guidance and strategic plans are being examined to identify activities, initiatives, and strategies for integrating environmental justice into planning and budgeting documents.

EPA's Inspector General recently identified the need for EJ program reviews. The agency agreed, and we will begin conducting those reviews in March 2008. The EPA renewed the charter of the National Environmental Justice Advisory Council for 2 years so that EPA will continue to receive valuable advice and recommendations from its stakeholders.

Since 1993, EPA has awarded more than $31 million in grants to more than 1,100 community organizations and others to take an active role in our Nation's environmental stewardship. These environmental justice grants promote community empowerment and capacity building essential to maximize meaningful participation in the regulatory process.

Just yesterday EPA announced it has awarded $1 million in environmental justice small grants this year to 20 community-based organizations to raise awareness and build their capacity to solve local environmental and public health issues.

EPA is making significant headway on the road to environmental justice. In moving forward we will complete the Environmental Justice Program reviews so that we can appropriately evaluate the effectiveness of EPA's actions for environmental justice. We will

also finalize the Environmental Justice Strategic Enforcement Assessment Tool, or EJ SEAT, to enhance the EPA Office of Enforcement and Compliance Assurance's ability to consistently identify potential environmental justice areas of concern and assist in making effective enforcement and compliance assurance resource deployment decisions. We will evaluate the tool, its strengths, and limitations.

In conclusion, I believe we are on the right track and have the statutory authorities and needed flexibilities to identify problems and tailor solutions that result in improvements in health and environmental quality for all.

I look forward to working with Congress to insure the continued progress towards this goal. I want to personally thank you, Chairman Wynn, for allowing me to appear before you on behalf of the EPA. Thank you for holding this hearing on this very important topic, environmental justice, and I would be happy to take any questions.

[The prepared statement of Mr. Nakayama follows:]

Testimony of Granta Y. Nakayama
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Before the
Subcommittee on Environment and Hazardous Materials
Committee on Energy and Commerce
United States House of Representatives

October 4, 2007

Good morning Chairman Wynn, Ranking Member Shimkus, and distinguished Members of the Subcommittee. I am Granta Nakayama, Assistant Administrator for Enforcement and Compliance Assurance (OECA) at the U.S. Environmental Protection Agency (EPA). My office is responsible for enforcing the nation's environmental laws, as well as serving as the National Program Manager for environmental justice. Thank you for inviting me to the hearing today on environmental justice legislation including the pending bill, H.R. 1103, the Environmental Justice Act of 2007. I am pleased to discuss the environmental justice accomplishments of the Agency, what we have learned from those accomplishments, and how we plan to continue our efforts to comprehensively address environmental justice.

Let me begin by emphasizing that the Administrator and I share your interest in continuing to advance efforts to address disproportionate and adverse environmental and public health risks faced by communities around the nation. We recognize that minority and/or low-income communities may be exposed disproportionately to environmental harms and risks. EPA works to protect these and other communities from adverse human health and environmental effects. Ensuring environmental justice means not only protecting human health and the environment for everyone, but also ensuring that all people are treated fairly and are given the

opportunity to participate meaningfully in the development, implementation, and enforcement of environmental laws, regulations, and policies.

Based on our experience, EPA has concluded that the integration of environmental justice considerations into the programs, policies, and activities of an agency is an approach that has yielded results. We are striving to more fully do so in the future. Most importantly, EPA has learned that addressing environmental justice issues is everyone's shared responsibility. Most environmental justice issues are local or site-specific – resolving these issues involves many tools coupled with the concerted efforts of many stakeholders – Federal, state, local and tribal governments, community organizations, NGOs, academic institutions, business/industry, and the community residents themselves.

We also recognize that environmental justice issues are complex and multifaceted. While no single tool or approach alone may provide the solution, EPA continues to believe that using the range of existing statutory, regulatory, and enforcement frameworks that underlie the environmental and public health protections of this nation, along with building the capacity of communities and other stakeholders to participate meaningfully in the environmental decisions that affect them, is a most effective way to protect the health and environment of all of our nation's people and communities.

Implementing Executive Order 12898

EPA is committed to integrating environmental justice considerations into its everyday work and believes that Department and Agency heads within the Executive Branch are best suited to promoting such change. We have developed a comprehensive approach that recognizes

the unique relationship between environmental protection, human health, economic development and social justice. EPA is a pioneer in Federal government implementation of environmental justice programs. No other Federal agency has attempted to incorporate environmental justice into its programs, policies, and activities as comprehensively as the EPA. EPA is the lead for implementing Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." This Executive Order directs Federal agencies to "make achieving environmental justice part of its mission." EPA works to comply with this Executive Order, and has taken significant and meaningful steps to integrate environmental justice into its mission.

Continued collaboration with our federal partners is important and, as lead agency for the Executive Order, EPA provides technical assistance to other Federal agencies on integrating environmental justice. For example, EPA has been working with the Centers for Disease Control and Prevention (CDC) in developing an environmental justice policy. EPA also is working with CDC's National Center for Environmental Health and with the Agency for Toxic Substances and Disease Registry (ATSDR) to develop a strategy for integrating environmental justice goals within its programs and operations. On July 18, 2007, EPA, CDC and ATSDR announced a memorandum of understanding (MOU) to collaborate on data gathering and sharing, and to find solutions for community health problems that could be linked to environmental hazards. Environmental justice was an important consideration in developing this MOU.

I am proud of the commitment that EPA has shown integrating environmental justice into its daily work. On November 4, 2005, Administrator Johnson reaffirmed EPA's commitment to environmental justice. He directed the Agency's managers and staff to integrate environmental

justice considerations into EPA's core planning and budgeting processes. As a result, EPA has made transparent, measurable, and accountable environmental justice commitments and targets in all five goals of EPA's Strategic Plan for 2006-2011. Administrator Johnson identified eight national environmental justice priorities. Specifically, he directed the Agency to work with our partners to:

- Reduce asthma attacks;
- Reduce exposure to air toxics;
- Reduce incidences of elevated blood lead levels (ASTDR and the Department of Housing and Urban Development);
- Ensure that companies meet environmental laws;
- Ensure that fish and shellfish are safe to eat (Food and Drug Administration);
- Ensure water is safe to drink;
- Revitalize brownfields and contaminated sites; and
- Foster collaborative problem-solving.

EPA's Program Offices and Regions each implement an Environmental Justice Action Plan (Action Plan) to support EPA national priorities. These Action Plans are prospective planning documents that identify measurable commitments from each organization.

EPA's Chief Financial Officer directed the Agency's National Program Managers (NPMs) to include language in their FY2008 National Program Guidance that addresses the use of Action Plans and the Agency's 2006-2011 Strategic Plan to identify activities, initiatives, and/or strategies for the integration of environmental justice and incorporate them into planning and budgeting documents and program agreements. By instituting these types of programmatic

requirements, EPA is building a stronger foundation to successfully integrate environmental justice into its programs for the long-term.

In addition, EPA's Inspector General recently identified the need for environmental justice program reviews. EPA agreed, and we have embarked on an extensive effort to develop and conduct those reviews. We are developing and piloting environmental justice review protocols for the Agency's programs. Once these protocols are completed, the Agency will begin conducting the reviews in March 2008.

Capacity Building

Since 1993, EPA has awarded more than $31 million in grants to more than 1,100 community-based organizations and others to take on an active role in our nation's environmental stewardship. These environmental justice grants promote community empowerment and capacity-building - essential ingredients to maximize meaningful participation in the regulatory process. This year, EPA awarded $1 million in environmental justice collaborative problem-solving grants to 10 community-based organizations, and just awarded an additional $1 million in EJ Small Grants to 20 community-based organizations, to raise awareness and build their capacity to solve local environmental and public health issues.

The Power of Collaborative Problem Solving

I would be remiss not to highlight a particular example that demonstrates not only EPA's success, but the success of other Federal, state, and local partners, and community groups. The ReGenesis Environmental Justice Partnership, led by a community-based organization in Spartanburg, South Carolina, began in 1999 with a $20,000 grant award to address local

environmental, health, economic and social issues. In 2003, EPA developed a Collaborative Problem-Solving (CPS) Model as a framework for others to follow. The model has worked well with amazing results.

The Partnership used elements of the CPS Model to leverage the initial grant from EPA to generate more than $166 million in funding, including over $1 million from EPA Region 4. ReGenesis marshaled the collaboration of more than 200 partner agencies, and local residents, industry, and a university to revitalize two Superfund sites and six Brownfields sites into new housing developments, an emergency access road, recreation areas, green space, and job training that are vital to the community's economic growth and well-being. This result was beyond anyone's expectation.

ReGenesis proved to be such an excellent example of what can be accomplished with EPA's funding, training and partnerships that we created a documentary film about it as a training tool to put thousands of other communities on the path of collaborative-problem solving. The DVD is being distributed across the country.

With the ongoing efforts in collaborative problem-solving and the grant programs, EPA is creating new opportunities to effectively target and address local environmental justice issues. By working together, everyone can benefit from the results.

Obtaining the Best Available Environmental Justice Advice

EPA's commitment to environmental justice is also reflected by the fact that it takes actions to obtain the best available environmental justice advice and to impart any lessons

learned to those who can work with us to address environmental justice issues at the federal, state and local levels.

Importantly, in 2006, EPA renewed the charter for the National Environmental Justice Advisory Council (NEJAC) thereby ensuring that EPA will continue to receive valuable advice and recommendations on national environmental justice policy issues from its stakeholders. The NEJAC is comprised of prominent representatives of local communities, academia, industry, and environmental, indigenous, as well as state, local, and tribal government groups that can identify and recommend solutions to environmental justice problems. It is essential that EPA provide an opportunity for such discussions and for ideas to be aired, and that the NEJAC's advice and recommendations be appropriately integrated into EPA's environmental justice priorities and initiatives.

In fact, during the NEJAC's public meeting last month, I spent a day engaging with the advisory members on the topics of goods movement, and EPA's environmental justice integration efforts. By obtaining the NEJAC's advice and recommendations particularly on the latter issue, I am confident that we are engaging meaningfully with our stakeholders as we move forward to address the human health and environmental issues that affect minority and low-income communities across our nation.

Continuing EPA's Environmental Justice Efforts

The EPA successes demonstrate that we are making significant headway on the road to environmental justice. To fully integrate and implement these concerns, the EPA and its Federal,

state, tribal, local and community partners continue to work together to build a better model for the future. We are on that path today, and will continue to address all issues that come our way.

In moving forward, we will complete the environmental justice program reviews so that we can appropriately evaluate the effectiveness of EPA's actions for environmental justice. A number of successes thus far have been the result of innovative outreach rather than traditional EPA regulatory activity. That has to be factored into our plans for the future. We will focus on leveraging resources so that we can broaden our reach and replicate successes in encouraging collaborative problem-solving.

We will also finalize the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) to enhance the EPA Office of Enforcement and Compliance Assurance's ability to consistently identify potential environmental justice areas of concern and assist in making fair and efficient enforcement and compliance resource deployment decisions. We will evaluate the value of the tool, its strengths and limitations.

Conclusion

Based on the lessons we have learned, we are on a path forward with EPA's environmental justice programs. The Administration places great importance on integrating environmental justice into its work, and EPA will continue to integrate environmental justice considerations into the Agency's core programs, policies and activities and to engage others in collaborative problem-solving to address environmental justice concerns at every turn. Whenever and wherever we address environmental justice issues, we strive to build staying power in those communities and share any lessons learned with others.

In short, we believe that we are on the right track and have statutory authority and needed flexibility to identify problems and tailor solutions that result in improvements in health and environmental quality for all. We look forward to working with Congress to ensure the continued progress towards this goal.

I would like to thank you, Mr. Chairman, Ranking Member, and other members of this Subcommittee, for inviting me here today to update you on the Agency's progress in integrating environmental justice as a part of the agency's mission in accordance with E.O. 12898. I would be happy to answer any questions you have at this time.

Mr. WYNN. Thank you very much, Mr. Nakayama.

Let us see. Mr. Najjum, I believe you are next.

WADE NAJJUM, ASSISTANT INSPECTOR GENERAL, PROGRAM EVALUATION, OFFICE OF INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. NAJJUM. Good morning, Mr. Chairman and members of the subcommittee. I am Wade Najjum, Assistant Inspector General for Program Evaluation with the EPA Office of Inspector General. I am pleased to be here today to discuss the OIG's work on how EPA has incorporated environmental justice within its programs and activities.

Over the past 5 years, the OIG has been examining EPA's environmental justice activities as part of our strategic plan to review how EPA fulfills its responsibilities. We have issued two reports specifically dealing with EPA implementation of environmental justice reviews.

In 2006, we completed our most recent evaluation of whether EPA program and regional offices had performed environmental justice reviews of their programs, policies, and activities. We sought to determine: if there had been clear direction from EPA's senior management to perform environmental justice reviews; if EPA had performed these reviews; and if EPA had adequate guidance to conduct these reviews or if there was a need for additional guidance or protocols.

We concluded that EPA program and regional offices have not routinely performed environmental justice reviews. Therefore, EPA could not determine whether its programs have a disproportionately high and adverse human health or environmental effect on minority and low-income populations. We were given multiple reasons why the reviews were not performed, including: the absence of a specific directive from EPA management to conduct such reviews; a belief by some program offices that they are not subject to the order since their programs do not lend themselves to reviewing impacts on minority and low-income populations; and uncertainty about how to perform the reviews.

We made four recommendations to EPA to address these issues: require program and regional offices to determine where environmental justice reviews are needed and establish a plan to complete them; ensure that these reviews include a determination if there is a disproportionate impact on minority and low-income populations; develop specific review guidance; and designate a responsible office to compile the results of these reviews and make recommendations to EPA senior leadership. EPA agreed with our recommendations and established milestones for completing those actions.

In our 2004 review, we reported on how EPA was integrating environmental justice into its operations. Specifically, we sought to determine: how EPA had implemented the order and integrated its concepts into regional and program offices; and how were environmental justice areas defined at the regional levels and what was the impact.

We concluded that EPA had not fully implemented the order and was not consistently integrating environmental justice into its day-to-day operations at that time. EPA had not identified minority

and low-income communities, or defined the term "disproportionately impacted." In the absence of environmental justice definitions, criteria, or standards from EPA, many regional and program offices individually took steps to implement environmental justice policies. The result was inconsistency in environmental justice actions across EPA regions and programs. Thus, how environmental justice action was implemented was dependent, in part, on where you lived.

We made 12 recommendations to EPA to address the issues we raised. EPA disagreed with 11 of our 12 recommendations. EPA did agree to perform a study of program and regional office's funding and staffing for environmental justice to ensure that adequate resources were available to fully implement its environmental justice plans. EPA completed that study in May 2004.

In the interest of objectivity I should also say that since the issuance of our reports, EPA has taken some positive steps to address environmental justice issues. However, we think EPA recognizes that more work needs to be done, particularly in its efforts to integrate environmental justice into its decision making, planning, and budgeting processes. Also, EPA still needs broader guidance on environmental justice program and policy reviews, which EPA acknowledges is not in place.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Najjum follows:]

STATEMENT OF WADE T. NAJJUM

Good morning Mr. Chairman and members of the subcommittee. I am Wade Najjum, Assistant Inspector General for Program Evaluation with the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG). I am pleased to be here today to discuss the OIG's work on how EPA has incorporated environmental justice within its programs and activities. EPA has made some progress in these areas over the past five years. However, our reports show that more could be done.

ENVIRONMENTAL JUSTICE AT EPA

EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. Meaningful involvement means that: 1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; 2) the public's contribution can influence the regulatory agency's decision; 3) their concerns will be considered in the decision making process; and 4) the decision makers seek out and facilitate the involvement of those potentially affected.

In February 1994, the President signed Executive Order 12898 (Order) focusing Federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. This Order directed Federal agencies to develop environmental justice strategies to help them address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. The Order is also intended to promote nondiscrimination in Federal programs that affect human health and the environment. It aims to provide minority and low-income communities' access to public information and public participation in matters relating to human health and the environment. The Order established an Interagency Working Group on environmental justice chaired by the EPA Administrator and comprised of the heads of 11 departments or agencies and several White House offices.

At EPA, the Office of Environmental Justice (OEJ) within the Office of Enforcement and Compliance Assurance (OECA) coordinates EPA's efforts to integrate environmental justice into all policies, programs, and activities. Within each regional office there is at least one environmental justice coordinator who serves as the focal point within their organizations and as the liaison to OEJ. Among the coordinator's duties are to provide policy advice and to develop and implement programs within their regions. There is no specific environmental justice statute to fund environmental justice activities at EPA. Consequently, OEJ performs activities using a general Environmental Program Management appropriation budget line item.

OIG Environmental Justice Work

For the past 5 years, the OIG has been examining EPA's environmental justice activities as part of our broader strategic plan to review how EPA fulfills its responsibilities to address environmental threats and their impact on ecosystems, communities, and susceptible populations. We have issued two reports focusing on EPA's implementation of Executive Order 12898 requirements.

Evaluation of EPA's Implementation of Executive Order

In a 2004 review, we reported on how EPA was integrating environmental justice into its operations. Specifically, we sought to answer the following questions: 1) how had EPA implemented the Order and integrated its concepts into its regional and program offices; and 2) how were environmental justice areas defined at the regional levels and what was the impact.

We concluded that EPA had not fully implemented the Order and was not consistently integrating environmental justice into its day-to-day operations at that time. EPA had not identified minority and low-income communities, or defined the term "disproportionately impacted.' Moreover, in 2001, EPA restated its commitment to environmental justice in a manner that did not emphasize minority and low-income populations which we believed was the intent of the Order. In the absence of environmental justice definitions, criteria, or standards from EPA, many regional and program offices individually took steps to implement environmental justice policies. The result was inconsistency in determining environmental justice communities across EPA regions and programs. For example, between the regions there was a wide array of approaches for identifying environmental justice communities. Thus, the implementation of environmental justice actions was dependent, in part, on where you lived.

We made 12 recommendations to EPA to address the issues we raised, which are listed in Attachment A. Four key recommendations were: 1) reaffirm the Executive Order as a priority; 2) establish specific timeframes for developing definitions, goals, and measurements; 3) develop a comprehensive strategic plan; and 4) determine if adequate resources are being applied to implement environmental justice. EPA disagreed with 11 of the 12 recommendations. EPA did agree to perform a comprehensive study of program and regional offices' funding and staffing for environmental justice to ensure that adequate resources are available to fully implement its environmental justice plans. In May 2004, EPA issued its report entitled "Environmental Justice Program Comprehensive Management Study" conducted by Tetra Tech EM Inc.

Evaluation of EPA Environmental Justice Reviews

In 2006, we completed our evaluation of whether EPA program and regional offices have performed environmental justice reviews of their programs, policies, and activities as required by the Order. We specifically sought to determine if: 1) there had been clear direction from EPA senior management to perform environmental justice reviews of EPA programs, policies, and activities; 2) EPA had performed environmental justice reviews; and 3) EPA had adequate guidance to conduct these reviews or if there was a need for additional directions or protocols.

To determine the direction, frequency, and guidance for environmental justice reviews, we met with OECA, OEJ, and Office of Air and Radiation representatives. We then conducted an EPA-wide survey of each of the Deputy Assistant Administrators in EPA's 13 program offices and each of the 10 Deputy Regional Administrators on their experience conducting environmental justice reviews of their programs, policies, and activities. We also asked them to describe their satisfaction with available guidance and instructions for conducting these reviews, and whether they needed additional directions or protocols. We did not design our survey to draw inferences or project results. Rather we sought to obtain descriptive information on implementing environmental justice at EPA.

Our survey results showed that EPA program and regional offices have not routinely performed environmental justice reviews. Reasons for not performing these reviews included the absence of a specific directive from EPA management to conduct such reviews; a belief by some program offices that they are not subject to the Order since their programs do not lend themselves to reviewing impacts on minority and low-income populations; and confusion regarding how to perform the reviews. In addition, we found that program and regional offices lacked clear guidance to follow when conducting environmental justice reviews. Survey respondents stated that protocols, a framework, or additional directions would be useful for conducting environmental justice reviews. We concluded that EPA cannot determine whether its programs have a disproportionately high and adverse human health or environmental effect on minority and low-income populations without performing these types of reviews.

We made four recommendations to EPA to address these issues. We recommended that EPA: 1) require program and regional offices to determine where environmental justice reviews are needed and establish a plan to complete them; 2) ensure that environmental justice reviews determine whether EPA programs, policies, and activities may have a disproportionately high and adverse health or environmental impact on minority and low-income populations; 3) develop specific environmental justice review guidance that includes protocols, a framework, or directions; and 4) designate a responsible office to compile the results of environmental justice reviews and make recommendations to EPA senior leadership. EPA agreed with our recommendations and established milestones for completing those actions. For example, in response to our third recommendation EPA convened an Agency-wide Environmental Justice workgroup in April 2007 to begin developing protocols to provide guidance for conducting reviews. Implementation of the protocols developed is scheduled for March 2008.

NOTEWORTHY EPA ACHIEVEMENTS

In the interest of objectivity I also should say that since the issuance of our reports, EPA has taken some steps to address environmental justice issues. In 2005, Administrator Stephen Johnson reaffirmed EPA's commitment to environmental justice by directing staff to establish measurable commitments that address environmental priorities such as: reducing asthma attacks, air toxics, and blood lead levels; ensuring that companies meet environmental laws; ensuring that fish and shellfish are safe to eat; and ensuring that water is safe to drink. EPA is also including language in the fiscal year 2008 National Program Guidance that each headquarters program office should use its environmental justice action plan and EPA's strategic plan to identify activities, initiatives, or strategies that address the integration of environmental justice. Finally, EPA is modifying its emergency management procedures in the wake of Hurricane Katrina to incorporate an environmental justice function and staffing support in the EPA's Incident Command Structure so that environmental justice issues are addressed in a timely manner.

These are all positive steps but EPA recognizes that more work needs to be done, particularly in its efforts to making environmental justice part of its mission by integrating environmental justice into its decision making, planning, and budgeting processes. EPA needs to be able to determine if their programs, policies, and actions have a disproportionate health or environmental impact on minority or low-income populations. EPA also still needs broad guidance on environmental justice program and policy reviews, which EPA acknowledges is not in place.

One of EPA's goals is to provide an environment where all people enjoy the same degree of protection from environmental and health hazards and equal access to the decision-making process to maintain a healthy environment in which to live and work. Our work has shown that EPA still needs to do more to integrate environmental justice into its programs and activities so that it may achieve this goal.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions you may have.

ATTACHMENT A

Recommendations from 2004 OIG Report "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice"

1) Issue a memorandum that reaffirms that Executive Order 12898 is the Agency's priority and that minority and low-income populations that are disproportionately impacted will receive the intended actions of this Executive Order.

2) Clearly define the mission of the Office of Environmental Justice and provide Agency staff with an understanding of the roles and responsibilities of the office.

3) Establish specific time frames for the development of definitions, goals and measurements that will ensure that the 1994 Executive Order is complied with in the most expeditious manner.

4) Develop and articulate a clear vision on the Agency's approach to environmental justice. The vision should focus on environmental justice integration and provide objectives that are clear, precise, and focused on environmental results.

5) Develop a comprehensive strategic plan for environmental justice. The plan should include a comprehensive mission statement that discusses, among other things, the Agency's major functions and operations, a set of outcome-related goals and objectives, and a description of how the Agency intends to achieve and monitor the goals and objectives.

6) Provide the regions and program offices a standard and consistent definition for a minority and low-income community, with instructions on how the Agency will implement and operationalize environmental justice into the Agency's daily activities. This could be done through issuing guidance or a policy statement from the Administrator.

7) Ensure that the comprehensive training program currently under development includes standard and consistent definitions of the key environmental justice concepts (i.e., low-income, minority, disproportionately impacted) and instructions for implementation.

8) Perform a comprehensive study of program and regional offices' funding and staffing for environmental justice to ensure that adequate resources are available to fully implement the Agency's environmental justice plan.

9) Develop a systematic approach to gathering accurate and complete information relating to environmental justice that is usable for assessing whether progress is being made by the program and regional offices.

10) Develop a standard strategy that limits variations relating to Geographical Information System (GIS) applications, including use of census information, determination of minority status, income threshold, and all other criteria necessary to provide regions with information for environmental justice decisions.

11) Require that the selected strategy for determining an environmental justice community is consistent for all EPA program and regional offices.

12) Develop a clear and comprehensive policy on actions that will benefit and protect identified minority and low-income communities and strive to include in States' Performance Partnership Agreements and Performance Partnership Grants.

Mr. WYNN. Thank you very much for your testimony.

Ms. O'Neill.

STATEMENT OF MOLLY A. O'NEILL ASSISTANT ADMINISTRATOR, OFFICE OF ENVIRONMENTAL INFORMATION, U.S. ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC

Ms. O'NEILL. Good morning, Mr. Chairman and distinguished members of the subcommittee. Thank you for the opportunity to testify today about the progress EPA is making in providing important information to communities across the Nation regarding our work to publish the annual toxic release inventory or TRI. This testimony reflects my dual roles as the Chief Information Officer at the U.S. EPA and as the Assistant Administrator of Environmental Information where the toxic release inventory is one of the programs that I oversee.

Let me begin by saying I believe environmental information is a strategic asset as we work to protect human health and the environment. I believe this is important because environmental information underlies all decisions made by EPA and our partners to achieve our goals. As you know, EPA's TRI Program provides information on releases and waste management activities for nearly 650 chemicals reported from industry. Environmental information has many uses, and one of the most effective is to encourage facilities to reduce emissions or releases.

The December 2006 final TRI rule expanding eligibility for use of short-form reporting provided important incentives for pollution prevention. The rule would allow companies to use a shorter, simpler reporting form known as Form A to provide required information so long as they eliminate or minimize releases to the environment. No facilities were excused from reporting under the TRI rule, and no chemicals were removed from the required reporting list. The only change in requirements is that facilities are permitted to use the short form if they maintain releases and total waste is below limits established in the rule.

The rule is an important part of EPA's strategy to minimize releases of toxic chemicals across the United States. It rewards facilities that completely eliminate releases of the worst environmental substances persistent by accumulative and toxic chemicals to PBTs. By allowing them to use a shorter reporting form, provided they do not exceed 500 pounds of recycling energy recovery and treatment for that chemical, EPA believes these stringent requirements for short-form reporting are appropriate for PBT chemicals because of the greater potential for environmental harm.

For other toxics the rule allows for short-form reporting for those facilities that reduce or maintain releases below 2,000 pounds, provided their total waste management does not exceed 5,000 pounds. EPA believes that providing incentives to encourage pollution prevention and better waste management practices is good for the environment, good for facilities, and good for people who live around them.

These limits encourage pollution prevention and should be given an opportunity to work. EPA does not support H.R. 1055, because it would eliminate the valuable incentives provided in the December 2006, rule before we have even had a chance to determine their effectiveness and could also have adverse resource implications to the TRI Program.

We would not expect the effects of the December 2006, new incentives to be reflected in the reports for calendar year 2006, that we are not processing. Beginning with reports for 2007, which would be due July 1, 2008, EPA will begin to evaluate the effectiveness of these incentives in reducing releases and promoting pollution prevention.

EPA does continue to demonstrate our commitment to public access to environmental information. This year we expanded TRI reporting of dioxin and dioxin-like chemicals, compounds, increasing public access to how facilities use, manage, and release the most toxic chemical group.

In addition, EPA converted the entire TRI reporting system over to the modern industry standard classification practice to enhance information sharing and comparability across sectors. We continue to take steps to improve TRI to enhance its utility for local communities. We continue to get it out earlier and earlier to the public.

In addition to TRI, my role as EPA's Chief Information Officer, I also want you to know that we are working on new and innovative tools and applications to deliver a new suite and a more comprehensive suite of environmental data to local communities, including the use of geo-special tools, which will provide easy access to detailed local information. Ultimately these efforts and other

projects underway will provide a useful set of environmental information about local environments.

On behalf of Administrator Johnson, thank you for inviting me to come here to speak today and to tell you our progress that EPA is making on providing important information to communities across the Nation, including TRI.

And in particular I want to thank you for inviting me personally to describe my views and our views at EPA on H.R. 1055, the Toxic Right-to-Know Protection Act.

I would be happy to address any questions.

[The prepared statement of Ms. O'Neill follows:]

Testimony of Molly A. O'Neill

Assistant Administrator for Environmental Information and

Chief Information Officer

U.S. Environmental Protection Agency

Before the House Committee on Energy & Commerce

Subcommittee on Environment and Hazardous Materials

October 4, 2007

Good morning, Mr. Chairman and distinguished Members of the Subcommittee. Thank you for the opportunity to testify today about the progress EPA is making in providing important information to communities across the nation including our work to publish the annual Toxics Release Inventory, or TRI. This testimony reflects my dual roles as the Chief Information Officer at the U.S. Environmental Protection Agency (EPA) and as the Assistant Administrator of Environmental Information where the TRI is one of the programs I oversee.

Let me begin by saying that I believe environmental information is a strategic asset as we work to protect human health and the environment. I believe this is important because environmental information underlies all decisions made by EPA and our partners to achieve our goals. As you know, EPA's TRI program provides information on the releases and waste management activities for nearly 650 chemicals reported from industry. Environmental information has many uses, and one of the most effective is to encourage facilities to reduce their emissions.

Background

The Emergency Planning and Community Right-to-know Act (EPCRA) of 1986, which is the authorizing statute for the Toxics Release Inventory (TRI), directs EPA to provide information to the public on releases and other waste management quantities of toxic chemicals. Since its implementation in 1987, TRI has been the centerpiece of the Agency's right-to-know programs and a useful tool for assisting communities in protecting their environment and making businesses more aware of their chemical releases. EPA does this by collecting required reports and making the information publicly available through the Internet and published reports.

The Pollution Prevention Act of 1990 expanded reporting requirements for facilities covered under TRI to include all forms of waste management, not just releases to the environment. It also established (Section 6602) as national policy that pollution "should be prevented or reduced at the source whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner." EPA strongly supports this policy and places great importance on continuing to find ways to provide incentives that encourage changes to environmental management practices.

TRI data serve to leverage the power of public access to information to improve our environment and, in this case, affect changes in behavior that lead to decreases in the release of toxic chemicals to the environment. The TRI data, in conjunction with other information, can be

used as a starting point in evaluating exposures that may result from releases and other waste management activities which involve toxic chemicals.

Recent Accomplishments in the TRI Program

Throughout the history of TRI, the Agency has committed to continuous improvements in the quality, utility, and timeliness of the TRI data. To this end, we provide a range of compliance assistance activities, such as the TRI Reporting Forms and Instructions, industry training workshops, chemical-specific and industry-specific guidance documents, and the TRI Information Center (a call hotline).

The Agency's investment in technology-based processes has contributed significantly to improving data quality and expediting the release of the data all the while reducing the burden associated with TRI reporting. These tools have not only promoted data quality and consistency and reduced reporting burden but more importantly, they have enabled EPA to release the data to the public earlier each year.

In addition to compliance assistance and technology innovation, EPA has used its regulatory authority to make sure the data are useful to our many stakeholders and promotes the environmental goals of community right-to-know programs. In addition to the December 2006 TRI rule, which promotes reductions in toxic chemical releases, EPA recently promulgated two other regulations which require reporting of data that will improve the utility of the TRI data. On May 10, 2007, the TRI program issued a rule which expands the reporting requirements for the dioxin and dioxin-like compounds category. Under this rule, in addition to reporting the total grams released for the entire dioxin category, facilities will be required to report the quantity for

each individual member of the chemical category on a new Form R Schedule 1, thereby enabling EPA to provide the public with more detailed information about releases and other waste management of these very toxic chemicals. In addition, TRI finalized the TRI North American Industry Classification System (NAICS) rule, which requires TRI facilities to report using NAICS codes, instead of Standard Industrial Classification (SIC) codes, beginning in reporting year 2006. The use of NAICS will make it possible to share and compare facility data more easily across sectors.

EPA Views on H.R. 1055, the "Toxic Right-to-Know Protection Act"

On December 22, 2006, EPA issued a final rule (the TRI rule) that provided incentives to encourage pollution prevention and improved waste management by allowing companies to use a shorter, simpler reporting form, known as "Form A" to provide required information when certain criteria were met. The more commonly used alternative is "Form R" which requires companies to provide more detailed information.

EPA does not support H.R. 1055 because it would eliminate the valuable incentives provided in the December, 2006, rule. EPA strongly urges modification of H.R. 1055 in order to maintain pollution prevention incentives and avoid diversion of Agency resources from important TRI program priorities. The TRI rule is a key part of EPA's strategy to minimize releases of toxic chemicals across the United States. EPA saw an increase in facility toxic chemical releases for TRI Reporting Year 2005 and is interested in finding ways to reduce these release quantities. The TRI rule rewards facilities that completely eliminate releases of the worst

environmental substances – Persistent, Bioaccumulative, and Toxic (PBTs) chemicals – by permitting such facilities to use a shorter reporting form, provided they do not exceed 500 pounds of recycling, energy recovery and treatment for the chemical. EPA believes these stringent requirements for short-form reporting are appropriate for PBT chemicals because of their greater potential for environmental harm. For other toxic chemicals, the rule allows short form reporting for those facilities that reduce or maintain their releases below 2,000 pounds, provided their total waste management (releases, recycling, energy recovery, and treatment) does not exceed 5,000 pounds.

No facilities were excused from reporting under the final TRI rule, and no chemicals were removed from the list for which covered facilities must report. The only change in requirements is that facilities are permitted to use the short form if they maintain releases and total wastes below limits established in the rule. By imposing stringent limits on releases (zero for PBTs, 2,000 pounds for non-PBTs) as a pre-condition of short-form reporting, EPA is encouraging businesses to minimize disposal into the environment. The limits on total wastes encourage pollution prevention. These incentives should be given an opportunity to work.

EPA is currently processing the TRI reports that were received by July 1, 2007, for TRI reporting year 2006. Because the rule was not promulgated until December 2006, we would not expect the effects of the new incentives to be reflected in these reports. However, beginning with the reporting year 2007 reports (due by July 1, 2008), EPA will begin to evaluate the effectiveness of these incentives in reducing releases and promoting pollution prevention. H.R. 1055 would eliminate these incentives before we have even had a chance to determine their effectiveness, and it could also have adverse resource implications for the TRI program.

EPA strongly believes that H.R. 1055 would not achieve the goals articulated by the Committee and would only serve to divert resources from key TRI program priorities. For example, EPA is currently preparing to release a compendium of supplementary information that will provide valuable context for interpreting and maximizing the utility of TRI data. A substantial effort has gone into preparing this report, which will include chapters on trends in toxic releases, releases not covered by TRI, specific industry sectors, geographic distribution of toxic releases, and high-priority PBT chemicals (mercury, lead and dioxin), among other topics. If EPA were forced to devote resources to undoing the 2006 rule (revising forms, instructions, data systems, etc) we would have less time to develop these types of innovative products that enhance the usefulness of TRI data to communities and policy makers. More importantly, however, the 2006 TRI rule put in place key incentives for industry to reduce chemical emissions, reduce total waste, and increase recycling and treatment. EPA is working to determine the effectiveness of these incentives as it continues to explore other ways to reduce toxic chemical releases. EPA believes that providing incentives to encourage pollution prevention and better waste management practices is good for the environment, good for facilities, and good for the people who live around them.

Conclusion

The TRI program is important to EPA and the public. We continue to evaluate the data and find ways to improve access and utility. In addition to TRI, in my role as EPA Chief Information Officer, I direct the development of new and innovative tools and applications to deliver a full suite of environmental data to local communities including geospatial tools which

provide easy access to detailed, local information. Ultimately, this will provide a broader set of environmental information about local environments.

On behalf of Administrator Johnson, thank you for inviting me to speak with you today about the progress EPA is making in providing important information to communities across the nation including, TRI, and in particular, thank you for inviting me to provide EPA's views on H.R. 1055, the Toxic Right-to-Know Protection Act.

Mr. WYNN. Thank you very much, Ms. O'Neill.
Mr. Sullivan.

STATEMENT OF THOMAS M. SULLIVAN, CHIEF COUNSEL, ADVOCACY, OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC

Mr. SULLIVAN. Chairman Wynn, Congressman Shimkus, and members of the subcommittee, thank you for giving me the opportunity to appear this morning.

I am the Chief Counsel for Advocacy at the U.S. Small Business Administration. My office is an independent one within the SBA, and therefore, the comments expressed in my statement do not necessarily reflect the position of the administration or the SBA. Due to my office's independence, my statement was not submitted to OMB for approval.

Small businesses have been asking for TRI paperwork burden relief since 1990. This hearing is actually the fifth hearing held by House committees on TRI reform in five consecutive Congresses. Five years after TRI was created, my office petitioned EPA to develop streamlined reporting for small volume chemical users.

In 1994, EPA responded to the petition by adopting Form A, as Ms. O'Neill mentioned, the short form for TRI reporting. Adapted as a less burdensome alternative to the long form, Form R, the original Form A allowed companies to report their releases as a range instead of a specific number.

Unfortunately, the Form A developed in 1994 was never utilized to its potential, owing to restrictive eligibility requirements subsequently imposed on the short form. Small business have consistently voiced their concerns to my office that the TRI Program imposes substantial paperwork burdens with little corresponding environmental benefit, especially for thousands of businesses that have zero discharges or emissions to the environment. These businesses must devote scarce time and resources to completing the lengthy, complex form R reports each year, despite the fact that they have zero discharges.

Why is TRI paperwork burden reduction important to small business? Well, the reason for my office's involvement is simple. Small businesses are disproportionately impacted by Federal rules and regulations. The overall regulatory burden in the United States exceeds $1.1 trillion. I will repeat that. The burden in the United States exceeds $1.1 trillion. For firms employing fewer than 20 employees, the most recent estimate of their annual regulatory burden is $7,647 per employee.

Looking specifically at compliance with Federal environmental rules, the difference between small and large firms is even more dramatic. Small firms have to spend four and a half times more per employee for environmental compliance than larger businesses do. Environmental requirements, including TRI paperwork, can comprise up to 72 percent of small manufacturers' total regulatory costs.

EPA's reform to the TRI reporting rules allows more small businesses to use the short form instead of the longer Form R. This will save money, and it provides an incentive for companies to recycle chemicals instead of disposing them.

The TRI Burden Reduction Rule will strengthen overall environmental compliance. I recently talked with a TRI expert who runs an environmental consulting firm in southeast Michigan. He works with small businesses on environmental management issues, and he was proud of the help he provided to a paper mill. He had worked with a paper mill to encourage them to recycle small amounts of mercury generated when switches and other process control circuits undergo maintenance in the mill's powerhouse.

He explained to me that EPA's TRI reform will allow a number of industrial operations such as tool and die shops and metal stamping plants to file a Form A for the first time. It will also provide an incentive for other companies to recycle their TRI chemicals rather than disposing of them.

The Office of Advocacy supports EPA's TRI Burden Reduction Rule. Although the rule reform does not go as far as some small businesses would prefer, my office supports EPA's December 2006 rule. The rule demonstrates that EPA is listening to the concerns of small business, and EPA's reform should be a model for other agencies to reform their existing rules and regulations to reduce costs while preserving or strengthening regulatory objectives. H.R. 1055 prevents EPA from moving forward with the reforms, so my office is opposed to the legislation.

Thank you for allowing me to present these views, and I would be happy to answer questions.

[The prepared statement of Mr. Sullivan follows:]

SBA Office of Advocacy
www.sba.gov/advo
Advocacy: the voice of small business in government

Testimony of

The Honorable Thomas M. Sullivan
Chief Counsel for Advocacy
U.S. Small Business Administration

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment and Hazardous Materials

Date:	October 4, 2007
Time:	10:00 A.M.
Location:	Room 2232 Rayburn House Office Building Washington, D.C.
Topic:	H.R. 1055, Toxic Right-to-Know Protection Act

409 3rd Street, SW · MC 3114 · Washington, DC 20416 · 202/205-6533 ph · 202/205-6938 fax
www.sba.gov/advo

Chairman Wynn and Members of the Subcommittee, thank you for giving me the opportunity to appear before you today. My name is Thomas M. Sullivan and I am the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA). Congress established the Office of Advocacy to represent the views of small entities before Congress and the Federal agencies. The Office of Advocacy (Advocacy) is an independent office within the SBA, and therefore the comments expressed in this statement do not necessarily reflect the position of the Administration or the SBA.

This Subcommittee is meeting today to examine H.R. 1055, a bill which essentially revokes the December 2006 rule of the U.S. Environmental Protection Agency (EPA), designed to reduce paperwork burdens under the Toxics Release Inventory (TRI) program.[1] The Office of Advocacy strongly supports EPA's TRI Burden Reduction rule. I testified last February before the Senate Committee on Environment and Public Works on Senate legislation (S. 595), which mirrors H.R.1055. Advocacy has worked with the EPA since 1988 on TRI issues. In our view, the TRI Burden Reduction rule will yield needed reductions in small business paperwork burdens while preserving the integrity of the TRI program and strengthening protection of the environment.

[1] U.S. Environmental Protection Agency, Final Rule, "Toxics Release Inventory Burden Reduction," 71 Fed. Reg. 76,932 (December 22, 2006).

Background

The public right-to-know provisions set forth by the Emergency Planning and Community Right to Know Act of 1986 (EPCRA)[2] created the Toxics Release Inventory (TRI), which requires companies to make a yearly report to EPA of their handling, management, recycling, disposal, and allowable emissions and discharges of listed chemicals. Over the years following EPCRA's passage, American businesses have taken unprecedented action to reduce the amount of toxic chemicals used in their plants. Many observers credit the public TRI reporting as the impetus behind these pollution reduction efforts.

Small Businesses Have Been Asking for TRI Paperwork Burden Relief Since 1990

Soon after the initial reporting years, small business discovered that TRI's requirement to track, estimate, and report chemical use was complex and time-consuming. Beginning in 1990, these small businesses began asking for simpler alternatives. The Office of Advocacy petitioned EPA in 1991 to develop streamlined reporting for small-volume chemical users. In 1994, EPA responded to the petition by adopting "Form A," the short form for TRI reporting. Adopted as a less burdensome alternative to the long form "Form R," the Form A allowed companies to report their releases as a range, instead of a specific number. Form A enabled the public to know that a facility handled less than a small threshold quantity of the reported chemical. Significant chemical management activities were still required to be reported on the longer, more detailed Form R.

[2] Pub. L. 99-499, Title III, codified at 42 U.S.C. §§ 11001-11050.

Unfortunately, the Form A that was developed in 1994 was never utilized to its potential, owing to restrictive eligibility requirements subsequently imposed on the short form. Small businesses have consistently voiced their concerns to Advocacy that the TRI program imposes substantial paperwork burdens with little corresponding environmental benefit, especially for thousands of businesses that have zero discharges or emissions to the environment. These businesses must devote scarce time and resources to completing lengthy, complex Form R reports each year, despite the fact that they have zero discharges.

Small businesses have continued to identify TRI paperwork relief as a priority. In 2001, 2002, and 2004, for example, TRI burden reduction was named as a high-priority candidate for regulatory reform in response to the Office of Management and Budget's public call for reform nominations.[3]

Why Is TRI Paperwork Burden Reduction Important to Small Business?

The annual burden of completing TRI paperwork is substantial. EPA has estimated that first-time Form R filers need to spend an average of 50 hours, and as many as 110, to complete the forms properly.[4] For small businesses, the burden is even heavier.

The 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, found that, in general, small businesses are disproportionately

[3] *See, e.g.*, Office of Management and Budget, Draft Report to Congress, 67 Fed. Reg. 15014, 15015 (March 28, 2002).
[4] *See, e.g.*, 66 Fed. Reg. 4,500, 4538 (January 17, 2001).

impacted by the total Federal regulatory burden.[5] This overall regulatory burden was estimated by Crain to exceed $1.1 trillion in 2004. For firms employing fewer than 20 employees, the annual regulatory burden in 2004 was estimated to be $7,647 per employee – nearly 1.5 times greater than the $5,282 burden estimated for firms with 500 or more employees.[6] Looking specifically at compliance with federal environmental rules, the difference between small and large firms is even more dramatic. Small firms generally have to spend 4½ times more per employee for environmental compliance than large businesses do. Environmental requirements, including TRI paperwork requirements, can comprise up to 72% of small manufacturers' total regulatory costs.[7]

As an illustration of the impact of TRI on small business, I recently spoke with manufacturers and environmental engineers who work with small companies in Southeast Michigan. These companies use aluminum alloys to build automatic transmissions and other car parts that must be heavily machined. Some of the alloys contain lead, which helps its machinability. Without lead, the alloys would be gummy, preventing a smooth machining process. The process generates scrap metal, which is recycled. Because the scrap metal contains lead, Form R reports have been required each year, despite that fact that no lead is ever released to the environment. EPA's TRI Burden Reduction rule will allow these companies to use Form A.

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[5] W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (September 2005) available at http://www.sba.gov/advo/research/rs264tot.pdf.
[6] *Id* at page 55, Table 18.
[7] *Id.*

EPA Has Long Recognized That TRI Burden Relief Is Necessary

EPA's efforts at TRI burden reduction, started in 1991, have spanned both Republican and Democratic Administrations. In 1994, EPA Administrator Browner approved the adoption of the original Form A. In 1997, when EPA expanded the scope of TRI reporting requirements, EPA promised that it would seek additional reductions in the TRI paperwork burden.[8] EPA Administrators have spent over 15 years working with the public to develop a new TRI paperwork reduction approach. This effort has included forming a Federal Advisory Committee, conducting an online dialogue with interested parties, holding stakeholder meetings, and going through the rulemaking process. The TRI Burden Reduction rule signed in December 2006 is the result of this process.

The Paperwork Burden Reduction Rule Does Not Weaken the TRI Program

Some observers have expressed concerns that the TRI Burden Reduction rule would result in less detailed information about chemicals being communicated to EPA, the States, and the public. Specifically, concerns have been voiced about the future ability to perform trend analyses, monitor the performance of individual facilities, and satisfy the public right-to-know. My office asked an independent contractor, E.H. Pechan & Associates to review this issue. Pechan reviewed over 2,000 comments on the proposed rule and identified 17 specific uses of TRI data for examination, addressing

[8] U.S. Environmental Protection Agency, Final Rule, "Addition of Facilities of Certain Industry Sectors; Revised Interpretation of Otherwise Use; Toxic Release Inventory Reporting, Community Right-to-Know" 62 Fed. Reg. 23,834, 23,887 (May 1, 1997) ("EPA believes that [Form R and Form A] can be revised to make it simpler and less costly for businesses to meet their recordkeeping and reporting obligations . . . EPA is initiating an intensive stakeholder process – involving citizens groups, industry, small businesses and states – to conduct comprehensive evaluation of the current TRI reporting forms and reporting practices with the explicit goal of identifying opportunities, consistent with community right-to-know and the relevant law, to simplify and/or reduce the cost of TRI reporting.").

national, state and local concerns. Based on this analysis, the June 2007 report[9] found that EPA's final rule will not have significant impacts on data uses identified by the commenters.

Advocacy agrees with EPA that the rule strikes an appropriate balance by allowing meaningful burden relief while at the same time continuing to provide valuable information to the public.

The TRI Burden Reduction Rule Will Strengthen Overall Environmental Compliance

Under the TRI Burden Reduction Rule, top environmental performers within industry will benefit by being able to use the short form (Form A). In order to qualify to use Form A, firms must minimize their use of all chemicals and sharply curtail their use of PBT chemicals. Most importantly, in order to use Form A, firms may not emit or discharge any PBT chemicals into the environment.

Advocacy Supports EPA's TRI Burden Reduction Rule

While small businesses and the Office of Advocacy asked EPA to deliver a greater measure of burden reduction and make Form A available to a larger number of filers, EPA ultimately chose a more modest alternative. Some manufacturers who deal with metal alloys that contain extremely small percentages of lead to assist in their machinability would have preferred a *de minimis* exemption. Their argument, which I agree with, is that the burdens of data collection and calculations to track miniscule percentages of lead contained within metal alloys is essentially a waste of resources when

[9] *Review and Analysis of EPA's Toxics Release Inventory (TRI) Phase III burden Reduction Proposal on TRI Data Uses*, E. H. Pechan & Assocs., Durham, NC , June 2007.

we know the scrap metal is recycled and there are no releases to the environment. When I visited a wheel manufacturer in Tennessee, I was amazed to see that the small facility produced 35,000 aluminum road wheels per week. The facility was spotless. Nevertheless, because of the aluminum dust in floor sweepings that ends up in their garbage containing an estimated total of 1/10 of a pound of lead per year, the company is still required to submit Form R reports to EPA each year.

Although it does not go as far as some small businesses would prefer, Advocacy supports the TRI Burden Reduction rule. The rule demonstrates that EPA is listening to the concerns of small business. EPA's TRI reform should be a model for other agencies to reform their existing regulations to reduce costs while preserving or strengthening the original regulatory objectives. H.R. 1055 would prevent EPA from moving forward on reforms to the TRI program that were called for by small business. For that reason, the Office of Advocacy opposes this legislation.

Thank you for allowing me to present these views. I would be happy to answer any questions.

Mr. WYNN. Thank you, Mr. Sullivan.
Mr. Stephenson.

STATEMENT OF JOHN B. STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Mr. STEPHENSON. Thank you, Mr. Chairman, Mr. Shimkus, members of the committee.

I am here today to discuss two studies the GAO has undertaken that relate these two issues. Our first study examined the extent to which EPA was meeting its environmental justice commitment that environmental laws will not disproportionately impact minority and low-income communities.

As Ms. Solis indicated, in July 2005 we issued a report to her that concluded that EPA in general devoted very little attention to environmental justice when developing new air rules. We made several recommendations for improvement that EPA has only partially responded to since we issued our report.

For example, to its credit EPA now includes the Office of Environmental Justice as an ex officio member of its Regulatory Steering Committee, however, the Office is still not sufficiently involved in working groups for individuals rules. We believe that more specific guidance, training, and manageable benchmarks are needed to hold EPA officials accountable for achieving EJ goals.

Our second study on the new toxic release inventory rule is almost complete and will result in a report later this month. TRI's an extremely important system as has been mentioned because it is EPA's mechanism for meeting the requirements of the Emergency Preparedness and Communities Right-to-Know Act for facilities to report and make public their use of toxic chemicals. There are currently over 23,000 facilities across the country that report valuable information annually on over 600 dangerous chemicals. In developing the TRI rule we found that EPA did not follow its internal rule-making guidelines.

For example, the rule pretends to reduce industry's reporting burden by quadrupling the threshold from 500 to 2,000 pounds for facilities to use the shorter, less-informative Form A for reporting toxic chemical releases. However, EPA did not fully analyze the impact of the loss of chemical information on TRI users like States, communities, and first responders.

EPA's internal stakeholders were in the process of analyzing several other burden reduction options when OMB late in the process suggested increasing the reporting threshold, an option that EPA had earlier rejected. Pressure to quickly implement the rule left EPA with insufficient time for a complete economic analysis.

For example, electronic reporting, which has been mentioned today and which has shown to provide far more burden reduction in this rule, was missing from the analysis. Notwithstanding the lack of analysis, EPA published the proposed rule in the Federal Register and received over 120,000 comments, including a dozen attorney generals from California, Connecticut, Illinois, Iowa, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Vermont, and Wisconsin opposing the rule because of its impact on TRI information and environmental justice implications.

Mr. Chairman, we are very concerned that to achieve burden reduction EPA is tinkering with what has historically been a highly-successful program to control the use of toxic chemicals. EPA contends that the rule will result in only a 1 percent loss of information, however, this is an aggregate estimate based on total pounds of chemicals nationwide and ignores the more important implications of the rule on individual communities.

In fact, we estimate that the rule has the potential to reduce information on toxic chemical releases from over 6,600 facilities. Moreover, a disproportionately larger number of these facilities are near minority and low-income communities.

Time permitting, Mr. Chairman, I would like to, I have a couple of graphics. I think each of you, if you can't see the monitors, has a package, and it should be in front of them. To illustrate the impact of the TRI rule on individual communities.

This uses Google Earth, which is a free software available to everybody and overlays EPA information on it. And what you are seeing in this first slide is the, indeed, the 23,000 TRI reporting facilities, and I know you can't count 23,000. Could you switch the slide? There you go. You can see that there are 23,000 facilities, and you can see the focus of where those are.

Now, this second slide shows you the 6,600 plus facilities that are subject to information reduction under this new rule. There is still quite a few facilities there. Now, you can use this. We are not using this interactively. These are stagnant, but you can actually use this to zoom in on any individual community, and we selected Los Angeles, but you could do this with any other area.

So the next slide zooms in on which 6,600 of these facilities are located in and around the Los Angeles area, and you can see there is quite a few.

And then finally we wanted to connect the dots between TRI and environmental justice by showing you the implications of these facilities in the Los Angeles area on low-income and minority communities. The cylinders represent low income households within a 1-mile radius of the facility. The higher the cylinder, the poorer the community, and the colors represent minority. Red colors represent 80 percent minority or greater. And, frankly, I think the graphic speaks for itself.

In conclusion, Mr. Chairman, let me say that failing to demonstrate any burden reduction, EPA now asserts that the TRI rule will provide an incentive for facilities to reduce their toxic chemical releases. It is difficult for us to understand how raising the threshold for reporting would achieve that objective.

Mr. Chairman, that concludes a summary of my statement. I will be happy to answer questions.

[The prepared statement of Mr. Stephenson follows:]

United States Government Accountability Office

GAO

Testimony

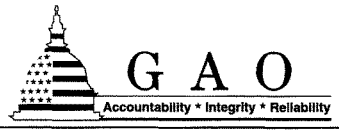
Before the Subcommittee on Environment and Hazardous Materials, Committee on Energy and Commerce, House of Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Thursday, October 4, 2007

ENVIRONMENTAL RIGHT-TO-KNOW

EPA's Recent Rule Could Reduce Availability of Toxic Chemical Information Used to Assess Environmental Justice

Statement of John B. Stephenson, Director
Natural Resources and Environment



GAO-08-115T

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Highlights

Highlights of GAO-08-115T, a testimony before the Subcommittee on Environment and Hazardous Materials, Committee on Energy and Commerce, House of Representatives

Why GAO Did This Study

A 1994 Executive Order sought to ensure that minority and low-income populations are not subjected to disproportionately high and adverse health or environmental effects from agency activities. In a July 2005 report, GAO made several recommendations to improve the Environmental Protection Agency's (EPA) adherence to these environmental justice principles.

The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires certain facilities that use toxic chemicals to report their releases to EPA, which makes the information available in the Toxics Release Inventory (TRI). Since 1995, facilities may submit a brief statement (Form A) in lieu of the more detailed Form R if releases of a chemical do not exceed 500 pounds a year. In January 2007, EPA finalized the TRI Burden Reduction Rule, quadrupling to 2,000 pounds what facilities can release before having to disclose details using Form R.

Congress is considering codifying the Executive Order and requiring EPA to implement GAO's environmental justice recommendations. Other legislation would amend EPCRA to, among other things, revert the Form A threshold to 500 pounds or less. In this testimony, GAO discusses (1) EPA's response to GAO's environmental justice recommendations, (2) the extent to which EPA followed internal guidelines when developing the TRI rule and (3) the impact of the rule on communities and facilities.

To view the full product, including the scope and methodology, click on GAO-08-115T. For more information, contact John Stephenson at (202) 512-3841 or stephensonj@gao.gov.

October 4, 2007

ENVIRONMENTAL RIGHT-TO-KNOW

EPA's Recent Rul Could R duce Availability of Toxic Chemical Information Used to Assess Environmental Justice

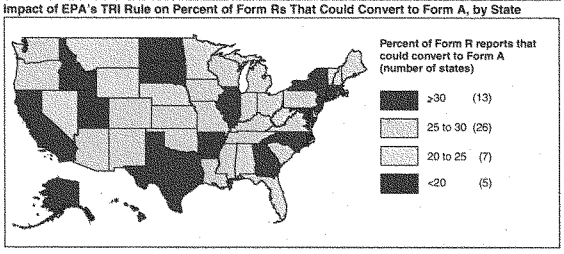
What GAO Found

EPA initially disagreed with GAO's July 2005 environmental justice recommendations, saying it was already paying appropriate attention to the issue. GAO called on EPA to improve the way it addresses environmental justice in its economic reviews and to better explain its rationale by providing data to support the agency's decisions. A year later, EPA responded more positively to the recommendations and committed to a number of actions. However, based on information that EPA has subsequently provided, GAO concluded in a July 2007 testimony that EPA's actions to date were incomplete and that measurable benchmarks were needed to hold agency officials accountable for achieving environmental justice goals.

In developing the TRI rule, EPA did not follow key aspects of its internal guidelines, including some related to environmental justice. EPA did not follow guidelines to ensure that scientific, economic, and policy issues are addressed at appropriate stages of rule development. For example, EPA asserted that the rule would not have environmental justice impacts; however, it did not support this assertion with adequate analysis. The omission is significant because many TRI facilities that no longer have to submit Form R reports are located in minority and low-income communities; and the reduction in toxic chemical information could disproportionately affect them.

EPA's TRI rule will reduce the amount of information about toxic chemical releases without providing significant savings to facilities. A total of nearly 22,200 Form R reports from some 3,500 facilities are eligible to convert to Form A under the rule. While EPA says the aggregate impact of these conversions will be minimal, the effect on individual states and communities may be significant, as illustrated below. Although making significantly less information available to communities, GAO estimated that the rule would save companies little—an average of less than $900 per facility.

Impact of EPA's TRI Rule on Percent of Form Rs That Could Convert to Form A, by State



Sources: GAO based on 2005 EPA TRI data and Map Info (map)

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work on two related issues. The first issue is the Environmental Protection Agency's (EPA) consideration of environmental justice in the development of new rules. Environmental justice generally refers to efforts to identify and address the disproportionately high and adverse human health and environmental impacts that air pollution and other environmental risks pose to specific populations—usually minority and low-income communities. The second issue is EPA's Toxic Release Inventory (TRI) Burden Reduction rule, which recently changed how much information some facilities are required to report to the public about their use and release of certain toxic chemicals. A key use of the TRI is for environmental justice purposes, and EPA used that rule as an example of how the agency has improved consideration of environmental justice issues in its rule development process. Specifically, information about toxic chemical use, transport, storage, and release captured in the TRI has been useful for determining whether minority and low-income populations bear disproportionately high and adverse human health or environmental effects of EPA programs, policies, and activities. Hence, while a change to TRI reporting requirements may not affect how much toxic waste is released to the environment, it could affect how much information communities will know about those toxic releases.

In 1994, President Clinton issued Executive Order 12898, which stated that EPA and other federal agencies, to the greatest extent practicable and permitted by law, shall make achieving environmental justice part of their missions by identifying and addressing, as appropriate, the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. To implement the order, EPA developed guidance for incorporating environmental justice into its programs, such as the enforcement of the Clean Air Act, which is intended in part, to control emissions that harm human health. A key to ensuring that environmental justice is sufficiently accounted for in agency decisions and operations is that it be considered at each point in the rule development process—including the point when agency workgroups typically consider regulatory options, perform economic analyses of proposed rules' costs, make proposed rules available for public comment, and finalize them before implementation.

Congress passed the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) to help inform citizens about releases of toxic

chemicals to the environment; to help governmental agencies, researchers, and others conduct research and gather data; and to aid in the development of appropriate regulations, guidelines, and standards. Section 313 of EPCRA generally requires certain facilities that manufacture, process, or otherwise handle specified amounts of any of 581 individual chemicals and 30 additional chemical categories to annually report the amount of those chemicals that they released to the environment, including whether those chemicals were released to the air, soil, or water. Facilities comply with TRI reporting requirements by submitting to EPA and their respective state information for each TRI-listed chemical that they use in excess of certain thresholds using a Form R report. Since 1995, EPA has allowed certain facilities to submit information on a brief Form A certification statement (Form A) in lieu of the detailed Form R report if they release or manage no more than 500 pounds of a chemical that is not persistent, bioaccumulative, and toxic (non-PBT) during the year. While both Form R and Form A capture information about a facility's identity, such as mailing address and parent company, and information about a chemical's identity, such as its generic name, only Form R captures detailed information about the chemical, such as quantity disposed or released onsite to air, water, and land or injected underground, or transferred for disposal or release off-site. Form R also provides information about the facility's efforts to reduce pollution at its source, including the quantities of waste it manages both on- and off-site, and how it manages waste, such as amounts recycled, burned for energy recovery, or treated. We provide a detailed comparison of the TRI data on Form R and Form A in Appendix I.

On December 22, 2006, EPA issued the TRI Burden Reduction rule, which sought to reduce industry's reporting burden by: (1) quadrupling the Form A threshold from 500 to 2,000 pounds of releases for a non-PBT chemical, and (2) allowing certain facilities to use Form A for non-dioxin, persistent bioaccumulative toxic (PBT) chemicals, such as lead and mercury, provided that they release none of the PBT chemical to the environment. The rule went into effect for reporting calendar year 2006 releases, which were due by July 1, 2007. Because EPA typically releases TRI data to the public in the spring following the due date, the most currently available data are for calendar year 2005; the 2006 data are expected in spring of 2008.

The Congress is considering legislation to codify Executive Order 12898, relating to environmental justice, to require the Administrator of the Environmental Protection Agency (EPA) to fully implement the recommendations that GAO made in 2005.[1] Additional legislation has been introduced that would, among other things, to effectively repeal EPA's TRI Burden Reduction Rule.[2] Specifically, the bills would amend EPCRA to (1) require the Administrator of EPA to establish the eligibility threshold for use of Form A at not greater than 500 pounds for non-PBT chemicals, (2) prohibit use of Form A for PBT chemicals,[3] and (3) repeal a provision of EPCRA allowing the Administrator of EPA to modify the frequency of toxic chemical release reporting.

My testimony this morning is based, in part, on a July 2007 update to our 2005 report on environmental justice, which recommended that EPA devote more attention to environmental justice when developing clean air rules.[4] Our 2005 report examined how EPA considered environmental justice during the drafting of three air rules and concluded that the manner in which EPA had incorporated environmental justice into its air rulemaking process fell short of the goals set forth in Executive Order 12898. In that report, we recommended four actions to help EPA resolve the problems we identified. Specifically, we called on:

1. EPA's rulemaking workgroups to devote attention to environmental justice while drafting and finalizing clean air rules;

2. the EPA Administrator to enhance workgroups' ability to identify potential environmental justice issues by (1) providing workgroup members with guidance and training to help them identify potential environmental justice problems and (2) involving environmental justice coordinators in the workgroups when appropriate;

[1]S. 642, H.R. 1103. The bills would also codify recommendations that EPA's Inspector General made in a report on EPA's environmental justice activities. EPA Office of Inspector General, *EPA Needs To Conduct Environmental Justice Reviews of Its Programs, Policies And Activities*, Report No. 2006-P-00034 (Washington, D.C.: September 18, 2006).

[2]S. 595, H.R. 1055.

[3]The bills specifically prohibits the use of Form A with respect to any chemical identified by the Administrator as a chemical of special concern under 40 C.F.R. § 372.28 (or a successor regulation).

[4]GAO, *Environmental Justice: EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules*, GAO-05-289 (Washington, D.C.: July 22, 2005).

3. the EPA Administrator improve assessments of potential environmental justice impacts in economic reviews by identifying the data and developing the modeling techniques needed to assess such impacts; and

4. the EPA Administrator to direct cognizant officials to respond more fully to public comments on environmental justice by, for example, better explaining the rationale for EPA's beliefs and by providing supporting data.

My testimony also draws on our February 2007 testimony, in which we discussed our then-ongoing work on EPA's TRI program.[5] We expect to publish the final results of our evaluation later this month. My statement today provides: (1) EPA's responses to the recommendations we made to EPA to address the environmental justice problems we identified in 2005, (2) our assessment of the extent to which EPA followed internal rule development guidelines when developing its TRI Burden Reduction Rule, including its implications for environmental justice, and (3) estimates of the impact of the TRI Burden Reduction Rule on communities and facilities.

In summary:

- In commenting on the draft of our July 2005 environmental justice report, EPA initially disagreed with our recommendations, saying it was already paying appropriate attention to environmental justice. A year later, in a letter to the Comptroller General, EPA responded more positively to our recommendations and committed to taking a number of actions to address them. However, based on information that EPA has subsequently provided regarding the recommendations we made in that report, we concluded in our July 2007 testimony that EPA's actions to date suggest the need for measurable benchmarks to achieve environmental justice goals and to hold agency officials accountable for making meaningful progress.[6]

- As I discussed in our February 2007 testimony, we found that EPA did not follow key aspects of its internal guidelines—including some related to

[5]GAO, *Environmental Information: EPA Actions Could Reduce the Availability of Environmental Information to the Public*, GAO-07-464T (Washington, D.C.: February 5, 2007).

[6]GAO, *Environmental Justice: Measurable Benchmarks Needed to Gauge EPA Progress in Correcting Past Problems*, GAO-07-1140T (Washington, D.C.: July 25, 2007).

environmental justice—in developing the TRI Burden Reduction Rule. We found that EPA's deviations from its guidelines were due, in part, to pressure from the Office of Management and Budget to significantly reduce industry's TRI reporting burden by the end of December 2006. Throughout this process, senior EPA management has the authority to depart from the guidelines. Nevertheless, we have identified several significant differences between the guidelines and the process EPA followed for this case, which was widely criticized by the public, including attorneys general from 12 states. Specifically, EPA did not follow key steps in its guidelines intended to ensure that scientific, economic, and policy issues were adequately addressed at the appropriate stages of development and to ensure cross-agency participation until the final action is completed. For example, the draft rule and supporting analyses are to be circulated for final agency review, a key step when EPA's internal and regional offices should have discussed with senior management whether they concurred with the rule. However, their input was limited at this stage because the review package addressed the "no significant change" option rather than the increased Form A threshold option that was subsequently included in the proposed rule and ultimately finalized. With regard to environmental justice, EPA asserted that the TRI rule would not have environmental justice impacts; however, the agency did not explain a key assumption it used in arriving at this conclusion. This is particularly significant because, according to EPA data that we examined, facilities that report to the TRI are more likely to be located near minority and low-income communities. Therefore any reduction in the availability of TRI data seems likely to disproportionately affect them.

- EPA's TRI Burden Reduction Rule will reduce the amount of information about toxic chemical releases previously available to the public. EPA asserted that the final rule would not result in the loss of critical information and would significantly reduce industry's reporting burden. With regard to EPA's assertion that critical information would not be lost, the agency estimated that less than 1 percent of the total pounds of chemical releases would no longer be reported to the TRI. However, we found the impact on data available to many communities could be more significant than EPA's national totals indicate, particularly at the local level. We estimated that a total of nearly 22,200 Form R reports are eligible to convert to Form A under the revised TRI reporting thresholds, ranging from 25 in Vermont to 2,196 in Texas. The number of chemicals for which only Form A information may be reported under the TRI rule ranges from 3 chemicals in South Dakota to 60 chemicals in Georgia. Taken by facility, some 3,500 facilities would no longer have to report any quantitative information about their chemical use and releases to the TRI, ranging from 5 in Alaska to 302 in California. With regard to EPA's assertion that the

final rule will result in significant reduction in industry's reporting burden, EPA estimated that the rule would save $5.9 million at most, which we calculated would amount to savings of less than $900 per facility.

EPA's Response to Our Environmental Justice Recommendations Suggests a Need for Clear Benchmarks to Measure Progress

As we testified in July 2007, EPA's actions in response to our previous recommendations suggest the need for measurable benchmarks—both to serve as goals to strive for in achieving environmental justice in its rulemaking process, and to hold cognizant officials accountable for making meaningful progress. In commenting on our draft 2005 report, EPA disagreed with the four recommendations we made, saying it was already paying appropriate attention to environmental justice. A year later, in its August 24, 2006 letter to the Comptroller General, EPA responded more positively to our recommendations and committed to taking a number of actions to address these issues.[7] Specifically, EPA's letter stated:

- In response to our first recommendation, calling upon EPA's rulemaking workgroups to devote attention to environmental justice while drafting and finalizing clean air rules, EPA responded that, to ensure consideration of environmental justice in the development of regulations, its Office of Environmental Justice was made an ex officio member of the agency's Regulatory Steering Committee, the body that oversees regulatory policy for EPA and the development of its rules. EPA also said that (1) the agency's Office of Policy, Economics and Innovation (responsible in part for providing support and guidance to EPA's program offices and regions as they develop their regulations) had convened an agency-wide workgroup to consider where environmental justice might be considered in rulemakings and (2) it was developing "template language" to help rule writers communicate findings regarding environmental justice in the preamble of rules. In addition, EPA officials emphasized that its Tiering Form—a key form completed by workgroup chairs to alert senior managers to the potential issues related to compliance with statutes, executive orders, and other matters—would be revised to include a question on environmental justice.
- In response to our second recommendation, calling on EPA to provide workgroup members with guidance and training to help them identify potential environmental justice problems and involve environmental

[7]31 U.S.C. 720 requires the head of a federal agency to submit a written statement of the actions taken on our recommendations to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform, and the House and Senate Committees on Appropriations within specified timeframes.

justice coordinators in the workgroups when appropriate, EPA said it was creating a comprehensive curriculum to meet the needs of agency rule writers. Specifically, EPA explained that its Office of Policy, Economics, and Innovation was focusing on how best to train agency staff to consider environmental justice during the regulation development process and that its Office of Air and Radiation had already developed environmental justice training tailored to the specific needs of that office. Among other training opportunities highlighted in the letter was a new on-line course offered by its Office of Environmental Justice to address a broad range of environmental justice issues. EPA also cited an initiative by the Office of Air and Radiation's Office of Air Quality Planning and Standards to use a regulatory development checklist to ensure that potential environmental justice issues and concerns are considered and addressed at each stage of the rulemaking process. In response to our call for greater involvement of Environmental Justice coordinators in workgroup activities, EPA said that as an ex officio member of the Regulatory Steering Committee, the Office of Environmental Justice would keep the program office environmental justice coordinators informed about new and ongoing rulemakings with potential environmental justice implications via monthly conference calls with the environmental justice coordinators.

- In response to our third recommendation, calling on the EPA Administrator to identify the data and develop the modeling techniques needed to assess potential environmental justice impacts in economic reviews, EPA responded that its Office of Air and Radiation was reviewing information in its air models to assess which demographic data could be analyzed to predict possible environmental justice effects. EPA also stated it was considering additional guidance to address methodological issues typically encountered when examining a proposed rule's impacts on subpopulations highlighted in the executive order. Specifically, EPA discussed creating a handbook that would discuss important methodological issues and suggest ways to properly screen and conduct more thorough environmental justice analyses. Finally, it noted that the Office of Air and Radiation was assessing models and tools to (1) determine the data required to identify communities of concern, (2) quantify environmental health, social and economic impacts on these communities, and (3) determine whether these impacts are disproportionately high and adverse.

- In response to our fourth recommendation, calling on the EPA Administrator to direct cognizant officials to respond more fully to public comments on environmental justice by, for example, better explaining the rationale for EPA's beliefs and by providing supporting data, EPA said that as a matter of policy, the agency includes a response to comments in the

preamble of a final rule or in a separate "Response to Comments" document in the public docket for its rulemakings. The agency noted, however, that it will re-emphasize the need to respond to comments fully, to include the rationale for its regulatory approach, and to better describe its supporting data.

However, more recent information from agency officials indicates that EPA's handling of environmental justice issues continues to fall short of our recommendations and the goals set forth in Executive Order 12898. In July 2007, we met with EPA officials to obtain current information on EPA's environmental justice activities, focusing in particular on those most relevant to our report's recommendations. Specifically:

- Regarding our first recommendation that workgroups consider environmental justice while drafting and finalizing regulations, the Office of Environmental Justice has not participated directly in any of the 103 air rules that have been proposed or finalized since EPA's August 2006 letter. According to EPA officials, the Office of Environmental Justice did participate in one workgroup of the Office of Solid Waste and Emergency Response, and provided comments on the final agency review for the Toxic Release Inventory Reporting Burden Reduction Rule. In addition, EPA explained that the inclusion of environmental justice on its Tiering Form has been delayed because it is only one of several issues being considered for inclusion in the tiering process.

- Regarding our second recommendation to improve training and include Environmental Justice coordinators in workgroups when appropriate, our latest information on EPA's progress shows mixed results. On the one hand, EPA continues to provide an environmental justice training course that began in 2002, and has included environmental justice in recent courses to help rule writers understand how environmental justice ties into the rulemaking process. On the other hand, some training courses that were planned have not yet been developed. Specifically, the Office of Policy, Economics, and Innovation has not completed the planned development of training on ways to consider environmental justice during the regulation development process. In addition, officials from EPA's Office of Air and Radiation told us in July that they were unable to develop environmental justice training—training EPA told us in 2006 that it had already developed—due to staff turnover and other reasons. Regarding our recommendation to involve the Environmental Justice coordinators in rulemaking workgroups when appropriate, EPA officials told us that active, hands-on participation by Environmental Justice coordinators in rulemakings has yet to occur.

- Regarding our third recommendation that EPA identify the data and develop modeling techniques to assess potential environmental justice impacts in economic reviews, EPA officials said that their data and models have improved since our 2005 report, but that their level of sophistication has not reached their goal for purposes of environmental justice considerations. EPA officials said that to understand how development of a rule might affect environmental justice for specific communities, further improvements are needed in modeling, and more specific data are needed about the socio-economic, health, and environmental composition of communities. Only when they have achieved such modeling and data improvements can they develop guidance on conducting an economic analysis of environmental justice issues. According to EPA, among other things, economists within the Office of Air and Radiation are continuing to evaluate and enhance their models in a way that will further improve consideration of environmental justice during rulemaking. For example, EPA officials told us that a contractor would begin to analyze the environmental justice implications of a yet-to-be-determined regulation to control a specific air pollutant in July 2007. EPA expects that the study, due in June 2008, will give the agency information about what socio-economic groups experience the benefits of a particular air regulation, and which ones bear the costs. EPA expects that the analysis will serve as a prototype for analyses of other pollutants.

- Regarding our fourth recommendation that the Administrator direct cognizant officials to respond more fully to public comments on environmental justice, EPA officials cited one example of an air rule in which the Office of Air and Radiation received comments from tribes and other commenters who believed that the a proposed air quality standard raised environmental justice concerns. According to the officials, the agency discussed the comments in the preamble to the final rule and in the associated response-to-comments document. Nonetheless, the officials with whom we met said they were unaware of any memoranda or revised guidance that would encourage more global, EPA-wide progress on this important issue.

  As we testified in July 2007, EPA's actions to date were sufficiently incomplete that measurable benchmarks are needed to achieve environmental justice goals and hold agency officials accountable for making meaningful progress on environmental justice issues.

EPA's TRI Rulemaking Deviated From Key Internal Guidelines, Including Some Related to Environmental Justice

As I discussed in our February 2007 testimony, EPA deviated from key internal guidelines in developing the TRI Burden Reduction Rule. EPA's Action Development Process provides a sequence of steps designed to ensure that scientific, economic, and policy issues are adequately addressed at the appropriate stages of rule development and to ensure cross-agency participation until the final rule is completed. Some of those steps relate to environmental justice issues. We found that EPA's deviations were caused, in part, by pressure from the Office of Management and Budget to reduce industry's TRI reporting burden by the end of December 2006. Throughout this process, senior EPA management has the authority to depart from the guidelines. Nevertheless, we identified several significant differences between the guidelines and the process that EPA followed in developing the TRI rule. Specifically:

- EPA did not follow a key element of its guidelines that is intended to identify and selection the options that best achieve the goal of the rulemaking. Specifically, an internal workgroup was charged with identifying and assessing options to reduce TRI reporting burden on industry and providing EPA management with a set of options from which management makes the final selection. However, in this case EPA management selected an altogether different option than the ones identified and assessed by the TRI workgroup. The TRI workgroup identified three options from a larger list of possible options that had been identified through a public stakeholder process, and the workgroup had scoped out these options' costs, benefits, and feasibility. The first two options allowed facilities to use Form A in lieu of Form R for PBT chemicals, provided the facility had no releases to the environment.[8] The third option would have created a new form, in lieu of Form R, for facilities to report "no significant change" if their releases changed little from the previous year. Under this element of EPA's guidelines, senior management then selects the option(s) that best achieve the rule's goals. However, based on our review of documents from the June 2005 options selection briefing for the Administrator and subsequent interviews with senior EPA officials, EPA deviated from this process. Specifically, it appears that the Office of Management and Budget (OMB) suggested an alternate option—increasing the Form A eligibility for non-PBT chemicals from 500 to 5,000 pounds—as a way of providing what OMB considered

[8]Specifically, the workgroup considered and analyzed options to facilities to (1) report PBT chemicals using Form A if they have zero releases and zero total other waste management activities or (2) report PBT chemicals using Form A if they have zero releases and no more than 500 pounds of other waste management activities.

significant burden reduction. Yet the TRI workgroup had previously dropped this option from further consideration because of its impact on the TRI. In addition to reviving this burden reduction option, the Administrator directed EPA staff to expedite the rule development process after the briefing in order to meet a commitment to OMB to reduce the TRI reporting burden by the end of December 2006.

- Second, we found problems with the extent to which the agency sought input from internal stakeholders. EPA's rule development guidelines are designed to ensure cross-agency participation until the rule is completed. For example, a key step in the guidelines provides for the draft rule and supporting analyses to be circulated for final agency review, when EPA's internal and regional offices should have discussed with senior management whether they concurred with the rule. As provided for in its guidelines, EPA conducted a final agency review for the rule in July 2005. However, the draft rule and accompanying economic analysis that was circulated for review did not discuss or evaluate the impact of raising the Form A non-PBT threshold above 500 pounds because the economic analysis for this option was not yet completed. In fact, such an analysis was not completed until after EPA sent the proposed rule to OMB for review. Because the final agency review package addressed to the "no significant change" option rather than the increased Form A threshold option, the EPA Administrator and the EPA Assistant Administrator for Environmental Information likely received limited input from internal stakeholders about the option to increase the Form A non-PBT threshold prior to sending the proposed rule to OMB for official review. Indeed, a measure of how rushed the process became is that the economic analysis for the proposed rule was completed just days before the proposal was signed by the Administrator on September 21, 2005 for publication in the *Federal Register*.[9]

- Third, our review of EPA's rule development process found that the agency did not conduct an environmental justice analysis to substantiate its assertion that the TRI rule would not have environmental justice impacts. In its proposed rule, EPA stated that it had "no indication that either option [changing reporting requirements for non-PBT and PBT chemicals] will disproportionately impact minority or low-income

[9]70 Fed. Reg. 57822 (October 4, 2005).

communities."[10] EPA concluded that it "believes that the data provided under this proposed rule will continue to provide valuable information that fulfills the purposes of the TRI program..." and that "the principal consequence of finalizing today's action would be to reduce the level of detail available [to the public] on some toxic chemical releases or management." However, the reason EPA said it had no indication about environmental justice impacts is because the agency did not complete an environmental justice assessment before it published the rule for comment in the *Federal Register*. Furthermore, we found that the statement concerning disproportionate impacts in the proposed rule was not written by EPA; rather, it was added by the Office of Management and Budget during its official review of the rule.[11]

After publication of the TRI rule in the *Federal Register*, EPA received over 100,000 comments during the rule's public comment period. Most commenters opposed EPA's rule because of its impact on the TRI, and some commenters, including the attorneys general of California, Connecticut, Illinois, Iowa, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, Vermont, and Wisconsin, questioned whether EPA had evaluated environmental justice issues. In addition, three members of the House Committee on Government Reform wrote to EPA Administrator Stephen Johnson in December 2005 asking that he substantiate EPA's conclusion that the TRI rule would not disproportionately impact minority and low-income communities.

In March 2006, EPA provided Congress with an environmental justice analysis showing that it had evaluated affected areas by zip codes and by proximity to facilities reporting to TRI. Table 1 summarizes the results of that analysis, which found that communities within 1 mile of facilities that reported to the TRI were about 42 percent minority, on average, compared to about 32 percent for the country as a whole. In addition those same communities are about 17 percent below the poverty level, compared to

[10]EPA proposed two options allowing a reporting facility to use the brief Form A for (1) a non-PBT chemical, so long as the annual report amount was not greater than 5,000 pounds, and (2) for PBT chemicals when there are no releases and the annual reportable amount is no more than 500 pounds. 70 Fed. Reg. 57822 (October 2, 2005). The annual reportable amount is the combined total quantity released at the facility, treated at the facility, recovered at the facility as a result of recycle operations, combusted for the purpose of energy recovery at the facility, and amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal.

[11]See docket EPA-HQ-TRI-2005-0073-0027, Toxics Release Inventory Burden Reduction Proposed Rule (Federal Register Notice Comparison Document).

about 13 percent for the country as a whole. (Compare table 1, columns A and B.)

Tabl 1: Minority and Poverty Demographics of the U.S. Population Compared to Communities within 1-mile of a Facility that Filed at L ast One TRI Form R Report for 2003

(Percent)

	Column A	Column B	Column C	Column D
	U.S. population	Within 1-mile of all facilities that filed a Form R	Within 1-mile of facilities that filed a Form R for but could have used Form A under proposed rule	Within 1-mil of facilities that filed a Form R but could have used Form A under final rule
Minority	31.8	41.8	43.5	43.8
Below U.S. poverty level	12.9	16.5	17.0	17.0

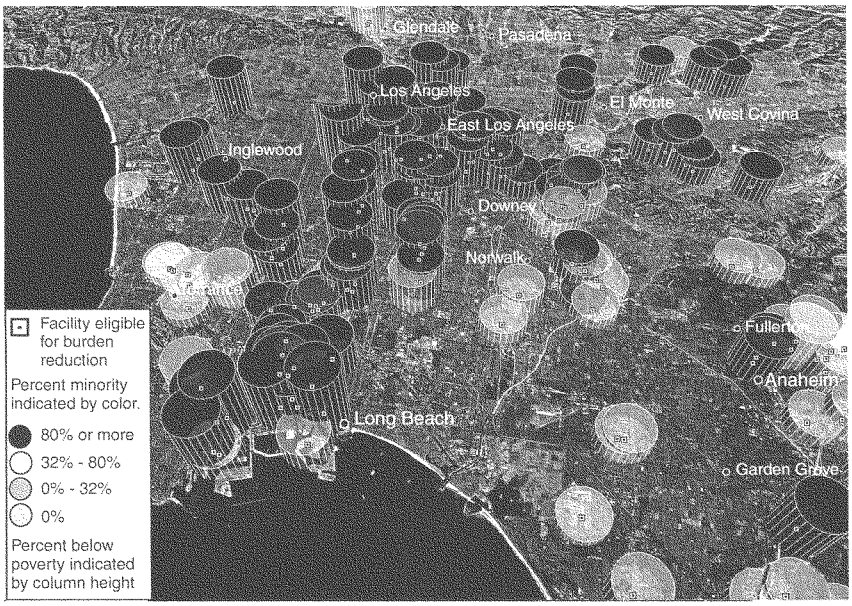
Source GAO summary of EPA analysis

EPA concluded that the results showed little variance in minority or poverty concentration near facilities currently reporting to the TRI compared to facilities that would be affected by the rule. (Compare table 1, columns B and C.) EPA argued that "while there is a higher proportion of minority and low-income communities in close proximity to some TRI facilities than in the population generally, the rule does not appear to have a disproportionate impact on these communities, since facilities in these communities are no more likely than elsewhere to become eligible to use Form A as a result of the rule." However, EPA's analysis indicates that TRI facilities are in communities that are one-third more minority and one-quarter more low-income, on average, than the U.S. population as a whole. Therefore, in comparison to the country at large, those populations would likely be disproportionately affected by an across-the-board reduction in TRI information. (Compare table 1, columns A and C.).[12] Thus, EPA assumed that although minority and low-income communities disproportionately benefit from TRI information, this fact was irrelevant to its environmental justice analysis. However, the agency did not explain or provide support for this assumption.

[12]EPA also argued that while the TRI program "provides important information that *may indirectly lead* to improved health and environmental conditions on the community level, it is not an emissions release control regulation that could directly affect health and environmental outcomes in a community." 71 Fed. Reg. 76944 (emphasis added). This statement overlooks EPA's own repeated assertions that the TRI program has resulted in substantial reductions in chemical releases. E.g., 2001 Toxic Release Inventory Public Data Release Report at 1-1 (2003); 1996 Toxic Release Inventory Public Data Release Report at 1 (1998).

I would like to illustrate the impact of EPA's rule on the TRI using a new tool that can help the public better understand environmental issues in their communities. Google Earth is a free geographic mapping tool that overlays various content, including TRI data from EPA, onto satellite photos and maps. Using this tool, the public can combine EPA's TRI and various demographic data to view the environmental justice impacts of EPA's TRI rule. As an example, Figure 1 shows a satellite image of southern California, including Los Angeles County and part of Orange County. The small dots indicate TRI facilities eligible for burden reduction under the TRI rule (i.e., eligible for reduced reporting on Form A). On top of every facility is a cylinder that indicates the demographic details of the people living within 1 mile of the facilities. Specifically, the cylinders' color shows the percent of that population that is minority (e.g., red cylinders indicate a community that is 80% or more minority). The cylinders' height shows the percent of that population living below the poverty level (e.g., taller cylinders indicate poorer communities). As the height and color of the cylinders shows, the communities in southern California near TRI-reporting facilities that are eligible for reduced reporting under EPA's rule, are disproportionately minority and low-income.

Figur 1: Minority- and Poverty-levels of Communities Within One Mile of Facilities in Southern California That Ar Eligibl for Burden R duction



Source: Google Earth based on EPA and Census Bureau data.

As I mentioned earlier in my testimony, EPA's latest response to our environmental justice recommendations used TRI as an example of how the agency has improved its handling of environmental justice in the rule development process. However, our analysis shows that EPA did not complete an environmental justice assessment before concluding that the proposed TRI rule did not disproportionately affect minority and low-income populations. Even after EPA completed its analysis—in response to pressure from Members of Congress and the public—the agency

concluded that the rule had no environmental justice implications despite the fact that TRI facilities are, on average, more likely to be minority and low-income than the U.S. as a whole; therefore, in comparison to the population at large, those populations would likely be disproportionately affected by an across-the-board reduction in TRI information.

EPA Actions Reduce the Amount of Information About Toxic Chemical Releases Previously Available to the Public

EPA asserted that its TRI Burden Reduction Rule will result in significant burden reduction without losing critical information, but our analyses show otherwise. We found that the rule, which went into effect for the reports that were due by July 1st of this year, reduces the quantity and detail of information currently available to many communities about toxic chemicals used, transported, or released in their environment.[13] For each facility that chooses to file a Form A instead of Form R, the public will no longer have available quantitative information about a facility's releases and waste management practices for a specific chemical that the facility manufactured, processed, or otherwise used. Appendix I shows the data that is contained on Form R compared to Form A. It is not possible to precisely quantify how much information will no longer be reported to the TRI on the detailed Form R because not all eligible facilities will take advantage of rule allowing them to submit the brief Form A. But using the most recent available data for calendar year 2005, it is possible to estimate what currently-reported information no longer has to be reported under EPA's revised TRI reporting requirements.

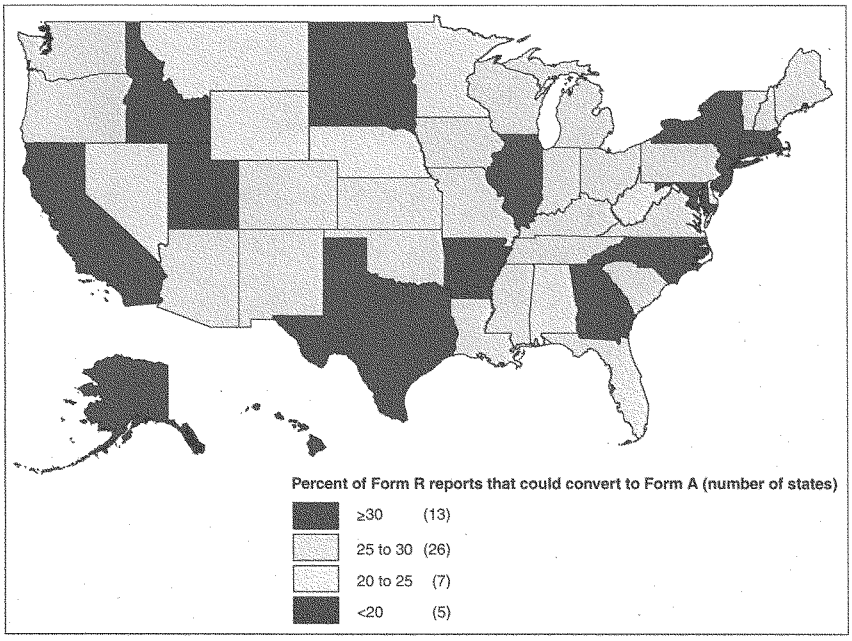
Our analysis shows that EPA's TRI rule could, by increasing the number of facilities that may use Form A, significantly reduce the amount of information currently available to many communities about toxic chemicals used, transported, or released into their environment. EPA estimated that the impact of its change to TRI would be minimal; amounting to less than 1 percent of total pounds of chemicals released nationally that no longer would have to be reported to the TRI. However, we found that the impact on individual communities is likely to be more significant than these national aggregate totals indicate. Specifically, EPA estimated that the Form R reports that could convert to Form A account for 5.7 million pounds of releases not being reported to the TRI (only 0.14% of all TRI release pounds) and an additional 10.5 million pounds of waste management activities (0.06% of total waste management pounds). However, to understand the potential impact of EPA's changes to TRI

[13]GAO-07-464T.

reporting requirements more locally, we used 2005 TRI data to estimate the number of detailed Form R reports that would no longer have to be submitted in each state and found that nearly 22,200 Form R reports (28 percent) could convert to Form A under EPA's new Form A thresholds.[14] The number of possible conversions ranges by state from 25 in Vermont (27.2 percent of all Form Rs formerly filed in the state) to 2,196 Form Rs in Texas (30.6 percent of Form Rs formerly filed in the state). As figure 2 shows, Alaska, California, Connecticut, Georgia, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, and Texas could lose at least 30 percent of Form R reports.

[14]We provide our estimates of these impacts, by state, in Appendix II.

Figur 2: Estimate of Impact Allowed by EPA's Changes on Number of Form Rs, by State

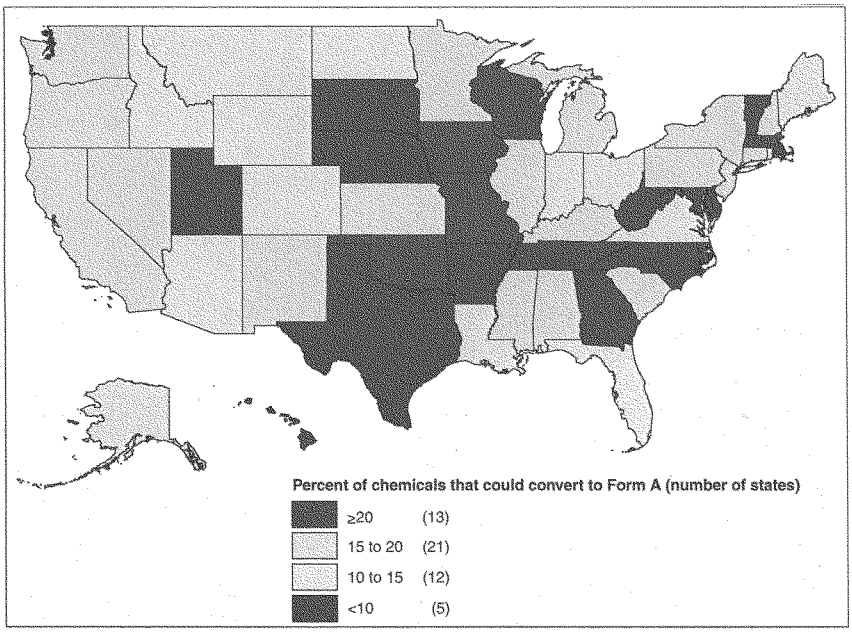


Sources: GAO based on 2005 EPA TRI data and Map Info (map).

Another way to characterize the impact of the TRI burden reduction rule is to examine what currently-available public data may no longer be reported about specific chemicals at the state level. The number of chemicals for which only Form A information may be reported under the TRI rule ranges from 3 chemicals in South Dakota to 60 chemicals in Georgia. That means that the specific quantitative information currently reported about those chemicals may no longer appear in the TRI database. Figure 3 shows that

thirteen states—Delaware, Georgia, Hawaii, Iowa, Maryland, Massachusetts, Missouri, North Carolina, Oklahoma, Tennessee, Vermont, West Virginia, and Wisconsin—could no longer have quantitative information about at least 20 percent of TRI-reported chemicals in the state.

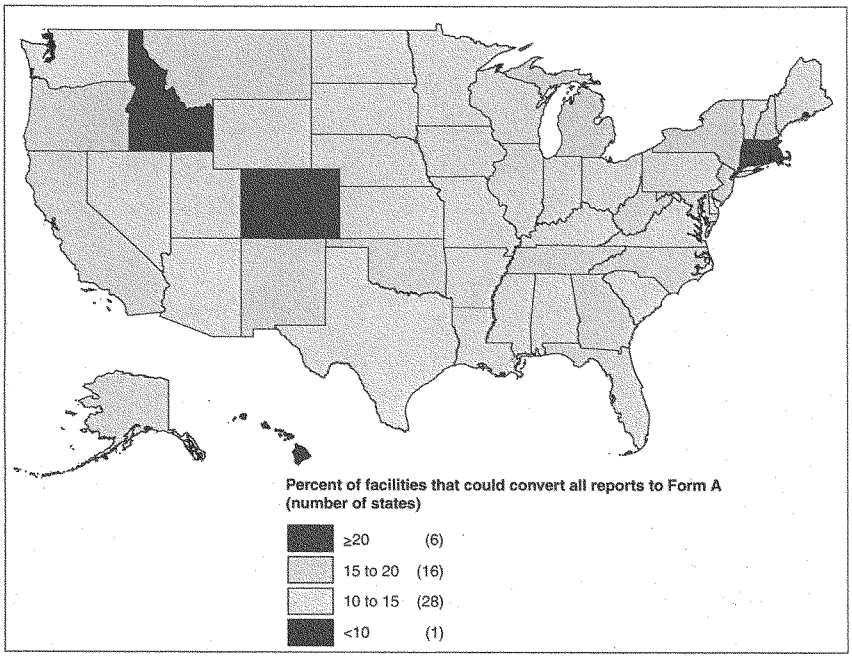
Figure 3: Estimate of Percent of Chemicals For Which Facilities Could Report on Form A, by State



Sources: GAO based on 2005 EPA TRI data and Map Info (map).

The impact of the loss of information from these Form R reports can also be understood in terms of the number of facilities that could be affected. We estimated that 6,620 facilities nationwide could chose to convert at least one Form R to a Form A, and about 54 percent of those would be eligible to convert all their Form Rs to Form A. That means that approximately 3,565 facilities would not have to report any quantitative information about their chemical releases and other waste management practices to the TRI, according to our estimates. The number of facilities ranges from 5 in Alaska to 302 in California. For example, in 2005, the ATSC Marine Terminal, bulk petroleum storage facility in Los Angeles County, California, reported releases of 13 different chemicals—including highly toxic benzene, toluene, and xylene—to the air. Although the facility's releases totaled about 5,000 pounds, it released less than 2,000 pounds of each chemical, and therefore would no longer have to file Form Rs for them. As figure 4 shows, more than 10 percent of facilities in each state except Idaho would no longer have to report any quantitative information to the TRI. The most affected states are Colorado, Connecticut, the District of Columbia, Hawaii, Massachusetts, and Rhode Island, where more than 20 percent of facilities could choose to not disclose the details of their chemical releases and other waste management practices by submitting a Form A in lieu of a Form R. Furthermore, our analysis found that citizens living in 75 counties in the United States—including 11 in Texas, 10 in Virginia, and 6 in Georgia—could have no quantitative TRI information about local toxic pollution.

Figure 4: Estimate of Percent of Facilities That Could Convert All Form Rs to Form A, by State



Sources: GAO based on 2005 EPA TRI data and Map Info (map).

With regard to EPA's assertion that the TRI rule will result in significant reduction in industry's reporting burden—the primary rationale for the rule—the agency estimated that the rule would save, at most, $5.9 million. (See table 2.) According to our calculations, these costs savings amount to only 4 percent of the $147.8 million total annual cost to industry of TRI reporting. Also, as we testified in February 2007, EPA's estimate likely overestimates the total cost savings (i.e., burden reduction) that will be

realized by reporting facilities because not all eligible facilities will choose to file a Form A in lieu of Form R.

Table 2: EPA Estimates of Annual Savings from Changes to TRI Reporting Requirements

Option	Newly eligible Form Rs	Eligible facilities	Burden (hours per form)	Annual burden savings (hours)	Cost savings per form	Annual cost savings
New PBT chemical eligibility	2,360	1,796	15.5	36,480	$748	$1,764,969
Increased eligibility for non-PBT chemicals	9,501	5,317	9.1	86,924	438	4,160,239
Total	**11,861**	**6,670**		**123,404**		**$5,925,208**

Source: EPA based on reporting year 2004 TRI data.

Concluding Observations

Environmental justice and the TRI are related and mutually dependent. Our assessment shows that EPA did not fully consider important impacts of its TRI rule, including environmental justice impacts on communities, when evaluating the rule's costs and benefits. That is, EPA's recent changes to TRI reporting requirements will reduce the amount and specificity of toxic chemical information that facilities have to report to the TRI and that will, in turn, impact communities' ability to assess environmental justice and other issues. It is unlikely that the TRI rule provides, as EPA asserts, significant reduction in industry's reporting burden without losing critical environmental information.

Mr. Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or members of the Subcommittee may have at this time.

Contact and Staff Acknowledgments

Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. For further information about this testimony, please contact John Stephenson at (202) 512-3841 or stephensonj@gao.gov. Key contributors to this testimony were Steven Elstein, Terrance Horner, Richard Johnson, and Daniel Semick. Other contributors included Mark Braza, Karen Febey, Kate Cardamone, Alison O'Neill, and Jennifer Popovic.

Appendix I: Comparison of Information Collected on the TRI Form R and Form A Certification Statement

Facilities must submit a detailed Form R report for each designated chemical that they use in excess of certain thresholds, or certify that they are not subject to the reporting requirement by submitting a brief Form A certification statement. Form A captures general information about the facility, such as address, parent company, industry type, and basic information about the chemical or chemicals it released. Form R includes the same information, but also requires facilities to provide details about the quantity of the chemical they disposed or released onsite to the air, water, land, and injected underground, or transferred for disposal or release off-site. Table 3 provides details about the specific information the facilities provide on the Form R and Form A.

Tabl 3: Information Collected on the TRI Form R and Form A Certification Statement

Form R	Form A
Facility Identification Information	**Facility Identification Information**
• TRI Facility ID Number	• TRI Facility ID Number
• Reporting year	• Reporting year
• Trade secret information (if claiming that toxic chemical is trade secret)	• Trade secret information (if claiming that toxic chemical is trade secret)
• Certification by facility owner/operator or senior management official	• Certification by facility owner/operator or senior management official
• Facility name, mailing address	• Facility name, mailing address
• Whether form is for entire facility, part of facility, federal facility, or contractor at federal facility	• Whether form is for entire facility, part of facility, federal facility, or contractor at federal facility
• Technical contact name, telephone number, Email address	• Technical contact name, telephone number, Email address
• Public contact name, telephone number	
• North American Industry Classification System (NAICS) codes	• North American Industry Classification System (NAICS) codes
• Dun & Bradstreet number	• Dun & Bradstreet number
• Parent company information (name, Dun & Bradstreet number)	• Parent company information (name, Dun & Bradstreet number)

Ch mical Specific Information	Chemical Specific Information

• Chemical Abstracts Service (CAS) registry number
• EPCRA Section 313 chemical or chemical category name
• Generic name
• Distribution of each member of the dioxin or dioxin-like compound category
• Generic name provided by supplier if chemical is component of a mixture
• Activities and uses of the chemical at facility, whether chemical is:
  • produced or imported for on-site use/processing, for sale/distribution, as a byproduct, or as an impurity
  • processed as a reactant, a formation component, article component, repackaging, or as an impurity
  • otherwise used as a chemical processing aid, manufacturing aid, or as an ancillary or other use
• Maximum amount onsite at any time during the year
	• Chemical Abstracts Service (CAS) registry number
	• EPCRA Section 313 chemical or chemical category name
	• Generic name

On-site Chemical Release Data	**On-site Chemical Release Data**

• Quantities released on-site to:
  • air as fugitive or non-point emissions
  • air as stack or point emissions
  • surface water as discharges to receiving streams or water bodies (including names of streams or water bodies)
  • underground injection
  • land, including RCRA Subtitle C landfills, other landfills, land treatment/application farming, RCRA Subtitle C surface impoundments, other surface impoundments, other land disposal
• Basis for estimates of releases (i.e., monitoring data or measurements, mass balance calculations, emissions factors, other approaches)
• Quantity released as a result of remedial actions, catastrophic events, or one-time events not associated with production processes
	Not reported on Form A

On-site Chemical Waste Management Data	**On-site Chemical Waste Management Data**

• Quantities managed on-site through:
  • recycling
  • energy recovery
  • treatment
• Recycling processes (e.g., metal recovery by smelting, solvent recovery by distillation)
• Energy recovery methods (e.g., kiln, furnace, boiler)
• Waste treatment methods (e.g., scrubber, electrostatic precipitator) for each waste stream (e.g., gaseous, aqueous, liquid non-aqueous, solids)
• On-site waste treatment efficiency
	Not reported on Form A

Off-site Transfers for Release or Other Waste Management	Off-site Transfers for Release or Other Waste Managem nt

• Quantities transferred to any Publicly Owned Treatment Works (POTW)
  • POTW name(s), address(es)
• Quantities transferred to other location for disposal or other release
  • underground injection
  • other land release
• Quantities transferred to other location for waste management
  • treatment
  • recycling
  • energy recovery
• Quantity transferred off-site for release, treatment, recycling, or energy recovery that resulted from remedial actions, catastrophic events, or one-time events not associated with production processes
• Off-site location(s) name and address
• Basis for estimates for amounts transferred
• Whether receiving location(s) is/are under control of reporting facility/parent company
	Not reported on Form A

Appendix II: GAO Estimates of the Possible Impact of Reporting Changes on TRI Data

We analyzed 2005 TRI data provided by EPA to estimate the number of Form Rs that could convert to Form A in each state and determined the possible impacts that this could have on data about specific chemicals and facilities. EPA released the 2005 data in March 2007; 2006 data is expected in spring of 2008. Table 4 provides our estimates of the total number of Form Rs eligible to convert to Form A, including the percent of total Form Rs submitted by facilities in each state. The table also provides our estimates of the number of unique chemicals for which no quantitative information would have to be reported in each state, including the percent of total chemicals reported in each state. The last two columns provide our estimates for the number of facilities that would longer have to provide quantitative information about their chemical releases and waste management practices, including the percent of total facilities reporting in each state.

Tabl 4: Estimated Impact of TRI Reporting Changes on Number of Form Rs, Chemicals, and Facilities, by State

	Form Rs		Chemicals		Facilities	
State	Number	Percent of total	Number	Percent of total	Number	Perc nt of total
AK	59	36.6	8	17.0	5	15.6
AL	456	22.0	34	17.1	69	12.9
AR	247	17.7	18	5.8	39	11.0
AZ	221	27.7	12	10.8	50	15.0
CA	1,533	37.5	36	18.2	302	19.9
CO	162	25.8	11	11.1	51	21.8
CT	299	33.5	16	15.4	73	20.6
DC	4	28.6	2	18.2	2	28.6
DE	80	27.7	24	23.3	10	14.1
FL	479	27.4	19	13.2	119	17.2
GA	678	30.9	60	29.1	132	16.7
HI	67	37.9	12	26.1	9	23.1
IA	371	27.7	34	22.2	46	10.6
ID	41	14.4	8	10.4	8	7.3
IL	1,155	30.0	37	16.4	171	14.3
IN	900	25.6	29	14.6	143	14.4
KS	291	28.3	23	16.0	41	14.0
KY	490	25.7	28	15.3	63	13.4
LA	665	25.6	34	13.1	46	12.4
MA	574	38.0	23	20.4	119	20.1
MD	221	32.6	24	22.6	34	16.6

Stat	Form Rs		Chemicals		Facilities	
	Number	Percent of total	Number	Percent of total	Number	P rc nt of total
ME	105	26.1	8	11.3	14	13.7
MI	965	29.7	36	19.0	145	16.1
MN	263	21.0	20	15.4	55	11.5
MO	498	27.3	43	21.7	80	14.2
MS	265	25.0	29	18.7	37	11.8
MT	61	21.8	10	13.5	7	15.2
NC	705	30.1	43	24.9	148	17.8
ND	29	13.8	7	11.5	6	12.5
NE	116	20.3	11	7.9	24	12.9
NH	98	29.1	13	17.3	23	16.1
NJ	582	35.1	34	16.0	101	19.3
NM	96	29.2	11	15.3	15	19.2
NV	96	21.2	14	18.9	19	14.3
NY	663	31.8	33	19.1	122	17.2
OH	1,557	28.5	38	12.6	218	13.8
OK	273	26.1	30	23.3	50	15.2
OR	236	28.6	16	15.5	47	15.5
PA	1,253	29.9	30	15.2	192	14.9
RI	112	39.3	12	17.4	30	23.4
SC	596	29.0	36	17.6	78	15.0
SD	44	19.6	3	5.8	10	10.5
TN	569	27.6	40	20.9	105	16.2
TX	2,196	30.6	29	9.3	210	14.1
UT	146	19.9	11	9.9	25	12.6
VA	401	25.2	23	14.8	70	14.3
VT	25	27.2	9	23.7	6	14.6
WA	276	26.4	22	19.8	43	12.5
WI	692	25.4	31	21.2	113	12.5
WV	222	22.8	40	24.1	35	17.4
WY	60	23.6	9	14.5	5	10.9
Total	**22,193**				**3,565**	

Source. GAO analysis of EPA TRI data

Mr. WYNN. Thank you very much for your testimony. I would like to thank all of the witnesses.

At this time the Chair would like to raise a few questions.

Mr. Nakayama, about how many rulemakings does EPA engage in?

Mr. NAKAYAMA. I don't have the exact number. I am sure it is hundreds.

Mr. WYNN. What percentage would you say the Office of Environmental Justice substantially participated in?

Mr. NAKAYAMA. I would say a very small fraction.

Mr. WYNN. OK. Thank you. Is it true that some programs of the EPA have not incorporated environmental justice in their core functions?

Mr. NAKAYAMA. I know we are working on getting all parts of EPA to integrate EJ into their functions, and this fiscal year 2008, strategic plan is moving forward.

Mr. WYNN. So that is somewhat of a left-handed way of saying that, yes, in the last 13 years there are some that have not.

Mr. NAKAYAMA. I don't personally know one way or the other.

Mr. WYNN. OK. That is fine. In the 13 years since the Executive order was issued, has EPA ever done a comprehensive review to determine whether this program or policies have a disproportionately high impact on minority communities, minority or low-income communities?

Mr. NAKAYAMA. We are engaged in that process now to conduct these EJ reviews as a result of both the IG report——

Mr. WYNN. I guess that is also another way of saying, no, you haven't in the past.

Ms. O'Neill, now, you said your basic rationale is if they minimize the releases, you want to allow them to use the short form. Is that basically your position?

Ms. O'NEILL. There is incentive to use the short form if they minimize or eliminate releases.

Mr. WYNN. OK. Now, it seems to me that the environmental community States and everyone else really would like to minimize releases as well, is it your position that you disagree with the 23 States and the 30 public health organizations and the 40 labor organizations and the 200 environmental organizations that have basically said they want this data notwithstanding the incentivizing that has taken place?

Ms. O'NEILL. I think that the States would agree that the first priority would be to eliminate or reduce waste as a priority.

Mr. WYNN. But the States said that they didn't want this rule. Twenty-three States at least said they didn't want it.

Ms. O'NEILL. Some of the comments to the rule based on what I have seen are not entirely or the understanding of what we are doing. The reality of it is that each community is still getting information on the chemicals that are there.

Mr. WYNN. Well, isn't it true that there would be 22,000, more than 22,000 less long-form reports with detailed information? Isn't that true?

Ms. O'NEILL. That is not true for this particular December 26 rule. As a result of that. Actually, there were 11,000 that were al-

ready eligible under the previous rule. So it is an additional 11,000. In total you are correct.

Mr. WYNN. In total it is 22,000?

Ms. O'NEILL. Right. I just wanted to clarify that.

Mr. WYNN. OK. Now, you are saying, well, they are not going to release these toxic materials, and so you think that is a justification for not providing the data. But isn't it true that even if they don't release the toxic material, that the material will still be in the facility?

Ms. O'NEILL. It depends on whether it is PBT or non-PBT, but some will. Absolutely. Up to 500 pounds of PBTs.

Mr. WYNN. So it would impact the employees in the facility even if the material were not released. Isn't that true?

Ms. O'NEILL. The facility employees should know where the information is and where the chemicals are.

Mr. WYNN. Well, they wouldn't be able to get the information because reports are not submitted. The detailed reports are not submitted. Now, what about first responders and others outside of the facility? Even if there is no release, again, the toxic material is still inside. Isn't that true?

Ms. O'NEILL. That is exactly right, and that is why EPCRA sets up different sections of the rule so that it can address emergency responses different than TRI.

Mr. WYNN. But the responders still need to be aware of that information.

Let me turn to Mr. Sullivan. You are talking about paperwork, but isn't it true that all these are electronically-filed reports?

Mr. SULLIVAN. I don't know that the percentage that are filed electronically or the number that are filed in paper. I would ask——

Mr. WYNN. But they could be filed electronically.

Mr. SULLIVAN. The actual program that receives the reports could respond.

Mr. WYNN. Now, you cited at one point $1 trillion is the burden, but isn't it true that the burden on an individual small business would only be about $900 a year?

Mr. SULLIVAN. You will hear from the next testimony that one example of a saving is 2 days worth of paperwork for this rule, and there are other estimates.

Mr. WYNN. Well, but it comes to an average of $900.

Mr. SULLIVAN. EPA's estimate is $900. That is correct.

Mr. WYNN. OK. Well, we will work with that. One final question.

Now, you talked about small businesses and the implications of these are very small, but isn't it true that the definition of small business includes businesses up to 500 employees?

Mr. SULLIVAN. SBA's definition of small employers includes businesses up to 500. That is correct.

Mr. WYNN. So these aren't exactly Ma and Pa operations that are filing these reports.

Mr. SULLIVAN. Mr. Chairman, Mom and Pop operations from all over the country have appealed to my office for over 10 years to get this type of reform.

Mr. WYNN. But employees, businesses under 10 employees aren't included.

Mr. SULLIVAN. The 10 employee threshold in the law was done on a risk analysis, and if you extend that same risk analysis, it leads to the reforms finalized in December 2006.

Mr. WYNN. But Ma and Pa really aren't included.

My time is up. I recognize my distinguished ranking member for questions at this time.

Mr. SHIMKUS. Thank you, Mr. Chairman. The frustrating thing with me in this is we keep using the word "release" and we don't define it, and I know the chairman tried to identify. It would help us, it would help the minority if in the movement of this bill that we just properly label.

So we could say toxic use chemical reporting, use inside a facility, we could say chemical reporting inside a facility, we could say possible toxic release inventory, what is possible to be released. We could say, here is a good acronym, TUMRI, toxic use manage and release inventory. So it identifies as not—every person on the panel kept using the word, release, and what it tells the public is that we are releasing all this stuff. All this stuff is in the atmosphere. All this stuff for environmental justice is killing the people in the minority communities when that is not true. This is a redefinition of the word, release, in 1986, by Senator Lautenberg. It is not Webster's definition of what a release is.

I am a simple infantrymen, southern Illinoian, rural person, and I think just to help address this debate we need to just properly define it, and that is my appeal to the people who really want to address this, to say if we want industry to report every chemical process in a facility and maybe they just recycle it, where there is, it is just in a cycle of manufacturing, then let us let them do that. Let us don't scare the world to say that all these things that are on this list are toxic releases, because they are not.

And so every testimony that is using the word, release, based upon the Lautenberg language is really deceptive in this testimony because 99.9 percent of all Americans would not agree with that definition, nor would Webster's definition.

So I would hope that it is a simple change. It would be in compliance with moving forward, but it is very, very frustrating.

Mr. Sullivan, how does this EPA reform, not hurt local communities?

Mr. SULLIVAN. Congressman Shimkus, when we appealed to EPA to reform the rule, we wanted to make sure that the same type of risk analysis that led to EPA Administrator Carol Browner's adoption of the short form transcended into this new paperwork burden reduction reform announced in December 2006. And when EPA did the analysis of moving information from Form R to Form A, and this was mentioned by GAO, they maintained 99 percent of the information. That is the same percentage requirement that Carol Browner used to adopt the short form.

So when you look at specific communities and you say, well, is it the same environmental protections from Carol Browner conveyed to this new rule, the answer is yes.

Mr. SHIMKUS. And we all love our first responders, and we want to make sure that they are protected and knowledgeable. How do you respond to the criticisms that this TRI reform hurts emergency responders?

Mr. SULLIVAN. Well, first of all, I commend the committee for having the hearing to clear up a terrible misconception, and that terrible misconception is that the Toxic Release Inventory provide first responder information when the alarm goes off, they are responding to a tragedy, and they are faced with a life-threatening situation of either breaking down a door or knowing that there is an explosive chemical behind that door, taking the appropriate procedures. That is not what TRI data is for.

In fact, to supplement Congressman Shimkus's earlier statement, the TRI covers about 24,000 facilities. MSDS sheets, which are available for employees and local firefighters and first responders, along with chemical inventory data, covers over 550,000 facilities, and it is timely information, not information that is over a year old like TRI data is. So I think that this committee deserves credit for really exposing terrible misinformation that the TRI data is the most important for first responders. That is not what the facts bear out, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman, and I have 6 seconds left, and I will yield back.

Mr. WYNN. Thank you. The Chair would recognize Ms. Solis for questions.

Ms. SOLIS. Thank you, Mr. Chairman.

My question is for Mr. Stephenson, and I wanted to ask just quite frankly, in your opinion, do you believe that the Executive order on environmental justice has been implemented adequately by EPA?

Mr. STEPHENSON. In a nutshell, no. That is what we reported in 2005, and we think they are moving in the right direction. We think including them as an ex officio member of the steering committee is good, but we saw no evidence of its inclusion in individual rule marking.

Ms. SOLIS. And you mentioned something about the current working groups that are coming about and that there is still a lack of representation of EJ representatives or stakeholders in those working groups. Is that correct?

Mr. STEPHENSON. That is right. The only one that was held up oddly enough was looking at EJ implications of this very rule, the TRI rule.

Ms. SOLIS. Which is amazing to me. I don't understand that.

My question is the facilities that you showed up here in Los Angeles, what would happen in a community like East Los Angeles, for example, which is pointed out very clearly in your documentation as the hot spots here, if they didn't have to report? This is like the 1 percent that doesn't, that would not be, would not have the advantage of giving us information, and this is where a higher tendency of minority, low-income, and toxic levels are much higher.

What would that mean to communities of color?

Mr. STEPHENSON. Well, there is a misconception here. We never said that TRI was the first source of information for emergency responders. Nevertheless, they use it in overall planning. We have been told that by the States.

This is a public right-to-know program, TRI, and we use that term "release" because that is the name of the program, Toxic Release Inventory. You are absolutely right that it is any facility that

manages, handles, disposes of appropriately, nevertheless the program is called the Toxic Release Inventory.

So the purpose of this program, the reason it has been highly successful is because the public has information about these chemicals. Individuals can go into the TRI database put in their ZIP Code and find out information about what is happening around them. We don't see burden reduction from raising the threshold from 500, 2,000 pounds.

Ms. SOLIS. And you mentioned something, if I could just interrupt, that with the reporting requirements being now much more easily accessible through computer, that that definitely would possibly lower costs for businesses.

Mr. STEPHENSON. Absolutely. Right now, and we think EPA is doing a good job integrating this information in more usable forms to the public, and we are disappointed that it takes 12 months to get the data out, but that is changing.

Ms. SOLIS. Yes.

Mr. STEPHENSON. Right now over 95 percent of the filers use electronic filing, and we expect that will go to 99 percent.

Ms. SOLIS. Yes.

Mr. STEPHENSON. So that is where the true burden reduction and usefulness of this program comes, not from a rule to change the threshold for reporting. It is not paperwork anymore.

Ms. SOLIS. Well, I think that this information is very timely because in the area that I do represent, which is kind of somewhat outlined in your graph here, the Port of Long Beach and Los Angeles as we know are major targets for potential terrorism, and if you can see in the map there, and I know the area. Geographically there is a lot of refineries, oil refineries, a lot of chemical plants, and a major thoroughfare for our railroad system. God forbid if something were to happen, and we didn't know what was available there. And this is where that information would be lacking if we continue to not see enforcement of the original legislation.

So I am very concerned about that, and I just want to thank you for giving us your information.

And I want to go next, if I can, please, to Granta Nakayama, and wanted to ask him with the administration's request to cut back on environmental justice funding, which was about a 30 percent cut, you mentioned earlier in your statement that you were giving out grants now of $1 million to community groups. Is it not true that during the discussion debate on the budget that if this, if that went through, according to the Bush administration, that these grant programs wouldn't even be there, and it was partly because Congress put the money back in?

Mr. NAKAYAMA. First of all, I want to be very clear that the President's budget request for the Office of Environmental Justice has been fairly flat over the last 5 or 6 years. There hasn't been much change. Congress through its generosity has provided an add on so that we could pursue these environmental justice grants. Appreciate the support of that program. We made great use of that money. I think it is having a big impact.

Ms. SOLIS. But it would have been cut. That is my question.

Mr. NAKAYAMA. Well, last year we didn't get the add on, because he had a continuing resolution. We did not get that add on, and

yet we took out, the administration put $895,000, almost $1 million, out of other EPA activities, not out of my office, not out of the Office of Enforcement and Compliance Assurance, put that money in there so we could continue this program.

Ms. SOLIS. My next question is, did the Office of Environmental Justice analyze the impact of the closure on the Region 10 Environmental Justice Office for budget reasons prior to its closure?

Mr. NAKAYAMA. The Region 10 Environmental Justice Office wasn't closed. What they did is they reorganized and pulled the environmental justice function out of the administration and resource management function and put it in a line operation. In other words, the real, they put it in the actual line organization that regulates the environmental activities in region 10. And what that did is I think it produced a much more active and much more effective environmental justice function in region 10.

Ms. SOLIS. One of the other questions I have is for our witness, Mr. Sullivan. You mentioned that the cost to small business given reporting of these chemicals is about a 72 percent burden or something like that to that effect. How do you quantify that with TRI? How do you quantify that? Please explain that to me.

Mr. SULLIVAN. Of course. Every 2 or 3 years my office hires an outside contractor to research regulatory burden with the attempt of trying to figure out whether there is a disproportionality of small versus large, because when we work with OSHA and EPA and IRS and Department of Transportation, the idea of our involvement and encouraging agency sensitivity to small firms is to level that playing field.

Ms. SOLIS. But there were a lot of other regulatory mechanisms in place where the Government actually provides assistance for cleanup, the Underground Storage Tank Program as an example. That isn't a direct burden necessarily placed on small businesses.

Mr. WYNN. The gentle lady's time has expired.

Ms. SOLIS. We can submit. Thank you.

Mr. WYNN. We are going to try to get one more line of questioning before recessing to vote.

Mr. Murphy of Pennsylvania.

Mr. MURPHY. Thank you, Mr. Chairman.

A quick question for the EPA here. Would the OSHA worker safety requirements apply in any plant that has to report and more specifically, does the TRI impact the OSHA safety requirements for workers?

Ms. O'NEILL. Assuming that is for me.

Mr. MURPHY. Yes.

Ms. O'NEILL. No, it does not impact.

Mr. MURPHY. Not at all?

Ms. O'NEILL. No.

Mr. MURPHY. OSHA standards are separate here?

Ms. O'NEILL. Yes, they are.

Mr. MURPHY. OK. That is an important thing. I may have some other follow up I want to use on that later on.

I am going to yield to the ranking member, Mr. Shimkus, the remainder of my time.

Mr. SHIMKUS. I thank you. Chairman Barton, I mean, ranking member, Joe, do you want to ask a question because we are going to be——

Mr. BARTON. No.

Mr. SHIMKUS. All right. Let me go to Ms. O'Neill. Does TRI set pollution limits for permits?

Ms. O'NEILL. No.

Mr. SHIMKUS. Does TRI set environmental health standards?

Ms. O'NEILL. No, it does not.

Mr. SHIMKUS. Is it anything more than a reporting program?

Ms. O'NEILL. It is a reporting program. Yes.

Mr. SHIMKUS. Is anyone newly exempted from TRI reporting that previously had to file a report?

Ms. O'NEILL. No, they are not.

Mr. SHIMKUS. Were any chemicals that previously had to be reported removed from the list of reportable chemicals?

Ms. O'NEILL. No, they were not.

Mr. SHIMKUS. How current is TRI data?

Ms. O'NEILL. By the time it is published, a year and a half old.

Mr. SHIMKUS. Eighteen months.

Ms. O'NEILL. Eighteen months. We are working on that.

Mr. SHIMKUS. All right. Is EPA prevented from getting additional data from reporting entities under TRI regulations?

Ms. O'NEILL. No.

Mr. SHIMKUS. OK. And for my last opportunity, I am still going to be lobbying for a change in the title. I got corrected. It wasn't the 1986, Act. The 1986, Act actually defined release as release. it was the 1990, changes that added all this other stuff, so if you all want to submit to me additional terminology that would adequately define what this program is, I think the committee would be happy to receive it. I would, and we would, maybe if we move forward, properly define what we actually are trying to do here.

And with that, Mr. Chairman, I yield back my time.

Mr. WYNN. Thank you. The subcommittee's going to stand in recess until the conclusion of this series of votes. We are going to reconvene 5 minutes after the conclusion of the last vote. Thank you.

[Recess.]

Mr. WYNN. The subcommittee will reconvene. At this point we are going to proceed directly with questions from Mr. Barrow of Georgia.

Mr. BARROW. Thank you, Mr. Chairman.

I hear, and I can relate to Mr. Shimkus's point about how the toxic release inventory is sort of misleading nomenclature. I guess instead of TRI it might be best for us to rename it TMI, toxic management index, but TMI also means too much information. Some folks don't want us to have enough information.

So I want to focus in on that concern of mine. I may agree with him that the use of the word, release, ain't Webster's definition of the word, release, but I will see him Webster's definition of release and raise him Webster's definition of small business, because I think the definition of small business that works for some purposes. It doesn't necessary apply in this context here.

And you can think about something without thinking about the things which it relates. You have the quality of being either a good

Congressional staffer or a good lawyer, but I want to talk about small business in a more practical sense, because I hear Mr. Sullivan's point. He is right. You know, little Mom and Pop outfits is one thing but 500 person, employees, especially when you are going to outsource so much of your stuff through contractors, who knows how that can be done.

I am intrigued, though, and I want to pick up on his point about the so-called trillion dollar burden we are imposing on business in this country, and I can relate to that, but I wonder if we think about what the cost of the compliance regime in this country would be if it wasn't on the honor system, people investigating themselves, but if we had a shown-up police force that actually did the monitoring, came on the premises and monitored. Came on the premises and recorded, came on the premises and did the reporting. If we had third-party verification rather than the self-reporting regime we have, I would rather imagine that burden would be a great deal bigger.

Which leads me to my question. How is range reporting going to lower that trillion dollar burden in a substantial way if you still have the burden of knowing and determining yourself through monitoring and assessment and recording and reporting to yourself, you still have the burden of determining exactly how much you are managing, how is it going to lower the cost if you just go ahead, to report it in broad ranges? I can tell you about range reporting. I have got an income that is a whole lot bigger than something I don't recognize. The range reporting regime we have got for Congressional income is something that I can't relate to at all, bears no relation to my real-life circumstances.

And what I am getting at is if you got to know precisely how much you are managing and or releasing in order to be able to validly comply with the oath you got to take when you fill out the short form, just like you got to fill out that oath to fill out the long form, if you got to know down to the jot and tiddle how much you are managing, how much you are producing, how much you are handling in order to fill out a range report, why not go ahead and submit the precise report? Why not go ahead and say how much of that trillion dollar burden are we going to relieve by them, by forcing the small businesses and the medium sized and all to know precisely how much they are handled but not tell us, to keep that information secret.

When you add to the fact that you are creating a tremendous incentive for folks to fudge a little bit. The honor system works better, I think, when you require people to be precise, but here you are actually inviting people to be vague and general in the reporting. Aren't you going to be inviting people to be vague and general in their ascertainment and their monitoring?

I am concerned about that. Who can tell me how it is going to lower the cost and how much it is going to lower the cost if you still got to know and we are still imposing the burden of finding out and determining to your own satisfaction so you can take that oath, just exactly how much stuff you are generating.

Mr. Sullivan, you want to try?

Mr. SULLIVAN. I would love to try to respond to the Congressman.

Mr. BARROW. Since I took most of my time leading up to this, I want you to be quick.

Mr. SULLIVAN. First of all, we are in agreement about the honor system. I think that really the crux of EPA's reform is to incentivize the honor system.

Mr. BARROW. Am I correct in understanding, though, that the rule still requires the managers to know and to monitor and determine exact, precisely, for them to know exactly how much it is, but we are still going to require them only to report it in general terms? And that is somehow going to incentivize them to produce less?

Mr. SULLIVAN. If I may fully respond to the Congressman's question, I would like to try and point out that a small firm with 15 employees that wants to manufacture the brass for this distinguished hearing room is given a choice of making sure as a start up do we act responsibly, and there are a number of reasons why that person would want to act responsibly and manage the alloy responsibly so that the amount, the small amount of lead that is in there does not leave this facility, is not emitted or discharged.

That is what is the incentive based in this EPA's reform. That is in sharp contrast to the old system that doesn't recognize this incredible innovator and entrepreneur who wants to start a domestic manufacturing of brass and says it doesn't matter if you send this outside of your facility or you have legally permitted emissions and discharges, because you are going to have to fill out the same long form anyway.

So filling out the small form——

Mr. BARROW. It seems to me that if we are going to require them to know what is in the long form and to determine what is in the long form, it is not that much weight of a burden for them to tell us what they already know, what they are already forced to know.

Mr. SULLIVAN. We respectfully disagree. Any burden reduction is important in small business.

Mr. BARROW. Mr. Najjum, in the 2 seconds I have, I had remaining, I want to ask you, you heard me talk about the situation in Augusta. Would your folks be willing to come down there and help us look into the situation at places like Hyde Park? Because we have got a community that is literally trapped. They can't, do they stay, do they go, and we need to bring the resources to bear, to help them evaluate whether or not staying is a viable option and how to deal with the unrest and the anxiety and the uncertainty of the folks who want to stay but also want to make sure that their neighborhoods are clean.

Can you do something about that? Can you come down and look at Hyde Park?

Mr. NAJJUM. We can talk with your staff about it, and if that means going down to look and see if there is something the IG can do, certainly.

Mr. BARROW. Thank you.

Mr. WYNN. Thank you, Mr. Barrow.

At this time the Chair would recognize Mr. Pallone, sponsor of the TRI bill.

Mr. PALLONE. Thank you. I am going to try to get in a question or two about TRI, and then I want to ask an environmental justice question.

Ms. O'Neill, in the GAO report they specifically say at one point here that the EPA's TRI burden reduction rule will reduce the amount of information about toxic chemical releases previously available to the public, and then it says that taken by facility some 3,500 facilities no longer have to report any quantitative information about their chemical use and releases to the TRI.

With regard to EPA's assertion the critical information would be, would not be lost. The agency estimates that less than 1 percent of the total pounds of chemical releases would on longer be reported, however, we found the impact on data available to many communities could be more significant than EPA's National totals indicate, particularly at the local level.

Do you disagree with any of those things?

Ms. O'NEILL. I disagree that communities will not be getting information. They will be getting information, and they can assume, because it is range related.

Mr. PALLONE. But they are saying there is going to be less information and that a lot of facilities won't be providing any information. Do you agree with that?

Ms. O'NEILL. Ninety-nine percent of the data will still be available. There will be some cases where it will be less data, but the most important data is available to the community and which is what chemical is being managed there, and that is the most important thing. And there is a whole suite of other information available to local communities. I think it is really important that we say that TRI is one set of data.

Mr. PALLONE. OK.

Ms. O'NEILL. And we really need to get, put that in context with other environmental data out there that I think is equally as important to the communities.

Mr. PALLONE. See, my problem is, and I will be honest with you, and I am not trying to denigrate you in any way, the whole notion of right-to-know in my opinion, I am only speaking for myself, is based on the idea that we can't trust industry to do the right thing, we can't even trust agencies and the Government, whether it be the Federal or the State or even Congress to do the right thing. And the best thing is to have transparency, throw everything out there as much as possible because the public will be, will react and take on whoever has to be taken on because we can't trust the industry or the Government to do it.

So when you say that by raising the threshold you provide this incentive, you create an incentive for pollution prevention, it kind of goes against the whole philosophy of the right to know because you are saying, well, we will incentivize the companies or the potential polluter, if you will, and provide theoretically less information to the public.

Well, the whole premise of the right-to-know is that we need to incentivize the public, not the potential polluter because we can't trust the company or the Government to do the right thing.

I know that Mr. Stephenson at one point, how does raising the threshold achieve the objective of less toxic releases, I don't see it. So let me just ask you one thing.

In proposing the new rule did the EPA conduct any studies on reporting reductions, creating incentives for pollution prevention? Prior to the new rule did the EPA conduct any economic analysis demonstrating an incentive affect with reduced reporting?

In other words, you state that the EPA is working to determine the effectiveness of these incentives, but shouldn't they have determined the effectiveness of those incentives before changing the rule rather than hoping that this incentive is going to work? I don't, it doesn't seem to me you have enough evidence that the incentive works.

Ms. O'NEILL. Well, first of all, EPA did do a lot of analysis. They did economic analysis, they looked at a number of chemicals that might be affected. We looked at by ZIP Code communities that might be affected. We looked at the number forms that might switch over. So there was a lot of analysis that was put in this. There was discussions, it is my understanding there was discussions in terms of do companies if they have this opportunity, would they have incentive? I don't know in terms of analysis——

Mr. PALLONE. Do you really have any evidence? I have to ask, I want to go to one more question unrelated, but do you really have any evidence that the incentive will work?

Ms. O'NEILL. In terms of the incentive?

Mr. PALLONE. Yes.

Ms. O'NEILL. I will have to get back to you, quite frankly, to see what studies are there, but we can get back to you on that.

Mr. PALLONE. All right. I would appreciate that.

I wanted to ask the Inspector General one question. I had a case of environmental, what I considered environmental racism. You may not be familiar with it. With the Ringwood Superfund Site in New Jersey, and this was a site where it was taken off the Superfund list, and myself and my two Senators made an issue of the fact that we didn't think there was proper cleanup, that we didn't think that the residents were properly informed about what was going on. We asked the IG to look into it from an environmental racism point of view because it was primarily a Native American community.

The IG, thankfully, came back and said you have got to put this back on the Superfund list, you have got to do a more thorough cleanup, you didn't do enough to inform the residents about this, and all that happened. It is back on the list, a more thorough cleanup is being done. They are out there doing more public information hearings.

But they said that there was no evidence that the reason this happened, all these bad things happened was because of social, cultural, or environmental ethnic reasons. And I guess my question is how do we prove that? This was a case of total negligence. They didn't do what they were supposed to do, and I believe it was because it was a Native American community. But it is hard to say, to pinpoint evidence, because they didn't do what they were supposed to do. They didn't have the public meetings, they didn't have, they didn't do the proper cleanup. I don't think anybody was step-

ping forward to say, we didn't do this because you were Native American.

So I just question that evidentiary requirement. What do you require to show that the reason all these bad things happened and need to be corrected was related to the fact that these were Native Americans? How, what is the evidentiary basis? They said there is no evidence, but there is not much evidence of anything because they didn't do what they were supposed to do.

Mr. NAJJUM. I understand the question and the concern, Congressman. I understand your frustration, but when we go as an IG looking for an audit or an evaluation, we have to have evidence and various ways to get it. We went through, in the case of Ringwood, yards of e-mails and documentation, anything that we could find that would show an indication or evidence that the actions or lack there of were based on the Native American population.

Mr. PALLONE. In other words, you have to have somebody actually saying that we didn't do this or we were negligent or we didn't report to these people because they are Native American in order for you to come to that conclusion? Nobody is going to say that.

Mr. NAJJUM. Sometimes they do, sir. When you are going back looking through the records sometimes there are indications or there would be evidence that actions were taken or not taken in the official documents and also in the e-mails and other things that go along with that, that would show that people were making, or taking actions based on that. But short of that, yes, it is very difficult for an IG to look at something without comparing it to something else and say in nine out of 10 cases they did this, and in this one case they did that.

But then we would still be ascribing a particular motive to that, which may or may not be it. That is the problem we face, so when we say there was no evidence, we are not coming to a conclusion that it happened or it didn't happen. What we are saying is we can't prove that without evidence.

Mr. PALLONE. Well, I am going to, I know my time is up, but I am going to follow up if I could, Mr. Chairman, with some questions on this, because I really believe that more needs to be done to look at the cause, whether this really was an environmental justice issue.

But I am sorry. Thank you. Thank you for letting me go over a little bit.

Mr. WYNN. At this time the Chair would recognize Mrs. Capps for questions.

Mrs. CAPPS. Thank you. I have three people I would like to question in this very short time period.

A brief question, Mr. Nakayama, during the hearing you stated that the EPA Office of Environmental Justice has participated in very few agency rulemaking efforts.

Mr. NAKAYAMA. That is true, because we depend on——

Mrs. CAPPS. Let me ask you the question. If EPA were about to develop a rule that on its face would apply primarily to minority, urban, low-income communities, wouldn't that be exactly the kind of rule that your Office of Environmental Justice should be actively involved in in order to insure that EJ impacts are addressed?

Mr. NAKAYAMA. We are trying to integrate environmental justice——

Mrs. CAPPS. You believe you should be involved in those kind of——

Mr. NAKAYAMA. I believe the environmental justice activities impacts should be considered during the rulemaking. Now, we take the position that really we need to build the capability of the program office that is developing the rule so that they need to take the lead and conduct that EJ analysis, because they have special expertise, for example, on air rule, they may have expertise of the demographics, their air modeling.

Mrs. CAPPS. So you don't believe you should be actively part of the rulemaking.

Mr. NAKAYAMA. We should be involved, but the primarily lead, we are trying to develop the capability to have the program office be the lead.

Mrs. CAPPS. All right. Let me turn to Mrs. O'Neill, and this will take a little bit of a narrative because it is a company in my district that has been reporting its ammonia release data to TRI.

As you know, this is a vegetable company in Santa Maria, CA, I happen to represent. I am very happy to. As you know, exposure to ammonia can irritate the skin, eyes, and respiratory system. Extreme exposure may cause death. The company's trend line on TRI starting in 1989, has been to reduce its ammonia releases year after year. In 1989, the company released 14,000 pounds of ammonia. It is now down to 5,400 in the last report. This shows, in my opinion, that TRI is working, because it is motivating a company like Pick Sweet to lower its releases. And it is successful and has something to brag about as it is doing that.

What I am concerned about is companies like this dropping out of detailed reporting. Requiring public disclosure provides a powerful incentive for facilities to continue to decrease toxic releases, provides community residents and first responders with vital information in cases of accidental releases, in cases of anything happening on the site. The TRI rule as proposed would have allowed this company to stop providing detailed reports to local emergency planning commissions.

If it weren't for the changes to the proposed rule, would this company have been required to file detailed reports and provide that information to the local first responders? They were only 400 pounds away from the 5,000-pound disclosure threshold, and if they had gotten below that and didn't have to report it all, the public health people would not have known that there was 4,500 pounds of release.

I would like your reaction.

Ms. O'NEILL. Well, again, on the Emergency Right-to-Know Act, the TRI report for EPCRA is broken out into several different sections. So under this we are not affecting the section for emergency planners at all.

Mrs. CAPPS. No matter what the level?

Ms. O'NEILL. No matter what the level. This is just for TRI reporting. So EPCRA has several sections in it. OK. So some emergency responders use the TRI reports as supplemental information, and in that case they will still understand, in this particular case

they will still have an understanding of what the chemicals of concern are there. But they rely on the different EPCRA section for all the hazardous materials that are there and their locations. So I just want to point that out.

Mrs. CAPPS. Right. And so we want, I am saying wouldn't, shouldn't that continue no matter what the release so that they——

Ms. O'NEILL. It does continue for emergency response. What, you are talking about two different——

Mrs. CAPPS. For emergency response it does?

Ms. O'NEILL. Well, this, the final rule does not affect EPCRA associated with emergency response reporting. OK. So what you are talking about is the TRI reports where the, for the impact for the final rule. And so depending on the type of chemical, and I don't have a list in front of me, I am not sure if they would meet the threshold. I don't know what else they have in their waste management. So they might have had to go further down. They might not have been 400 pounds.

Mrs. CAPPS. They wouldn't have to report after they got below a certain——

Ms. O'NEILL. Well, it is a little bit more complicated than that because it is 5,000 for everything but there is a cap on the actual type of management and releases, which is 2,000 pounds. So it may, it actually may incentivize them to go down even further. It may incentivize them.

Mrs. CAPPS. Well, is there a way to find that out? I would like to follow up with you because——

Ms. O'NEILL. If you, yes, if you could submit the question so I know what the particular chemical is and the facility, it might be a lot easier to get back to you.

Mrs. CAPPS. I will.

I am thinking about first responders to an incident there to any kind of incident in the public where they need to have some way of knowing what they are walking into.

Ms. O'NEILL. Right, and again, what, the final rule is not for section 312 of EPCRA, which is the primary source of information for first responders.

Mrs. CAPPS. Thank you. I just, I hope, may I have an extra few seconds to ask, I would like to get Mr. Stephenson to be able to comment on some of these incentives I have been talking about.

The reporting and disclosure requirements in TRI I believe myself are very important incentives. Data is, for this company supports that conclusion. They worked hard to get their releases down. Other than the release of ammonia and accidents do happen, they are heading in the right direction. Releases were going down.

What, I want your response if I could ask indulgence of the Chair, to——

Mr. STEPHENSON. That is our point exactly. If you increase the threshold for reporting from 500 to 2,000 you are de-incentivizing them to go much below 2,000. So, if there is no burden reduction, why not keep the rule the way it was at 500 pounds? We think that will provide the incentives necessary to keep——

Mrs. CAPPS. Bring it all the way down.

Mr. STEPHENSON. Bring it all the way down.

Mrs. CAPPS. Thank you.

Mr. WYNN. I would like to thank all the witnesses on this panel first for your testimony but also for your patience. I know we had a pretty considerable break. We appreciate your presence here, and as I said, members may be submitting written questions.

Thank you very much.

At this time I would like to call forth our second panel.

While they are coming up, I would like to ask unanimous consent that two documents be inserted in the record. The first is a March 6, 2007, letter to the Honorable John Dingell and the Honorable Joe Barton signed by 40 individuals and public interest organizations expressing support for the Environmental Justice Act of 2007, and the second is a September 28, 2007, Dear Representative letter from 307 organizations urging support for H.R. 1055, the Toxic Right-to-Know Protection Act.

Mr. SHIMKUS. Mr. Chairman.

Mr. WYNN. Yes.

Mr. SHIMKUS. I think I am being drafted a unanimous consent as we speak.

Mr. WYNN. Well, what I would like to do if there are no objections, the two letters that I have just referenced will be submitted to the record, and if at some point you would like to introduce or make a unanimous consent request, the Chair will certainly entertain that.

Hearing no objections the two items that are mentioned will be entered into the record.

Mr. WYNN. I would like to welcome our second panel and introduce them to you.

First we have Mr. Hilary O. Shelton, director, National Association for the Advancement of Colored People, Washington Bureau.

Second we have Dr. Robert Bullard, Ware professor, Department of Sociology, director, Environmental Justice Resource Center, Clark Atlanta University.

Third we have Mr. Jose Bravo, executive director, Just Transition Alliance on behalf of the Communities for a Better Environment.

Fourth, Mr. Andrew Bopp, director of public affairs, Society of Glass and Ceramic Decorators.

Fifth, Mr. Alan Finkelstein, assistant fire marshal, Strongsville Fire and Emergency Services.

And last but certainly not least Ms. Nancy Wittenberg, assistant commissioner, New Jersey Department of Environmental Protection.

Again, I would like to welcome you, offer you 5 minutes each for your statements. Your full prepared testimony will, of course, be entered into the record.

Mr. Shelton.

STATEMENT OF HILARY O. SHELTON, DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, WASHINGTON BUREAU, WASHINGTON, DC

Mr. SHELTON. Good morning, Chairman Wynn and members of the subcommittee. I thank you for the opportunity this morning to testify before you.

As you mentioned, my name is Hilary Shelton, and I am the director of the Washington Bureau of the National Association for the Advancement of Colored People. I have been invited here today to discuss environmental justice and communities' rights to know.

Sadly, more than 40 years after the enactment of the Civil Rights Act of 1964, and the Fair Housing Act of 1968, we are still a much too segregated society. Centuries of legal segregation and Jim Crow and continuing America in which the amount of education received and the salary you earn is determined in a large part, unfortunately, by the color of your skin. And as a result, Americans still living in communities marked by concentrations of people who look alike. Even sadder, it is communities of color, neighborhoods with large concentrations of racial and ethnic minority Americans which bear a disproportionate share of the Nation's air, water, and toxic waste pollution problems. And since the places where people live and work have an enormous impact on their health, this disproportionate exposure to pollution leads to a more racial and ethnic minority Americans suffering from ill health.

And perhaps the saddest part of all this is that the Federal Government has a proven track record of being less responsive to the needs of communities if color when pollution is a problem. As a seminal study in the National Law Journal in 1992, stated, there is a, "racial divide in the way the United States Government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results, and stiffer penalties than communities where blacks, Hispanics, and other racial minorities live."

There have been several conclusive studies that demonstrate, beyond a shadow of a doubt, that communities of color are disproportionately targeted by polluters. As the United Church of Christ, "Toxic Wastes and Race in Twenty, 1987–2007," concluded, race is the most significant independent predictor of commercial hazardous waste facilities locations. In fact, a December 2, 2005, report by the Associated Press reported that 79 percent of African-Americans live in polluted neighborhoods.

So what is the impact and cost of these disparities to communities of color? Perhaps most importantly it has been effectively argued that disparities in pollution are a leading cause of health disparities among America's populations. Many of the principle causes of death in the United States today, that is cancer, chronic lung disease, and diabetes, have significant environmental causes. Furthermore, the environmental causes of non-lethal conditions, including birth defects, asthma, learning disabilities, and nervous system disorders, are also well documented.

The NAACP recognizes that one of the major hurdles facing this committee, as well as the Federal Government, is the fact that many of the zoning laws and regulations which determine who is exposed to hazardous pollution are made at the local level. This, however, does not and should not absolve the Federal Government from taking action to try to mitigate environmental injustices and help communities help themselves.

The NAACP strongly supports the two bills that are the subject of today's hearings; H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-to-Know Protection Act. If enacted, these bills will provide communities with powerful tools in

their struggle against pollutants. By providing communities with details about the quantities and quality of the pollution in their air, water, and soil, they can make informed decisions and demands on their elected officials. An informed community is an empowered community.

In my written testimony I elaborate on why the NAACP feels this legislation is necessary and important. For the record, I have also included in my testimony an excerpt from this month's Crisis Magazine, the magazine of the NAACP. The cover story of the July-August edition is on environmental justice, and within this article are several good examples of individuals and communities who have fought against polluters and pollution.

I would again like to thank Chairman Wynn and Congresswoman Solis, Congressman Pallone and the other members of this committee for all of your efforts on this important issue.

I would also like to thank Leslie Fields of the Sierra Club, Environmental Justice Department, for her assistance in preparing this statement, as well as the input of the group called Advocates for the Environmental Human Rights.

With that I welcome your questions.

[The prepared statement of Mr. Shelton follows:]

STATEMENT OF HILARY SHELTON

Good morning Chairman Wynn and members of the subcommittee. I thank you for the opportunity to testify before you today.

My name is Hilary Shelton, and I am the Director of the Washington Bureau of the National Association for the Advancement of Colored People, the NAACP. The Washington Bureau is the public policy advocacy branch of our Nation's oldest, largest and most widely recognized grassroots civil rights organization. I have been invited here today to discuss environmental justice and communities' right to know.

It is sad but true that today, more than forty years after Dr. King spoke to us in his "I Have a Dream" speech of one nation in which we all lived together under God, and despite the Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fair Housing Act of 1967 we are still a much too segregated society. Centuries of legal segregation and Jim Crow and a continuing America in which the amount of education you receive and the salary you make is determined in large part by the color of your skin have resulted in many Americans still living in communities marked by a concentration of people who look alike.

Even sadder, it is communities of color, neighborhoods with large concentrations of racial and ethnic minority Americans, which bear a disproportionate share of the Nation's air, water and toxic waste pollution problems. And since the places where people live and work have an enormous impact on their health, this disproportionate exposure to pollution leads to more racial and ethnic minority Americans suffering from ill health—both physical and mental.

And perhaps the saddest part of this all is that the Government, our American Government, has a proven track record of being less responsive to the needs of communities of color when pollution is a problem. As a seminal study on the National Law Journal in 1992 stated, there is a "...racial divide in the way the United States Government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results and stiffer penalties than communities where Blacks, Hispanics and other minorities live."

There have been several conclusive studies that demonstrate, beyond a shadow of a doubt, that communities of color are disproportionately targeted by polluters. Perhaps the most famous of these studies, by the United Church of Christ, is the 1987 study Toxic Wastes and Race in the United States, and the more recent follow-up, Toxic Wastes and Race at Twenty 1987–2007. Both the 1987 and the 2007 UCC reports found race to be the most significant independent predictor of commercial hazardous waste facility locations when socio-economic and other non-racial factors are taken into account. In fact, as I am sure we will hear from more than one source today, in the 2000 study the UCC study found that neighborhoods within 3 kilo-

meters of commercial hazardous waste facilities are 56 percent people of color whereas non-host areas are 30 percent people of color.

So what is the impact and cost on communities of color of these disparities? Perhaps most importantly, it has been effectively argued that disparities in pollution are a leading cause of the health disparities among America's populations. Many of the principal causes of death in the United States today (cancer, chronic lung disease and diabetes) have significant environmental causes. Furthermore, the environmental effects of non-lethal conditions (including birth defects, asthma, learning disabilities and nervous system disorders) are also well documented.

The NAACP recognizes that one of the major hurdles facing this committee, as well as the Federal Government, is the fact that many of the zoning laws and regulations which determine who is exposed to hazardous pollution are made at the local level. This however does not, and should not, absolve the Federal Government from taking action to try to mitigate environmental injustices and help communities help themselves.

The NAACP strongly supports the two bills that are the subject of today's hearing, H.R. 1103, the Environmental Justice Act of 2007 and H.R. 1055, the Toxic Right to Know Protection Act. If enacted, these bills will provide communities with powerful tools in their struggle against pollutants. By providing communities with details about the quantity and quality of pollutants in their air, water or soil, they can make informed decisions and demands of their elected officials. An informed community is an empowered community, and bills like H.R. 1103 and H.R. 1055 will provide individuals and neighborhoods with much-needed tools in their struggles to safeguard themselves and their families.

H.R. 1055 corrects a January 2007 regulation by the U.S. Environmental Protection Agency (EPA) which would allow up to ten times more pollution to be released by a facility before that facility is required to submit to EPA a detailed report of its emissions. EPA collects such reports in a publicly accessible database known as the Toxic Release Inventory or "TRI." TRI has proven to be an effective tool for raising public awareness of the amounts and kinds of toxic pollution released by a variety of facilities, and providing support for public advocacy that has reduced toxic pollution levels. Without H.R. 1055, communities that are disproportionately burdened with toxic pollution will not have the vitally important information needed to protect their health and environment.

For example, African Americans living in Mossville, Louisiana have been documented by EPA and a Federal Government health agency as having elevated levels of dioxin, an extremely toxic chemical that can cause cancer and harm the normal development of the unborn and children. Using TRI reports that were collected by EPA prior to its January 2007 rule change, the residents of Mossville were able to identify the industrial facilities operating near their community that release the same unique dioxin compounds that have been detected in their blood and environment. Without TRI reports, the people of Mossville would not have the ability to find the sources of their dioxin exposures, and call on EPA to take action that protects their health and the health of future generations.

By requiring TRI reports to provide more complete information about toxic pollution, House Bill 1055 supports the right of communities to access reliable information regarding the pollution that affects their health and environment.

H.R. 1103 also takes tremendous strides towards ensuring environmental justice. By codifying executive order 12898, H.R. 1103 will strengthen compliance and enforcement of environmental justice goals at the Federal level. This Executive Order reinforced the promise of the Civil Rights Act of 1965, which prohibits discrimination in programs receiving Federal funds. In the years since Executive Order 12898 was issued, the EPA and other Federal agencies have adopted commitments to environmental justice. Yet numerous studies have concluded that significant action is still needed for EPA to integrate equity concerns into their operations in a way that will end this form of injustice for minority and low-income groups. H.R. 1103 would ensure that Executive Order 12898 is carried out faithfully and without delay.

I would like to close my statement with a few examples of why H.R. 1103 and H.R. 1055 are necessary and the good they can do. For the record, I would like to include in my written testimony an excerpt from this month's Crisis Magazine, the Magazine of the NAACP. The cover story of the July / August edition is on Environmental Justice, and within the articles are several good examples of individuals and communities who have fought against polluters and pollution.

Included in these articles is the story of Peggy Shepard, the co-founder of WE ACT, a community group focusing on cleaning up communities of color in New York City. Despite a strong organizational structure which was able to harness public outrage into demonstrations and effective legal strategies, Ms. Shepard reports that "science, technology and research are also indispensable tools for a community in

its struggle to create a safe and sustainable environment. Its lack is a void that contributes to communities of color being excluded from decision-making positions."

I would also like to thank Congressman Wynn, Congresswoman Solis, Congressman Pallone and the other members of this subcommittee for all of your efforts on this important issue. I would also like to thank Leslie fields of the Sierra Club's Environmental Justice Department for her assistance in preparing this statement, as well as the input of the group Advocates for Environmental Human Rights.

I will happily take your questions.

Mr. WYNN. Thank you very much for your testimony.

Dr. Bullard.

STATEMENT OF ROBERT D. BULLARD, WARE PROFESSOR, DEPARTMENT OF SOCIOLOGY; DIRECTOR, ENVIRONMENTAL JUSTICE RESOURCE CENTER, CLARK ATLANTA UNIVERSITY, ATLANTA, GA

Mr. BULLARD. Good afternoon. My name is Robert Bullard, and I direct the Environmental Justice Resource Center at Clark Atlanta University. Mr. Chairman and members of the subcommittee, I want to thank you for holding this hearing.

This year marks the 25th anniversary of Warren County, NC, PCB Landfill protests in 1982, that made headlines and ignited the environmental, the national environmental justice movement. This year also represents the 20th anniversary of the landmark, "Toxic Wastes and Race at Twenty, Toxic Wastes and Race in the United States Report," published by the United Church of Christ.

To commemorate this milestone, the UCC asked me to assemble a team of researchers to update that report. We did, and that report is titled, "Toxic Wastes and Race at Twenty, 1987–2007." We released that report in March in Washington, DC.

The findings, people of color make up the majority, 56 percent of those living in neighborhoods with a 2-mile radius of the Nation's commercial hazardous waste sites, nearly double the percentage in areas 2 miles, more than 2 miles.

People of color make up more than two-thirds, 69 percent, of the residents in neighborhoods with clustered facilities. It is easier to get two facilities if you have one. It is easier to get five if you have four.

Nine out of 10 EPA regions have racial disparities in the location of hazardous waste facilities. I wrote a book in 1990, called, "Dumping in Dixie." This is not a Southern phenomena. It is national.

Forty of 44 States, 90 percent of the hazardous waste facilities have disproportionately high percentages of people of color in host neighborhoods.

Conclusions: People of color are concentrated in neighborhoods and communities with the greatest number of facilities and people of color in 2007, are more concentrated in areas with commercial hazardous waste facilities than they were in 1987.

Clearly, low-income and communities of color continue to be disproportionately and adversely impacted by environmental toxins. It has now been more than 13 years since President Clinton signed Executive order 12898, however, environmental justice still eludes many communities across this Nation.

Numerous studies have documented that people of color in the United States are disproportionately impacted by environmental hazards in their homes, schools, neighborhoods, and workplace. Schools are not safe in some communities. A 2001, report indicated that over 600,000 school children in Massachusetts, New York, New Jersey, Michigan, and California were, live within, these schools were located within a half a mile of a Federal Superfund site.

When we look at the reports from GAO, from the EPA's Inspector General, it is clear that environmental justice from the Executive order is not being implemented. Numerous studies, the most recent study done by the Associated Press shows that 79 percent of African-Americans live in the most dangerous facilities where, related to TRI.

If you look at the whole question of the weakening of TRI, it is important to note that when you overlay the toxic release inventory database facilities with the commercial hazardous waste facilities and the other facilities that is located in communities of color and low-income communities, you have saturated communities. You have sacrifice zones. You have communities that not only bear a disproportionate burden but in many cases are fence-lined with facilities. And so when you tinker and tamper with a database that has been used for many years for longitudinal data and for comparative studies, it is important to understand that it is not just one facility that you are talking about or one database. You are talking about communities that are suffering.

There are more than 36 recommendations from the report. There are 10 that were highlighted and lifted out and more than 100 organizations around the country endorsed them. It is important to note that two of those 10 recommendations that were top priorities included passing a National Environmental Justice Act codifying the Executive order and protecting and enhancing community right-to-know, worker right-to-know, community and worker right-to-know so that H.R. 1103, Environmental Justice Act of 2007, and H.R. 1055, Toxic Right-to-Know Protection Act, fall hand in hand with the findings and the conclusions of the report.

Getting Government to respond to environmental and health concerns of low income and people of color communities has been an uphill struggle. The time to act is now. Our communities cannot wait another 20 years. Achieving the environmental justice for all makes us a much healthier, stronger, and more secure Nation as a whole.

I will be pleased to answer any questions that you may have. Thank you very much.

[The prepared statement of Mr. Bullard follows:]

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Testimony of

Robert D. Bullard, Ph.D.

Director of the Environmental Justice Resource Center

Clark Atlanta University

Subcommittee on Environment and Hazardous Materials

"Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know"

Washington, DC

October 4, 2007

Good morning. My name is Robert D. Bullard and I direct the Environmental Justice Resource Center at Clark Atlanta University in Atlanta, GA. Mr. Chairman and members of the Subcommittee, I want to first thank you for the opportunity to appear before you today at this subcommittee hearing.

This year marks twenty-five years since the Warren County, North Carolina PCB Landfill protests in 1982 made headlines and ignited the national environmental justice movement. This year also marks the twentieth anniversary of the landmark *Toxic Wastes and Race* report published by the United Church of Christ (UCC) Commission for Racial

Justice.[1] To commemorate this milestone, the UCC asked me to assemble a team of researchers to complete a new study, *Toxic Wastes and Race at Twenty 1987-2007.*[2] The report was released in March 2007. In addition to myself, the other principal authors of the new UCC report are Professors Paul Mohai (University of Michigan), Beverly Wright (Dillard University of New Orleans), and Robin Saha (University of Montana).

Toxic Wastes and Race at Twenty examined disparities by region and state, and separate analyses are conducted for metropolitan areas, where most hazardous waste facilities are located.

Study Findings

- People of color make up the majority (56%) of those living in neighborhoods within two miles of the nation's commercial hazardous waste facilities, nearly double the percentage in areas beyond two miles (30%).
- People of color make up more than two-thirds (69%) of the residents in neighborhoods with clustered facilities.
- 9 out of 10 EPA regions have racial disparities in the location of hazardous waste sites.
- Forty of 44 states (90%) with hazardous waste facilities have disproportionately high percentages of people of color in host neighborhoods–on average about two times greater than the percentages in non-host areas (44% vs. 23%).

Study Conclusions

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[1] United Church of Christ Commission for Racial Justice, *Toxic Wastes and Race in the United States.* New York: UCC, 1987.
[2] R.D. Bullard, P. Mohai, R. Saha, and B. Wright, *Toxic Wastes and Race at Twenty: 1987-2007.* Cleveland, OH: United Church of Christ Witness & Justice Ministries, March 2007. The full report is available at http://www.ejrc.cau.edu/TWART-light.pdf.

- People of color are concentrated in neighborhoods and communities with the greatest number of facilities; and people of color in 2007 are more concentrated in areas with commercial hazardous sites than in 1987.
- Clearly, low-income and communities of color continue to be disproportionately and adversely impact by environmental toxins.
- Residents in fenceline communities comprise a special needs population that deserves special attention.

It has now been more than thirteen years since President Clinton signed Executive Order 12898, *"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"* on February 11, 1994.[3] However, environmental justice still eludes many communities across this nation.

Numerous studies dating back to the 1970s have documented that people of color in the United States are disproportionately impacted by environmental hazards in their homes, schools, neighborhoods, and workplace.[4] A 1999 Institute of Medicine study, *Toward Environmental Justice: Research, Education, and Health Policy Needs,* concluded that "low-income and people of color communities are exposed to higher levels of pollution than the rest of the nation and that these same populations experience certain diseases in greater number than more affluent white communities."[5]

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[3] Executive Order 12898 of February 11, 1009, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," *Federal Register*, Vol. 59, No. 32, Wednesday, February 16, 1994.

[4] R.D. Bullard, *Dumping in Dixie: Race, Class and Environmental Quality*. Westview Press, 1990; R.D. Bullard, *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*. Sierra Club Books, 2006; R.D. Bullard, *Growing Smarter: Achieving Livable Communities, Environmental Justice and Regional Equity*. MIT Press, 2007.

[5] Institute of Medicine, *Toward Environmental Justice: Research, Education, and Health Policy Needs*. Washington, DC: National Academy of Sciences, 1999, Chapter 1.

A 2000 study by *The Dallas Morning News* and the University of Texas-Dallas found that nearly half (46 percent) of the housing units for the poor, mostly minorities, sit within one-mile of factories that reported toxic emissions to the U.S. Environmental Protection Agency.[6]

Even schools are not safe from environmental assaults. A 2001 Center for Health, Environment, and Justice study, *Poisoned Schools: Invisible Threats, Visible Action*, reports that more than 600,000 students in Massachusetts, New York, New Jersey, Michigan and California were attending nearly 1,200 public schools, mostly populated by low-income and people of color students, that are located within a half mile of federal Superfund or state-identified contaminated sites.[7]

In its 2003 report, *Not in My Backyard: Executive Order and Title VI as Tools for Achieving Environmental Justice*, the U.S. Commission on Civil Rights (USCCR) concluded that "Minority and low-income communities are most often exposed to multiple pollutants and from multiple sources. . . . There is no presumption of adverse health risk from multiple exposures, and no policy on cumulative risk assessment that considers the roles of social, economic and behavioral factors when assessing risk."[8]

A March 2004 EPA Inspector General report, *EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities,* concluded that the agency "has not developed a clear vision or a comprehensive strategic plan, and has

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[6] See "Study: Public Housing is Too Often Located Near Toxic Sites." *Dallas Morning News*, October 3, 2000.

[7] See the Center for Health, Environment, and Justice, *Poisoned Schools* report (2001) found at http://www.bredl.org/press/2001/poisoned_schools.htm.

[8] U.S. Commission on Civil Rights, Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice. Washington, DC: U.S. Commission on Civil Rights, 2003, p. 27.

not established values, goals, expectations, and performance measurements" for integrating environmental justice into its day-to-day operations.[9]

In July 2005, the U.S. Government Accountability Office (GAO) criticized EPA for its handling of environmental justice issues when drafting clean air rules. That same month, EPA proposed major changes to its Environmental Justice Strategic Plan. This proposal outraged EJ leaders from coast to coast. The agency's Environmental Justice Strategic Plan was described as a "giant step backward."[10] The changes would clearly allow EPA to shirk its responsibility for addressing environmental justice problems in minority populations and low-income populations and divert resources away from implementing Executive Order 12898.

In December 2005, the Associated Press released results from its study, *More Blacks Live with Pollution*, showing African Americans are 79 percent more likely than whites to live in neighborhoods where industrial pollution is suspected of posing the greatest health danger.[11] Using EPA's own data and government scientists, the AP study found blacks in 19 states were more than twice as likely as whites to live in neighborhoods with high pollution; a similar pattern was discovered for Hispanics in 12 states and Asians in seven states.

The AP analyzed the health risk posed by industrial air pollution using toxic chemical air releases reported by factories to calculate a health risk score for each square kilometer of the United States. The scores can be used to compare risks from long-term

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[9] U.S. EPA Office of Inspector General, *EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice*. Washington, DC: GAO, March 1, 2004.
[10] Robert D. Bullard. EPA's Draft Environmental Justice Strategic Plan -- A "Giant Step Backward." (7/15/2005). *Environmental Justice Resource Center*, http://www.ejrc.cau.edu/BullardDraftEJStrat.html.
[11] David Pace, "AP: More Blacks Live with Pollution," *ABC News*, December 13, 2005, available at http://abcnews.go.com/Health/wireStory?id=1403682&CMP=OTC-RSSFeeds0312.

exposure to factory pollution from one area to another. The scores are based on the amount of toxic pollution released by each factory, the path the pollution takes as it spreads through the air, the level of danger to humans posed by each different chemical released, and the number of males and females of different ages who live in the exposure paths.

In 2006, the EPA attacked the community right-to-know by announcing plans to modify the Toxic Release Inventory (TRI) program by reducing TRI reporting. The program is widely credited with reducing toxic chemical releases by 65 percent.[12] As a researcher, I have used TRI data to support work in a variety of areas, including environmental justice, urban land use, industrial facility siting, minority health, community reinvestment, housing, transportation, smart growth, and regional equity.[13]

According to the EPA Science Advisory Board (SAB), the TRI data provide the only reliable source of longitudinal data to evaluate changes in facility and firm environmental performance, to conduct risk assessments of changes in toxic release levels, and to conduct spatial analysis of toxic hazards.[14] The SAB reports more than 120 scholarly articles have been published using the TRI data to address a wide range of public health, economic and social science issues.

Clearly, the TRI has become a useful resource for many different organizations, including government, business, academic, and community groups. EPA's 2003 report, *How Are the Toxics Release Inventory Data Used*, concludes:

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[12] OMB Watch. Changing the "Right to Know" to the Right to Guess: EPA's Plans to Modify Toxics Release Inventory Reporting. (No Date), http://www.ombwatch.org/tricenter/TRIpress.html.
[13] See Robert D. Bullard, Glenn S. Johnson, and Angel O. Torres, *Sprawl City: Race, Politics, and Planning in Atlanta*. Washington, DC: Island Press, 2000. Also see "Books by Robert D. Bullard," Environmental Justice Resource Center at Clark Atlanta University, http://www.ejrc.cau.edu/rdbbooks.htm.
[14] Letter from EPA Science Advisory Board to EPA Administrator Stephen L. Johnson, "Toxics Release Inventory Data," July 12, 2006, http://www.epa.gov/science1/pdf/sab-com-06-001.pdf.

"A variety of stakeholders work with TRI data on a regular basis. Some data uses, such as risk screening, were recognized when the TRI was first implemented; other uses have developed as the program has matured and expanded. TRI data have been a key tool in the environmental justice movement and in the drive toward more environmentally responsible investment. The applications of TRI data will likely increase in number as environmental awareness grows and opportunities are identified for integrating TRI data with other types of information."[15]

Policy Recommendations

The *Toxic Wastes and Race at Twenty* report makes more than three dozen recommendations for action at the Congressional, state and local levels to help eliminate the disparities. However, several of the report recommendations are especially timely for this hearing on H.R. 1103 ("Environmental Justice Act of 2007") and H.R. 1055 ("Toxic Right-to-Know Protection Act"). They include:

1. **Pass a National Environmental Justice Act Codifying the Environmental Justice Executive Order 12898.** Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" provides significant impetus to advance environmental justice at the federal level and in the states. Congress should codify Executive Order 12898 into law. Congress will thereby establish an unequivocal legal mandate and impose federal responsibility in ways that advance equal protection under law in communities of color and low-income communities.

2. **Protect and Enhance Community and Worker Right-to-Know**. Reinstate the reporting of emissions and lower reporting thresholds to the Toxic Release Inventory (TRI) database on an annual basis to protect communities' right to know.

[15] U.S. Environmental Protection Agency, *How Are the Toxics Release Inventory Data Used? Government, Business, Academic and Citizen Uses.* Washington, DC: Office of Environmental Information, March 2003, p. 17.

Getting government to respond to the environmental and health concerns of low-income and people of color communities has been an uphill struggle. The time to act is now. Our communities cannot wait another twenty years. Achieving environmental justice for all makes us a much healthier, stronger, and more secure nation as a whole.

Mr. WYNN. Thank you very much for your testimony.
Mr. Bravo.

STATEMENT OF JOSE BRAVO, COMMUNITIES FOR A BETTER ENVIRONMENT, EXECUTIVE DIRECTOR, JUST TRANSITION ALLIANCE, CHULA VISTA, CA

Mr. BRAVO. Thank you, Mr. Chairman, and thank you, members of the subcommittee for inviting us here to give testimony today. On behalf of Communities for a Better Environment and the Just Transition Alliance, I would like to thank you for inviting me to speak on the important issues of right-to-know and environmental justice.

The bulk of my testimony is based on the courageous work of Communities for a Better Environment, where I serve as a board member. But my comments here today are also endorsed by the Just Transition Alliance, which I am the executive director of. Communities for a Better Environment is a California community-based environmental organization working for environmental justice in highly-industrialized areas of California, especially in communities of color and low-income communities that have been shown to bear the higher, a higher burden in concentration of toxic sources.

We believe that with the weakening of the toxic release inventory California loses more ZIP Codes reporting to TRI than any other State in the Nation. The weakening of TRI by setting higher reporting thresholds causes California data, lost data from all reporting facilities for 64 of 502 ZIP Codes, and other California ZIP Codes also lose important data. This is tragic, because TRI has been so useful in identifying and prioritizing pollution sources, because reporting is so easy to do and because the act of reporting itself makes companies much more aware of their toxics use. Consequently, weakening, the weakening of the, of TRI must be rolled back.

CBE has used the toxic release inventory since its inception as a fundamental right-to-know tool. For example, one of the earliest analyses documenting environmental racism was the 1989, CBE "Richmond at Risk" report. This analysis of TRI, Superfund, and demographic data demonstrated that much higher concentrations of topic sources and emissions are sited in areas with the highest populations of people of color. Reports like these were crucial to community-based campaigns that led to the development of new environmental justice policies by public agencies and the phase-out of unnecessary chemical use.

CBE and many other community-based groups have continued to use the toxic release inventory in concert with demographic data to map cumulative exposure from large numbers of smaller toxic sources, which individually may have posed lower health risks, but because of geographic concentration presented formidable risks. CBE continued to use the data to document increased risks in our 1998, "Building a Regional Voice for Environmental Justice" report. And in hundreds of individual research efforts throughout the years. Frequently, community members have used TRI data themselves to push for local improvements.

Our 2004, report found in southern California that African-Americans are a third more likely and Latinos nearly twice as likely to live in a census tract containing a facility emitting high-priority TRI pollutants. The racial differences in exposure persisted even when data was controlled for income, land use, and manufacturing presence. The racial chasm is also larger than emissions are, also larger when emissions are carcinogenic, the more dangerous the facility, the higher the likelihood that minorities are concentrated nearby.

The continued undisrupted concentration of large numbers of industrial polluters in communities of color with highest incidents of health problems, including asthma, is a major reason why TRI reporting thresholds need to be restored to the lower thresholds for reporting.

Reporting thresholds back down to 500 pounds instead of the new relaxed 2,000 pound threshold is crucial. Not only do concentrations of large numbers of smaller emitters cause toxic hotspots, but individual companies' emissions can fluctuate or grow. Failure to report at the lower significant level can cause companies to miss reporting when their emissions increase because they are accustomed to reporting. This can lead to many years of delay in identification of the problem emissions. In one case of a steel company located in a residential neighborhood in the Bay Area, the company's toxic emissions were causing frequent odor problems, and emissions were about 500 pounds, but lower than 2,000 pounds, but growing. If TRI thresholds had been weakened at that time, the trend in documented emissions increases would have been identified. Neighbors pushed for cleanup, resulting in the company agreeing to install a carbon control plant.

Some of the worst carcinogens such as methylene chloride and perchloroethylene previously widely used in California manufacturing are now more rarely used, thanks to community campaigns using TRI. These have been a widespread phase out by scores of California manufacturers of many carcinogens and early phase out in the past of ozone-depleting chemicals due to community publications of TRI data on individual companies and on regional concentration facilities, of facilities. Good and comprehensive TRI reporting was not only responsible for public health improvements in the past, but will also provide crucial safeguards for overuse of other toxic chemicals and toxic hotspot concentrations, which is still, unfortunately, widespread.

[The prepared statement of Mr. Bravo follows:]

TESTIMONY OF JOSE BRAVO

Mr. Chairman and members of the subcommittee:

On behalf of Communities for a Better Environment (CBE) and the Just Transition Alliance (JTA) I would like to thank you for inviting me to speak on the important issues of public right-to-know and environmental justice.

The bulk of my testimony is based on the courageous work of CBE, where I serve as a board member. But my comments here today are also endorsed by the Just Transition Alliance for which I am executive director. Communities for a Better Environment is a California community-based environmental organization working for Environmental Justice in highly-industrialized areas of California especially in communities of color and low income communities that have been shown to bear a higher burden of concentration of toxic sources.

• With the weakening of the Toxic Release Inventory, California loses more zip codes reporting to the TRI than any other state in the nation. The weakening of the TRI by setting higher reporting thresholds causes California to lose data from all reporting facilities for 64 out of 502 zip codes, and the other California zip codes also lose important data. This is tragic, because TRI has been so useful in identifying and prioritizing pollution sources, because reporting is so easy to do, and because the act of reporting itself makes companies much more aware of their toxics use. Consequently the weakening of the TRI must be rolled back.

• CBE has used the Toxics Release Inventory (TRI) since its inception, as a fundamental Community Right-to-Know tool. For example, one of the earliest analyses documenting environmental racism was the1989 CBE "Richmond at Risk: report. This analysis of TRI, Superfund, and demographic data demonstrated that much higher concentrations of toxics sources and emissions are sited in areas with the highest populations of people of color. Reports like these were crucial to community-based campaigns that led to the development of new Environmental Justice policies by public agencies, and to phaseout of unnecessary chemical use.

• CBE and many other community-based groups have continued to use the TRI in concert with demographic data to map cumulative exposure from large numbers of smaller toxic sources, which individually may have posed lower health risks, but because of geographic concentration presented formidable risks. CBE continued to use the data to document increased risks in our 1998 "Holding Our Breath" report, in our 2004 "Building a Regional Voice for Environmental Justice" report, and in hundreds of individual research efforts throughout the years. Frequently community members have used the TRI data themselves to push for local improvements.

• Our 2004 report found in southern California that African-Americans are a third more likely and Latinos nearly twice as likely to live in a census tract containing a facility emitting high-priority TRI pollutants. The racial differences in exposure persisted even when data was controlled for income, land use, and manufacturing presence. The racial chasm is also larger when emissions are carcinogenic "the more dangerous the facility, the higher the likelihood that minorities are concentrated nearby. Mobile sources of pollution just made this problem worse.

• The continued undisputed concentration of large numbers of industrial polluters in communities of color with the highest incidences of health problems (including asthma) is a major reason why the TRI reporting thresholds need to be restored to the lower thresholds for reporting.

• Putting the TRI reporting thresholds back down to 500 lbs instead of the new relaxed 2,000 lb. threshold is crucial. Not only do concentrations of large numbers of smaller emitters cause toxic hotspots, but individual companies' emissions can fluctuate or grow. Failure to report at the lower significance level can cause companies to miss reporting when their emissions increase because they are not accustomed to reporting. This can lead to many years of delay in identification of problem emissions. In one case of a steel company located in a residential neighborhood in the Bay Area, the company's toxic emissions were causing frequent odor problems and emissions were above 500 lbs., but lower than 2,000 lbs, but growing. If the TRI threshold had been weakened at the time, the trend in documented emissions increases would not have been identified. Neighbors pushed for cleanup, resulting in the company agreeing to install a carbon control system at the plant.

• CBE reports based on TRI data led directly to phase out of toxic chemicals at many industrial facilities, which operated even better without these chemicals. For example, after public campaigns based on TRI data, many companies using toxic solvents as degreasing agents found that they could eliminate the production steps introducing grease in certain metals processing, so that degreasing with toxic solvents became completely unnecessary. Other companies found that toxic cleaning solvents could be replaced with soap and water! Of course this did not cause the phaseout of all toxic chemicals, but it resulted in phaseout of many of the most unnecessary uses of toxics for many chemicals. It also pushed many companies to voluntarily minimize usage until alternatives could be phased in.

• Some of the worst carcinogens such as methylene chloride and perchloroethylene previously widely used in California manufacturing are now more rarely used, thanks to community campaigns using TRI data. There has been a widespread phaseout by scores of California manufacturers of to community publications of TRI data on individual companies and on regional concentrations of facilities. Good and comprehensive TRI reporting was not only responsible for public health improvements in the past, it will also provide crucial safeguards for future overuse of other toxic chemicals and toxic hotspot concentrations which still are unfortunately widespread.

• In the past, CBE identified many companies that failed to report to the TRI, skewing the data. To do this, CBE had to find data through painstaking research

of individual local permit information (which is very inaccessible to the public, frequently taking months to receive). CBE succeeded in getting the non-reporting companies to submit their data to the publicly accessible TRI. Even more importantly, CBE won many dozens of EPA-approved settlements with these companies in which we convinced the companies to completely phase out use of the toxic chemicals in lieu of paying penalties for past failure to report. We helped the companies identify pollution prevention options and consultants, who often found that companies would MAKE money from chemical phaseout. As a result, millions of pounds of toxic, cancer-causing, and ozone-depleting chemicals were completely phased out by dozens of California companies.

• While community organizations like CBE have used the TRI data successfully for decades, we still have a long way to go and cannot afford to lose the full use of this important tool. Data shows persistent disparity in statewide patterns of toxic use, with continued higher exposure for African Americans and Latinos as compared to Anglos.

• We urge you to reinstate the strong TRI reporting requirements at the lowest thresholds.

Mr. WYNN. Thank you, Mr. Bravo.
Mr. Bopp.

STATEMENT OF ANDREW BOPP, DIRECTOR, PUBLIC AFFAIRS, SOCIETY OF GLASS AND CERAMIC DECORATORS, ALEXANDRIA, VA

Mr. BOPP. Thank you, Chairman, and thank the committee for allowing me to testify today on EPA's efforts to reduce the paperwork burden of TRI reporting on small business. My name is Andrew Bopp. I am the public affairs director of Society of Glass and Ceramic Decorators. This group is made up primarily of companies that custom-print mugs and glassware including very small family businesses. And I noted that earlier people were referring to companies up to 500. I am talking of companies around 15 to 20 employees and then, well, I will get into this.

I have worked with SGCD members for 10 years now, including business owners like Nancy Klinefelter, who is president of Baltimore Glassware Decorators. I have tried to help her as she grapples with the regulatory issues related to operating a business where lead is a necessary part of the process. Nancy testified on the TRI burden reduction before the Senate EPW Committee back in January, and she was eager to be here today. Unfortunately, the nature of a small business, she is at a trade show in Maryland. No one else from her company could do it, so she couldn't be here, so I am basically speaking for her and others like her.

As with most regulations as has been pointed out before, the TRI reporting burden creates far more problems for small business than for large business. Companies like Nancy's especially, and again, we are talking 15, 20 employees, not the 500 threshold people referred to earlier. To give you an idea of the type of company I am talking about, Baltimore Glass was started by Nancy's brother back in 1977, with the help of her father, who had worked in the glass industry for more than 50 years. They employ 15 employees, like I said before, including Nancy's mother, who works in the office, her father, who acts as general manager, and her brothers who work in sales and production. This is truly your family-type business that we are talking about. They employ no engineers on staff, certainly no environmental engineers, so the TRI burden, it falls entirely on Nancy.

Baltimore Glassware is not a unique company. It represents the typical wholesale glass and ceramic decorator in this country. They print small quantities of glass and ceramic ware, such as mugs as Mr. Shimkus showed, for ad specialty, restaurants, souvenir-type uses. When custom printing these mugs or glasses, companies may use lead-bearing enamels on the outside surfaces to achieve the color and mainly durability demanded by customers.

As a rule, unleaded enamels do not have the durability, gloss, or color ranges the customers require. It is not a case of, oh, we are just going to choose to pick this. It is a case of you either get the order or you don't, which means something in business.

These lead-free colors do not hold up well for abrasion of deterioration in dishwashers. It is very important to understand that the leaded colors become a part of the glass after they are fired. Also, due to the cost of these colors, Baltimore Glass and all the companies like them use what is needed and the rest goes back on the shelf. These are not companies that are emitting as I will get to.

I am testifying today really in support of EPA's recent burden reduction rule that allows companies such as Baltimore Glass to use the TRI Form A instead of the more complicated Form R. To do so, and this is the important thing, they must meet very strict eligibility requirements. It is really similar to using the 1040EZ instead of the 1040, if you qualify. You are still reporting everything, but you get to do it in a simpler way.

To qualify, that decorator, Nancy's company or a company like them, must use less than 500 pounds of lead in a year, and again, that is use, not release, and the key is they must report zero release of lead onsite and offsite. They have to report nothing. So this is not a case of losing information. This is a case of nothing. She is able to do it on a simpler form. Essentially all of the information that the neighbors need is what lead is released, like Congressman Shimkus referred to earlier, the release. That is what counts.

Baltimore Glass does exceed the threshold of 100 pounds used in a year to enter into the program, and they exceed the employee threshold of 10 employees to get into the program, but barely, so there they are. They are in the program with major companies using the Form R.

I have spoken with Nancy every year as she has attempted to complete the Form R properly, but every year she receives notices from EPA that paperwork corrections are needed. These changes do no reflect the failure to report color use or release. They just reflect paperwork errors. For example, last year she received a 13-page notice from EPA that informed her she had not identified lead compounds by their correct CAS number. This is a small businesswoman who is expected to look through these different forms that engineers process to fill out a report. Using Form A streamlined the process for Nancy since it was used for the 2006 report, and she has to date not received any questions from EPA on her last report.

Remember, again, small business. Time spent on completing paperwork is time that Nancy and others like her cannot spend on doing things like supervising employees, working with customers, and more importantly, looking for new business. Glass and ceramic decorators face brutal competition like many manufacturers from

Chinese decorators. The reality is that paperwork burdens add to the cost of doing business by absorbing staff time. EPA estimated in the final rule that companies would save 15½ a year of staff time if they qualified to use the Form R. That was brought up earlier, and that is 2 days worth of work for someone. That may not mean much to a large company, but it means a lot, a real lot to a small company. Nancy said this, she said this before the EPW Committee.

SGCD and responsible small business owners like Nancy do believe that it is important to keep track of any releases that might impact their neighborhoods where they live. She lives there. Or the environment. That has not changed as a result of EPA's new burden reduction rule. If a decorator like Nancy has a release, no matter how miniscule or even if it is managed offsite, they will be required to use Form R as in the past. One and you are back on Form R.

If a company manages, like Nancy's, its burden production process during the year to avoid any release, then you can use the Form A. That acts as an incentive to eliminate release, and it definitely does. I talk to her every year she is doing the paperwork, and it is confusing every year.

SGCD does commend EPA for listening to our concerns and making an effort to reduce the TRI paperwork burden without impacting the information that decorators provide to the public through the TRI Program. I urge this committee to support such paperwork burden reduction efforts which are critical to maintaining the competitiveness of business in this country, especially small business.

Thank you, again, for the opportunity to testify.

[The prepared statement of Mr. Bopp follows:]

United States House of Representatives
Committee on Energy and Commerce

Subcommittee on Environment
And Hazardous Materials

Testimony of

Andrew Bopp
Public Affairs Director
Society of Glass and Ceramic Decorators

515 King Street, Suite 420
Alexandria, VA 22314

on

Environmental Protection Agency's
Toxic Release Inventory
Form A Burden Reduction Rule

October 4, 2007

Thank you for the opportunity to testify on EPA's efforts to reduce the paperwork burden of Toxic Release Inventory reporting on small businesses. My name is Andrew Bopp, and I am the Public Affairs Director of the Society of Glass and Ceramic Decorators. This organization is made up primarily of companies that custom print mugs and glassware including very small family-run businesses.

I have worked with SGCD members for the past ten years including business owners like Nancy Klinefelter, the President of Baltimore Glassware Decorators, as she grapples with the regulatory issues that are related to operating a business where lead is a necessary part of the process. Nancy testified on the TRI burden reduction rule before the Senate Environment and Public Works Committee on February 6, 2007, and she was eager to testify here today. Unfortunately, she also handles all of the marketing efforts for her company, and she is the only person who could work a trade show in Maryland today.

As with most regulations, the TRI reporting burden creates far more problems for small companies like Nancy's than larger operations that usually employ technical staff who can handle the forms. To give you an idea of the type of company I'm talking about, Baltimore Glass was started by Nancy's brother in 1977 with the help of her father who worked in glass decorating for more than 50 years. They employ 15 employees including Nancy's mother who works in the office, her father who acts as general manager and her two brothers who work in sales and production. They employ no engineers on staff, let alone an environmental engineer, so the TRI paperwork falls entirely on Nancy.

Baltimore Glassware represents the typical wholesale decorator. They custom print small quantities of glass and ceramic ware for advertising specialty, restaurant and souvenir distributors. When custom printing mugs or glasses, these companies may use lead-bearing enamels on the outside surfaces to achieve the color and durability demanded by customers. As a rule, unleaded enamels do not have the durability, gloss or color ranges that customers require. These lead-free colors do not hold up well for abrasion or deterioration in either domestic or commercial dishwashers. It is very important to understand that the leaded colors become a part of the glass after they are fired. Also, due to the cost of these colors, Baltimore Glassware and similar companies use only what is needed, and the rest goes back on the shelf.

I am testifying today in support of EPA's recent burden reduction rule that allows companies such as Baltimore Glass to utilize the simpler TRI Reporting Form A instead of the more complicated Form R if they meet very strict eligibility requirements. I equate this change to the IRS allowing some taxpayers with very simple returns to use the 1040EZ instead of the complicated 1040 form. Baltimore Glass will still be providing its neighbors and anyone else who might want to know with the same information about release that they have always provided, but the Form A makes it easier for Nancy and other small business owners to file a report. Her neighbors will still have the same access to information about Baltimore Glass' releases as they do now.

To qualify, a decorator must use less than 500 pounds of lead in a year and report 0 release of lead on-site and 0 release off-site. That means that Baltimore Glass or similar

companies essentially are reporting nothing of significance to their neighbors. Lead is the only TRI chemical used at Baltimore Glassware and other similar shops, and they report lead use since the reporting threshold is 100 pounds of annual usage. Baltimore Glass exceeds that threshold, although only barely. I want to emphasize that these threshold numbers reflect lead used, not released.

I have spoken with Nancy every year as she attempted to complete the Form R properly, but every year, she received notices from EPA that paperwork corrections were needed. These changes did not reflect any failure to report color use or release; they just reflected paperwork errors. For example, last year, she received a 13-page notice from EPA that informed her that she had not identified lead compounds by their CAS Number or chemical category code. Using Form A streamlined the process for Nancy, and prevented this paperwork run-around for the first time as she filed her 2007 report.

Nancy estimated that tracking color use and completing the Form R paperwork took more than 130 hours a year, although she never attempted to formally track the time spent. Each ceramic color has a different percentage of lead, so Baltimore Glass and similar companies must calculate lead use differently for each color used. This varies from day to day, and the calculations take time. If a company can maintain zero releases, the ability to report on Form A really streamlines the reporting burden. This acts as an incentive to eliminate release.

Remember that time spent on completing paperwork is time that Nancy and small business owners like her cannot spend on other things. Time spent on paperwork is time that is not spent supervising employees, working with customers, and most importantly looking for new business. Glass and ceramic decorators face brutal competition from Chinese decorators, and the reality is that paperwork burdens add to the cost of doing business by absorbing key staff time in particular. EPA estimated in the final rule that companies would save 15.5 hours a year of staff time if they qualified to use the Form A instead of the complicated Form R. Again, Nancy reported that the Form A was much simpler to complete this year for her 2006 report, and this time savings really helped as she worked to keep her business afloat in a difficult environment for small manufacturing operations.

SGCD and responsible small business owners such as Nancy believe that it is important to keep track of any releases that might impact their neighborhoods or the environment. That has not changed as a result of EPA's new burden reduction rule. If a decorator has a release, no matter how miniscule or even if it is managed off-site, it would be required to use the Form R as in the past. If a company manages its production process during a year to avoid any releases, the ability to use the simpler Form A makes it easier for that company to handle the paperwork to demonstrate that fact.

The EPA burden reduction rule also encourages companies to adapt the best decorating methods possible to eliminate releases and to qualify for simpler TRI reporting.

I also want to emphasize that this burden reduction effort was not done in haste. EPA has focused on expanding Form A eligibility after many other options were considered. The agency also sought input from a wide variety of stakeholders. SGCD participated in the two on-line Stakeholder Dialogs that EPA conducted between 2002 and 2004. It has taken quite a long time to complete this process.

SGCD commends EPA for listening to our concerns and making an effort to reduce the TRI paperwork burden without impacting the information that decorators provide to the public through the TRI program. I urge this committee to support such paperwork burden reduction efforts which are critical to maintaining the competitiveness of small companies in this country.

Thank you again for the opportunity to testify before you today.

Mr. WYNN. Thank you, Mr. Bopp.
Mr. Finkelstein.

STATEMENT OF ALAN FINKELSTEIN, ASSISTANT FIRE MARSHAL, STRONGSVILLE FIRE AND EMERGENCY SERVICES, TRENTON, NJ

Mr. FINKELSTEIN. Good afternoon. My name is Alan Finkelstein, and I would like to thank Chairman Wynn and Mr. Shimkus and the subcommittee members for permitting me to come in and give testimony for this hearing. I would like to also thank Mr. Shimkus for acknowledging my existence before. I appreciate the acknowledgement.

I am here today because I wanted to speak in support of the Toxic Right-to-Know Protection Act, H.R. 1055. I want to make some clarifications. I am not here on behalf of my fire department. I am not here on behalf of the Cuyahoga County Local Emergency Planning Committee or any other organization I am associated with.

I also need to make some clarifications. Mr. Shimkus made a statement before regarding the fact that first responders don't make use or wouldn't make use of the TRI in their response, and that is correct. I take credit for making that comment on a conference call that was last, made last winter, to which there were several replies. It was not my intent for anybody to think that first responders would make use of 313 rather than 311 and 312, which are the extremely hazardous substances, and those are required to be reported.

I have been in the fire service for 25 years, and for the last 15 years I have been involved with hazardous materials response in planning as well our hazard emergency planning that goes on within my city and Cuyahoga County. I have done extensive work with the Local Emergency Planning Committee and with the U.S. EPA Region 5 as far as getting chemical reporting in and working with facilities to help make them safer.

The toxic release inventory provides us with information that we wouldn't ordinarily have. There are some chemicals at facilities or materials at facilities that aren't covered under any other section of EPCRA. A facility in my jurisdiction has copper and manganese in inventory. They are not covered under any other section of EPCRA. They don't provide a hazard probably as far as release because generally they are not in particulate form, however, for the workers they are a hazard and for responders they are a hazard if they go into that building. We need to make sure that they have the proper respiratory protection for themselves.

As the fire prevention officer for my city, I am responsible for the facilities, protecting their workers and for staff in general.

There are a couple of things that I learned when I was in my original fire school way back in the dinosaur age, and there are two things that stood out for me were that life safety is always the first priority for firefighters, and for the citizens at large. The second thing is that pre-planning is important before an incident happens. Toxic release inventory gives us information about facilities that may not be available in other sections. It also helps us address

things with the facility. If they have issues, we can help, also help them out as far as their planning goes.

There are sections of the Clean Air Act, section 112(r), which is the risk management plan, and also the Emergency Planning and Community Right-to-Know Act which were created to help jurisdictions get the information they need for planning and response. It was also created to help the citizens get information for the facilities in their jurisdictions and which they live around. Because of concerns about homeland security, a lot of the things, a lot of the information that was available is no longer available to citizens except on a case-by-case basis. It makes things difficult for them.

By increasing the reporting threshold from 500 to 5,000 pounds for most facilities and enabling facilities to use the Form A, which doesn't provide any quantitative information about what is present at the facilities, it basically just tells us that a facility is there. It doesn't give us any information. There have been some companies that complained that the TRI reporting was overly burdensome and that it was expensive. My contention is that the cost of not reporting it and having people get injured or killed is a lot more expensive.

Basically as far as the reporting goes, it is the responsibility of business to make sure that they are safe. It may benefit the facility because they have transparent operations. It lets the citizens know that they are being open and correcting in what they have out there, and our facilities tend to be thinking along those lines.

One of the side benefits resulting from toxic release inventory and the risk management plan being out there is that facilities decrease their inventories and change their processes so that they can minimize the amounts of chemicals they have on site at any one time. We have facilities that are required to report 10,000 pounds of ammonia if they have it in inventory. They have decreased the size of their tanks down to 7,000 pounds. So they save money by not having to file the reports in certain areas of EPCRA and RMP, and they also save on product because they don't need to keep so much on hand.

The safety is also benefited by having those reductions made in the amount that is present and also there are inherently safer processes being used. For the small business people or the Small Business Administration, I would also like to add that if facilities need environmental contractors to come in and help them do their paperwork, they are able to do so, and it helps the small businesses out.

The last point I would like to make, I cut it a lot shorter. You have the written ones. I wanted to keep it a little bit shorter, is that the facilities are generally located in areas where there are low-income people who have the most risk of health problems because they don't have healthcare available to them, and they also have the least political voice.

Thank you.

[The prepared statement of Mr. Finkelstein follows:]

STATEMENT BY

ALAN FINKELSTEIN, ASSISTANT FIRE MARSHAL

STRONGSVILLE FIRE AND EMERGENCY SERVICES

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

OCTOBER 4, 2007

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 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

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[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.

Mr. WYNN. Thank you very much, Mr. Finkelstein. We are going to have to be a little tight, because as you can tell, there is a vote.

I want to get Ms. Wittenberg's testimony in before we go to the vote.

Ms. Wittenberg.

STATEMENT OF NANCY WITTENBERG, ASSISTANT COMMISSIONER, NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, TRENTON, NJ

Ms. WITTENBERG. Thank you. I will keep it short. I optimistically wrote good morning. Good afternoon now. I will learn my lesson. My name is Nancy Wittenberg. I am the assistant commissioner of environmental regulation for the New Jersey Department of Environmental Protection.

New Jersey has got a unique perspective on the TRI issue. We have combined implementation of several laws in New Jersey, including our own Worker and Community Right-to-Know Law, our own Pollution Prevention Act, and the Federal Emergency Planning and Community Right-to-Know Act. The burden reduction didn't impact New Jersey. We combined our forms into one form, so regardless of what EPA did, facilities in New Jersey that would be required to submit any form, be it A or R, to DEP have to submit to us a different form, which is called a Release and Pollution Prevention Report.

It is much like the Form R, but maybe it is a little easier to do because we have never had any complaints from small business. I checked. I went online, I worked through the form myself. We have pretty much simplified it down as best we could.

What we did sort of to make the point today was we looked back over the data we have gotten over the years compared to what we wouldn't have gotten if we had been subject to the burden reduction in the State and just to throw out some of the numbers quickly that we came up with is that we do a trends report, which is perhaps one of the best things we get out of our TRI data. And in my submitted testimony is the link to get that. We would have missed out on knowing about over a million pounds of cancer-causing compounds used in the State of New Jersey. That includes 21,000 pounds of waste arsenic. All of our arsenic data would be lost to us if that reporting level changed. One hundred, twenty-two thousand, four hundred and sixty-five pounds of styrene, 175,000 pounds of chromium, 44 different carcinogen data would have been lost to us completely. Six-thousand, seven hundred and seventy-three pounds of production-related waste for PBTs over just the last 4 years, 30 municipalities in New Jersey wouldn't have had any of their facilities report at all. So we would have lost a significant amount of data.

In terms of EJ, we looked at two urban areas in New Jersey: Linden and Camden. Just over the past 2 years if we had been subject to burden reduction, in Camden four facilities would not have to report at all, and every facility in Camden is right next door to where a lot of people live. In Linden six facilities would not have had to report at all, and each of these facilities use PBTs including lead as well as carcinogens. So that would be a significant loss to those communities to know about the use of those substances.

Clearly, New Jersey has seen the benefits of having this data, and we went back and looked at what we wouldn't have had should this change impacted us. So we are very supportive. My testimony has much more information. I am keeping it short.

Thanks.

[The prepared statement of Ms. Wittenberg follows:]

STATEMENT BY
NANCY WITTENBERG, ASSISTANT COMMISSIONER
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
ON THE
ENVIRONMENTAL JUSTICE ACT OF 2007
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
OCTOBER 4, 2007

Good Morning. My name is Nancy Wittenberg and I am the Assistant Commissioner of Environmental Regulation for the New Jersey Department of Environmental Protection. Thank you for the opportunity to discuss HR 1103 and HR1055.

New Jersey is a densely populated state with a current population of close to 9,000,000 and home to some 500 facilities that use, store, generate and release toxic chemicals. Many of these facilities are located in close proximity to housing, schools and other areas where the general public are potentially impacted by these substances. Due to the size and developed state of New Jersey we do not have the luxury of keeping such facilities isolated. Thus the ability to obtain data regarding toxic substances in our state is of utmost importance.

New Jersey has a unique perspective regarding Toxic Chemical Release Inventory (TRI) reporting. New Jersey has combined implementation of several environmental laws designed to promote multi-media environmental management and public awareness. New Jersey has one unified program to implement the state's Worker and Community Right to Know Act, the state Pollution Prevention Act, and the federal Emergency Planning and Community Right to Know Act. Since 2003, any facility which is subject to reporting under the TRI criteria is required to submit a Release and Pollution Prevention Report, which provides the material balance for toxic chemicals brought on site and released from the site to the air, water, or land.

Approximately 500 New Jersey companies were, prior to 2006, required to file TRI forms (Form Rs) listing their environmental releases. However, these companies are also required to submit to DEP the Release and Pollution Prevention Report (RPPRs) listing environmental release, waste transfer, throughput, and pollution prevention progress information. Thus the changes to the TRI adopted by EPA in 2006 did not change the reporting requirements for New Jersey facilities.

The data collected on the Release and Pollution Prevention Report for NJ is similar to that required by Form R in that facilities report on quantities of toxic chemicals released to the environment. As such the federal burden reduction did not impact reporting in

New Jersey. Thus we are able to compare what data was reported under our existing framework to what would have been reported were we limited to the federal program.

The data collected in New Jersey has served the state and its residents well. At the Department of Environmental Protection we collect data detailing chemical throughput, multi-media environmental releases, on-site waste management, off site transfers and pollution prevention. The data has been used for a multitude or purposes including:

- Analysis of trends in chemical use, waste generation and releases, reported in our trends report located at: http://www.nj.gov/dep/opppc/reports/trendsmaste09.23.06r.pdf
- Reports on the top 10 success stories and failure stories with regard to reduction on releases
- Evaluation of facility operations
- Determination of Department priorities including enforcement, permitting and technical assistance.
- Assessments of geographic distribution of chemical usage as well as focusing on specific communities

Through analyzing and reporting on trends we have influenced facilities and have compelled action.

Were New Jersey subject to the existing federal program many of our efforts would not have been possible. Looking at the trends report for the ten year period ending in 2005 we identified the following that would not have been reported:

- data regarding releases and waste management for more than 1,000,000 pounds of cancer –causing compounds
- 21,000 pounds of waste arsenic.
- 122,465 pounds of styrene waste.
- 175,000 pounds of chromium waste
- Data on releases of 44 different carcinogens.
- 6773 pounds of production related waste for persistent, bioaccumulative, toxic substances over the last 4 years
- release data for 30 New Jersey municipalities
- information regarding release or other waste management activities for over 100 facilities.

Review of data for two urban areas Linden and Camden, during the 2004 to 2006 time frame, identified specific examples of where release data collected in New Jersey would have been unavailable. (See Appendix A.) These cities are highly developed areas with large populations this information is very important. In Camden release data for 4 facilities would have been unavailable. This data includes specifics regarding copper, zinc, PCBs, chorine, and lead. For Linden in 2006 data on 6 facilities would not have been available, resulting in the loss of information on PBTs including lead, as well as carcinogens.

I have heard that there is concern about the impact of reporting on small businesses. We have not encountered this in New Jersey. Our rules do not apply to facilities unless they fall in the list of regulated industry codes and have more than 10 full time employees and manufacture or process more than 25,000 pounds of a listed substance. All three criteria must be met. This is consistent with the federal requirement.

HR 1055 amends to Emergency Planning and Community Right to Know Act of 1986 to require facilities to provide data beyond simply listing hazardous substances to include specifics regarding releases. Clearly New Jersey is in support of this change. We have been collecting this data continuously for 20 years and have seen the benefits.

There are numerous examples of such benefits. The data were used to develop and undertake enforcement sweeps in two urban communities to respond to resident concerns about health impacts. The data were used to eliminate emissions of a carcinogen, hydrazine, from a facility in Newark. The data were used to reduce emissions of benzene from a refinery. Clearly, were it not for our own state program requirements, New Jersey's environment and communities would have suffered unnecessary impact. New Jersey stands as a clear case for the benefit and need for the most thorough and comprehensive toxic chemical reporting.

Appendix A

Summary of Environmental Justice Communities impacted by the TRI Burden Reduction Rule
(all NPO[1] quantities reported in pounds)

The tables below are present NJ Release and Pollution Prevention Report (RPPR) data for two New Jersey cities – Camden and Linden - that might be considered Environmental Justice communities. RPPR data parallel in many ways the data reported under the TRI. (The big difference with RPPR data is that materials accounting, or chemical use, data are reported to NJDEP.) The quantities reported under NPO and Releases are comparable to that reported on TRI. The quantities support the perspective of some industry representatives that TRI is "regulation through information" (attributable to a DuPont corporate representative). The NPO and release trends are downward representing industries reductions in NPO over the years, whether attributable to pollution prevention activities, market demands (lower production possibly, but not documented), or simply an attempt to get out of the TRI reporting requirements.

The tables on the following pages detail the summaries presented here. Included are both PBTs (such as Lead and Compounds, Polycyclic Aromatic Compounds, and Benzo(g,h,i)perylene) and non-PBTs (such as Benzene, Styrene, Toluene, etc.) that are carcinogens or known to have other human health or environmental effects.

Camden

Report Year	# of Facilities	# of Reports	NPO[1]	Releases[2]
2004	4	9	1,236	608
2005	5	11	724	443
2006	3	7	339	292

Linden

Report Year	# of Facilities	# of Reports	NPO[1]	Releases[2]
2004	9	44	31,012	5,959
2005	10	48	29,717	3,834
2006	7	34	23,220	1,465

1. NPO – nonproduct output (or production-related waste).
2. Releases are a component of total NPO.

Data Loss for Camden as a Result of Burden Reduction Rule based on 2004-2006 RPPR Data
(all quantities reported in pounds)

2004

FACID	Facility Name	CAS #	Chemical Name	Calculated Use	NPO	On-Site Releases
57699400000	F W WINTER INC & CO	N770	VANADIUM COMPOUNDS	60,439	255	255
31839200000	STATE METAL INDUSTRIES IN	7440-50-8	COPPER	816,449	231	231
57699400000	F W WINTER INC & CO	N450	MANGANESE COMPOUNDS	34,152	121	121
31839200000	STATE METAL INDUSTRIES IN	1336-36-3	POLYCHLORINATED BIPHENY	25	25	1
90224800000	L-3 COMMUNICATIONS CORP	7439-92-1	LEAD	1,464	604	0
93952800000	MAFCO WORLDWIDE CORPOF	N590	POLYCYCLIC AROMATIC COM	2,624	0	0
31839200000	STATE METAL INDUSTRIES IN	7439-92-1	LEAD	40,263	0	0
31839200000	STATE METAL INDUSTRIES IN	7782-50-5	CHLORINE	746,000	0	0
93952800000	MAFCO WORLDWIDE CORPOF	191-24-2	BENZO(G,H,I)PERYLENE	28	0	0
4			**9**	**1,701,444**	**1,236**	**608**

2005

FACID	Facility Name	CAS #	Chemical Name	Calculated Use	NPO	On-Site Releases
57699400000	F W WINTER INC & CO	N770	VANADIUM COMPOUNDS	73,014	208	208
31839200000	STATE METAL INDUSTRIES IN	7440-50-8	COPPER	736,159	206	206
93089900000	GEORGIA PACIFIC GYPSUM L	N982	ZINC COMPOUNDS	392,441	27	27
31839200000	STATE METAL INDUSTRIES IN	1336-36-3	POLYCHLORINATED BIPHENY	26	26	1
93089900000	GEORGIA PACIFIC GYPSUM L	N420	LEAD COMPOUNDS	1,028	1	1
90224800000	L-3 COMMUNICATIONS CORP	7439-92-1	LEAD	1,089	257	0
11900900000	CONCORD CHEMICAL CO INC	107-21-1	ETHYLENE GLYCOL	880	0	0
11900900000	CONCORD CHEMICAL CO INC	111-42-2	DIETHANOLAMINE	60,000	0	0
11900900000	CONCORD CHEMICAL CO INC	1319-77-3	CRESOL (MIXED ISOMERS)	100,000	0	0
31839200000	STATE METAL INDUSTRIES IN	7439-92-1	LEAD	39,600	0	0
31839200000	STATE METAL INDUSTRIES IN	7782-50-5	CHLORINE	726,000	0	0
5			**11**	**2,130,237**	**724**	**443**

2006

FACID	Facility Name	CAS #	Chemical Name	Calculated Use	NPO	On-Site Releases
31839200000	STATE METAL INDUSTRIES IN	7440-50-8	COPPER	663,113	273	273
93089900000	GEORGIA PACIFIC GYPSUM L	N982	ZINC COMPOUNDS	911,278	18	18
31839200000	STATE METAL INDUSTRIES IN	1336-36-3	POLYCHLORINATED BIPHENY	27	27	1
93089900000	GEORGIA PACIFIC GYPSUM L	N420	LEAD COMPOUNDS	1,226	0	0
90224800000	L-3 COMMUNICATIONS CORP	7439-92-1	LEAD	394	20	0
31839200000	STATE METAL INDUSTRIES IN	7439-92-1	LEAD	40,300	0	0
31839200000	STATE METAL INDUSTRIES IN	7782-50-5	CHLORINE	872,000	0	0
3			**7**	**2,488,338**	**339**	**292**

Data Loss for Linden as a Result of Burden Reduction Rule based on 2004 RPPR Data
(all quantities reported in pounds)

FACID	Facility Name	CAS #	Chemical Name	Calculated Use	NPO	On-Site Releases
82980100000	CONOCOPHILLIPS CO	N495	NICKEL COMPOUNDS	4,955	4,955	1,349
33757700004	INFINEUM USA	115-07-1	PROPYLENE [PROPENE]	1,307	1,307	1,307
00004010001	GENERAL MOTORS CORPORA	107-21-1	ETHYLENE GLYCOL	397,572	1,164	855
00004010001	GENERAL MOTORS CORPORA	110-54-3	N-HEXANE	22,962	691	596
15244700000	LUBRIZOL DOCK RESINS	80-62-6	METHYL METHACRYLATE	638,672	719	309
82980100000	CONOCOPHILLIPS CO	74-90-8	HYDROGEN CYANIDE [HYDRO	29,290	290	290
82980100000	CONOCOPHILLIPS CO	N010	ANTIMONY COMPOUNDS	18,749	749	192
00004010001	GENERAL MOTORS CORPORA	71-43-2	BENZENE	18,791	217	152
15244700000	LUBRIZOL DOCK RESINS	96-33-3	METHYL ACRYLATE	251,097	414	135
82980100000	CONOCOPHILLIPS CO	67-56-1	METHANOL	330,131	131	131
82980100000	CONOCOPHILLIPS CO	N100	COPPER COMPOUNDS [WITH I	2,626	2,626	120
82980100000	CONOCOPHILLIPS CO	127-18-4	TETRACHLOROETHYLENE [PE	56,110	110	110
00004010001	GENERAL MOTORS CORPORA	1634-04-4	METHYL TERT-BUTYL ETHER	67,185	465	89
73021500002	COSMED GROUP INC	75-21-8	ETHYLENE OXIDE	73,095	73	73
82980100000	CONOCOPHILLIPS CO	N420	LEAD COMPOUNDS	5,981	1,681	51
15244700000	LUBRIZOL DOCK RESINS	100-42-5	STYRENE	434,449	3,027	41
15244700000	LUBRIZOL DOCK RESINS	141-32-2	BUTYL ACRYLATE	213,003	174	35
00004010001	GENERAL MOTORS CORPORA	110-82-7	CYCLOHEXANE	22,394	107	28
15244700000	LUBRIZOL DOCK RESINS	108-10-1	METHYL ISOBUTYL KETONE	98,977	1,828	21
15244700000	LUBRIZOL DOCK RESINS	140-88-5	ETHYL ACRYLATE	35,848	238	20
15244700000	LUBRIZOL DOCK RESINS	107-13-1	ACRYLONITRILE	15,193	16	16
73021500002	COSMED GROUP INC	75-56-9	PROPYLENE OXIDE	11,755	12	12
00004010001	GENERAL MOTORS CORPORA	N982	ZINC COMPOUNDS	17,181	4,549	9
82980100000	CONOCOPHILLIPS CO	N590	POLYCYCLIC AROMATIC COM	1,533	1,533	5
15244700000	LUBRIZOL DOCK RESINS	79-10-7	ACRYLIC ACID	102,856	10	3
82980100000	CONOCOPHILLIPS CO	1313-27-5	MOLYBDENUM TRIOXIDE	2,613	313	3
15244700000	LUBRIZOL DOCK RESINS	71-36-3	N-BUTYL ALCOHOL	17,061	3,090	2
15244700000	LUBRIZOL DOCK RESINS	85-44-9	PHTHALIC ANHYDRIDE	39,381	35	2
82980100000	CONOCOPHILLIPS CO	N458	MERCURY COMPOUNDS	49	37	1
15244700000	LUBRIZOL DOCK RESINS	111-42-2	DIETHANOLAMINE	60,529	4	1
15244700000	LUBRIZOL DOCK RESINS	N120	DIISOCYANATES	10,191	2	1
33757700004	INFINEUM USA	N420	LEAD COMPOUNDS	1	1	0
00585211018	PSEG FOSSIL LLC	N590	POLYCYCLIC AROMATIC COM	475	338	0
82980100000	CONOCOPHILLIPS CO	191-24-2	BENZO(G,H,I)PERYLENE	46	46	0
00004010001	GENERAL MOTORS CORPORA	N420	LEAD COMPOUNDS	1,799	60	0
57836900000	CITGO PETROLEUM CORPOR	1336-36-3	POLYCHLORINATED BIPHENY	0	0	0
57836900000	CITGO PETROLEUM CORPOR	N420	LEAD COMPOUNDS	1,382	0	0
83747200000	TOTAL LUBRICANTS USA INC	107-21-1	ETHYLENE GLYCOL	65,338	0	0
83747200000	TOTAL LUBRICANTS USA INC	N230	GLYCOL ETHERS (EXCEPT SU	26,649	0	0
83747200000	TOTAL LUBRICANTS USA INC	N583	POLYCHLORINATED ALKANES	150,469	0	0
83747200000	TOTAL LUBRICANTS USA INC	N982	ZINC COMPOUNDS	14,375	0	0
85313000001	GULF OIL LIMITED PARTNERS	191-24-2	BENZO(G,H,I)PERYLENE	4,506	0	0
85313000001	GULF OIL LIMITED PARTNERS	7439-92-1	LEAD	236	0	0
85313000001	GULF OIL LIMITED PARTNERS	N590	POLYCYCLIC AROMATIC COM	23,510	0	0
9			**44**	**3,290,321**	**31,012**	**5,959**

Data Loss for Linden as a Result of Burden Reduction Rule based on 2005 RPPR Data
(all quantities reported in pounds)

FACID	Facility Name	CAS #	Chemical Name	Calculated Use	NPO	On-Site Releases
00004010001	GENERAL MOTORS CORPORA	67-56-1	METHANOL	19,390	2,106	1,492
00004010001	GENERAL MOTORS CORPORA	108-88-3	TOLUENE	80,631	908	416
00004010001	GENERAL MOTORS CORPORA	110-54-3	N-HEXANE	18,565	461	344
15244700000	LUBRIZOL DOCK RESINS	80-62-6	METHYL METHACRYLATE	644,792	525	286
33757700004	INFINEUM USA	110-54-3	N-HEXANE	3,493	3,493	228
82980100000	CONOCOPHILLIPS CO	N010	ANTIMONY COMPOUNDS	24,462	1,462	163
82980100000	CONOCOPHILLIPS CO	67-56-1	METHANOL	360,160	160	160
82980100000	CONOCOPHILLIPS CO	127-18-4	TETRACHLOROETHYLENE [PE	92,135	135	135
15244700000	LUBRIZOL DOCK RESINS	96-33-3	METHYL ACRYLATE	209,478	187	101
00004010001	GENERAL MOTORS CORPORA	71-43-2	BENZENE	14,658	179	82
00004010001	GENERAL MOTORS CORPORA	1634-04-4	METHYL TERT-BUTYL ETHER	65,672	429	77
73021500002	COSMED GROUP INC	75-21-8	ETHYLENE OXIDE	64,745	65	65
82980100000	CONOCOPHILLIPS CO	N420	LEAD COMPOUNDS	6,424	1,924	45
15244700000	LUBRIZOL DOCK RESINS	140-88-5	ETHYL ACRYLATE	279,709	196	33
15244700000	LUBRIZOL DOCK RESINS	100-42-5	STYRENE	292,278	51	31
73021500002	COSMED GROUP INC	75-56-9	PROPYLENE OXIDE	31,439	31	31
15244700000	LUBRIZOL DOCK RESINS	141-32-2	BUTYL ACRYLATE	191,694	150	27
00004010001	GENERAL MOTORS CORPORA	110-82-7	CYCLOHEXANE	18,242	138	21
15244700000	LUBRIZOL DOCK RESINS	95-63-6	1,2,4-TRIMETHYLBENZENE	101,377	3,291	20
15244700000	LUBRIZOL DOCK RESINS	108-10-1	METHYL ISOBUTYL KETONE	59,558	939	16
15244700000	LUBRIZOL DOCK RESINS	107-13-1	ACRYLONITRILE	21,209	14	14
82980100000	CONOCOPHILLIPS CO	74-90-8	HYDROGEN CYANIDE [HYDRO	180,013	13	13
15244700000	LUBRIZOL DOCK RESINS	100-41-4	ETHYLBENZENE	68,549	4,765	12
82980100000	CONOCOPHILLIPS CO	N590	POLYCYCLIC AROMATIC COM	2,711	2,711	5
15244700000	LUBRIZOL DOCK RESINS	N230	GLYCOL ETHERS (EXCEPT SU	74,440	2,319	5
15244700000	LUBRIZOL DOCK RESINS	71-36-3	N-BUTYL ALCOHOL	16,531	2,258	3
15244700000	LUBRIZOL DOCK RESINS	78-84-2	ISOBUTYRALDEHYDE	16,423	391	3
15244700000	LUBRIZOL DOCK RESINS	79-10-7	ACRYLIC ACID	89,521	9	2
82980100000	CONOCOPHILLIPS CO	N458	MERCURY COMPOUNDS	63	20	1
00004010001	GENERAL MOTORS CORPORA	N420	LEAD COMPOUNDS	1,472	25	1
15244700000	LUBRIZOL DOCK RESINS	85-44-9	PHTHALIC ANHYDRIDE	16,434	17	1
33757700004	INFINEUM USA	N420	LEAD COMPOUNDS	16	16	0
82980100000	CONOCOPHILLIPS CO	191-24-2	BENZO(G,H,I)PERYLENE	72	72	0
00004010001	GENERAL MOTORS CORPORA	107-21-1	ETHYLENE GLYCOL	194,937	255	0
00585211018	PSEG FOSSIL LLC	7632-00-0	SODIUM NITRITE	22,000	0	0
15244700000	LUBRIZOL DOCK RESINS	111-42-2	DIETHANOLAMINE	17,921	2	0
57836900000	CITGO PETROLEUM CORPOR	107-21-1	ETHYLENE GLYCOL	19,947	0	0
57836900000	CITGO PETROLEUM CORPOR	N420	LEAD COMPOUNDS	1,224	0	0
68493000007	BRUNSWICK HOT MIX CORP	1344-28-1	ALUMINUM OXIDE (FIBROUS F	105,000	0	0
83747200000	TOTAL LUBRICANTS USA INC	107-21-1	ETHYLENE GLYCOL	45,500	0	0
83747200000	TOTAL LUBRICANTS USA INC	N230	GLYCOL ETHERS (EXCEPT SU	25,242	0	0
83747200000	TOTAL LUBRICANTS USA INC	N583	POLYCHLORINATED ALKANES	201,777	0	0
83747200000	TOTAL LUBRICANTS USA INC	N982	ZINC COMPOUNDS	92,400	0	0
85313000001	GULF OIL LIMITED PARTNERS	191-24-2	BENZO(G,H,I)PERYLENE	4,799	0	0
85313000001	GULF OIL LIMITED PARTNERS	7439-92-1	LEAD	245	0	0
85313000001	GULF OIL LIMITED PARTNERS	N590	POLYCYCLIC AROMATIC COM	25,500	0	0
10			**46**	**3,822,847**	**29,717**	**3,834**

Data Loss for Linden as a Result of Burden Reduction Rule based on 2006 RPPR Data
(all quantities reported in pounds)

FACID	Facility Name	CAS #	Chemical Name	Calculated Use	NPO	On-Site Releases
15244700000	LUBRIZOL DOCK RESINS	80-62-6	METHYL METHACRYLATE	473,501	756	286
82980100000	CONOCOPHILLIPS CO	N010	ANTIMONY COMPOUNDS	22,816	3,816	232
15244700000	LUBRIZOL DOCK RESINS	96-33-3	METHYL ACRYLATE	118,272	341	206
82980100000	CONOCOPHILLIPS CO	67-56-1	METHANOL	290,184	184	184
15244700000	LUBRIZOL DOCK RESINS	100-42-5	STYRENE	224,287	380	130
82980100000	CONOCOPHILLIPS CO	127-18-4	TETRACHLOROETHYLENE [PE	120,098	98	98
82980100000	CONOCOPHILLIPS CO	N420	LEAD COMPOUNDS	8,840	640	64
73021500002	COSMED GROUP INC	75-21-8	ETHYLENE OXIDE	55,079	56	56
15244700000	LUBRIZOL DOCK RESINS	108-10-1	METHYL ISOBUTYL KETONE	59,704	872	33
73021500002	COSMED GROUP INC	75-56-9	PROPYLENE OXIDE	28,811	30	30
15244700000	LUBRIZOL DOCK RESINS	85-44-9	PHTHALIC ANHYDRIDE	24,206	42	25
15244700000	LUBRIZOL DOCK RESINS	141-32-2	BUTYL ACRYLATE	110,898	132	20
15244700000	LUBRIZOL DOCK RESINS	140-88-5	ETHYL ACRYLATE	266,318	175	15
15244700000	LUBRIZOL DOCK RESINS	107-13-1	ACRYLONITRILE	20,304	16	13
00000042261	CONOCO PHILLIPS	107-21-1	ETHYLENE GLYCOL	11,109	12	12
00000042261	CONOCO PHILLIPS	N230	GLYCOL ETHERS (EXCEPT SU	36,675	12	12
82980100000	CONOCOPHILLIPS CO	74-90-8	HYDROGEN CYANIDE [HYDRO	150,011	11	11
15244700000	LUBRIZOL DOCK RESINS	100-41-4	ETHYLBENZENE	57,981	4,151	10
15244700000	LUBRIZOL DOCK RESINS	67-56-1	METHANOL	15,779	2,395	10
15244700000	LUBRIZOL DOCK RESINS	N230	GLYCOL ETHERS (EXCEPT SU	64,778	4,591	9
82980100000	CONOCOPHILLIPS CO	N590	POLYCYCLIC AROMATIC COM	2,887	2,887	5
15244700000	LUBRIZOL DOCK RESINS	71-36-3	N-BUTYL ALCOHOL	24,499	816	1
15244700000	LUBRIZOL DOCK RESINS	79-10-7	ACRYLIC ACID	56,929	55	1
82980100000	CONOCOPHILLIPS CO	N458	MERCURY COMPOUNDS	56	14	1
00000042261	CONOCO PHILLIPS	N590	POLYCYCLIC AROMATIC COM	53,010	5	1
33757700004	INFINEUM USA	N420	LEAD COMPOUNDS	9	9	0
82980100000	CONOCOPHILLIPS CO	191-24-2	BENZO(G,H,I)PERYLENE	229	229	0
00000042261	CONOCO PHILLIPS	191-24-2	BENZO(G,H,I)PERYLENE	10,960	1	0
15244700000	LUBRIZOL DOCK RESINS	111-42-2	DIETHANOLAMINE	19,017	475	0
15244700000	LUBRIZOL DOCK RESINS	78-84-2	ISOBUTYRALDEHYDE	16,341	19	0
57836900000	CITGO PETROLEUM CORPOR	N420	LEAD COMPOUNDS	1,079	0	0
85313000001	GULF OIL LIMITED PARTNERS	191-24-2	BENZO(G,H,I)PERYLENE	4,418	0	0
85313000001	GULF OIL LIMITED PARTNERS	7439-92-1	LEAD	237	0	0
85313000001	GULF OIL LIMITED PARTNERS	N590	POLYCYCLIC AROMATIC COM	24,361	0	0
7			34	2,373,683	23,220	1,465

Mr. WYNN. Thank you very much. Short but effective.

I want to thank all the witnesses. Unfortunately, we do have a vote on. We have two votes, a 15-minute and a 5-minute, so I think it is safe to say that we probably wouldn't be back before, about 25 minutes if you want to take a break, get a sandwich, or something like that. We will be back, we will have questions following that. Thank you.

The subcommittee stands in recess.

[Recess.]

Mr. WYNN. They will probably be drifting in. If someone sees them, just let them know. In the meantime, I think what I would like to do is go ahead and start. I know Mr. Bopp has another engagement. I just have a couple of quick questions that I will start with.

The Chair recognizes himself for questions.

Mr. Bopp, I am sympathetic to small businesses, but I want to cover a couple things. One, we are talking about electronic filing for the most part I think.

Second, you mentioned lead a number of times. Does your client deal with other chemicals in her processes, or is she primarily concerned about reporting on lead?

Mr. BOPP. It is really just lead.

Mr. WYNN. OK. So basically we have a situation of electronic filing with one chemical, and isn't it true to phrase this other question, isn't it true that basically once you, after the first year, your basic data, name, address, location, type of chemical, all is pretty much set. You just touch the button.

Mr. BOPP. Right.

Mr. WYNN. So is it reasonable to say that it is less burdensome in subsequent years than it is in the first year?

Mr. BOPP. It would seem so. For her, though, and I wish she were here because she could answer this a heck of a lot better than me, but she still files the paper forms. So, again, this is someone who actually complains frequently about being forced into the electronic forms. So she still does the paper forms. A lot of the time that is spent is in tracking the lead use and the colors because every color has a different percentage of lead.

So, and, again, from her experience, like I have said, every single year she has gotten something back from EPA saying that something she has done is not correct. Again, there are no releases there, but this is, again, a very small company. Obviously they are computerized, who isn't, but she is not very comfortable with working on the web, and again, I wish she were here, because she would say exactly that, and she often really gets wound up over things like that.

Mr. WYNN. Are there any other witnesses, do any other witnesses want to make a comment on the small business problem? I think Ms. Wittenberg——

Ms. WITTENBERG. The only thing I would say is that from New Jersey's perspective and we have been doing this a long time, and it is a State program, so we provide as much assistance as we can, we have never had a complaint from small business about burden, about cost. I checked every office we had to make sure that, over the years, we have a small business assistance office.

As I said, our forms are on-line, it is mandatory electronic. The form is set up to be pretty user friendly, but it has not been an issue for the small businesses in our State anyway to date to do the reporting.

Mr. WYNN. Thank you. Mr. Shelton, I appreciate your testimony, and I know you said there are instances, and I am aware of instances in which the environmental justice issue has really caused hardship. I was wondering if you could help us put a human face on this if you might relate one of the situations that the NAACP has encountered.

Mr. SHELTON. Thank you very much. We visited the small town of Gainesville, GA, very close to a rather large production facility. If you walked into this local community, what you see is some very pristine, working class homes on a street that slopes down to a very, very nice public playground at the bottom of this very nice and pristine community. Just past the playground you see a drainage ditch and just on the other side of that you see a rather large facility.

That large facility has a number of smokestacks that pour out toxins and so forth into the air. Interestingly enough, it was the facility that actually paid for that very, very nice playground and the great part and the great area that we had a chance to visit.

We walked through the community and actually stopped by each door on a one-block, both sides of the street, and stopped at each house in which a member of the community actually had some form of cancer. What we found as we moved through the streets and put a black ribbon on the steps, on the railing of each of the houses that actually got through stopping by many to visit to find out in many cases that more than one member of the family actually has some kind of cancer. We stopped and visited one young man, 30 years of age, living with his mother, his sister, and all three had some type of cancer. Mother had a form of throat cancer, he had a form of a lung cancer, his sister had a form of ovarian cancer, but this seemed to go on on both sides of the street and throughout this entire city block. As we got to the block after laying these black ribbons, we turned around and looked back, and quite frankly, Mr. Chairman, we were stunned and shocked to see that nearly every house on this street, 20 houses on each side of the street, almost every house had a black ribbon in front of it. It was shocking to see how pollutants like this actually destabilized the entire families and for that matter entire communities.

Mr. WYNN. Thank you very much. That has been the observation that many of us have been able to make in conversations in different parts of the country, and I appreciate you sharing that with us.

At this time I am going to relinquish the balance of my time to my ranking member, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr.——

Mr. WYNN. Excuse me. I would like to relinquish my time and recognize for a full 5 minutes. You didn't see that coming. A full 5 minutes for questioning to Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman.

A lot of the statements that are made in the second panel talks about the community not knowing, having information, the right-to-know. I don't disagree with any of that.

If we could change the definition so that release really, so that TRI isn't toxic release, because we know as you heard in the, you all sat in the first panel, that it really is toxic use, management, and release inventory, no one here would have a problem with that, would they?

Why don't you just, Mr. Shelton?

Mr. SHELTON. It doesn't matter to us what you call it.

Mr. SHIMKUS. Right.

Mr. SHELTON. The importance that——

Mr. SHIMKUS. Yes. I think there is a problem with what you call it, because you by definition tell business and this form says you are releasing toxics, where many times they are not. They may be good stewards, so if we could just change the terminology and still get the same information, you wouldn't have a problem with that.

Mr. SHELTON. As long as all the data is collected at the same levels quite frankly. As a matter of fact, we would then begin to push you further to collect even more data. Nonetheless, as long as the data is collected don't care a whole lot about what you call it as long as you continue to collect that data.

Mr. SHIMKUS. OK. Mr. Bopp.

Mr. BOPP. No. I think that is a very good idea, because, again, people look at that——

Mr. SHIMKUS. Mr. Finkelstein.

Mr. FINKELSTEIN. I concur. I think that that is the ideal way to go.

Mr. SHIMKUS. Ms. Wittenberg.

Ms. WITTENBERG. Not a problem.

Mr. SHIMKUS. Not a problem. Great. Thank you.

I do have unanimous consent to have inserted into the record of this hearing a letter supporting analysis submitted both, to both of us and dated today from the Business Network for Environmental Justice on H.R. 1103. I understand from staff that this information was transmitted to your staff yesterday, and we were told at the staff level that the majority would have no objection to its inclusion.

Ms. SOLIS [presiding]. Without objection.

Mr. SHIMKUS. Thank you.

Ms. SOLIS. It will be entered into the record.

Mr. SHIMKUS. And then Mr. Bopp, thanks for staying. I think it is important.

Your fellow, and remember, those of us who really, and we are trying to talk about small business. I have problems with that definition, what is it, 500, 250?

Mr. BOPP. Yes.

Mr. SHIMKUS. But most of us in rural America, small business is small business. It is 30 employees or less. Small business creates 50 percent of all new jobs in America.

Mr. BOPP. Uh-huh.

Mr. SHIMKUS. Are those Mom and Pops that create new jobs. So your testimony is important, and I appreciate you coming here, and I appreciate you staying.

Obviously, your fellow panelists has overwhelmingly questioned the EPA's TRI burden reduction proposal. They keep pointing to overwhelming amount of comments against this rule. Why is this burden reduction so important?

Mr. BOPP. Again, the thing I keep coming back to is for these small businesses it is zero releasers who are getting reduction. Companies in the glass and ceramic industry face real, real, real tough competition from overseas. Every 2-day period, which is what the savings would be that it saved, is valuable. It is helpful, and again, to report nothing. If you are reporting something, our, to use the case of Nancy once again, she lives in the neighborhood. She is the last one who is going to want to have dumping in her neighborhood.

So to make it simpler for her, to save her time to just make things better for business without losing any release information, I don't see how that is bad.

Mr. SHIMKUS. Would any of your members or other fellow small businesses be except from reporting under the new rule?

Mr. BOPP. No. It is, you are either on the Form R or the Form A. If you release anything at all, you are back on the Form R, and one pound transmitted offsite, you are back on Form R.

Mr. SHIMKUS. Is the TRI, hopefully TUMRI, if we can change that, is TRI the only environmental health or product safety rule that you need to follow?

Mr. BOPP. Not at all. Starting with the final product FDA has heavily regulated the use of metals on tableware for years. OSHA rules take precedence for worker exposure possibly in these situations, various States have different rules. As you can imagine, when there is lead in the consumer product, FDA has regulated this tightly for 35 years. It is sort of, it is like leaded crystal. Lead is there. It is, if there is no lead, there is no leaded crystal. That doesn't mean it is dangerous in that form.

So it is highly regulated already.

Mr. SHIMKUS. And are Nancy's mugs and the paint on them regulated by anyone else or in any other way? Probably the same question.

Mr. BOPP. Same question basically. Yes. Those agencies basically, again, for products using lead, they are heavily, heavily, heavily regulated.

Mr. SHIMKUS. And Dr. Bullard and Mr. Bravo, the question I asked before you returned was if reporting is all the same, would you be supportive of changing the TRI phrase to TUMRI, that is my new lobbying, which would be the toxic use, management, and release inventory?

The other panelists, I don't want to sway you, they all said they wouldn't have a problem. I am—could be an amendment, so would you have, if everything else stayed the same, we just changed, release, and added, use, management, and release.

Mr. BULLARD. Well, Congressman, I would not have a problem with changing that as long as everything stayed the same.

Mr. SHIMKUS. OK.

Mr. BULLARD. We have lots of names for facilities and reporting requirements like sanitary landfill.

Mr. SHIMKUS. Yes. I just want to get clarify. I am just trying to bring clarity here.

Mr. Bravo.

Mr. BRAVO. Yes. Likewise what Dr. Bullard is saying. I wouldn't have a problem with that, but there is something to be said about names.

Mr. SHIMKUS. Yes. That is right. And I am just, I thank you. I went over my time. Yield back.

Ms. SOLIS. OK. Then I guess I am the closing person here, but I have a lot of questions.

Mr. Bopp, you mentioned that there is a burden that is shared by small businesses, and you say in the application process and applying for this information.

What is the real cost, though, of compiling that information that they have to by law do anyway? It doesn't mean that they are going to be left without having to do that, so can you give me an idea of what that is, that they currently have to do anyway?

Mr. BOPP. Absolutely. Yes. Nancy, I believe she even said in the EPW testimony back in February estimates without having formally done anything that about 130 hours go into calculating the colors used during the year by all employees, because, again, if you are decorating 20 different types of mugs a day with multiple colors, you have to track each color. Each color has a different amount of lead, and so——

Ms. SOLIS. But she is still going to be required under law to do that anyway.

Mr. BOPP. She still has to do that. Absolutely.

Ms. SOLIS. So, that is not really what we are talking about here. We are talking about in this proposal by EPA is to reduce the information so all you are going to, all we are really talking about is that one application and which to me sounds de minimus in some sense.

Mr. BOPP. According to EPA it is 15½ hours. So if Nancy were here, and I will speak for her, that is 2 whole days when she could be doing something else.

Ms. SOLIS. Right. And I understand that.

Mr. BOPP. So, and, again, it is, I think the key thing here is in this case for lead to be on that simpler form she has to be reporting zero release onsite and offsite. So I don't see how being on a simpler form, that is the key thing we are reporting here.

Ms. SOLIS. Well, she also makes a choice by running her business that contains that kind of contaminants. So those are choices that business people make. So everyone in our society we usually agree that everyone pays under the law.

Mr. BOPP. Oh, absolutely.

Ms. SOLIS. So that is what is happening here.

So, anyway, my other question is for Dr. Bullard. Thank you so much for coming and Mr. Bravo and all the panelists obviously, but I wanted to ask you with respect to the comment that was made earlier by Ms. O'Neill, what you feel about the fact that just 1 percentage of less information is going to be made available.

What does that mean for communities of color and underrepresented areas?

Mr. BULLARD. I think it is important to understand that 1 percent across the board may not seem like a large number for the kinds of releases that we are talking about or the number of facilities, but if you are talking about communities that are already overburdened, communities that already have more than their "fair share" of types of emitting facilities, you are not talking about a level playing field.

Ms. SOLIS. So maybe what you, I am trying to understand. So I am looking in my own district where we have maybe in the city of Industry, near my district, you have several different industry-run organizations that have heavy, heavy concentrations of pollutants, whether it is paint, whether it is battery acid and arsenic and what have you. And if you are, you are taking some people off that list, it doesn't mean that it lessens the toxicity in the air or the water.

And I guess that is what I am trying to understand is, in your opinion is that what would happen? We are not taking away the facility. The facility is still going to be there.

Mr. BULLARD. Right. The facility will still be there. Again, when you talk about one facility that may produce a small amount of pollution, it may, the toxicity level for that one facility may be such that it creates a huge health problem, health threat in those communities that are already overburdened and saturated.

Ms. SOLIS. And so my concern, too, is that OMB asked EPA to work towards a national figure instead of looking at the localities that we have been hearing today from our witness from Mr. Chairman, and that is why I think when people somehow disregard the importance of environmental justice, that we are trying to somehow capture why it is important to have an equal playing field, because so many times we are not looked at adequately. And I know that is the case right now in my district. I have three Superfund sites, and we have high levels of contaminants, perchlorate in our water, which is another discussion that we have had before.

And we have, this is, there is no scientific evidence yet, but I wish we could collaborate and have HHS here at another time to collaborate the data for incidents of diseases as well as high asthma rates, high incidence of epilepsy, cancer, and what have you. In an area where I grew up nearby a battery recycling plant where acid, arsenic was produced and disposed of, our water has been contaminated.

Thank goodness for local jurisdictions in our State of California because we have Proposition 65, which requires notification. And most people will read a flyer that you will get in the mail, but they won't even understand what that means, and it means to be aware of, that there are some maybe ambient particular matter that is there in the air. We have found neighborhoods adjacent to where I live, where I grew up where there are cancer clusters; ovarian, all kinds, uterine. All kinds of different types of cancers, and it is rather alarming to me to know that this isn't just going on in my part of town, that it continues to happen.

My time is up.

Mr. Chairman, I yield back to you.

Mr. WYNN [presiding]. I want to thank the vice-chair for giving me a little break there and particularly, again, for her leadership throughout on this issue.

If there are no other questions at this time, I believe that concludes our business with these witnesses. We have no further witnesses today. Thank you again for your patience and for your testimony.

I would like to remind Members that you may submit additional questions for the record to be answered by the relevant witnesses. The questions should be submitted to the committee clerk in the electronic form within the next 10 days. The clerk will notify your offices of procedures.

And without objection thank you, again, and the subcommittee stands adjourned.

[Whereupon, at 2:10 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 1055

To amend the Emergency Planning and Community Right-to-Know Act of 1986 to strike a provision relating to modifications in reporting frequency.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2007

Mr. PALLONE (for himself, Ms. SOLIS, Mr. DEFAZIO, Mr. BRADY of Pennsylvania, Mr. KUCINICH, Mr. LANTOS, Mr. MORAN of Virginia, Mr. FRANK of Massachusetts, Ms. SCHWARTZ, Mr. ROTHMAN, Mr. INSLEE, Ms. MATSUI, Mr. MCGOVERN, Ms. WOOLSEY, Ms. BERKLEY, Mr. GEORGE MILLER of California, Mr. WEXLER, Mr. MARKEY, Mr. ALLEN, Mr. WEINER, Mr. CONYERS, Mr. WAXMAN, Ms. LINDA T. SÁNCHEZ of California, Mr. GRIJALVA, Ms. SCHAKOWSKY, Mrs. CAPPS, Mr. PAYNE, Mr. BLUMENAUER, Mr. SERRANO, Mr. GUTIERREZ, Ms. CASTOR, Mr. ACKERMAN, Mr. HOLT, Ms. HIRONO, Mr. SIRES, Mr. PASCRELL, Mrs. TAUSCHER, Mr. HONDA, Ms. BORDALLO, Mr. CLAY, Mr. ELLISON, Ms. MCCOLLUM of Minnesota, Mr. OLVER, Ms. KILPATRICK, Mr. NADLER, Mr. WYNN, Mr. LEVIN, Mr. DOYLE, Ms. BALDWIN, and Mr. FARR) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Emergency Planning and Community Right-to-Know Act of 1986 to strike a provision relating to modifications in reporting frequency.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Toxic Right-to-Know Protection Act".

SEC. 2. MODIFICATIONS IN REPORTING FREQUENCY.

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023) is amended—

(1) by striking subsection (i); and

(2) by redesignating subsections (j) through (l) as subsections (i) through (k), respectively.

SEC. 3. REQUIREMENTS RELATING TO TOXIC RELEASE INVENTORY.

Notwithstanding any other provision of law—

(1) the Administrator of the Environmental Protection Agency (referred to in this section as the "Administrator") shall establish the eligibility threshold regarding the use of a form A certification statement under the toxic release inventory program established under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 et seq.) at not greater than 500 pounds for nonpersistent bioaccumulative and toxic chemicals; and

(2) the use of a form A certification statement described in paragraph (1), or any equivalent successor thereto, shall be prohibited with respect to

any chemical identified by the Administrator as a chemical of special concern under section 372.28 of title 40, Code of Federal Regulations (or a successor regulation).

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I

110TH CONGRESS
1ST SESSION

H. R. 1103

To codify Executive Order 12898, relating to environmental justice, to require the Administrator of the Environmental Protection Agency to fully implement the recommendations of the Inspector General of the Agency and the Comptroller General of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2007

Ms. SOLIS (for herself, Mr. WYNN, Mr. HASTINGS of Florida, Mr. UDALL of Colorado, Mr. CONYERS, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To codify Executive Order 12898, relating to environmental justice, to require the Administrator of the Environmental Protection Agency to fully implement the recommendations of the Inspector General of the Agency and the Comptroller General of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Environmental Justice Act of 2007".

SEC. 2. CODIFICATION OF EXECUTIVE ORDER 12898.

(a) IN GENERAL.—The President of the United States is authorized and directed to execute, administer and enforce as a matter of Federal law the provisions of Executive Order 12898, dated February 11, 1994, ("Federal Actions To Address Environmental Justice In Minority Populations and Low-Income Populations") with such modifications as are provided in this section.

(b) DEFINITION OF ENVIRONMENTAL JUSTICE.—For purposes of carrying out the provisions of Executive Order 12898, the following definitions shall apply:

(1) The term "environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, educational level, or income with respect to the development, implementation, and enforcement of environmental laws and regulations in order to ensure that—

(A) minority and low-income communities have access to public information relating to human health and environmental planning, regulations and enforcement; and

(B) no minority or low-income population is forced to shoulder a disproportionate burden of the negative human health and environmental impacts of pollution or other environmental hazard.

(2) The term "fair treatment" means policies and practices that ensure that no group of people, including racial, ethnic, or socioeconomic groups bear disproportionately high and adverse human health or environmental effects resulting from Federal agency programs, policies, and activities.

(c) JUDICIAL REVIEW AND RIGHTS OF ACTION.—The provisions of section 6–609 of Executive Order 12898 shall not apply for purposes of this Act.

SEC. 3. IMPLEMENTATION OF RECOMMENDATIONS BY ENVIRONMENTAL PROTECTION AGENCY.

(a) INSPECTOR GENERAL RECOMMENDATIONS.—The Administrator of the Environmental Protection Agency shall, as promptly as practicable, carry out each of the following recommendations of the Inspector General of the agency as set forth in report # 2006–P–00034 entitled "EPA needs to conduct environmental justice reviews of its programs, policies and activities":

(1) The recommendation that the agency's program and regional offices identify which programs,

policies, and activities need environmental justice reviews and require these offices to establish a plan to complete the necessary reviews.

(2) The recommendation that the Administrator of the agency ensure that these reviews determine whether the programs, policies, and activities may have a disproportionately high and adverse health or environmental impact on minority and low-income populations.

(3) The recommendation that each program and regional office develop specific environmental justice review guidance for conducting environmental justice reviews.

(4) The recommendation that the Administrator designate a responsible office to compile results of environmental justice reviews and recommend appropriate actions.

(b) GAO RECOMMENDATIONS.—In developing rules under laws administered by the Environmental Protection Agency, the Administrator of the Agency shall, as promptly as practicable, carry out each of the following recommendations of the Comptroller General of the United States as set forth in GAO Report numbered GAO–05–289 entitled "EPA Should Devote More Attention to Environmental Justice when Developing Clean Air Rules":

(1) The recommendation that the Administrator ensure that workgroups involved in developing a rule devote attention to environmental justice while drafting and finalizing the rule.

(2) The recommendation that the Administrator enhance the ability of such workgroups to identify potential environmental justice issues through such steps as providing workgroup members with guidance and training to helping them identify potential environmental justice problems and involving environmental justice coordinators in the workgroups when appropriate.

(3) The recommendation that the Administrator improve assessments of potential environmental justice impacts in economic reviews by identifying the data and developing the modeling techniques needed to assess such impacts.

(4) The recommendation that the Administrator direct appropriate agency officers and employees to respond fully when feasible to public comments on environmental justice, including improving the agency's explanation of the basis for its conclusions, together with supporting data.

(c) 2004 INSPECTOR GENERAL REPORT.—The Administrator of the Environmental Protection Agency shall,

as promptly as practicable, carry out each of the following recommendations of the Inspector General of the agency as set forth in the report entitled "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice" (Report No. 2004–P–00007):

(1) The recommendation that the agency clearly define the mission of the Office of Environmental Justice (OEJ) and provide agency staff with an understanding of the roles and responsibilities of the office.

(2) The recommendation that the agency establish (through issuing guidance or a policy statement from the Administrator) specific time frames for the development of definitions, goals, and measurements regarding environmental justice and provide the regions and program offices a standard and consistent definition for a minority and low-income community, with instructions on how the agency will implement and operationalize environmental justice into the agency's daily activities.

(3) The recommendation that the agency ensure the comprehensive training program currently under development includes standard and consistent definitions of the key environmental justice concepts (such as "low-income", "minority", and "disproportion-

ately impacted") and instructions for implementation of those concepts.

(d) REPORT.—The Administrator shall submit an initial report to Congress within 6 months after the enactment of this Act regarding the Administrator's strategy for implementing the recommendations referred to in subsections (a), (b), and (c). Thereafter, the Administrator shall provide semi-annual reports to Congress regarding his progress in implementing such recommendations as well as his progress on modifying the Administrator's emergency management procedures to incorporate environmental justice in the agency's Incident Command Structure (in accordance with the December 18, 2006, letter from the Deputy Administrator to the Acting Inspector General of the agency).

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October 4, 2007

VIA EMAIL

The Honorable Albert Wynn
Chairman
Subcommittee on Environment and Hazardous Waste
Committee on Energy and Commerce

Th Honorable John Shimkus
Ranking Member
Subcommittee on Environment and Hazardous Waste
Committee on Energy and Commerce

U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Wynn and Ranking Member Shimkus:

Thank you for the opportunity to comment on the work of the House Subcommittee on Environment and Hazardous Waste. The Business Network for Environmental Justice ("BNEJ") is a voluntary organization of businesses, corporations, industry trade associations, industry service providers and business groups interested in environmental justice issues. Formed in 1995, the BNEJ believes all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color, or national origin. We support open and informed dialogue with citizens about environmental decisions that affect local communities. We also support continued sound scientific research into factors affecting human health and the environment, and the use of scientifically sound risk assessments in evaluating and prioritizing health and environmental risks.

The BNEJ's statement today focuses first on H.R. 1103, the Environmental Justice Act of 2007. We do not necessarily object to codification of Executive Order 12,898, but we hav s rious concerns about the goals and effects of H.R. 1103.

Below, please find the full text of our comments. Again, thank you for the opportunity to present our views today.

Sincerely,

Keith W. McCoy
Executive Director

EXECUTIVE SUMMARY

H.R. 1103, the Environmental Justice Act of 2007. We are open-minded about the potential benefits of codifying Executive Order 12,898, but we have serious concerns about H.R. 1103, which invites litigation over alleged "disparate impacts."

"Disparate Impacts" are not evidence of discrimination. In a free society, not everyone lives the same distance from every facility, whether it's a library or a landfill. State and local environmental issue permits based on their technical standards, not based on the demographics of the nearby population.

Eliminating "disparate impacts" is not a reasonable goal. It's not reasonable to expect that every group will live equally distant from every facility.

H.R. 1103 Would Invite Litigation. By overturning section 6-609 of the Executive Order, the bill allows anyone to sue in `court over any federal agency action that they believe creates or permits any "disproportionate impact." This invites federal judges to second-guess permits issued by state regulators.

EPA's Environmental Justice "Toolkit." In November of 2004, EPA issued its **Toolkit for Assessing Potential Allegations of Environmental Injustice.** The Toolkit was meant to provide EPA's Environmental Justice Coordinators with a systematic approach for evaluating complaints of alleged environmental injustice.

Confrontation instead of collaboration. Rather than encouraging collaborative approaches to problem-solving in affected communities, the Toolkit embodies a confrontational approach similar to EPA's highly controversial guidance, issued in 2000, under Title VI of the Civil Rights Act of 1964.

Uncritical acceptance of complaints. Using a "hypothetical example," the Toolkit suggests that EPA's EJ Coordinators should view the facts from the perspective of citizens who complain, paying little heed to the views of state and local government officials, or those of business and industry stakeholders.

Equating all disproportionate impacts with environmental injustice. The Toolkit mistakenly equates all disproportionate impacts with environmental injustice. But the law requires equal treatment, not equal results.

Lack of meaningful public comment. The Business Network for Environmental Justice ("BNEJ") filed detailed comments with EPA when the Toolkit was proposed in November of 2003. Yet EPA never responded to those comments. It simply issued the Toolkit without addressing these issues.

STATEMENT

First, the bill would effectively charge all federal agencies with eliminating all "disproportionate impacts" that may be associated with agency programs, policies, and activities. This standard is unrealistic, unworkable, and unsound. Including it in federal statutory law would commit the United States Government to achieving the impossible.

Second, the bill would invite litigation over virtually any situation where any federal program, policy, or activity allegedly exposed any racial, ethnic, or socioeconomic group to a "disproportionate impact." This would require the federal courts to second-guess the existence of such impacts, and the means taken to address them. Because many claims arise from environmental permits issued by state and local government agencies, the bill would have the federal courts begin second-guessing the decisions made by these state and local governments.

We discuss these issues below.

EPA's EJ "Toolkit." Today's statement then addresses EPA's Toolkit for Assessing Potential Allegations of Environmental Injustice (the "Toolkit"), issued in November of 2004. We believe the Toolkit fails to provide a useful framework for assessing allegations of environmental injustice. Rather than encouraging collaborative approaches to problem-solving in affected communities, the Toolkit embodies a confrontational approach that bypasses state environmental regulators and affected industrial facilities. In many respects, EPA's Toolkit outlines an approach similar to that found in EPA's highly controversial proposed investigation guidance, issued in 2000 under Title VI of the Civil Rights Act of 1964.

Given our serious concerns with the Toolkit, the BNEJ submitted detailed written comments to EPA when the Toolkit was proposed in November of 2003. Unfortunately, EPA never responded to the BNEJ's comments, but simply issued the Toolkit in final form without addressing any of the issues raised by the BNEJ. Thus, it is especially appropriate for the Subcommittee to examine the Toolkit as part of its consideration of EPA's environmental justice programs.

II. H.R. 1103 Would Invite Litigation Over "Disproportionate Impacts."

The idea of codifying Executive Order 12,898 may have some merit. In any event, the BNEJ remains open-minded about potential benefits that might be achieved through such legislation. We believe firmly, however, that H.R. 1103 goes too far.

A. "Disproportionate Impacts" Are Not Evidence of Discrimination.

The concept of "disproportionate impacts," as used in Executive Order 12,898, is borrow d from the context of employment discrimination claims under Title VII of the Civil Rights Act of 1964. The courts have allowed Title VII plaintiffs alleging employment discrimination to make out a prima face case by showing the existence of a disparate impact, a significant disparity between the racial composition of the employer's workforce and the racial composition of the qualified pool of job applicants. The burden then shifts to the employer to show offer some justification for the disparity.[1/]

In the context of employment discrimination and traditional Title VI claims, this structure makes sense. Of course, we do not expect absolute equality of minority representation (demographic homogeneity) in employment. Instead, we expect representation to be proportional to some relevant measure of job qualification.[2/] In other words, given the appropriate reference population (qualified job applicants or employees), we expect proportionally equal results in the target population (applicants hired or employees promoted). Thus, where we find a "racially disparate outcome," we require some justification to show that the outcome is not the result of unlawful discrimination.[3/]

But these expectations do not carry over to the context of environmental justice claims. "Generally, population variables are not 'well-mixed': they are not randomly distributed in groups and clusters . . . ."[4/] As a result, there is no reason to expect that the population affected by an industrial or governmental facility would tend to mirror the racial or ethnic composition of the surrounding city, the county, the state, or the entire nation. Because there is no reason to expect that sort of "proportionality" to occur in the absence of discrimination, there is also no reason to think that any "disparities" from proportionality are the result of discrimination.

As the U.S. Court of Appeals for the Seventh Circuit explained:

> The fact that a qualified black is passed over for promotion in favor of a white has been thought sufficiently suspicious to place on the defendant the minimum burden of presenting a noninvidious reason why the black lost out. . . . [But] we pointed out the unsuitability of [the disparate impact] framework when there is no basis for comparing the

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1/ *See, e.g.*, NAACP v. Medical Center, Inc., 657 F.2d 1322, 1333-34 (3d Cir. 1981) (en banc); *cf.* Wards Cove Packing Co. v. Antonio, 490 U.S. 642, 660 (1989) (Title VII).

2/ *See* Mark Kelman, *Concepts of Discrimination in "General Ability" Job Testing,* 104 HARV. L. REV. 1157, 1166 n.23 (1991).

3/ *Id.*

4/ Leslie Kish, Survey Sampling 163 (1965).

> defendant's treatment of the plaintiff with the defendant's treatment of other, similarly situated persons. . . . . No reasonable suspicion of racial discrimination can arise from the mere fact of a discrepancy . . . .[5/]

In sum, the fundamental point here is that in the context of environmental justice, so-called disparate impacts are not evidence of discrimination. It is entirely predictable that all sorts of facilities – some perceived as public benefits, others perceived as undesirable – will be located in such a way that not all sub-groups in the population live equally close to, or equally distant from, these facilities. Whether we focus on libraries or landfills, medical centers or incinerators, not everyone will live equally close to – or equally distant from – these facilities. This non-equal distribution is a function of zoning, market forces, and individual preferences in a free society. It is not evidence of racial or ethnic discrimination.

B. Eliminating "Disproportionate Impacts" is Not a Reasonable Goal.

As noted earlier, the BNEJ emphatically believes all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color, or national origin. This means that environmental standard-setting, permitting, and enforcement should be free of any such discrimination.

But this does not mean that all persons can or should be guaranteed equal environmental results. *See, e.g., Alexander v. Choate,* 469 U.S. 287, 304 (1985) (Congress sought to assure "evenhanded treatment" and equal opportunity to participate in federally-funded programs, not to guarantee "equal results" from such programs) (Rehabilitation Act); *Jersey Heights Neighborhood Ass'n v. Glendening,* 174 F.3d 180, 194 (4th Cir. 1999) (noting that, in the context of highway construction, "equal benefits" would mandate "a twisting, turning roadway that zigs and zags only to capture equally every ethnic subset of our population," and rejecting "equal benefits" approach as an "absurdity") (Fair Housing Act).

As a practical matter, a guarantee of equal results would be impossible to implement or enforce in a free society. Identical facilities cannot be placed everywhere, and even identical facilities cause unequal impacts in different locations for different populations. Consequently, some individuals within the community and some communities as a whole will inevitably face greater exposure than others to any given facility. Differences in exposure are not the same thing as environmental injustice. The key point is that differences do exist, and we cannot blindly condemn all such differences.

5/ Latimore v. Citibank Federal Savings Bank, 151 F.3d 712, 713-15 (7th Cir. 1998) (emphasis supplied); *cf.* Ayres & Vars, 98 COLUM. L. REV. at 1635 (government affirmative action to remedy private employment discrimination is justified only when individuals comp t in the same labor market).

This point was clearly articulated by the Environmental Hearing Board of the Commonwealth of Pennsylvania in an early phase of the environmental justice litigation arising in Chester, Pennsylvania:

> Life in organized society necessarily involves risks, burdens and benefits. These all increase as society grows larger and more complex. Ideally, they should be shared equally by all members of the society, but that is rarely, if ever, possible. Transportation facilities cannot be everywhere; some persons will be close to one, others will not. *Whether this is looked upon as benefit or burden will depend on the outlook and interests of each person.* Parks and recreational facilities also cannot be in every neighborhood. Those not near to such a facility may feel burdened by the distance while those adjacent to it may feel burdened by the proximity. . . . The point is that all persons in society have a mixture of risks, burdens and benefits in varying proportions to other persons.

Chester Residents Concerned for Quality Living v. Commonwealth of Pennsylvania, Environmental Hearing Board Docket No. 93-234-MR, slip op. at 1518 (Oct. 20, 1993) (emphasis added).

C. "Disproportionate Impact" Claims Are Subjective and Unpredictable.

Even if the goal of equal environmental results was a sound one, the identification of "disproportionate impacts" in the context of environmental regulation and permitting is highly subjective. There is no agreed-upon framework for making these determinations, so there is no predictability for any of the stakeholders.

In theory, at least three basic issues must be resolved in order for a federal agency to determine whether a disparate environmental effect exists that may warrant redress under EPA's regulations. These are:

(1) the types of adverse impacts to be considered, how they are to be measured, and whether they are causally related to the actions or activities of concern;

(2) the target and reference populations to be assessed; and

(3) the magnitude of disparities between target and reference populations.

Because each of these issues raises questions that have no principled answers, federal agencies seeking to evaluate allegations of disproportionate impacts will inevitably face highly subjective claims, and their answers will be unpredictable.

1. Adverse Impacts, Causation, and Measurement

In the context of employment discrimination under Title VII, the adverse impact of concern is clear: a job applicant was turned down or an employee was not promoted or was fired.[6/] In the environmental justice context, however, substantial disputes exist as to what types of adverse impacts should be analyzed for disparities.

Consider the siting of a chemical manufacturing facility. Should the adverse impacts of concern be limited to health effects directly caused by actual exposure to materials of concern, or should they include exposure to materials of concern without regard to health effects? Should the adverse impacts include health effects resulting from psychological responses to such exposures or even to the potential for such exposures?[7/] Should the adverse impacts include psychological or aesthetic impacts (including non-human environmental protection) that do not have physical manifestations? Should the adverse impacts include health effects resulting from differential sensitivities to equivalent exposures, which may or may not be caused by personal behaviors? Should the adverse impacts include socio-economic effects of siting the facility, such as changes to traffic patterns and effects on housing costs and supplies?

Even if the relevant impacts can be identified, additional questions are posed. Should each of the relevant adverse impacts of particular facilities be evaluated separately, or should they be combined in an overall assessment of the impacts of those facilities? Should the adverse impacts of particular facilities be evaluated separately from other facilities or activities causing the same types of environmental impacts, or should they be combined into an assessment of cumulative impacts? Finally, should these similar but cumulative impacts be evaluated in isolation, or should they be combined with different types of impacts in an overall evaluation of (synergistic) environmental impacts?

There are no easy or principled answers to any of these questions.

In any event, once the relevant impacts are specified, they must be measured and causally related to the relevant activities. Like the impacts themselves, the nature of the measuring tools and the causal proof required is entirely unclear.

6/ *See, e.g.,* Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582 (1983) (Title VI termination); Griggs v. Duke Power Co., 401 U.S. 424 (1971) (Title VII hiring); Bridgeport Guardians, Inc. v. City of Bridgeport, 933 F.2d 1140 (2d Cir. 1991) (Title VII promotion).

7/ *See, e.g.,* Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 775 (1983).

In the environmental justice context, if the adverse effect of concern is exposure to pollution, then proving causation may be a relatively simple (but still quite complex) matter of measuring and modeling emissions of pollutants from particular (or multiple) facilities. But if the adverse effects of concern are health risks to or actual effects produced in individuals, proving causation becomes immensely complex. For some effects, it may be impossible. How should federal agencies measure and trace to particular facilities adverse health, psychological or aesthetic effects that vary with the beliefs and susceptibility of the receptors?

Again, there are no easy or principled answers. Further, as with employment discrimination, arithmetic proof will rarely suffice to demonstrate adverse impacts.[8/] This is true even in the simple case of disparate exposure to pollutants. Such proof will not address the many uncertainties involved in the physical dispersion of pollutants. Nor will it address differing sensitivities of minorities to pollutants, a common concern of environmental justice advocates. If the adverse impacts of concern are instead defined as health effects resulting from multiple, cumulative, and synergistic exposures to pollutants, sensitive statistical methods must be employed to determine if differences in observed or predicted effects are statistically significant. The nature of the proof thus depends largely on the adverse impacts of concern.

If statistical proof is employed, arbitrary choices also must be made in establishing the required level of significance. In addition to the choice of statistical methods, regulators and analysts often use a 90%, a 95%, or a 99% confidence interval to assess the effects of particular activities. The choice of significance level will dramatically alter whether disparate impacts are identified,[9/] but the choice is rarely mandated by law.[10/] The higher the threshold of confidence required, the more difficult it will be to prove that a disparate impact exists. But even when highly significant

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8/ *See* 1 BARBARA LINDEMANN & PAUL GROSSMAN, EMPLOYMENT DISCRIMINATION LAW 93 (ABA 3d ed. 1996) (hereinafter cited as "LINDEMANN & GROSSMAN"); *id.* at 29 (1998 Supplement) (discussing criticism of the "80 percent rule" of 29 C.F.R. §§ 1607.1, 1607.4(D), which some courts have applied to determine when employee selection criteria have an adverse effect); RAMONA L. PAETZOLD & STEVEN L. WILLBORN, THE STATISTICS OF DISCRIMINATION: USING STATISTICAL EVIDENCE IN DISCRIMINATION CASES § 5.06 at 5:10 to 5:15 (West Group 1998) (hereinafter cited as "PAETZOLD & WILLBORN") (discussing the 80 percent rule); EEOC v. Steamship Clerks Local 1066, 48 F.3d 594, 606 (1st Cir. 1995) (statistical proof is not always required to establish a prima facie case of disparate employment impact under Title VII); *cf.* York v. American Telephone & Telegraph Co., 95 F.3d 948, 958 (10th Cir. 1996) (judicial notice of disparate impacts is inappropriate).

9/ *See* Adrian E. Raferty, *Bayesian Model Selection in Social Research, in* SOCIOLOGICAL METHODOLOGY 1995, at 111 (Peter V. Marsden ed., 1995).

10/ *See* LINDEMANN & GROSSMAN at 90-91 (discussing the use of different confidence intervals in Title VII litigation).

statistical correlations are generated, they may not necessarily prove that particular actions or activities cause the environmental impacts of concern.[11/]

In sum, federal agencies would face an unmanageable task in seeking to assess their own programs, policies, and activities to discern potential disproportionate impacts.

2. Target Populations and Reference Populations

Even if identifying the relevant impacts was more straightforward, the difficulties and complexities associated with comparing various populations are far greater. In the employment discrimination context, the relevant comparison groups are clear. In regard to hiring, a court can compare the racial composition of an employer's work force to the racial composition of the qualified labor pool.[12/] Similarly, in regard to promotion or firing, a court can compare the racial composition of qualified employees to those promoted.

In the environmental justice context, however, it is far more difficult to identify the impacted ("target") population, and more difficult still to determine an appropriate comparison ("reference") population. Because population groups are not randomly distributed, as explained earlier, "[m]uch depends on how relevant communities are defined and upon what constitutes a 'proportional' distribution of desirable or undesirable land uses. There are no easy or absolute answers to either of these questions."[13/]

The problem of defining the relevant comparison groups is particularly acute when proximity – e.g., distance to a chemical manufacturer -- is used as a proxy for exposure or health impacts. Unless proximity is directly correlated with exposure, different proximities may be selected arbitrarily to determine the target population and its demographic composition. The arbitrary choices can include measures based on geographic distances, on similar or different political or statistical jurisdictions, or on other geographical proxies for actual exposures. For example, a target group could be selected based on a specified distance from a facility, a particular jurisdiction, or a specific direction or specific pattern of activity.

Even if the target group is selected on the basis of direct exposures, arbitrary choices are made in selecting a comparison group. There is no "control" reference

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11/ *See, e.g.,* OTIS D. DUNCAN, INTRODUCTION TO STRUCTURAL EQUATION MODELS (Academic Press, Inc. 1975).

12/ *See* PAETZOLD & WILLBORN § 5.04, at 5:7-5:9 (disparate impact analysis normally addresses qualified applicants or relevant labor markets, but may use for comparison the general population when applicant data "are not available, reliable, or are believed to be biased, and where statistical information regarding the labor market is difficult to ascertain").

13/ Alice Kaswan, *Environmental Justice: Bridging the Gap Between Environmental Laws and "Justice,"* 47 Am. U. L. Rev. 221, 231 (1997).

group that both (1) precis ly matches the demographic composition of the target population and (2) lacks the chemical or other facility of concern. No theoretical standard exists with which to determine what demographic reference population is "appropriate." A reference group for comparison thus can only be selected based on arbitrary choices. These choices may include demographic groups located within a larger distance, a larger jurisdiction or a "comparable" jurisdiction in another location, all or different directions or all or different patterns of activity.

For example, one could draw a circle with a one-mile radius around the proposed facility. Or one could consider only those residents within the circle who live downwind from the proposed facility. Or, instead of drawing circles, one could look to existing political or statistical jurisdictions, such as census tracts, zip codes, townships, cities, counties, and states. Each of these alternatives has a different demographic make-up, so the choice of one or the other will always alter the result of any comparison to the demographic composition of the target population. Depending on which comparison groups is chosen, the results of a disparate impact analysis will vary dramatically.

Without principled answers, claims of disparate impact remain arbitrary and even subject to manipulation. In practice, environmental justice advocates have adopted different approaches to advance their causes, even within the same case. In one well-known Title VI case, the plaintiffs initially defined the target population as all individuals living within the city of Chester, Pennsylvania, and the reference population as all citizens living within Delaware County, Pennsylvania.[14/] But when they later filed their complaint in federal court, the plaintiffs chose a different, more favorable, but equally arbitrary target population, i.e., all individuals living in the census tract in which the facility was located.[15/]

The arbitrariness of choosing a reference population for comparison purposes is exacerbated by the statistical fact that the racial and ethnic composition of communities is not uniform and is not randomly distributed. So if proximity to a chemical or other facility is used to define the target population, and a county is used to define the reference population, we should expect to find in many cases that there are statistically significant "disparate impacts" between the racial or ethnic make-up of the smaller population and the larger one.

3. Magnitude of Disparities

In civil rights cases that do not address environmental justice, courts have required proof that disparate impacts exceed a non-trivial threshold. This threshold is

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14/ *See* Chester Residents Concerned for Quality Living v. Commonwealth of Pennsylvania, Environmental Hearing Board Docket No. 93-234-MR, slip op. at 1518 (Oct. 20, 1993) (emphasis added).

15/ *See* Complaint ¶ 31, Chester Residents Concerned for Quality Living v. Seif, 944 F. Supp. 413 (E.D. Pa. 1996).

alternatively defined as "substantially higher," "significantly different," "substantially disproportionate," or a "substantially discriminatory pattern."[16/] This standard is extremely important, because it specifies whether statistically significant disparities warrant redress.

For example, analysis may provide highly significant statistical inferences of extremely minor differences in adverse effects among different demographic groups. In th context of employment discrimination, courts have required that statistically significant disparities have "practical significance."[17/] Under H.R. 1103, must federal agencies address even minor differences? How significant must the difference be in order to warrant action? This question can only be answered based on the strength of the inference that the differences in adverse effects are caused by discrimination, and on social choices regarding how many resources to devote in what manner to addressing discrimination. For obvious reasons, the answers are subject to substantial dispute.

D. H.R. 1103 Would Invite Litigation.

Because the complicated and challenging issues associated with environmental justice are best addressed through proactive government action and collaborative problem-solving, section 6-609 of Executive Order 12,898 wisely provided that:

> "This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any person with this order."

This would change drastically if H.R. 1103 were to be enacted. Section 2(c) of the bill states that the language quoted above "shall not apply for purposes of this Act." What that really means is that any person could file a lawsuit in federal court at any time against the United States, its agencies, or its officers, based on any alleged act or omission that resulted in any alleged disproportionate impact.

The results here are not difficult to predict, but they are unlikely to be constructive. Most environmental permits are issued by state and local agencies implementing programs that have significant involvement by the U.S. Environmental Protection Agency. Persons claiming disparate impacts from any new or existing facility

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16/ *See* Vicki Been, *Environmental Justice and Equity Issues in* ZONING & LAND USE CONTROLS, Ch. 25D.04[3] at 25D-90 (Rohan, ed., 1995).

17/ LINDEMANN & GROSSMAN at 94.

will have little difficulty drafting pleadings that claim a violation of the newly codified Executive Order 12,898. These lawsuits will name EPA, and perhaps some of its officials, as defendants. These cases will ask federal judges to second-guess the permits issued by state and local agencies, based solely on the racial or ethnic composition of the communities living near the facilities.

At a minimum, legislation that would open the doors to such litigation should not advance without careful consultation with all affected parties, including the state and local environmental agencies and the Environment & Natural Resources Division of the U.S. Department of Justice.

III. EPA's EJ Toolkit Sends EPA's Environmental Justice Coordinators Down the Path of Confrontation, Rather than Collaboration.

EPA's target audience for the Toolkit is "the Environmental Justice Coordinators at EPA Headquarters and Regional Offices who are directly involved in environmental justice initiatives and are the front-line in addressing allegations of environmental injustice." Toolkit at 2. The stated objective of the Toolkit is to provide the EJ Coordinators with both

- "a conceptual and substantive framework for understanding the Agency's environmental justice program"; and
- "a systematic approach with reference tools that can be used . . . to assess and respond to potential allegations of environmental injustice . . . . "

Toolkit at 1. The BNEJ agrees that it would be beneficial to provide these tools to the Agency's EJ Coordinators. Unfortunately, the Toolkit falls well short of the mark. Specifically, the Toolkit embodies a confrontational approach to potential environmental justice problems, rather than the collaborative problem-solving approach that is far more likely to succeed.

A. The EJ Coordinators Should Serve Primarily as Facilitators and Problem Solvers.

In order to address potential environmental justice issues most effectively, EPA's EJ Coordinators should seek to serve as facilitators and problem solvers, rather than fact-finders. By promoting collaborative discussions among state and local government, business and industry, and communities, the EJ Coordinators are in the best position to help achieve "win-win" solutions.

This means that the EJ Coordinators should focus on identifying potential solutions to the various problems they encounter, rather than on studying those problems. To help the EJ Coordinators do their jobs, they might benefit from some technical assistance in (1) understanding the nature of the various complaints th y may

receive, and (2) setting priorities among those complaints. But the Toolkit does not provide that assistance. Instead, as shown below, it departs from the collaborative problem-solving model and reflects a more confrontational approach to environmental justice issues.

B. The Toolkit Departs from the Collaborative Problem-Solving Model

The approach taken in the Toolkit is curiously out of touch with some of the best and most current thinking – both within EPA and elsewhere – on the collaborative problem-solving model. Consider the work of the National Environmental Justice Advisory Council ("NEJAC"), the advisory committee chartered and overseen by the Office of Environmental Justice ("OEJ"). In the past several years, the NEJAC has released a series of major advisory reports intended to guide EPA policy on environmental justice issues. These reports embrace a constructive problem-solving approach that contrasts sharply with the adversarial, fragmented approach advocated in the Toolkit.

For example, in its seminal study of the potential to advance environmental justice through pollution prevention, the NEJAC in its consensus chapter advocated a move "toward a multi-stakeholder collaborative model to advance environmental justice through pollution prevention." The NEJAC specifically advised that:

> A community-driven multi-stakeholder model would feature the common goal of a healthy local environment and highlight the need to share responsibility for achieving that goal. A community-driven model would take a broad look at environmental concerns in the community, identify the most effective ways to improve health, and utilize the potential of collaboration and mobilizing local resources to make progress in improving the health status of local residents. A community-driven collaborative model would acknowledge the importance of sharing information and establishing a level playing field for all participants. This kind of collaborative model can help build sustainable community capacity to understand and improve the environment.

National Environmental Justice Advisory Council, *Advancing Environmental Justice through Pollution Prevention* 21 (June 2003) (emphasis supplied).

The approach that underpins the NEJAC pollution prevention report is not an aberration, but is an approach that has been endorsed by EPA's Office of Environmental Justice in numerous other settings. It is the OEJ, after all, that chairs the federal Interagency Working Group that has gained such acclaim for its piloting and institutionalization of the collaborative model. *See, e.g.,* Charles Lee, "Collaborative Models to Achieve Environmental Justice and Healthy Communities," *Human Rights* (ABA), Volume 30, Issue 4 (Fall 2003). *See also* National Environmental Policy Commission, *Final Report to the Congressional Black Caucus* at 10 (consensus recommendations) (Medical University of South Carolina September 26, 2003).

The effectiveness of the collaborative approach was well articulated in anoth r recent report prepared by EPA's Office of Policy, Economics and Innovation, which summarized:

> Multi-stakeholder collaboration can act as a transformative mechanism for enabling communities and associated stakeholders to constructively address complex and long-standing issues concerning environmental and public health hazards, strained or nonexistent relations with government agencies and other institutions, and economic decline.

Office of Policy, Economics, and Innovation, *Towards an Environmental Justice Collaborative Model*, p. 6 (EPA/100-R-03-001 January 2003), www.epa.gov/evaluate.

The National Association of Manufacturers, a founding member of the BNEJ, was an active and enthusiastic participant in the NEJAC pollution prevention report quoted above. The BNEJ membership is, frankly, dismayed to see EPA's Office of Environmental Justice encourage its EJ Coordinators to turn away from the collaborative problem-solving model and to focus instead on a confrontational approach that – as we show below -- pits one "team," consisting of EPA's EJ Coordinators and the community activists, against another "team" made up of state and local government officials and the business community.

C. The Toolkit Outlines a Process Similar to EPA's Highly Controversial Title VI Guidance.

Not only is the Toolkit not premised upon a collaborative process, but it actually outlines a process similar to EPA's highly controversial proposed guidance on Title VI investigations, issued in 2000. The BNEJ commented extensively on that proposed guidance. In particular, we emphasized that the proposed Title VI Guidance

> adopts a reactive strategy that promotes uncertainty for all involved. Instead of defining clear standards about which facilities and operations will be allowed in which communities, [it] encourages ad hoc challenges to proposed or existing environmental permits. The results are: (1) affected communities and other environmental justice advocates are always reacting to specific projects, rather than proactively establishing clear standards to protect their communities; (2) the momentum of an existing or even proposed facility can be difficult to stop; (3) state permitting agencies and facility owners/operators face substantial uncertainty about whether a proposed activity will be found to have an impermissible disparate impact . . . and (4) a facility owner/operator can invest substantial amounts in a particular facility (including an established, long-permitted facility) and/or permit application only to have it unpredictably investigated and rejected . . . .

August 28, 2000 BNEJ Comments at 4-5, quoting Craig Arnold, *Land Use Regulation and Environmental Justice*, 30 Env'tl L. Rptr. (ELI) 10395, 10397-98 (June 2000) (emphasis supplied).

The Toolkit, in turn, shares many of these same defects. We mention below some of the more glaring flaws in the Toolkit:

1. Complaints May Be Raised By Anyone At Any Time, With or Without Evidence.

A basic concern with the Toolkit is its assumption that anyone may raise a complaint of environmental injustice at any time and in any manner, with or without any supportive evidence. This seems to invite ad hoc challenges to virtually any regulatory or permitting decision, even after the final rule or permit is issued. This in turn means that there will be no predictability and no finality in the regulatory and permitting processes.

Apparently complaints of environmental injustice need not meet any particular threshold of significance in order to warrant a screening-level assessment by EPA. The complaints need not even be made in writing. Moreover, these complaints can be made even after previous complaints of environmental injustice – based upon the same fact pattern -- have been made, reviewed, and found to lack merit.

What is more, the Toolkit does not even require the complaining parties to exhaust their administrative remedies with state and local government agencies. This is a very serious flaw, because the community, the regulators, and the permittee(s) all benefit when these issues are pursued to the greatest extent possible during the regulatory or permitting processes.

In fact, requiring exhaustion would help in two ways. First, if the complaining party achieves its objectives through the regulatory or permit process, then there is no need to file a complaint of alleged environmental injustice. Second, if the complaining party does not achieve its objectives because the regulatory or permitting agency considers and rejects the arguments being advance, then the complaining party may well reconsider the merit of filing a complaint with EPA.

Moreover, even if a complaint is eventually filed, exhaustion helps insure that EPA will have readily at hand a well-developed factual record on which to base its decision-making. The regulatory or permitting agency likely will not be required to gather new data, as the issue(s) will already have been aired. Additionally, the community, the agency, and the permittee(s) would all benefit from early awareness of the issues underlying the complaint, rather than being surprised when new issues are raised in a complaint filed with EPA months after the regulatory or permit decision at issue.

2. EPA Defines the "Affected Community" and then S lects a "Reference Community" for Comparison.

A key step in analyzing potential disproportionate adverse impacts is to identify, and determine the characteristics, of the affected community, which then provides a basis for comparison to an appropriate reference community. The results of the analysis will hinge on whether the affected population differs significantly from the comparison population. Unfortunately, the Toolkit fails to clarify how EPA will approach this vital task.

The Toolkit seems to envision using proximity to a pollution source as a proxy for actual exposure to pollution. This suggests that EPA will draw circles of various radii around the source(s) and then assume that the population within the circles is somehow "affected" by air emissions or other impacts. This approach leaves the community, the regulatory agency, and the permittee completely unable to predict the outcome of the analysis, because they cannot predict what the "affected community" will be. They have no way of knowing how large or how small the circles should be or will be. Nor do they have any way of telling how accurately any circles can reflect the realities of exposure, given that emissions are rarely distributed in circular patterns. There can be neither predictability nor certainty to EPA's investigations when no one knows in advance whether EPA will rely on proximity approaches and, if so, how EPA will determine the size of the circles.

Similar problems arise when EPA selects a reference community for comparison purposes. There is no "control" reference group for comparison with the affected community that precisely matches its demographic composition and that lacks the presence of the facility of concern. No theoretical standard exists with which to d t rmine what demographic reference population is the most "appropriate." A reference community thus must be selected based on arbitrary choices. These choices may include demographic groups located within a greater distance, or within a larger jurisdiction, or within a "comparable" jurisdiction in another location.

The inherently arbitrary selection of a reference community has significant consequences, because the racial and ethnic composition of communities is not uniform. Consequently, it will be a rare event that any particular community will contain the same demographic composition as the jurisdictions that surround it. "Generally, population variables are not 'well-mixed': they are not randomly distributed in groups and clusters . . . ."18/ Therefore, if proximity alone is used to define the "affected community," we should expect to find on a fairly routine basis statistically significant disparate impacts between smaller "affected community" jurisdictions and larger "reference community" jurisdictions. As explained below in Section IV, these disparat impacts should not be equated with environmental injustice.

18/ Leslie Kish, Survey Sampling 163 (1965).

In sum, EPA's Toolkit fails to explain how the Environmental Justice Coordinators are to make the all-important comparison between the "affected" community and the "reference" community. Without clarity on that basic point, no one can ever know in advance whether EPA will decide that any particular situation involves "environmental injustice."

3. EPA Sets the Bar Too Low on Data Quality.

EPA's Toolkit indicates a preference for valid and reliable data, but also a willingness to use other data -- data that are not valid and/or not reliable -- in cases where good data are unavailable. This approaches disserves the community, the regulatory agency, and the permittee(s) by allowing decisions to be made on the basis of information or analytic methods that may not be sufficient to justify the conclusions drawn from the available data, or that may not present an accurate picture of the actual situation.

This problem is most readily apparent in EPA's discussion of the causation aspect of its analysis. The issue here is individual or aggregate causation: Does the facility, either alone or in combination with other sources, actually cause a disparate adverse impact?

To EPA's credit, the Toolkit acknowledges the difficulty of establishing causation in many situations. Toolkit at 69. But EPA does not explain how it will ensure that any proxy for an actual exposure that is evaluated is the cause of a discriminatory disparate impact.

For example, EPA states that it will consider as an "indicator" of environmental injustice "the number of environmentally regulated facilities within a community" and "the length of time" they have been in operation. Toolkit at 31-32. In other words, EPA will look at *potential* exposure scenarios and make various assumptions in order to use this information in support of overall findings about adverse impacts. But the use or storage of pollutants cannot be equated with actual releases or actual exposure. It would be highly inappropriate for EPA to evaluate the specifics of such use and storage in order to predict the likelihood of possible future releases. See *Fertilizer Institute v. United States EPA*, 935 F.2d 1303 (D.C. Cir. 1991) (even CERCLA's very broad definition of "release" does not include storage). This kind of prediction should not be considered to support a complaint of environmental injustice.

The point here is not that EPA must always have current pinpoint emissions monitoring data in order to draw any conclusions about releases and exposures from a facility. Estimates of emissions may be entirely appropriate where actual data are unavailable. However, actual releases and actual exposures, not potential releases, should be the focus of any adverse impact determination.

Finally, despite EPA's stated preference for valid and reliable data, some of the databases and other potential sources discussed in the Toolkit fall short of the mark. TRI reporting data, for example, are widely recognized as having built-in limitations due to the "one size fits all" rules that govern the way facilities must calculate or estimate their own TRI data. The CERCLIS database maintained by the Superfund program is also known to have varying data quality among the EPA Regional offices. It may not be possible to specify in advance which data sources will and will not be considered in all cases. EPA should recognize, however, that data from some of the most common databases may well be unsuitable for use in assessing complaints because they are neither valid nor reliable.

4. EPA May Not Involve the Permittee in the Assessment.

EPA should recognize that the permittee typically has a strong and legitimate interest in any government activity relating to its facility. The issue need not be viewed solely in terms of whether a permit amounts to a legally protected property interest. Instead, it can be viewed in terms of ensuring that all persons with an interest in the issues are informed and afforded a reasonable opportunity to submit any information they believe may be useful.

The permittee will likely be in possession of the most up-to-date information about actual facility emissions, available pollution-control technologies, the cost of installing them and their technical practicability. Clearly, there is a role for the permittee(s) in assessing any complaint of environmental injustice, and EPA should recognize such a role.

The permittee's perspective may be particularly crucial in cases where a regulatory benchmark, rather than a risk level, is used to assess the facility's emissions. Regulatory limits on emissions are often established through a lengthy process that considers various margins of safety, impacts on sensitive sub-populations and other complexities. In the *Select Steel* case, for example, one critical fact was that the National Ambient Air Quality Standards were established to protect human health with an adequate margin of safety. The permittee will often have a unique appreciation of issues such as these from having participated in the standard-setting process. To leave the permittee uninvolved is to risk the loss of this potentially vital information.

Finally, not notifying the permittee of the complaint is simply not being fair to a stakeholder with a strong and legitimate interest in the issues. Permittees may be inv sting substantial amounts in facilities that may never be allowed to operate, and they obviously need to know that their permits are potentially at risk.

5. EPA May Pressure the State Agency to Take Action Against the Permittee Even If its Facility Has Little Impact on Overall Pollution Levels.

Despite EPA's frequent acknowledgment that a single permitted facility is rarely the sole cause of an disparate adverse impact, there is no mention in the Toolkit of how th remedy for such an impact should be distributed among the various sources that contribute to it.

For all that appears, the complaining party could simply focus on the facility that received the most recent permit (or permit renewal) and demand of that facility sufficient emissions reductions or offsets to address any impacts of concern, even though the facility in question contributed very little to those impacts in the first place. Indeed, this is exactly how EPA proceeds in the "hypothetical example" it presents in Appendix C to the Toolkit.

The BNEJ believes that EPA must commit itself strongly and explicitly to a rule of proportionality -- a facility that is a minor part of the problem should not be expected to bear a major share of the solution. This basic rule of proportionality is absent from the Toolkit.

Focusing on the most recent permit, and attempting to hold that one facility accountable for the impacts of many other sources, is blatantly unfair and completely unworkable. What is more, expecting one permittee to remedy or mitigate the cumulative adverse impacts of other businesses, governmental sources, and the general public is also unlawful. Again, the Toolkit simply fails to provide the EJ Coordinators with a coherent framework for addressing this important recurring issue.

6. EPA's Actions May Be Unreviewable.

Finally, the Toolkit fails to provide any right of administrative appeal or judicial review of the actions taken by EPA's EJ Coordinators in response to complaints of environmental injustice. In the "hypothetical example" given in Appendix C, for xample, EPA decides that the permittee should pay for an assessment of environmental justice issues and that the state should deny the air quality permit. It is manifestly unfair for the EJ Coordinators to make decisions of this magnitude in a vacuum, shielded from review by anyone else. EPA should expressly acknowledge the desirability of administrative and judicial review for all Agency decisions in the area of environmental justice that significantly affect the rights of any person. The Toolkit itself should also acknowledge the presumption that such review is available.

D. EPA's "Hypothetical Example" Dramatically Illustrates the Toolkit's Confrontational Approach.

The confrontational approach underlying the Toolkit is illustrated most dramatically in EPA's "hypothetical example" of "Census Tract 9999" in Chestnut Heights County, which is Appendix C to the Toolkit. Taken as a whole, Appendix C suggests that EPA's EJ Coordinators should view the facts from the perspective of citiz ns who complain, and should pay little attention to the views of state and local

government officials, or to those of business and industry stakeholders. The BNEJ does not believe that this is how EPA's EJ coordinators actually perform their work. Nor would this be a constructive approach for them to begin using.

Among the many elements of EPA's "hypothetical example" that illustrate the on -sided and confrontational approach are the following:

- No written complaint is ever filed by "Citizens for Environmental Justice (CEJ)," but CEJ "insists" that EPA staff accompany them on a walking tour of their small community, and EPA readily agrees to do so (pp. C-1, C-3);

- EPA observes what it describes as "huge" tractor trailers, a "mammoth" landfill, abandoned buildings that "on their face" indicate possible contamination, and a facility owner who "immediately" shuts his doors as soon as he sees an unfamiliar face (p. C-1);

- EPA never mentions the zoning or other approved land use plan(s) for the community;

- EPA quickly adopts the CEJ perspective that their minority, low-income neighborhood is widely referred to as "The Pits," and EPA itself consistently uses that term, apparently as a gesture of solidarity (p. C-1 and throughout);

- EPA describes the President of CEJ as "charismatic," in contrast to the industrial facility owner who is described as behaving in a highly suspicious manner (pp. C-1, C-2);

- EPA echoes CEJ's claim that their neighborhood "is targeted by the decisionmakers" because the residents are minority and low-income, yet EPA apparently finds no evidence to support such a claim (p. C-3);

- EPA fails to mention the state permitting agency's facially neutral permitting practices, or the fact that state law typically requires permitting decisions to be based on technical criteria, not on demographics;

- After the walking tour, EPA's notes "strongly indicate an environmental justice situation," apparently because numerous potential sources of pollution are located in a small community whose residents are heavily minority and low-income (p. C-4);

- EPA invites CEJ to send two representatives to help EPA plan its screening-level assessment, but makes no effort to involve either the owner of the proposed facility whose air quality permit application is

pending, or any of the other industrial stakeholders in the community (p. C-5);

- EPA decides that the reference community for comparison purposes is the entire county (Chestnut Heights County), based solely on the way in which CEJ has articulated its (verbal) complaint (pp. C-5 to C-6);

- EPA meets repeatedly with CEJ and takes pains to insure that the assessment plan, the conceptual model, etc., are acceptable to CEJ, yet EPA fails to provide information to, or seek input from, any of the industrial stakeholders (p. C-6;

- EPA asks the state permitting agency to re-do its air quality modeling for the proposed facility, this time "assuming more extreme weather conditions for the area than assumed previously," although there is no indication that the original assumptions were inaccurate in any way or that the new "more extreme" assumptions are more realistic (p. C-11)

- Based on the "more extreme" modeling, EPA concludes that the proposed facility could have adverse health effects on the community "given the possible existing levels of air contamination" (p. C-13);

- Although the state DEQ held a public hearing on CEJ's concerns less than a month ago, and released extensive documentation on its approach to the air quality permitting issues, EPA faults the DEQ because the CEJ members were unable to read its documentation (pp. C-4, C-11);

- EPA expresses concern that "the state DEQ might not deny the [proposed facility's air quality] permit" (C-14) (emphasis supplied), even though the facility apparently meets all of the technical standards for obtaining the requested air quality permit;

- EPA then convinces the state DEQ "that a more Refined Assessment is needed" and that "the owners of the proposed facility should contribute resources for the assessment" (p. C-14); and

- EPA also suggests to the state DEQ various "mitigation options that the state can discuss with the facility owners . . . or consider for state actions . . . ." (p. C-14).

In sum, EPA responds to CEJ's verbal complaint by devoting substantial resources to a new investigation, viewing the facts in the light most favorable to CEJ, second-guessing the findings of the state regulatory agency, bypassing the views of the affected industrial facility, and then pressuring the state agency to extract both a financial contribution and also unspecified "mitigation" measures from the facility owner.

This is a textbook example of confrontation and intrigue being pursued where collaborative problem-solving would have achieved better results. Yet the Toolkit presents this case study to the EJ Coordinators as an illustration of how they should perform their official duties. For EPA to encourage this kind of conduct by its employees is nothing short of disgraceful.

IV. EPA Must Explain and Document the Toolkit's 51 Different EJ "Indicators"

The Toolkit presents a total of 51 "Environmental Justice Indicators" to be used by the EJ Coordinators in assessing potential complaints. According to the Toolkit, EPA developed these 51 indicators by "adapt[ing]" various indicators used by the Organization for Economic Co-Operation and Development (OECD). Toolkit at 26. But upon closer examination, it is clear that EPA has not fully explained, or adequately documented, most of the 51 indicators it now seeks to use.

The OECD's most current published work in this area is entitled "OECD Environmental Indicators – Towards Sustainable Development" (2001). This publication includes indicators approved by the Environment Ministers of the OECD member countries for use in performing environmental assessments. In this 2001 publication, OECD presents 34 such indicators, divided into 2 groups – environmental indicators and socio-economic indicators.

EPA's Toolkit, on the other hand, presents a total of 51 indicators, divided into 4 groups – environmental, health, social, and economic. According to the Toolkit, EPA has "modified or supplemented the OECD's indicators." Toolkit at 26.

But it appears that EPA has done much more than that. Of the 51 indicators presented in the Toolkit, very few are OECD indicators. Most of the others – particularly those presented as "health" and "social" indicators – are not even loosely related to any of the OECD's indicators. In other words, EPA created many of these indicators on its own, without offering any explanation or documentation for them.

At a minimum, then, EPA must now independently explain and support the manner in which it developed each of these 51 indicators, as well as its rationale for proposing to use them in evaluating environmental justice complaints. The Toolkit simply does not present this explanation or this support.

Even without this explanation or support, many of the 51 indicators in the Toolkit raise significant questions because on their face, they do not appear to be indicative of either environmental problems or environmental injustice. We address below just a few examples taken from 3 of the 4 sub-groups in the Toolkit.

- **Climate** is listed as an Environmental Indicator, even though every community obviously has a climate and the presence of a climate is not by itself an indicator of any environmental quality issue or environmental

justice issue;

- **Infant mortality rate** is listed as a Health Indicator, even though EPA acknowledges that this rate "is sensitive to a variety of community health factors . . . including nutrition, drug and alcohol use, and disease status," Toolkit at 39-40, which may have nothing to do with environmental quality or environmental justice issues;

- **Percent of the population that is literate in English or other languages** is listed as a Social Indicator, when the literacy rate in and of itself is obviously not an indicator of either environmental quality or environmental injustice;

- **Percent of the population with access to public transportation and services** is listed as a Social Indicator because low-income persons may "require public transportation to access urban . . . amenities," Toolkit at 47, which on its face is not an indicator of either environmental quality or environmental injustice;

- **Percent of community that uses regulated (cigarettes, alcohol) and unregulated (drugs) substances** is listed as a Social Indicator because these substances can make users "more susceptible to other environmental hazards," Toolkit at 48, yet their use is a matter of personal choice and respect for the law, not an indicator of environmental quality or environmental injustice; and

- **Cultural dynamics** is listed as a Social Indicator, without any clear definition of what it means or how it can be measured, yet it is not an indicator of environmental quality or environmental injustice.

In sum, EPA has yet to explain (1) how it derived these 51 indicators from the OECD's drastically different set of 34 environmental indicators, or (2) how EPA's 51 Indicators can be reliably measured and used in conducting assessments, or (3) most fundamentally, why EPA believes these 51 indicators actually "indicate" the existence of environmental injustice. Until EPA provides the essential explanation and documentation, the Toolkit should not be used by EPA's EJ Coordinators.

V. By Equating All Disproportionate Impacts with Environmental Injustice, The Toolkit Promises Far More Than EPA Can Deliver.

The final problem with the Toolkit is also the most fundamental: It promises far more than EPA can deliver. Based on the term "fair treatment," as found in EPA's Mission Statement, the Toolkit seemingly equates all disproportionate impacts with environmental injustice. *See, e.g.,* Toolkit at 71-72. This is not sound public policy, because EPA is promising more than it can possibly deliver. As we explained above in

greater detail in Section II, not all disproportionate impacts are the result of discrimination, and it is neither possible nor desirable to guarantee that all persons will experience equal environmental results.

March 6, 2007

Honorable John D. Dingell
Honorable Joe Barton

Dear Chairman and Ranking Member:

The undersigned organizations write to express our support for the Environmental Justice Act of 2007. It is a statistical fact that low-income and people of color populations often face disproportionate incidences of environmentally-related harm, including higher rates of disease, more health threats like lead paint in homes, and undue exposure to hazardous waste sites, toxic playgrounds, and schools located near Superfund sites and facilities that release toxic chemicals.

We believe that this Act will advance environmental protections in communities of color and low-income communities in several significant ways. First, the bill would codify the 1994 Executive Order entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (E.O. 12898) to ensure that all federal agencies and their programs and rules are appropriately protecting our nation's most vulnerable communities. By passing this bill and codifying the Executive Order, Congress would strengthen the legal basis for the provisions of the Order and give Legislative Branch support to the important goal of ending disparities in treatment for predominately minority and low-income communities in our federal environmental programs.

Second, the legislation requires that EPA implement recommendations provided by the agency's own Inspector General as well as the Government Accountability Office on how the Executive Order should be properly implemented to protect environmental justice communities.

Third, the Act provides for much-needed congressional oversight and accountability by requiring EPA to regularly report on its progress in implementing these policies.

We applaud the leadership of Representatives Hilda Solis, Alcee Hastings, and Mark Udall and Senators Richard Durbin and John Kerry in advancing this legislation. We look forward to working with them and you to pass the Environmental Justice Act of 2007 as well as other initiatives that advance the goals of environmental justice.

Sincerely,

Advocates for Environmental Human Rights (LA)
Alternatives for Community & Environment (MA)
Dr. Robert Bullard, Environmental Justice Resource Center (GA)
Center on Race, Poverty and the Environment (CA)
Clean New York (NY)
Clean Water Action
Coal River Mountain Watch (WV)
Communities for a Better Environment (CA)

Connecticut Coalition for Environmental Justice (CT)
Concerned Residents of Lockwood Valley (CA)
Deep South Center on Environmental Justice (LA)
Environmental Health Fund National
Earthjustice
Fort Ord Environmental Justice Network, Inc. (CA)
Global Community Monitor (CA)
Groundwork USA
Gulf Coast Community Services Center / IRD (MS)
Gulf Coast Unitarian Universalist Fellowship (MS)
Healthy San Leandro Collaborative (CA)
Indigenous Environmental Network
Interfaith Community Association/Industrial Areas Foundation (NJ)
Ironbound Community Corporation (NJ)
Lawyers' Committee for Civil Rights Under Law
Natural Resources Defense Council
National Alliance of Vietnamese American Service Agencies
New Jersey Environmental Federation (NJ)
North Jersey Environmental Justice Alliance (NJ)
Northwest District Association Health & Environment Committee (OR)
People for Children Health & Environmental Justice (CA)
Pesticide Action Network of North America
Robin Saha, Assistant Professor, University of Montana (MT)
South Jersey Environmental Justice Alliance, Inc. (NJ)
Southwest Network for Environmental and Economic Justice (NM)
Sustainable Community Development Group, Inc.
Sustainable South Bronx (NY)
Toxics Action Center Campaigns (MA)
UPROSE (NY)
Washington State Human Rights Commission (WA)
WE ACT for Environmental Justice, Inc. (NY)
West Oakland Environmental Indicators Project, Inc. (CA)

307 COMMUNITY, ENVIRONMENT, FAITH, INVESTOR, LABOR, LEGAL, PUBLIC HEALTH, PUBLIC INTEREST, RESEARCH AND SCIENTISTS ORGANIZATIONS CALL ON CONGRESS TO RESTORE TOXIC CHEMICAL REPORTING

September 28, 2007

Dear Representative:

On behalf of the undersigned organizations, we write to urge you to support the Toxic Right-to-Know Protection Act (H.R. 1055), which will be the subject of a hearing in the Environment and Hazardous Materials Subcommittee on October 4th. This legislation would reverse a recent EPA rule change to the federal Toxic Release Inventory (TRI) that restricted the public's right-to-know about harmful chemicals released from thousands of facilities in states and communities across the country.[1]

The TRI program is simple in application but profound in effect. Industrial facilities that use certain toxic chemicals in amounts that exceed established reporting thresholds must file annual release reports, which are subsequently compiled and posted on EPA's website for public review. Small businesses under ten full-time employees and certain industry sectors are exempted from TRI reporting requirements.[2]

Although the TRI program does not mandate toxic reductions, the process of public disclosure is a powerful incentive to voluntarily decrease toxic releases. In fact, releases of TRI toxic chemicals that have been continuously reported since 1988 have decreased by 58%.[3] In addition to promoting toxic reductions, the TRI is an essential tool that alerts workers, first responders, public health officials and communities to the presence of harmful chemicals.

After more than two decades of success, EPA's new rule is a serious setback for the TRI program. The rule limits available toxic release data by adding a loophole that allows facilities to withhold previously reported information from governmental and public review. A recent GAO assessment determined that these changes will have a significant impact on information available to the public, including more than 3,500 facilities across the country that would no longer need to report their toxic releases. The GAO also found that EPA violated its own rulemaking procedures and noted several problems with EPA's analysis justifying the changes.[4]

EPA's action to limit the public's right-to-know was overwhelming opposed by more than 120,000 citizens, 113 government agencies and officials representing 23 states, and hundreds of organizations representing labor, public health, environmental, investor and faith-based interests. The changes were also opposed by the U.S. Conference of Mayors, the Environmental Council of States and EPA's own Science Advisory Board.[5] In May 2006, the House of Representatives voted to block EPA from finalizing the rule.[6]

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[1] 71 Fed. Reg. 76,932 *et seq.* (Dec. 22, 2006)
[2] 42 U.S.C. § 11023(b)(1)
[3] EPA, 2005 TRI Public Data Release Brochure. Retrieved May 22, 2007, from www.epa.gov/tri/tridata/tri05/brochure/brochure.htm.
[4] EPA Actions Could Reduce the Availability of Environmental Information to the Public: Hearing before the Senate Environment and Public Works Committee, 110th Cong., 1st Sess. (Feb. 6, 2007) (testimony of John B. Stephenson).
[5] Against the Public's Will, OMB Watch (December 2006). Retrieved May 22, 2007, from http://www.ombwatch.org/info/TRICommentsReport.pdf.
[6] 109th Cong., 2nd Sess., roll call no. 165 (May 18, 2006)

The TRI is a critical public health and informational tool that provides a powerful incentive for voluntary toxic reductions, and arms the public, emergency responders and governments with the information necessary to protect communities from dangerous chemicals. **We urge you to cosponsor and vote in favor of H.R 1055 to restore public access to the toxic release information eliminated by EPA's recent rule.**

Sincerely,

Community Groups (22)

Alliance of Residents Concerning O'Hare

Calhoun County Resource Watch

Centro Latino de Educación Popular

Citizens for Clean Air & Water Pueblo/Southern Colorado

Citizens for Safe Water Around Badger

Clean Air of Western New York

Community In-power and Development Association Inc.

Concerned Residents of Lockwood Valley

Cross Community Coalition

Detroiters Working for Environmental Justice

Don't Waste Arizona

Galveston-Houston Association for Smog Prevention

Global Community Monitor

Glynn Environmental Coalition

Iowa Citizen Action Network

Jones Valley Urban Farm

Kentucky Resources Council, Inc.

ManaSota-88

REACT (Rubbertown Emergency ACTion)

Sustainable South Bronx

The New Grady Coalition

Valley Watch, Inc.

Environmental Groups (126)

Action for a Clean Environment

ActionPA

Acton Citizens for Environmental Safety

Advocates for Environmental Human Rights

Airaware of Evansville, Indiana

Alabama Rivers Alliance

Alaska Community Action on Toxics

Albemarle Environmental Association

Alliance for a Clean Environment

Alliance for Sustainability

American Bottom Conservancy

Annie Appleseed Project

Arizona Toxics Information

Black Warrior Riverkeeper

Buckeye Environmental Network

Cahaba River Society

California Communities Against Toxics

Californian for Alternatives to Toxics

Central Valley Air Quality (CVAQ) Coalition

Chemical Weapons Working Group

Citizens Against Ruining the Environment-C.A.R.E

Citizens Campaign for the Environment

Citizens' Environmental Coalition

Citizens for a Clean Environment, Inc.

Citizens for Clean Air and Water

Citizens for Environmental Justice

Citizens Opposing a Polluted Environment (COPE)

Clean Air Council

Clean Air Watch

Clean New York

Clean Water Action

Clean Water Action Alliance of Minnesota

Clean Water for North Carolina

Climate Change is Elementary

Columbia Riverkeeper

Commonweal

Connecticut Coalition for Environmental Justice

Crude Accountability

Downwinders at Risk

Earth Island Institute, Campaign to Safeguard America's Waters

EARTHWORKS

Ecology Center

EnviroJustice

Environment and Human Health, Inc.

Environment California

Environment Illinois

Environmental Action Group of Western New York

Environmental Coalition on Nuclear Power

Environmental Community Action, Inc.(ECO-Action)

Environmental Community Organization

Environmental Defense

Environmental Integrity Project

Environmental Justice Committee

Environmental League of Massachusetts

Environmental Research Foundation

Environmental Working Group

Erie County (PA) Environmental Coalition

Families Against Cancer and Toxics

Florida Wildlife Federation

Food & Water Watch

FresCAMP (Fresno Coalition Against the Misuse of Pesticides

Galveston Baykeeper

GotMercury.Org

Great Lakes United

Green Environmental Coalition in Yellow Springs Ohio

Green Purchasing Institute

Greenaction for Health and Environmental Justice

Greenpeace Toxics Program

Gulf Restoration Network

Hoosier Environmental Council Board

Housatonic Riverkeeper

Indigenous Environmental Network

Journalism to Raise Environmental Awareness

Just Transition Alliance

KAHEA: The Hawaiian-Environmental Alliance

Kentucky Environmental Foundation

League of Conservation Voters

Louisiana Environmental Action Network

Lyons Incinerator Opponents Network

Maine Toxics Action Coalition

Mankato Area Environmentalists

Michigan Environmental Council

Missouri Coalition for the Environment

Montana Environmental Information Center

Mothers Against Airport Pollution

Mothers for Clean Air

MT-CHEER (Coalition for Health, Econ. & Env. Rights)

NAHMMA (North American Hazardous Materials Management Association)

National Environmental Trust

National Refinery Reform Campaign; National Bucket Brigade Coalition

Natural Resources Defense Council

New Jersey Environmental Federation

New Jersey Work Environment Council

New York Climate Rescue

9/11 Environmental Action

North American Water Office

North Carolina Conservation Network

Northern Alaska Environmental Center

Oceana

Ohio Environmental Council

Oregon Environmental Council

Oregon Toxics Alliance

Partnership for a Sustainable Future, Inc.

Pembina Institute

Pesticide Action Network, North America

Pesticide Education Project

Planning and Conservation League

Puget Soundkeeper Alliance

RESTORE

Savannah Riverkeeper

Sierra Club

Silicon Valley Toxics Coalition

South Metro Greens

Southwest Neighbors Protecting Our Environment

Stand Up/Save Lives Campaign

STORM Coalition

Sustainable Measures

Texans for Alternatives to Pesticides

Texas Campaign for the Environment

Toxics Information Project

US Citizens Aviation Watch Association

Vanguard Environmental, Inc.

Washington Environmental Council

Western Lake Erie Association

West-Rhode Riverkeeper

Wild South

Faith Groups (18)

Catholic Health Association

Center for Earth Spirituality and Rural Ministry School Sisters of Notre Dame

Coalition for Responsible Investment Region VI

Coalition on the Environment and Jewish Life

Diocese of Trenton

Earth Ministry

Faith in Place

GreenFaith

Jewish Council for Public Affairs

Muslim American Society Freedom Foundation

National Catholic Rural Life Conference

Presbyterian Church (USA) Washington Office

Restoring Eden

Sisters of Charity of Cincinnati

The IHM Justice, Peace and Sustainability Office

Union for Reform Judaism

United Church of Christ Network for Environmental & Economic Responsibility

Women of Reform Judaism

Investor Groups (14)

Ceres

Clean Yield Asset Management

Co-op America

Domini Social Investments

Ethical Investment Research Services (EIRS)

Green Century Capital Management

Harrington Investments Inc.

KLD Research & Analytics, Inc.

Lazarus Financial Planning

Pax World Management Corp.

Social Investment Forum

Trillium Asset Management Corporation

Walden Asset Management

Winslow Management Company

Labor Groups (16)

American Federation of Government Employees (AFGE)

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

American Federation of State, County and Municipal Employees (AFSCME)

Communications Workers of America

Farmworker Association of Florida

International Union, United Auto Workers

Maine Labor Group on Health

Massachusetts Coalition for Occupational Safety and Health

National Latino Farmers & Ranchers Trade Association

New York Committee for Occupational Safety and Health

Philadelphia Area Project on Occupational Safety and Health

SEIU

SEMCOSH/UAW 2200

United Food and Commercial Workers (UFCW)

United Steelworkers (USW)

Western New York Council on Occupational Safety and Health

Legal Groups (7)

Atlantic States Legal Foundation, Inc.

California Rural Legal Assistance Foundation

Center for Environmental Law & Policy

Center for International Environmental Law

National Lawyers' Guild

New York Environmental Law & Justice Project

Western Environmental Law Center

Open Government Groups (13)

Americans for Democratic Action, Inc.

Californians Aware

Center for Media and Democracy

Center for Media and Democracy

Coalition of Journalists for Open Government

Georgians for Open Government

Indiana Coalition for Open Government

National Freedom of Information Coalition, University of Missouri School of Journalism

New Jersey Foundation for Open Government

New Jersey Foundation for Open Government

OpenTheGovernment.org

Public Knowledge

Society of Professional Journalists

Public Interest Groups (26)

American Working Group for National Policy

Center for Democracy and Technology

CIBA

Common Cause

Empire State Consumer Association

Ethics in Government Group

Government Accountability Project

Gray Panthers National

International Relations Center- Americas Program

National Consumers League

Needful Provision, Inc.

New York Public Interest Research Group

Noise Pollution Clearing House

North Coast Civic Association

Ohio Citizen Action

OMB Watch

Policy Development

Public Citizen

Space Coast Progressive Alliance

Steven and Michele Kirsch Foundation

SWOP

U.S. Public Interest Research Group

Unison Institute

Uranium Impact Assessment Center

USAction/USAction Education Fund

W.E.S.T.

Public Health Groups (42)

Alliance for Healthy Homes

American Association on Intellectual and Developmental Disabilities

American Lung Association

American Nurses Association

Bon Secours Health System, Inc

Breast Cancer Action

Breast Cancer Fund

Cancer Awareness Coalition, Inc.

Center for Environmental Health

Center for Food Safety

Center for Health Environment and Justice

Children's Environmental Health Network

Doctors for Open Government

Endometriosis Association

Environmental Health Education Center of the University of Maryland School of Nursing

Environmental Health Fund

Environmental Health Project

Environmental Health Watch

Farmworker Health and Safety Institute

Health Care Without Harm

Health Integrity Project

Healthy Building Network

Healthy Child Healthy World

Healthy Kids: The Key to Basics

Healthy Schools Network, Inc.

Heart of America Northwest

Huntington Breast Cancer Action Coalition

Improving Kids' Environment

Institute for Children's Environmental Health

Learning Disabilities Association of America

MCS Beacon of Hope

National Center for Healthy Housing

New Hampshire Citizens for Health Freedom

Patient Alliance for Neuroendocrineimmune Disorders Organization for Research and Advocacy

Physicians for Social Responsibility

Prevention is the Cure, Inc.

Protect All Children's Environment

Respiratory Health Association of Metropolitan Chicago

Science and Environmental Health Network

Semmelweis Society International

Student Health Integrity Project

Triumph Treatment Services

Research and Science Groups (23)

Alliance for Aquatic Resource Monitoring (ALLARM) at Dickinson College

American Association of Law Libraries

American Library Association

Association of Research Libraries

Center for Corporate Policy

Center for Science in the Public Interest

Center on Race, Poverty & the Environment

DataCenter

Edmonds Institute

Environmental Research Foundation

Environmental Studies Department at Dickinson College

Federation of American Scientists

Food First/Institute for Food and Development Policy

Hazard Analysis Consulting

Institute for Agriculture and Trade Policy

Institute for Environmental Research and Education

International Center for Technology Assessment

National Center for Vermiculite and Asbestos-Related Cancers, Wayne State University

National Priorities Project

Political Economy Research Institute (PERI)

Sciencecorps

Southwest Research and Information Center

Union of Concerned Scientists

UNITED STEELWORKERS

UNITY AND STRENGTH FOR WORKERS

Support of the Toxic Right-to-Know Protection Act

Statement of

Roxanne Brown
Legislative Representative

The United Steelworkers (USW) is the largest industrial union in North America. We represent 850,000 workers across many diverse industries including steel, paper, chemicals, rubber, oil and gas. Many of the industries I just named are known polluters of our environment, and because of this our Union has a long history of working with the companies that employ our members to preserve, restore and improve the air we breath, the water we drink and all factors in our environment that support the human condition. The Toxics Release Inventory (passed under the Emergency Planning and Community Right-to-Know Act) is a program that has had the support of the USW since its inception more than 20 years ago.

Last year, the EPA significantly weakened the rights of millions of workers and Americans to know what toxic dangers such as lead and mercury may exist in the air and water supplies in their communities by gutting many of the protections guaranteed under the Toxics Release Inventory program.

The new rules allow corporations to release up to 10 times more pollution without reporting it, and also allows corporations to withhold information about their production and use of the most dangerous toxins that accumulate in the body and persist for long periods of time.

The USW lent its voice to a chorus of groups including labor and environmental groups, government agencies in 23 states and over a 120,000 individuals opposing these new rules, but the Administration chose to listen to 34 comments (mostly from chemical companies) favoring the rollbacks.

The TRI program has also served to benefit our members by helping them to be better educated about the toxic dangers they may face at their places of work. It can definitely be said that pollutants that harm workers on the job, often harm their families at home.

Our Union has been a leader within the labor movement in establishing a role for workers and unions on issues that negatively affect the communities in which they live. Be it poor air quality, polluted water or dangerous toxins on the job, our Union has been in the fight for a better world for our members and our children to come since the 1960's, and we continue in that fight through our support of the "Toxic Right-to-Know Protection Act". This is strong legislation that aims to protect the safety of millions of American's across the nation by ensuring their right to know the toxic dangers that might exist within their communities. We commend Representatives Solis and Pallone, and Senator Lautenberg for introducing this legislation, and we look forward to continuing to work closely with them on getting it passed in both houses of Congress.

Thank you.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

1150 17th Street, N.W., Washington, D.C. 20036 • 202-778-4384 • 202-293-5308 (Fax) • www.usw.org

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

February 26, 2008

Mr. Andrew Bopp
Director of Public Affairs
Society of Glass and Ceramic Decorators
515 King Street, Suite 420
Alexandria, VA 22314

Dear Mr. Bopp:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received by no later than the close of business on **Tuesday, March 11, 2008**. Your written responses should be delivered to room **2322-B Rayburn House Office Building** and faxed to **(202) 225-2899** to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at **rachel.bleshman@mail.house.gov**. Please send your response in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

Responses to Questions of February 26, 2008
Andrew Bopp, Society of Glass and Ceramic Decorators

1. What TRI Form would a company need to complete if they needed to ship even 1 pound of lead off-site to a disposal facility per year?

A. The company would be required to complete the complicated TRI Form R if they shipped even 1 pound of lead off-site to a waste disposal facility. The TRI Burden Reduction Rule only allows companies to utilize the simplified Form A if they have zero (0) release on-site and off-site. A neighbor living near a glass decorating shop would know simply by the type of form completed whether or not any lead were released into his or her neighborhood by that shop. In other words, no information of any consequence is lost, but the time spent by small business owners and managers in complying with the paperwork burden is minimized. This rule is the definition of common sense reform.

2. How would you answer the criticism that the burden relief under the new EPA rule is meant to primarily help large businesses?

A. I would note that the TRI burden relief steps benefit primarily small businesses, especially in the glass and ceramic industry. SGCD members such as Baltimore Glassware Decorators, Baltimore, MD, which employs 15 people, are the companies that are utilizing the Form A to streamline their TRI compliance efforts. The owner of that company, Nancy Klinefelter, has testified to that effect before the Senate Environment and Public Works Committee in January 2007. These are the small companies that are by far more likely to have zero release on-site and off-site to enable them to utilize Form A. Larger companies in the industry, especially the very large ceramic manufacturers, handle a much larger volume of colors that may contain lead, and it is much more difficult for them to manage their process to achieve zero release.

In addition, large companies generally employ environmental engineers and compliance staff to handle environmental concerns including TRI reporting. These companies have the expert staff to handle the Form R, so the burden reduction rule has essentially had no impact on them. On the other hand, small companies in the glass and ceramic decorating business do not generally employ expert environmental engineers, or even any engineers at all in many cases, so the ability to use a simplified TRI reporting form is a real benefit to them.

Time not spent on complicated forms to report zero release is time that can be spent finding new business, managing the facility, and working with employees. This is time that is needed to manage a company to compete with competition in China which isn't burdened with even necessary environmental regulations.

> Congress claims to support American business in its efforts to maintain good jobs here in the U.S. If so, it should not be difficult to support EPA's efforts to streamline reporting burdens on small business, especially when the burden reduction rule is applicable only if the company has nothing of consequence to report. If that reform is unacceptable, then no reform is acceptable.

I would be happy to answer further questions if needed.

Sincerely,

Andrew Bopp
Director of Public Affairs
Society of Glass and Ceramic Decorators
1444 I Street NW, Suite 700
Washington, DC 20005
703-838-2810

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

February 26, 2008

Mr. Jose Bravo
Communities for a Better Environment
836 Stanford Avenue
Chula Vista, CA 91913

Dear Mr. Bravo:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

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Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

4/3/08

Chairperson John D. Dingell
U.S. House of Representatives
Committee on Energy and Commerce
By email and fax

Re: Questions from Congressmembers and responses from CBE regarding HR1103 and HR1055 on the Toxic Release Inventory (TRI)

Honorable Chairperson Dingell,

Thank you for contacting us. This letter provides the responses of Communities for a Better Environment (CBE), to questions from the Honorable Joe Barton, Ranking Member, Committee on Energy and Commerce, and the Honorable John Shimkus, Ranking Member, Subcommittee on Environment and Hazardous Materials. These questions related to the testimony of our Board member, Jose Bravo to Congress on October 4, 2007. Thank you for the additional time we were given for responses. The questions and answers are attached on the following pages. We greatly appreciate the Congressional attention to these important issues regarding the Toxic Release Inventory and Community Right-to-Know issues.

Sincerely,

Julia May,

Communities for a Better Environment

Questions and Responses:

1. Your written testimony states your organization would like to see TRI reporting requirements at the lowest possible thresholds. Is the past Form A threshold of 500 lgs. the lowest possible threshold or would you think it possible for some other threshold to be allowed?

Response: A threshold of 500 pounds is not the lowest possible trigger for requiring toxic pollutant releases to be reported. A lower threshold is particularly important for persistent, bioaccumulative toxic chemicals. For example, EPA estimated that U.S. releases of dioxins from all sources combined totaled less than 65 pounds in 1995.[1] If only one facility released 400 pounds of dioxins, this could exceed EPA's estimate for all sources in the nation by more than 500 percent, but could be unreported under a 500-pound threshold. This hypothetical example is provided only to illustrate the need for lower reporting thresholds. In previous comments to EPA, CBE recommended that all facilities using industrial processes that are known dioxin sources should be required to report the amounts of dioxins they release in the Toxics Release Inventory.[2] We still believe that this should be done.

2. EPA testified that TRI does not set pollution limits or standards. Does your organization assert that raising the Form A threshold has contributed to more toxins being emitted into the environment?

Response: Raising the threshold certainly has the potential to contribute to more toxins emitted to the environment, because toxins out of sight are frequently out of mind. This is almost impossible to prove, because we cannot know exactly the extent of unreported emissions (because they fell below the reporting threshold). What we can know is that we have directly experienced that identification of emissions that were previously unidentified, in many different regulatory processes, frequently leads to efforts to reduce these emissions, either voluntarily, or by regulatory requirement. We know that the TRI itself brought to light major emissions of all kinds of chemicals that companies had not previously focused on phasing out. After publication of the TRI, many companies paid more mind to their toxic chemical usage and made efforts to identify alternatives and phase out toxics. We have experienced this not only with the TRI, but in other cases.

---

[1] USEPA, 1998. The Inventory of Sources of Dioxin in the United States (EPA/600/P-98/002Aa). See, e.g., page 2-7. Accounting for uncertainties in the source estimates EPA estimated that toxicity weighted releases of dioxins (toxicity equivalents of the different dioxin compounds, or "TEQ") in 1995 ranged from 5,000-29,100 grams, which is 11-64 pounds.

[2] It should be noted that this approach would provide maximum information while relieving facilities that do not use dioxin-creating processes from the burden of demonstrating that their releases are below the threshold. CBE's February 26, 1999 comments on EPA Docket Control No. OPPTS-400132 described this proposed approach. Also, in 1996 CBE petitioned EPA to add dioxins to the list of TRI chemicals reported and establish an appropriate reporting threshold.

One example is with oil refinery flaring. Before a monitoring program was put in place, flaring emissions were vastly underestimated. When the monitoring and public reporting of flaring emissions was required, companies put in equipment to reduce flaring in California.

3. You mention times that polluters have not reported TRI data and your group had to go through the process of requesting earlier permits in order to find out what chemicals are being used at their facility. Would the EPA's TRI proposal alter your remedy of requesting earlier permits?

Response: When the TRI provides data at the lowest thresholds for reporting, and since the TRI provides more accessible data than most regulatory data, it does alter our need to look for other types of data, such as other permitting documents. Getting other types of data frequently requires doing public records requests and waiting many months to receive data. Sometimes we never receive data requested. The TRI instead provides us with immediate online access to data, which is extremely helpful for evaluating and solving many kinds of environmental problems.

4. You mention some industrial facilities are phasing out toxic chemicals from their manufacturing process/ as a result of your organization's efforts. Sometimes, you stated, the companies actually performed better financially as a result. What was stopping these companies from not using the toxic substances to begin with?

Response: The reasons for shortsighted business decisions may include simple error, and may not all be knowable. However, companies sometimes hurt their own long-term interests by continuing polluting practices because of a conflict between short-term profit and long-term sustainability. An example of this conflict is the response to pollution prevention audits of 112 facilities in California's Silicon Valley.[3] The audits showed that efficiencies from more aggressive pollution prevention measures could net cost savings within five years, but many of the companies preferred less aggressive measures, even though the long term cost savings from these were smaller. This could not be explained fully by lack of access to capital because a locally-supported loan program was available. However, the less aggressive measures, which would allow more pollution with less long term cost savings, were expected to begin providing these smaller savings more quickly.

[3] CBE worked with the Silicon Valley Toxics Coalition and other community based groups in this effort, and reported a retrospective analysis of results in an address to the Commonwealth Club Water Section at San Francisco on November 17, 1994.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

February 26, 2008

Robert D. Bullard, Ph.D.
Ware Professor, Department of Sociology
Director, Environmental Justice Resource Center
Clark Atlanta University
223 James P. Brawley Drive, S.W.
Atlanta, GA 30314

Dear Dr. Bullard:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

The Honorable Joe Barton and the Honorable John Shimkus

1. Do you disagree with the notion that a plant can operate cleanly and legally, but still have air emissions? How many of the factories identified in your study were out of compliance with their permits or the law?

It is possible and quite probable for a plant to operate cleanly and legally and to be in compliance and still have air emissions. Numerous studies show that the TRI program over the past two decades has had a dramatic impact on plants reducing their emissions and at the same time encouraging them to operate cleaner. The 2007 *Toxic Wastes and Race at Twenty* study did not focus on facility compliance.

2. You discuss the cumulative effect of pollution outputs from several sources on the health of low-income and minority populations. If all these facilities are operating in compliance, would you still have this concern? Would stricter local planning or restrictions on business development in these areas be an easier solution than a federal law?

I would still have concern about the cumulative effect of pollution outputs from several sources on the health of low-income and minority populations even if all of the facilities were operating in compliance. In general, an operating facility permit is evaluated on its pollution outputs one facility at a time, rather than its pollution burden factored into the cumulative pollution outputs of multiple facilities on a community. Several states have passed environmental legislation and policies to address the facility "clustering" concerns of nearby residents (see the University of California Hastings College of Law, Public Policy Law Research Institute, *Environmental Justice for All: A Fifty State Survey of Legislation, Policies and Cases*, 3rd edition, 2007, available at http://www.uchastings.edu/site_files/plri/EJ2007.pdf).

I am not suggesting a federal law or a federal agency such as the EPA or some other federal agency take over land use planning. Land use planning is a job primarily for local, regional and state jurisdictions. Nevertheless, the federal government has a role, though limited, since some federal government decisions and guidances impact local and regional land use from zoning regulations to the construction of transportation systems (highways vs public transit and other alternatives to driving) that respond to a region's needs to comply with the federal Clean Air Act.

For example, the January 2001 EPA report, *EPA Guidance: Improving Air Quality Through Land Use Activities*, "is intended to inform state and local governments that land use activities which can be shown (through appropriate modeling and quantification) to have beneficial impacts on air quality, may help them meet their air quality goals" (p. 2). The *Guidance* reads:

> "In recent years, many of EPA's stakeholders have explored using land use activities as strategies for improving air quality. These stakeholders, including state and local planning agencies, have suggested that EPA improve guidance on

> how to recognize land use strategies in the air quality planning process that result in improvements in local and regional air quality" (p.1).

The EPA report described the role of the federal government in the following passage:

> "Although federal agencies are not involved in land use decisions, federal statues such as environmental laws, tax codes, federal mortgage lending policies, and transportation infrastructure policies can influence local land use planning.
>
> Examples of such policies include assessment requirements in the National Environmental Policy Act (NEPA), transportation planning requirements found in U.S. Department of Transportation regulations, and specification on property use included in the EPA's Superfund regulations." (p. 7)

The EPA report adds: "While the federal government does not have jurisdiction over land use decision making, federal statues and funding policies do influence local land use decision. Grant programs that assist stats in redeveloping abandoned brownfields, earmarking federal funding assistance for 'empowerment zones' in older urban areas, and partnership between federal agencies and state and local governments to test land use planning tools are some examples." (p. 8)

Similarly, Federal Aviation Administration (FAA) rules impact certain local land uses, such as the location of solid waste disposal facilities, near airports. Any solid waste disposal facility (i.e. sanitary landfill) which is located within 1,500 meters (about 5,000 feet) of all runways planned to be used by piston-powered aircraft, or within 3,000 meters (about 10,000 feet) of all runways planned to be used by turbojets is considered by the Federal Aviation Administration (FAA) to be an incompatible land use because of the potential for conflicts between bird habitat and low-flying aircraft. (Refer to FAA Advisory Circular 150/5200.33 "Hazardous Wildlife Attractants on or Near Airports" and FAA Order 5200.5, "FAA Guidance Concerning Sanitary Landfills on or Near Airports.")

3. Do you support brownfield cleanup and redevelopment?

Yes, I strongly support brownfield cleanup and redevelopment.

4. You state your support for ensuring TRI reporting every year. H.R. 1055 would eliminate the provision in law that pegs one year as the benchmark for reporting. Does this change your opinion of H.R. 1055?

No.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

February 26, 2008

Mr. Alan Finkelstein
Assistant Fire Marshal
Strongsville Fire and Emergency Services
18600 Royalton Road
Strongsville, Ohio 44136

Dear Mr. Finkelstein:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

March 3, 2008

Response from Alan Finkelstein to Questions for the Record from Members of the Committee on Energy and Commerce

The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus
Subcommittee on Environment and Hazardous Materials

1. "TRI data that EPA collects is somewhat dated. In fact the final 2005 data was released March 22, 2007, 16 months after the final pound of waste was counted or 28 months after the beginning of the reporting period. By March 2007, the data could be seriously outdated.
   Today, shipments of hazardous materials are tracked on paper manifests that track materials from cradle to grave. Unfortunately, that data is not available to first responders during an incident because the paper is often destroyed with the facility. Because industry uses paper reports, first responders have little practical way to make use of that data. EPA is working on making the manifest tracking system electronic and making the data available in "real time" to first responders. Legislation to authorize such a system is working its way slowly through. the Senate. Wouldn't "real time" e-manifest system be more useful for your efforts than more historic TRI data.?"

Good morning gentlemen! Thanks for the opportunity to have further input into what has the potential for being a fairly important decision.

I would like to clear up some possible points of confusion. TRI is for facilities to report what they have onsite and are shipping. There are two separate issues, transportation incidents and onsite releases that go offsite. TRI was not designed as a response tool, as I've indicated in my previous testimony before your committees. It does however give us information on chemicals that may be dangerous to responders and to the communities they are located in. In order to best serve our communities we need to have all the information that's available.

It is extremely unusual for paperwork to be destroyed at either facility or transportation incidents. Records are (or should be!!) kept in safe areas at facilities or at an offsite data storage facility just as any other important business records. Any materials that are shipped via road, rail, or water are required to be accompanied by shipping papers, which are usually housed with the crew or driver. Of course, none of our systems are perfect, so data may be lost.

As far as real time manifests go, the idea is certainly worth exploring, but may not be practical. It's something that we currently have available in the form of OREIS

(Operation Respond Institute). This software allows response agencies to access the mainframe computers and databases of several railroads and one trucking company to aid in determining what may be in a rail car or truck. However, this does not cover all the railroads or trucking companies. I have inserted the web address for OREIS should you want to look at it further (http://www.oreis.com/ori_info/oreis.cfm).

We can't get facilities to report on an annual basis for a variety of reasons, including the paperwork burden. The EPA has free software available (Tier 2 Submit) to facilitate Tier 2 annual reports by facilities and assistance with filing the data, including a report validation tool to ensure that all the required data is submitted. It even is tailored to include data fields that individual states want facilities to report. In spite of this we get complaints that it's too much trouble and too expensive to do. One of the side benefits of the Tier 2 Submit software is that the data can be directly imported to the EPA/NOAA CAMEO Suite software also free and in use by fire departments and LEPCs (Local Emergency Planning Committees) all across the country. In spite of that there are complaints of too large a burden. Even with that in mind I believe that could have an efficient functioning system of daily reporting on storage and shipments from these facilities. The Department of Homeland Security, through its CFATS program, has also added another layer of bureaucracy to the paperwork requirement of facilities. Shouldn't we stick with what we know works?

2. "Is it your position that there are better sources of information than TRI for emergency responders to use, including Emergency Response plans mandated under Section 312 or MSDS data from Section 311?"

We appear to have some confusion again gentlemen. I have never stated that TRI was superior to either of the other sections of the law, as it was not intended for response use. I did however state that TRI is useful for planning purposes. One of the positive side benefits of TRI is that facilities have decreased their inventories of reportable materials so that they don't have to file. There is certainly something to be said for that as it benefits the community and possibly also the facility as a result of less waste to be created and disposed of, as well as good will from public perception of environmental awareness.

As previously mentioned in my responses there are several software programs available for responders, planners, and facilities. In addition to the free software there are numerous proprietary programs available.

I appreciate both of taking the time to ask more questions instead of dismissing my comments out of hand. Please feel free to contact me if I may be of further assistance.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

February 26, 2008

Mr. Wade Najjum
Assistant Inspector General for Program Evaluation
Office of Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Najjum:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

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Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 11 2008

OFFICE OF
INSPECTOR GENERAL

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Barton:

This is in response to your follow-up questions from the October 4, 2007, hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" held before the Subcommittee on Environment and Hazardous Materials. My answers to the questions you posed in the February 26, 2008, letter from Chairman Dingell are enclosed. Thank you for the opportunity to elaborate on my testimony. A similar letter is being sent to Congressman Shimkus. If you should have any questions on this or any other matter, please contact Eileen McMahon, Assistant Inspector General for Congressional and Public Liaison, at (202) 566-2391.

Sincerely,

Wade T. Najjum
Assistant Inspector General for
Program Evaluation

Enclosure

Responses to Questions from the Honorable Joe Barton and the Honorable John Shimkus

1. In 2001, EPA redefined environmental justice. Since H.R. 1103 statutorily reverses this definition, do you see a possible conflict with EPA's broader mission and its statutory mandates in other laws to address the greatest threats first and protect public health without regard to other factors?

Answer:

Executive Order 12898 (Order) set Federal actions to address environmental justice (EJ) in minority populations and low-income populations for the Executive Branch. Our 2004 report entitled "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice," reported that EPA was not consistent with the Order because it had changed the focus of the program from that described in the Order. Regarding H.R. 1103, I cannot answer questions about possible conflicts between proposed legislation and statutory mandates in other laws since I am not an attorney.

2. You mention 12 recommendations that the IG made to EPA on its EJ program and said EPA only agreed to follow one: development of a comprehensive strategic plan. However, you further emphasize that only four (4) of those recommendations, one of which EPA agreed to follow, were "key". It stands to reason, though, that the commissioning and publication of a comprehensive plan assume follow through on your other "key" recommendations (establish specific timeframes for developing definitions, goals, and measurements; and determine if adequate resources are being applied to implement environmental justice). Do you disagree?

Answer:

Yes. In my written testimony I stated we made 12 recommendations to EPA to address the issues we raised and listed all 12 in an attachment. I discussed four key recommendations; I did not say "only" four were key. That wording understates the scope of the disagreement at that time between the OIG and EPA and the progress EPA has made since then. As stated in my testimony, EPA did not agree to commission and publish a strategic plan—EPA specifically disagreed with 11 of our 12 recommendations. My testimony says: "EPA did agree to perform a comprehensive study of program and regional offices' funding and staffing for environmental justice to ensure that adequate resources are available to fully implement its environmental justice plans." The intent of the recommendation was to assure that after implementing the other 11 recommendations, funding and staffing were commensurate with the "new" program. However, since EPA disagreed with all the other recommendations, the review was based on the existing program OIG considered inconsistent with the Order.

3. You state that some EPA program offices believe that they are not subject to the EJ Executive Order since their programs do not lend themselves to reviewing impacts on minority and low-income populations. Do these offices' assertions have merit?

Answer:

It depends since the programs, policies, and activities of some EPA offices are more likely to have potential impacts on EJ communities than others. For example, it is reasonable to assume that some decisions by the Office of Air and Radiation or the Office of Water could have impacts on minority and low-income populations; it is less apparent that the actions of the Office of Administration and Resources Management or the Office of Research and Development could have EJ impacts. Therefore, the determination of whether the programs, policies, and activities of an EPA office have potential EJ impacts needs to be determined on a case-by-case basis. Consequently, we recommended that the Deputy Administrator require the Agency's program and regional offices to identify which programs, policies, and activities need EJ reviews.

4. If, as you say, EPA has been improving its EJ efforts over the last few years, do you think enactment of H.R. 1103 will have a chilling effect on those efforts, i.e. postpone, interrupt, or delay consistent improvement on EPA's EJ efforts?

Answer:

No. In response to our 2006 report, the Agency has committed to a series of pilot EJ reviews as well as the establishment of a framework to implement and oversee these reviews across programs. These actions could support any systemic comprehensive integration of EJ into the fabric of its core mission.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

February 26, 2008

Ms. Nancy Wittenberg
Assistant Commissioner
New Jersey Department of Environmental Protection
401 E. State Street, 7th Floor
P.O. Box 402
Trenton, NJ 08625-0402

Dear Ms. Wittenberg:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received by no later than the close of business on **Tuesday, March 11, 2008**. Your written responses should be delivered to room **2322-B Rayburn House Office Building** and faxed to **(202) 225-2899** to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at **rachel.bleshman@mail.house.gov**. Please send your response in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

SUBCOMMITTEE ON ENVIRONMENT AND HAZARDOUS MATERIALS
Testimony provided by Nancy Wittenberg, Assistant Commissioner, New Jersey Department of Environmental Protection, October 4, 2007

Answers to questions raised by the Honorable John Shimkus (IL) and the Honorable Joe Barton (TX)

Question 1. You testify that NJ has enacted a rigorous set of pollution reporting laws to compliment the Federal government. Why should the Federal government have to step in for other states that do not have the same population and business demographics you do? Do you not think the other states, like California, are smart enough to figure out what they need?

Answer 1.

The USEPA's rule changes under the guise of "burden reduction" create additional layers of reporting criteria for industry to evaluate. These criteria are applicable to both the persistent, bioaccumulative, toxic (PBT) substances and the non-PBTs on the TRI list. Further, USEPA is charged by numerous states (via a lawsuit) of exceeding its statutory authority by manipulating the TRI data at a national level and ignoring the impact of TRI reporting on individual substances and communities.

Presumably, no two states are alike in population and business demographics. However, the fact that the new rule allows for industry to no longer report environmental releases, on-site management and off-site transfer of toxic and hazardous substances that were once reportable will affect communities across the nation.

As for the intelligence of states to figure out what they need in addition to or in place of TRI, it is NJDEP's position that the federal government should not back track on one of the most effective and successful environmental programs ever enacted. Additionally, many states are facing moderate to severe budget difficulties and, therefore, may not be able to implement a toxic use reporting or reduction program to complement TRI.

Question 2. Your testimony acknowledges that NJ's programs are predicated upon filed TRI reports. Since Section 321 of EPCRA prevents TRI regulations from pre-empting your state, I would expect your state to still be able to operate its other programs. Am I correct? Are you representing the official views of any states besides your own?

Answer 2.

New Jersey's Worker and Community Right To Know Act was enacted prior to, and in fact was used as a model for, the federal Emergency Planning and Community Right-To Know Act of 1986 (EPCRA). New Jersey is still able to implement and enforce its pollution reporting/reduction environmental programs.

NJ does not imply or intend to represent the official views of any other state. However, this does not prevent us from being an advocate for other states or for successful environmental programs. Again, many states are facing moderate to severe budget difficulties that may restrict their ability to implement a toxic use reporting or reduction program to supplement TRI.

Question 3. You testify that state-driven initiatives are the reasons for your successes, but you testify also that there are numerous benefits to forcing more widespread and detailed federal TRI reporting requirements, including benzene and hydrazine emissions reductions in your state. In your view, would these types of facilities fall under the new Form A or R requirements? In addition, wouldn't other sections of EPCRA, as well as separate federal environmental laws, like the Clean Air Act, be equally helpful in exposing these emissions?

Answer 3.

The intent of my testimony regarding HR 1055 was meant to show New Jersey's support for the TRI reporting requirements that were in place prior to the burden reduction rule of December 2006. Additionally, we are happy to share information on the benefits of a more detailed reporting program as it exists in our state.

In the Hydrazine example, the facility in question would have been covered by the new Form R requirements for 1995–1997 and 1999-2001, and qualify for the new Form A option for 1998 and 2002. (This facility ceased operations at the end of 2002 and no further reports were submitted.) For the Benzene example, the facility would have been covered by the new Form R requirements for all reporting years since 1995. I believe that it is more important to note that for the last 11 reporting years (1995-2005, since the original Form A was available), nearly 6.1 million pounds of production-related wastes of toxic substances, of which more than 1.2 million pounds were releases to the environment, would have qualified for the new Form A option by New Jersey's facilities. New Jersey's communities and citizens would not have had these data available for public review.

EPCRA 313 (TRI) is the only federal program that requires multi-media reporting of toxics data for actual releases and waste transfers as compared to, for example, air permit allowable emissions. The TRI data are also comparable across industry types, or for chemicals, or for emissions or discharge sources. Other federal environmental programs regulate different groups or classifications of industry with different lists of substances and different reporting criteria and are, therefore, not equally helpful in exposing emissions, discharges, and waste generation of toxic and hazardous substance on a multi-media basis.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

February 26, 2008

Mr. Granta Y. Nakayama
Assistant Administrator
Office of Enforcement and Compliance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Nakayama:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response. Please be advised that you will be receiving an additional set of questions within a week.

To facilitate the printing of the hearing record, your responses to these questions should be received by no later than the close of business on **Tuesday, March 11, 2008**. Your written responses should be delivered to room **2322-B Rayburn House Office Building** and faxed to **(202) 225-2899** to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at **rachel.bleshman@mail.house.gov**. Please send your response in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 2 4 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Dingell:

Thank you for your letter of February 26, 2008, containing follow-up questions from the October 4, 2007, hearing before the Subcommittee on Environment and Hazardous Materials on the Environmental Protection Agency's Environmental Justice Program, and H.R. 1103, the Environmental Justice Act of 2007. Your letter requests responses to questions submitted by several Members of the Committee. As requested, separate letters have been developed for each Member, responding to the specific questions submitted.

Please find enclosed responses to your questions. I hope this information will be useful to you and the Members of the Committee. If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at (202) 564-1859.

Sincerely,

Christopher P. Bliley
Associate Administrator

Enclosure

cc: The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

EPA Responses to Questions for the Record:
October 4, 2007 Hearing on "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know"
H.R. 1103, the "Environmental Justice Act of 2007"
H.R. 1055, the "Toxic Right to Know Protection Act"
Before the House Committee on Energy and Commerce
Subcommittee on Environment and Hazardous Materials

The Honorable Joe Barton and the Honorable John Shimkus

QUESTION 1: Can you name some successes from your EJ program, and related grant programs? How have communities benefited from the grant programs?

ANSWER: The Environmental Justice Small Grant Program has reached approximately 1,000 communities around the country and achieved notable successes in increasing awareness and building community capacity to address local environmental and public health issues. A few of these programs are highlighted below (see also Attachment 1, "Regional Success Stories"):

- Using an Environmental Justice Small Grant, the Cedar Tree Institute worked with 9 faith leaders, representing 200 congregations, to conduct a clean-sweep collection of household hazardous waste and increase the public's awareness of environmental impacts in the Central Upper Peninsula of Michigan. This is a rural area with a large tribal and low-income population. The community benefit from this collaborative effort is the collection of 47 tons of materials (including mercury) in one day, exceeding the amount collected by the Delta County Waste Facility over the last 7 years.

- In 1999, EPA awarded a $20,000 small grant to ReGenesis, a community-based organization in Spartanburg, South Carolina to address environmental, health, economic and social issues in the Arkwright and Forest Park communities. Over the past eight years, the ReGenesis Environmental Justice Partnership has generated more than $166 million in funding and marshaled the collaboration of more than 200 partner agencies, local residents, organizations, industry, and a university to revitalize two Superfund sites and six Brownfield sites. The community benefits from this effort are new housing developments, emergency access roads, recreation areas, green space, and job training that are vital to the community's economic growth and well-being.

- "We Mean Green Clean," a project conducted by the Healthy Homes Campaign in Chicago, Illinois, resulted in the Chicago Public School Office of Purchasing adopting a single source purchasing initiative that meets the Green Seal, ensuring products contain no carcinogens, are not combustible or corrosive to the skin and eyes, and that cleaners do not contain mercury, lead, arsenic, cadmium and other harmful compounds. The Chicago Board of Education also adopted a formal district policy that emphasizes green cleaning goals. The Chicago Public School Policy on green cleaning impacts 600 schools, over 430,000 students, and over 2,600 janitorial workers.

- Our EJ Collaborative Problem Solving (CPS) cooperative agreements have garnered many successes as well. For example, our recipients have:

    - Cleaned up and prepared an abandoned lot for redevelopment in Anahola, Hawaii;
    - Educated the residents of Tacoma, Washington about safe and sustainable methods of harvesting shellfish;
    - Reduced exposure to asthma causing contaminants and increased community access for asthma treatment for residents of a Brooklyn, New York community;
    - Helped the residents of Mebane, North Carolina address issues with failing septic systems, potentially impacting 500 homes; and
    - Reduced lead exposure among residents of Pacoima, California, a Los Angeles area city.

QUESTION 2: H.R. 1103 requires EJ efforts at all agencies of the federal government. Does your testimony represent the views of every agency and department of the federal government?

ANSWER: EPA's testimony was approved through the inter-agency review process. EPA provides a leadership role in the federal government as the Chair of the Federal Interagency Working Group (IWG) on Environmental Justice. Through the IWG, EPA encourages and supports other federal agencies' efforts to integrate environmental justice into their programs, policies and activities. EPA has also developed formal agreements with federal agencies to enhance our collective efforts to address the environmental and public health concerns facing communities (e.g., a Memorandum Of Understanding with CDC/ATSDR), including communities with EJ concerns (see Attachment 2)).

Have any other federal agencies attempted to institutionalize their EJ Programs as comprehensively as EPA is doing?

ANSWER: EPA is comprehensively integrating environmental justice into its core programs, policies and activities and its planning and budgeting processes. We intend to lead by example: EPA's Strategic Plan 2006-2011 has EJ commitments and targets in all 5 goals, and has designated eight national EJ priorities. Each program office and region is implementing an EJ Action Plan, and program offices are working to integrate EJ into the National Program Managers' guidance. EPA is developing and conducting EJ Reviews of specific programs and Agency functions. EPA has also developed regulatory template language to discuss EJ concerns in its regulatory actions. Other agencies are best able to answer questions about their own EJ programs and efforts.

QUESTION 3: Where do you see the EJ Programs in 5 years?

ANSWER: We believe that we have put into place many of the building blocks necessary to show results in terms of environmental or public health improvements. Over the course of the next five years, we foresee the continued development and integration of EJ into EPA's daily work, with the goal of improving our ability to show tangible results.

- Measurable results in program activities – via EPA Strategic Plan goals/targets and EJ Action Plans
- Integration into EPA's rulemaking process – via EJ regulatory template language, EJ training for rule writers, and results of EJ Reviews of rulemaking/standard-setting functions
- More effective EJ integration into programs, policies and activities – as a result of EJ Reviews
- More consistent way of identifying areas with potential EJ concerns – as a result of EJSEAT (see answer to question 4 below).

How would H.R. 1103 alter this plan?

ANSWER: We have no reason to believe that H.R. 1103 would alter our plan.

QUESTION 4: How do you intend to consistently identify areas of potential EJ concern?

ANSWER: The Office of Enforcement and Compliance Assurance (OECA) is developing the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT), which uses select federally-recognized environmental, health, compliance, and socio-demographic data to create a consistent method for identifying areas with potential disproportionately high and adverse human health or environmental effects. OECA is continuing development of the tool this year, by testing potential applications to OECA's programs.

How are you conducting the EJ Reviews?

ANSWER: EPA is nearing completion of developing protocols to begin conducting EJ Reviews to determine the extent to which the Agency's programs, policies, and activities identify and address environmental justice concerns. EPA convened an Agency-wide EJ Reviews Workgroup that developed the protocols for conducting EJ reviews, covering the Agency's core function areas (i.e., rule-making/standard setting, permitting, enforcement, and remediation/cleanup). Each Program Office and Region will identify activities for EJ reviews and establish a schedule for this first round of reviews in their FY09 EJ Action Plans (due June 2008 for Program Offices and November 2008 for Regional Offices).

QUESTION 5: I understand EPA used its funding to create a documentary film. Why did you create this documentary film about one community when you could have used those funds on another grant that could have benefited more than one community?

ANSWER: We developed the DVD to serve as a collaborative problem solving training tool that can reach thousands of communities and other stakeholders.

QUESTION 6: Resources for the Future released a study (April 2007) criticizing the EJ Small Grants Program for not having an impact in reducing TRI emissions. Do you agree with their conclusions?

ANSWER: The EJ Small Grants Program is a competitively awarded program based on the strength of project proposals that EPA receives during the Request for Application period. Applicants must demonstrate a level of capacity to qualify for the grants and operate according to the grant requirements. The EJ Small Grants Program has reached, and continues to reach, many of the communities that are most affected by environmental harms and risks. TRI emissions are only one potential measure of such potential risks.

QUESTION 7: Your testimony demonstrates numerous successes in EPA's environmental justice efforts under Executive Order 12898. Is it the Agency's position that E.O. 12898 alone gives the Agency adequate and meaningful authority to carry out its environmental justice missions?

ANSWER: EPA continues to believe that using its range of statutory, regulatory and enforcement authorities, in tandem with building the capacity of communities and other stakeholders to participate meaningfully in the environmental decisions that affect them, is a most effective way to protect the health and environment of all our nation's people and communities.

Executive Order 12898 established federal executive policy on environmental justice. The federal agencies subject to the Order, including the U.S. Environmental Protection Agency (EPA), were directed to make environmental justice part of their missions, to the greatest extent practicable and permitted by law. EPA accomplishes this goal by utilizing existing statutory authorities and regulations.

QUESTION 8: How would H.R. 1103 change the function, organization, and/or mission of the Office of Enforcement and Compliance Assurance, and for that matter, the EPA as a whole?

ANSWER: EPA recognizes that minority and low-income communities frequently may be exposed disproportionately to environmental harms and risks. We are all working to find the most effective ways to protect these and other burdened communities from adverse impacts to human health and the environment. We do not believe that codification of a 14-year-old Executive Order (which does not provide any additional authorities to the Agency) is either appropriate, or the best way to advance our shared goals.

QUESTION 9: Key definitions affecting EJ program efforts have been adjusted a couple of times in the last dozen years. Does the Agency disagree or have any concerns with H.R. 1103's definitions of "environmental justice" or "fair treatment"? How will these definitions affect your office's mission and programs?

ANSWER: Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This EPA definition has not changed and is consistent with the definitions in H.R. 1103.

QUESTION 10: I have some questions about OECA and your involvement in the final stages of the TRI burden reduction rule.

a) Could you please elaborate on these efforts and describe the involvement you had and your Office's final position on the rulemaking?

ANSWER: OECA's Office of Civil Enforcement participated throughout the rulemaking process and was involved in the decision-making that led to the important changes between the proposed rule and the final rule, including the Agency's decision to maintain many aspects of the TRI program without change.

EPA's Office of Environmental Justice recommended that an environmental justice assessment be conducted as part of the final rule development process. An environmental justice assessment was completed and considered by Agency senior managers. Following this analysis, OECA determined that the Agency had given careful consideration to the level of detailed information provided to minority and low- income communities and raised no further objections to the final rule.

b) Do you believe this involvement led to further consideration of the potential environmental justice concerns associated with the rulemaking?

ANSWER: Yes. As evidenced by the environmental justice assessment that was completed and considered by Agency senior managers.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 17 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable Albert Wynn
Chairman
Subcommittee on Environment and Hazardous Materials
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Wynn:

Thank you for your follow-up questions from the October 4, 2007, hearing before the Subcommittee on Environment and Hazardous Materials on the Environmental Protection Agency's Environmental Justice Program, and H.R. 1103, the Environmental Justice Act of 2007. Please find enclosed responses to your questions. I hope this information will be useful to you and the Members of the Committee.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at (202) 564-1859.

Sincerely,

Christopher P. Bliley
Associate Administrator

Enclosure

EPA Responses to Questions for the Record:
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H.R. 1055, the "Toxic Right to Know Protection Act"
Before the House Committee on Energy and Commerce
Subcommittee on Environment and Hazardous Materials

The Honorable Albert Wynn

1. **You stated in your oral testimony that the Environmental Protection Agency (EPA) Office of Environmental Justice, the agency's lead office for environmental justice issues, has participated in very few rulemaking efforts.**

   a. Since August 1, 2006, how many proposed or final rules have included a formal analysis of environmental justice issues? Please provide a list of each proposed and final rule, along with the title and date of the formal analysis document.
   b. Since August 1, 2006, how many proposed or final rules have been reviewed and commented upon by EPA's Office of Environmental Justice? Please provide a list of each proposed and final rule, along with the title and date of the comment document.
   c. Have EPA's rulemaking workgroups regularly and consistently included a representative from the EPA Office of Environmental Justice? If not, please explain why not.

2. **You stated in your oral testimony that EPA needs to build the capability of the agency's Program Offices so that they can take the lead on environmental justice issues while developing rules and regulations.**

   a. Does any EPA Program Office currently have the capacity to take the lead on environmental issues during rulemaking efforts? If so, please list each Program Office that currently has this capacity.
   b. For each EPA Program Office that does not currently have the capacity, when will that capacity be developed? Please list each EPA Program Office and a date by which the capacity to lead on environmental justice issues during the rulemaking process can be expected.

3. **When does EPA expect to have a formal analysis of environmental justice issues fully incorporated into the agency's rulemaking process?**

RESPONSE to Questions 1-3:

As stated in EPA's testimony, EPA has developed a comprehensive approach to integrating environmental justice considerations into its everyday work, including rule

and regulation development. Our approach recognizes that (1) environmental justice issues are complex and multi-faceted; (2) that a most effective way to address these issues entails using the range of existing statutory, regulatory and enforcement tools available; and (3) that we need to continue to build the capacity of EPA's Program Offices, including the Office of Environmental Justice (OEJ), to incorporate environmental justice into our programs, policies and activities as comprehensively as possible. In order to meet this goal, the Agency's Program Offices collaborate to develop frameworks to identify and address environmental justice issues in the rulemaking process, and to conduct environmental justice analyses in regulatory activities.

EPA continues to make substantial progress on integrating environmental justice into the agency's rulemaking efforts.

- EPA's Program Offices have the capacity to take the lead on environmental justice issues while developing rules and regulations. In accordance with a systematic approach for rulemaking integration, each Office is expected to develop its internal capacity to identify, analyze and incorporate environmental justice concerns into its regulatory activities.

- Our Program Offices continue to build that capacity by collaborating with the Office of Environmental Justice (OEJ) to identify additional or enhanced analyses during a rulemaking for which an environmental justice analysis may be critical.

- OEJ and the agency's Program Offices also accomplish this integration goal through cross-agency committees and work groups involved in regulatory action development and other regulatory activities, such as participating in monthly Status Report briefings for senior management in the Office of Air and Radiation; biweekly meetings of the Regulatory Steering Committee (RSC); and the quarterly meetings of the Regional Regulatory Contacts (RRC).

EPA's Program Offices are collaborating on activities to revise existing regulatory management tools and to develop tools to incorporate Executive Order 12898 on environmental justice, and enhanced stakeholder involvement and public participation, such as:

- Developing the Environmental Justice Regulatory Template, in use since December of 2006, recommending language for document drafters when writing the preambles to EPA-issued rules.

- Revising the Action Development Process (ADP) Tiering (and Maintenance) Form to include prompts that the Lead Program Office can check for (1) potential impacts of a rule on the "health or environmental condition" of minority communities or low income communities, (2) disproportionately high and adverse human health and environmental effects on minority or low

income populations, and (3) the need for consultation or work group involvement by either OEJ or an appropriate Environmental Justice Coordinator.

- Ensuring that the revised ADP Guidance and the Stakeholder Involvement Rule Aid incorporate explicit references to EO 12898 and environmental justice issues.

- Developing an Environmental Justice Rule Aid to assist rule writers in identifying environmental justice issues at tiering.

- Revising the ADP Flow Chart to identify the stages through the ADP process for consultation with OEJ and/or the appropriate Environmental Justice Coordinator and/or Program management official in Tier 1 & 2 Rules, regardless of whether the work group has a designated a work group member with environmental justice expertise.

- Developing a substantive guidance on methodologies and data to support formal environmental justice analyses in agency rules and activities.

As you can see, OEJ's role in rulemaking is evolving, and the Office has become more actively involved in both procedural and substantive rulemaking activities at EPA. OEJ was never envisioned to participate in all, or even most, work groups which identify environmental justice issues. As part of our systematic approach to integrating environmental justice into the Agency's mission, we expect the lead Program Office in a rulemaking to take the responsibility for the consideration of environmental justice issues, consulting with OEJ, as needed.

4. **As part of the TRI rulemaking, did EPA provide a complete copy of the final rulemaking package (including a final economic analysis) to the EPA National Environmental Justice Advisory Committee (NEJAC) for review and comment?**

   If so:

   a) **When was a complete copy of the final rulemaking package provided to the NEJAC?**

   b) **Did the NEJAC provide comments in response?**

   c) **Were any NEAJC comments incorporated into the TRI Burden Reduction Final Rule?**

   Please provide copies of all comments prepared by NEJAC regarding changes to the TRI reporting requirements that were submitted to EPA.

RESPONSE: No. EPA did not provide a complete copy of the final rulemaking package to the NEJAC. As a matter of practice, EPA has utilized the NEJAC for advice and recommendations on broad public policy issues, rather than on specific rulemaking actions. These issues have included brownfields, waste transfer stations, superfund relocation, permitting, cumulative risks and impacts, pollution prevention, fish consumption, meaningful involvement and fair treatment by Tribal environmental programs, disaster preparedness and response, and goods movement.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

February 26, 2008

Molly A. O'Neill
Assistant Administrator
Office Environmental Information
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Ms. O'Neill:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response. Please be advised that you will be receiving an additional set of questions within a week.

To facilitate the printing of the hearing record, your responses to these questions should be received by no later than the close of business on **Tuesday, March 11, 2008**. Your written responses should be delivered to room **2322-B Rayburn House Office Building** and faxed to **(202) 225-2899** to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at **rachel.bleshman@mail.house.gov**. Please send your response in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

The Honorable Tim Murphy
Subcommittee on Environment and Hazardous Materials

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 19 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of February 26, 2008, containing follow-up questions from the October 4, 2007, hearing before the Subcommittee on Environment and Hazardous Materials on the Toxics Release Inventory (TRI) program and H.R. 1055, the Toxic Right-To-Know Protection Act. Your letter requests responses to questions submitted by several Members of the Committee. As requested, separate letters have been developed for each Member, responding to the specific questions submitted.

If you would like to discuss these matters further, please contact me or your staff may contact Pamela Janifer of my staff at (202) 564-6969.

Sincerely,

Christopher P. Bliley
Associate Administrator

Questions submitted by the Honorable Joe Barton and the Honorable John Shimkus

1. Has EPA added new features to the TRI short Form A, such as business contact information, so local communities can get additional information from a business about substances it uses on site?

Beginning with reporting year 2007 (reports to be submitted by July 1, 2008), EPA has added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who can respond to questions from the public about the facility's Form A.

2. In your opinion which provides more useful public health information, TRI or Section 311 of EPCRA, which requires businesses to provide Material Safety Data Sheets that detail not only what chemicals are being used in a process, but health response and threat information?

Both TRI data required by Section 313 of EPCRA and material safety data sheets (MSDSs) required by Section 311 of EPCRA provide useful information to protect the public's health. Pursuant to Section 311 of EPCRA, the owner or operator of any facility required to prepare or have available a MSDS for a hazardous chemical under the Occupational Safety and Health Act of 1970 must submit the MSDS to the appropriate local emergency planning committee, the state emergency response commission, and the fire department with jurisdiction over the facility. By contrast, the TRI provides information directly to the public on releases of chemicals and other waste management activities for nearly 650 toxic chemicals and chemical categories from manufacturing, metal and coal mining, electric utilities, and commercial hazardous waste treatment, among other industries. TRI data are available to the public through the TRI Explorer (http://www.epa.gov/triexplorer) and Envirofacts (http://www.epa.gov/enviro) databases.

3. This year, our subcommittee held a two day hearing on EPA's budget and agreed that EPA needed to focus its priorities and appropriately spend its resources on them. You state that H.R. 1055 would only serve to divert resources from key TRI program priorities. Could you tell us what these priorities are and how public health would suffer if we increased annual paperwork requirements under TRI?

EPA believes these resources could be better used to strengthen the TRI program in other ways, for example by improving data integrity and accelerating the annual data release. In fact, EPA released the 2006 TRI Data on February 21, 2008, making the TRI data available to the public earlier than ever before. Further, for the first time, in an attempt to look at chemical hazards, in the 2006 data release, EPA used the Risk Screening Environmental Indicators (RSEI) "toxicity-weighted-pounds" methodology to provide additional insights that go beyond simple pounds analysis and reflect some basic measure of chemical toxicity.

4. You say that on May 10, 2007, EPA expanded reporting for Form R under TRI. To put this in context, is it fair to say that EPA's burden reduction plan for TRI is

all the more important for smaller businesses and people who do the right thing for the environment because of the expanding requirements for Form R filers under TRI?

On May 10, 2007, the Toxics Release Inventory Program issued a rule expanding reporting requirements for dioxin and dioxin-like compounds. Facilities may not use Form A for dioxin and dioxin-like compounds. The December 2006 final rule expanding Form A eligibility did not change the requirement that dioxin and dioxin-like compounds be reported on Form R. Therefore, the expansion of reporting requirements for dioxin and dioxin-like compounds does not have any impact on, and was not impacted by, the December 2006 TRI final rule. The only change in requirements under the December 2006 final rule is that facilities are permitted to use the short form (the Form A) if they maintain releases and total wastes below limits established in the rule. EPA believes this change encourages pollution prevention and provides an incentive to reduce releases.

5. Do you believe it is appropriate for Congress to negate EPA's work in this area and strip EPA of further discretion on this matter simply because it disagrees with the Agency?

In crafting EPCRA Section 313, Congress established appropriate flexibility for the Agency to modify chemicals covered, facilities covered, and reporting thresholds. EPA has used this flexibility several times over the 20 year history of the program. In most cases, EPA has expanded reporting to provide information on additional chemicals and facilities, and to lower reporting thresholds for certain classes of chemicals. EPA believes it has used this authority sparingly and wisely. As stated in Assistant Administrator Molly A. O'Neill's testimony for the October 2007 hearing, "By imposing stringent limits on releases (zero for PBTs, 2,000 pounds for non-PBTS) as a pre-condition of short-form reporting, EPA is encouraging businesses to minimize disposal into the environment. The limits on total wastes encourage pollution prevention. These incentives should be given an opportunity to work." Congressional action reinstating prior regulations would eliminate such an opportunity and would reduce the flexibility Congress has appropriately delegated to EPA to manage the program effectively in response to changing conditions and concerns.

6. Could you further explain the logic behind allowing greater use of Form A if EPA was seeing an increase in facility toxic chemical releases for TRI Reporting Year 2005?

As stated in Assistant Administrator Molly A. O'Neill's testimony for the October 2007 hearing, "No facilities were excused from reporting under the final TRI rule, and no chemicals were removed from the list for which covered facilities must report. The only change in requirements is that facilities are permitted to use the short form if they maintain releases and total wastes below limits established in the rule." EPA believes this change provides an incentive to reduce releases which is beneficial in any circumstance, and more so if releases are rising.

7. From what I understand, EPA receives 95-plus percent of its TRI reports in an electronic format – and courtesy of a large, memory-eating, computer disc program. The remaining reports are hand written. What percentage of those written filers are the very businesses the TRI burden reduction plan is trying to help?

The CD version of the Toxics Release Inventory – Made Easy (TRI-ME) software is quickly being replaced by the web-based version of TRI-ME (referred to as "TRI-MEweb"), which doesn't require downloading. TRI-MEweb is available to all reporting facilities for reporting year 2007 (submissions due July 1, 2008).

EPA encourages all TRI reporters, including those facilities that qualify for expanded Form A eligibility, to discontinue the use of paper submissions in favor of submitting electronically. Both the CD and Web-based versions (TRI-ME and TRI-MEweb) allow facilities to send their TRI submissions electronically over the Internet using EPA's Central Data Exchange (CDX) without mailing any paper to EPA. In fact, even for those facilities filing Form A, the use of paper has decreased. Paper submissions of Form A decreased by almost 50% (904 paper Form As for 2005 and 497 paper Form As for 2006) from 2005 to 2006.

8. Since the agency has decided not to pursue a change in the reporting frequency, do you think it is necessary to completely, statutorily remove the Administrator's discretion under Section 313(i)?

As stated in the December 22, 2006 Federal Register notice (71 FR 77019) announcing EPA's decision to maintain the annual reporting requirement for TRI, EPA stated that, "While the Agency does not intend to take any further actions concerning reporting frequency, EPA will adhere to the process outlined in 42 U.S.C. 11023(i)(5) and provide 12 months advance notice to Congress should the Agency in the future decide to initiate changes to reporting frequency." EPA believes the statute establishes an appropriate process for changes in reporting frequency which balances the need for flexibility with a concern for Congressional oversight.

Questions submitted by the Honorable Tim Murphy

1. Can EPA explain exactly what information is "lost" when a facility that formerly reported TRI data on "Form R" now begins to report the data on "Form A?"

Form A provides the name of the chemical and certain facility identification information. In addition, Form A can be used by the public as a "range report," *i.e.*, an indication that the facility manages between 0 and 500 pounds of a PBT chemical as waste and has no releases or other disposal. For a non-PBT chemical, Form A means a facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released or otherwise disposed. Further, EPA recently added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who can respond to questions from the public about the facility's Form A.

Form R provides more details about releases and other waste management activities that are not provided by Form A. Form R provides: a qualitative description of the facility's threshold activities (*i.e.*, manufacture, process, and otherwise use); a range of the maximum amount of the chemical on-site at any given time during the year; estimates of the amounts of the chemical released on-site to air, water, and land; amounts transferred off-site to publicly owned treatment works (POTWs) and other off-site locations; on-site waste treatment, energy recovery, and recycling methods and amounts; and amounts transferred off-site for release and other waste management. Following EPA's December 2006 rule making, full Form R reporting is still required for over 99 percent of both releases and transfers of toxic chemicals to other facilities.

2. If a facility now releases significant quantities of toxic chemicals, under what circumstances will this facility no longer have to report those releases if they switch from "Form R" to "Form A?"

Under the December 2006 final rule no facilities are excused from reporting and no chemicals have been removed from the list for which covered facilities must report. To be eligible to use Form A for PBT chemicals, facilities would need to eliminate all releases or other disposal, and reduce other waste management of the chemical, such as recycling and treatment, to no more than 500 pounds. For non-PBT chemicals the eligibility limit on total waste management (*i.e.*, releases, recycling, energy recovery, and treatment) is 5,000 pounds, with a cap on releases and other disposal of 2,000 pounds. The"cap" means that releases and other disposal must not comprise more than 2,000 pounds of the 5,000-pound total limit for all waste management. EPA believes the more stringent eligibility requirements for PBT chemicals (zero releases, 500 total pounds managed as waste) are appropriate because of the greater concern with even small releases of these chemicals.

3. Under the reporting changes recently proposed by EPA, is there any circumstance in which a facility that used to report data under either "Form R" or "Form A" will no longer have to fill out any TRI forms at all?

No. Under the December 2006 final rule no facilities are excused from reporting and no chemicals have been removed from the list for which covered facilities must report.

4. If more facilities switch from "Form R" to "Form A," what impact will this have on the public's ability to gain access to the TRI data?

Form A provides the name of the chemical and certain facility identification information. In addition, Form A can be used by the public as a "range report," *i.e.,* an indication that the facility manages between 0 and 500 pounds of a PBT chemical as waste and has no releases or other disposal. For a non-PBT chemical, Form A means a facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released or otherwise disposed.

EPA recently added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who can respond to questions from the public about the facility's Form A. Like Form Rs, Form As are available to the public through the TRI Explorer (http://www.epa.gov/triexplorer) and Envirofacts (http://www.epa.gov/enviro) databases.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 17 2008

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of March 12, 2008 containing follow-up questions from the October 4, 2007 hearing before the Subcommittee on Environment and Hazardous Materials on the Toxics Release Inventory (TRI) program and H.R. 1055, the Toxic Right-To-Know Protection Act. Your letter requests responses to questions submitted by the Honorable Albert R. Wynn, Chairman of the Subcommittee on Environment and Hazardous Material. As requested, a separate letter has been developed responding to Chairman Wynn's questions.

If you would like to discuss these matters further, please contact me at (202) 564-7862 or your staff may contact Pamela Janifer of my staff at (202) 564-6969.

Sincerely,

Christopher P. Bliley
Associate Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

APR 17 2008

The Honorable Albert R. Wynn
Chairman
Subcommittee on Environment and Hazardous Materials
United States House of Representatives
Washington, D.C. 20515

Dear Representative Wynn:

Thank you for your follow-up questions from the October 4, 2007 hearing before the Subcommittee on Environment and Hazardous Materials on the Toxics Release Inventory (TRI) program and H.R. 1055, the Toxic Right-To-Know Protection Act. We have provided a response to each of your questions. As requested in Chairman Dingell's March 12, 2008 letter to Assistant Administrator O'Neill, a separate letter has been developed responding to your questions.

If you would like to discuss these matters further, please contact me at (202) 564-7862 or your staff may contact Pamela Janifer of my staff at (202) 564-6969.

Sincerely,

Christopher P. Bliley
Associate Administrator

Enclosures

Questions submitted by the Honorable Albert Wynn

1. **According to the Government Accountability Office (GAO), the Environmental Protection Agency (EPA) received 122,000 public comments on the proposed reporting changes to the TRI program – 99 percent of which did not support the proposed new rule. Has any other TRI proposed rule change generated this amount of negative public comment? If so, please identify any such proposed rule.**

Comparisons of the degree of opposition to the December 2006 rule with opposition to other rules would be highly subjective; however, EPA can confirm that before the December 2006 final rule was issued the Agency carefully considered the merits of all timely comments opposed to the proposed rule as well as all timely comments in favor of it.

In fact, EPA acted upon the concerns raised in many comments opposing the proposed expansion of Form A eligibility. To address commenters' concern that the proposed 5,000-pound total waste management limit for expanded Form A eligibility for non-PBT (non-persistent, bioaccumulative, and toxic) chemicals would allow too high a volume of releases, especially toxic air emissions, into communities without requiring detailed Form R reports, EPA decided to include in the final rule a 2,000-pound limit on releases as part of the proposed 5,000-pound total waste management eligibility limit. In addition to addressing commenters' concern, this coupling of the 2,000-pound limit on releases with the 5,000-pound limit on total waste management structured expanded Form A eligibility in a way that promotes the use of preferred waste management methods such as recycling over disposal and other releases.

2. **In the Preamble to the TRI Burden Reduction Final Rule, EPA states that "Although today's action was not specifically crafted to address minority and disadvantaged communities, the reduced number of facilities eligible for Form A under today's rule, as compared to the proposed rule, means that there will be more detailed information available to communities generally, including minority and disadvantaged communities."**

   a. **Please provide a list of all studies and analyses that were considered as part of the TRI rulemaking that support the EPA's position that more detailed information would be available to minority and disadvantaged communities.**

   b. **Please include in this list, the date of the study and/or analysis, as well as the name of the office or individual that authored the study and/or analysis.**

EPA prepared an Environmental Justice (EJ) analysis of the TRI final rule expanding Form A eligibility that compared the impact the proposed rule and the final rule could be expected to have on minority or low-income communities. This EJ analysis supports the

position that the final rule, as compared to the proposed rule, would result in a smaller number of Form As from facilities in close proximity to minority and low-income communities. This EJ document is titled "EJ analysis of the Phase II and alternative Phase II rules." This document is dated November 1, 2006 and is addressed from Will Smith, US EPA, Office of Environmental Information (OEI), to Marc Edmonds, US EPA, OEI. This document resides in the docket for this rulemaking as document 5007.

A copy of the EJ analysis can be the found in the EPA docket for this rulemaking at: www.regulations.gov. From the *Regulations.gov* homepage select "Advanced Document Search" on the right side of the homepage. Then, select "Environmental Protection Agency" from the "Agency" pick-list. In the "Document ID" field enter TRI-2005-0073-5007 and then select the "Submit" button at the bottom of the screen.

To view the entire docket of more than 5,000 documents select "Advanced Docket Search" from the right side of the *Regulations.gov* homepage and then select "Environmental Protection Agency" in the "Agency" pick-list and enter TRI-2005-0073 in the "Docket ID" field and then select the "Submit" button.

3. **In the Preamble to the TRI Burden Reduction Final Rule, EPA states that "While there is a higher proportion of minority and low income communities in close proximity to some TRI facilities than in the population generally, the rule does not appear to a have a disproportionate impact on these communities, since facilities in these communities are no more likely than elsewhere to become eligible to use Form A as a result of the rule."**

   a. **Please provide a list of all studies and analyses that were considered as part of the TRI rulemaking that support the EPA's position that facilities in minority and low income communities would be "no more likely than elsewhere to become eligible to use Form A."**

   b. **Please include in this list, the date of the study and/or analysis, as well as the name of the office or individual that authored the study and/or analysis.**

Prior to the November 1, 2006 EJ analysis (discussed above in response to Question 2) which supports the position that facilities in minority and low-income communities would be no more likely than elsewhere to become eligible to use Form A as a result of the rule, the Agency provided a response to a request for information from three Members of the U.S. House of Representatives which also supports this finding. The letter is dated March 1, 2006 and is addressed from Linda A. Travers, Acting Assistant Administrator and Chief Information Officer of EPA's Office of Environmental Information to the Honorable Henry A. Waxman, the Honorable Stephen F. Lynch, and the Honorable Dennis J. Kucinich. This document resides in the docket for this rulemaking as document 4999.

A copy of the March 1, 2006 response letter can be the found in the EPA docket for this rulemaking at: **www.regulations.gov**. From the *Regulations.gov* homepage select "Advanced Document Search" on the right side of the homepage. Then, select "Environmental Protection Agency" from the "Agency" pick-list. In the "Document ID" field enter TRI-2005-0073-4999 and then select the "Submit" button at the bottom of the screen.

To view the entire docket of more than 5,000 documents select "Advanced Docket Search" from the right side of the *Regulations.gov* homepage and then select "Environmental Protection Agency" in the "Agency" pick-list and enter TRI-2005-0073 in the "Docket ID" field and then select the "Submit" button.

4. **In the Preamble to the TRI Burden Reduction Final Rule, the agency states that "EPA does not have any evidence that this rule will have a direct effect on human health or environmental conditions." Did EPA conduct any study or analysis, as part of the rulemaking, regarding the potential health effects, direct or indirect, of the TRI Burden Reduction Rule? If so:**

   a. **Please provide a list of all studies and analyses regarding potential health effects that were conducted as part of the TRI rulemaking; and**

   b. **Please include in this list, the date of the study and/or analysis, as well as the name of the office or individual that authored the study and/or analysis.**

The TRI program does not impose emissions limits on facilities. It requires that facilities provide information on the ways they manage chemicals on the TRI list. Some of their chemical management is restricted through local, state, and federal regulations and permits. Therefore, any potential impact from changes to the TRI program is an information impact, not a direct impact on human health. Nonetheless, EPA considers the TRI program an important tool in influencing facilities to reduce releases to the environment. While EPA did not conduct a study or analysis of the potential health effects of the TRI rule expanding Form A eligibility, EPA recognizes that TRI provides important information that may indirectly lead to improved health and environmental conditions at the community level.

Since 1995 Form A has continued to provide communities with important information. Form A provides the name of the chemical and certain facility identification information. In addition, Form A can be used by the public as a "range report," *i.e.*, an indication that the facility manages between 0 and 500 pounds of a PBT chemical as waste and has no releases of the chemical. For a non-PBT chemical, Form A means a facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released.

Further, EPA recently added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who

can respond to questions from the public about the facility's Form A. Like Form Rs, Form As are available to the public through the TRI Explorer (http://www.epa.gov/triexplorer) and Envirofacts (http://www.epa.gov/enviro) databases.

5. **In its analysis of the TRI Burden Reduction Final Rule, GAO estimated that thousands of facilities that previously filed Form Rs may file Form As under the new rule (GAO – February 2007 and November 2007). In view of the differences in the amount and specificity of information on Form R and Form A, GAO concluded that EPA's changes to TRI reporting requirements could lead to significantly less information on toxic chemicals being reported to communities across the country.**

   a. **As part of the TRI rulemaking, did EPA prepare an estimate of the number of facilities that would be allowed to submit Form As due to the new thresholds, and identify which communities would be affected? If so, please provide the title of the estimate document, the date of the estimate, and the name of the office or individual that prepared the estimate.**

   b. **As part of the TRI rulemaking, did EPA prepare an estimate of the number of Form Rs that might not be submitted due to the new thresholds, and identify which communities would be affected? If so, please provide the title of the estimate document, the date of the estimate, and the name of the office or individual that prepared the estimate.**

   c. **As part of the TRI rulemaking, did EPA prepare an estimate of the number of facilities that might not have to report any specific quantitative information about their chemical releases due to the new thresholds, and identify which communities would be impacted? If so, please provide the title of the estimate document, the date of the estimate, and the name of the office or individual that prepared the estimate?**

The Economic Analyses prepared for both the proposed rule and the final rule expanding Form A eligibility estimate the number of facilities as well as the number of Form Rs expected to become newly eligible for Form A. They also identify the number of zip codes with at least one Form R estimated to become newly eligible for Form A and the number of zip codes with all Form Rs estimated to become newly eligible for Form A, i.e., communities where all reports could be eligible for the short form. As part of the TRI rulemaking, EPA did prepare an estimate of the number of facilities that might not have to report any specific quantitative information about their chemical releases on Form R due to the new, expanded Form A eligibility limits. This estimate of the number of facilities is contained in the EJ document titled "EJ analysis of the Phase II and alternative Phase II rules" and dated November 1, 2006. This EJ document is discussed above in response to Question 2. Important to note, however, is that while this number of

facilities may no longer report on Form R under the December 2006 final rule, these facilities are not relieved of their obligation to report to TRI, but rather may be allowed to use the shorter Form A in lieu of the more-detailed Form R.

The Economic Analysis for the proposed rule is titled "Economic Analysis of the Proposed Toxics Release Inventory Phase II Burden Reduction Rule." This Economic Analysis is dated September 19, 2005 and was prepared by EPA's Office of Environmental Information (OEI), Analytical Support Branch (ASB). This document resides in the docket for this rulemaking, by chapter, as document entries 0002 to 0010.

The Economic Analysis for the final rule is titled "Economic Analysis of the Toxics Release Inventory Phase 2 Burden Reduction Rule." This Economic Analysis is dated September 22, 2006 and was prepared by EPA's OEI, ASB. This document resides in the docket for this rulemaking, by chapter, as document entries 4988 to 4997.

In addition, for the proposed rule EPA prepared a detailed breakdown of each zip code where one or more non-PBT Form Rs was estimated to become newly eligible for Form A under the proposed rule. This 131-page table of zip codes is contained in the document titled, "Table 11: Option 4 Community Data Loss Analysis, Zip Codes Where One or More Form R Converts to a Form A When the Threshold for Non-PBT Chemicals is 5,000 Pounds (based on RY 2002 data)." This document was prepared by a contractor for EPA's OEI, ASB. The document does not bear a specific date but it was entered in the docket on 09/20/2005 as document 0018.

Further, the EJ analysis of the TRI final rule expanding Form A eligibility (see response to Question 2 above) estimates the number of facilities that could have all Form Rs become eligible for Form A under both the proposed rule and the final rule. This EJ document is titled "EJ analysis of the Phase II and alternative Phase II rules." This document is dated November 1, 2006 and is addressed from Will Smith, US EPA, Office of Environmental Information (OEI), to Marc Edmonds, US EPA, OEI. This document resides in the docket for this rulemaking as document 5007.

For more information on how to access documents in the EPA docket for this rulemaking see the response to Question 2 above.

6. As part of the TRI rulemaking, did EPA conduct any studies or analyses of potential effects on local emergency planning commissions as a result of the new reporting thresholds? If so:

a. Please provide a list of all studies and analyses regarding potential effects on local emergency planning commissions that were conducted as part of the TRI rulemaking; and

b. Please include in this list the date of the study and/or analysis, as well as the name of the office or individual that authored the study and/or analysis.

EPA did not conduct a study or analysis of the TRI rule's impact on local emergency planning committees. Local emergency planning committees receive information from the chemical inventory reporting requirement established in Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). The reporting requirements of Section 312 are specifically structured around the needs of first responders. For example, Section 312 requires reporting of both the quantity and the location of hazardous chemicals stored on site. This information is not gathered by the TRI program and the 2006 TRI rule does not affect the availability of this information in any way. The use of TRI data (collected under Section 313 of EPCRA for different statutory purposes) by local emergency planning committees is supplemental to information provided to state and local emergency planning committees under Section 312, and would generally be of limited use to them. The December 2006 rule did not change any facility's requirements with respect to Section 312 information provided to local emergency planning committees.

Further, the December 2006 final rule expanding Form A eligibility does not relieve any facility of their obligation to report to TRI, but rather allows those facilities that eliminate or minimize their releases to use the shorter Form A in lieu of the more-detailed Form R. Form A also continues to provide useful information, identifying the chemical, the facility, and the range of release and other waste management amounts by chemical at the facility.

7. As part of the TRI rulemaking, did EPA conduct any studies or analyses of the potential effects on firefighters and other "first responders" as a result of the new reporting thresholds? If so:

a. Please provide a list of all studies and analyses regarding potential effects on local emergency planning commissions that were conducted as part of the TRI rulemaking; and

b. Please include in this list the date of the study and/or analysis, as well as the name of the office or individual that authored the study and/or analysis.

EPA did not conduct a study or analysis of the TRI rule's impact on firefighters and other "first responders." As discussed in the preceding response, local emergency planning committees, state emergency response commissions, and local fire departments receive information from the chemical inventory reporting requirement established in Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), which is specifically structured to address their needs. The use of TRI data (collected under Section 313 of EPCRA for different statutory purposes) by these entities is supplemental to information provided to them under Section 312, and would generally be of limited use to them.

Further, the December 2006 final rule expanding Form A eligibility does not relieve any facility of their obligation to report to TRI, but rather allows those facilities that eliminate or minimize their releases to use the shorter Form A in lieu of the more-detailed Form R. Form A also continues to provide useful information, identifying the chemical, the facility, and the range of release and other waste management amounts by chemical at the facility.

8. **GAO's analysis of the TRI Burden Reduction Final Rule shows that a number of States may lose specific, quantitative information on certain chemicals altogether. As a result of EPA's rule changes, GAO estimates that 13 States may stop receiving detailed information on approximately 20 percent of the TRI-reported chemicals in the State. As part of the TRI rulemaking, did EPA conduct any studies or analyses on the loss of detailed quantitative data on the State level? If so:**

   a. **Please provide a list of all studies and analyses showing the State-by-State projected loss of detailed quantitative data; and**

   b. **Please include in this list, the date of the study and/or analysis, as well as the name of the office or individual that authored the study and/or analysis.**

EPA did not conduct a comprehensive study or analysis of the December 2006 TRI final rule's impact on each State. The Agency did, however, conduct analysis at the State level as part of a response to a request for information from six U.S. Senators. Specifically, the analysis included a state-by-state list of facilities that reported between 500 and 5,000 pounds of production-related waste for at least one non-PBT TRI-listed chemical. This response letter is dated January 13, 2006 and is addressed from Linda A. Travers, Acting Assistant Administrator and Chief Information Officer of EPA's Office of Environmental Information to the Honorable John McCain, the Honorable Ron Wyden, the Honorable James Jeffords, the Honorable Hillary Rodham Clinton, the Honorable Barbara Boxer, and the Honorable Barack Obama. This letter and the attached appendices reside in the docket for this rulemaking as documents 5001 and 5001.1 through, and including, 5001.4. In addition, as discussed above in response to Question 5, EPA did estimate at a local, community level, by zip code, the impact of both the proposed rule and the final rule on the number of newly eligible Form As. For more information on how to access documents in the EPA docket for this rulemaking see the response to Question 2 above.

Further, the December 2006 final rule expanding Form A eligibility does not relieve any facility of their obligation to report to TRI, but rather allows those facilities that eliminate or minimize their releases to use the shorter Form A in lieu of the more-detailed Form R. Form A also continues to provide useful information, identifying the chemical, the facility, and alerting all concerned citizens to the range of release and other waste management amounts by chemical at the facility.

9. **EPA's Web site states that "Armed with TRI data, communities have more power to hold companies accountable and make informed decisions about how toxic chemicals are to be managed. The data often spurs companies to focus on their chemical management practices since they are being measured and made public." In her oral testimony, Ms. O'Neill confirms that "environmental information has many uses, and one of the most effective is to encourage facilities to reduce emissions or releases." Yet EPA's TRI Burden Reduction Final Rule decreases the amount of environmental information made available to the EPA and public and, according to Ms. O'Neill, expanding eligibility for short-form reporting was adopted to provide "incentives for pollution prevention."**

   As part of the TRI rulemaking, did EPA conduct any studies or analyses evaluating the idea that *less* reporting and public disclosure of emissions and releases provides an incentive for pollution prevention? If so:

   a. Please provide a list of all studies and analyses regarding less reporting and disclosure as an incentive to pollution reduction that were conducted as part of the TRI rulemaking; and

   b. Please include in this list the date of the study and/or analysis, as well as the name of the office or individual that authored the study and/or analysis.

EPA did not conduct any specific study or analysis regarding the rule's incentive for pollution prevention. EPA believes the December 2006 final rule's incentive to reduce pollution stems from the burden relief associated with completing Form A, in lieu of the more detailed Form R, and not from the fact that less detailed information will be available to the public from low-level releasers that choose to use Form A. The December 2006 final rule does not relieve any facilities of their obligation to report to TRI. As stated in Assistant Administrator Molly A. O'Neill's testimony for the October 2007 hearing, "No facilities were excused from reporting under the final TRI rule, and no chemicals were removed from the list for which covered facilities must report. The only change in requirements is that facilities are permitted to use the short form if they maintain releases and total wastes below limits established in the rule."

Further, while Form R provides more detailed information than Form A, as a longstanding part of the TRI, Form A continues to provide communities with important information. Form A provides the name of the chemical and certain facility identification information. In addition, Form A can be used by the public as a "range report," *i.e.*, an indication that the facility manages between 0 and 500 pounds of a PBT chemical as waste and has no releases of the chemical. For a non-PBT chemical, Form A means a facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released. Further, EPA recently added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who can respond to questions from the public about the facility's

Form A. Like Form Rs, Form As are available to the public through the TRI Explorer (http://www.epa.gov/triexplorer) and Envirofacts (http://www.epa.gov/enviro) databases.

10. In your oral testimony, you stated that the new TRI rule creates a pollution reduction incentive by allowing short-form reporting at facilities that reduce or maintain their releases below the new 2,000 pound threshold. According to GAO, however, EPA's new rule allows facilities already below the 2,000 pound threshold to increase their emissions without triggering the Form R detailed reporting requirement. Did EPA consider this situation during the TRI rulemaking? If so, when was this potential for less reporting and disclosure considered, and by what offices or individuals? What changes, if any, were made to the TRI Burden Reduction Final Rule to address this problem?

Throughout the entire rulemaking process EPA has been aware, and stakeholders have continually made clear, that any elevation of the release limit for Form A eligibility will result in greater release amounts being reflected as a range on Form A. As discussed above in response to Question 1, to address commenters' concern that the proposed 5,000-pound total waste management limit for expanded Form A eligibility for non-PBT chemicals would allow too large amounts of releases, especially toxic air emissions, into communities without requiring detailed Form R reports, EPA decided to include in the final rule a 2,000-pound limit on releases as part of the proposed 5,000-pound total waste management limit. By coupling of the 2,000-pound limit on releases with the 5,000-pound limit on total waste management EPA has structured expanded Form A eligibility in a way that promotes the use of preferred waste management methods such as recycling over disposal and other releases.

11. As part of the TRI rulemaking, did EPA provide a complete copy of the final rulemaking package (including a final economic analysis) to the EPA National Environmental Justice Advisory Committee (NEJAC) for review and comment?

a. When was a complete copy of the final rulemaking package provided to the NEJAC?

b. Did the NEJAC provide comments in response?

c. Were any NEJAC comments incorporated into the TRI Burden Reduction Final Rule?

d. Please provide copies of all comments prepared by NEJAC regarding changes to the TRI reporting requirements that were submitted to EPA.

EPA did not provide a complete copy of the final rulemaking package to EPA's NEJAC for review and comment. Please see the response provided by the Office of Enforcement

and Compliance Assurance (OECA) to this same question; specifically, OECA response to Question 4 from the Honorable Albert R. Wynn.

12. In a letter to Mr. John Stephenson of GAO (dated October 4, 2007), you acknowledge that the TRI Burden Reduction Rule results in a "loss of information to communities about toxic releases and pollution prevention" and that EPA has sought to minimize this loss. Has EPA quantified this loss of information at the community level? If so, please provide a list of the communities that have lost information. For each community adversely affected, please include a detailed description of what steps EPA has taken to minimize the loss.

As discussed above in response to Question 5, the Economic Analyses prepared for both the proposed rule and the final rule expanding Form A eligibility estimate the number of facilities as well as the number of Form Rs expected to become newly eligible for Form A. The Economic Analyses prepared for both the proposed rule and the final rule expanding Form A eligibility also identify the number of zip codes with at least one Form R estimated to become newly eligible for Form A and the number of zip codes with all Form Rs estimated to become newly eligible for Form A. In addition, for the proposed rule EPA prepared a detailed breakdown of each zip code where one or more non-PBT Form Rs was estimated to become newly eligible for Form A under the proposed rule.

As already discussed, with regard to the expansion of Form A eligibility and the resulting decrease in the number of Form Rs, it is important to keep in mind that the December 2006 final rule does not relieve any facilities of their obligation to report to TRI. The only change in requirements is that facilities are permitted to use the Form A if they maintain releases and total wastes below limits established in the rule.

While Form R does provide more detailed information than Form A, as a longstanding part of the TRI, Form A continues to provide communities with important information. Form A provides the name of the chemical and certain facility identification information. In addition, Form A can be used by the public as a "range report," *i.e.*, an indication that the facility manages between 0 and 500 pounds of a PBT chemical as waste and has no releases of the chemical. For a non-PBT chemical, Form A means a facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released. Further, EPA recently added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who can respond to questions from the public about the facility's Form A. Like Form Rs, Form As are available to the public through the TRI Explorer (http://www.epa.gov/triexplorer) and Envirofacts (http://www.epa.gov/enviro) databases.

13. Is it EPA's position that a reduction in TRI reporting requirements is more important than a community's right to know about chemical releases?

No, it is not EPA's position that a reduction in TRI reporting requirements is more important than a community's right to know about chemical releases. However, as stated

above and elsewhere, under the December 2006 final rule expanding Form A eligibility no facilities have been excused from reporting to TRI, and no chemicals have been removed from the list for which covered facilities must report. The only change in requirements is that facilities are permitted to use the shorter Form A if they maintain releases and total wastes below limits established in the final rule. EPA believes that regulations that reward preferred environmental management practices, such as reducing releases and other disposal in favor of recycling or other preferred practices, by allowing a shorter, less complicated report to be used, encourage environmental improvement and thereby benefit the environment and communities. Furthermore, as noted in the economic analysis and preamble to the final rule, the rule preserves full Form R reporting on over 99% of total releases and waste management quantities.

14. Given the new thresholds for reporting, is it EPA's position that chemical releases to the environment are safe, if they happen to be less than 2000 pounds per year?

No, it is not EPA's position that chemical releases less than 2,000 pounds per year are necessarily safe. Recall that the TRI program does not impose or affect emissions limits and other controls, which are established by local, state, and federal regulations and permits. It provides information on how the facility manages chemicals.

Form A can be used by the public as a "range report," *i.e.*, an indication that the facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released. Further, EPA recently added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who can respond to questions from the public about the facility's Form A. Like Form Rs, Form As are available to the public through the TRI Explorer (http://www.epa.gov/triexplorer) and Envirofacts (http://www.epa.gov/enviro) databases. Communities can use this information to initiate meaningful dialogue with facilities that submit Form A to TRI.

15. H.R. 1055 would re-establish reporting requirements that were in place before EPA decided to initiate rulemaking activities and make changes to the TRI reporting requirements. In her written testimony, however, Ms. O'Neill states that H.R. 1055 would "serve to divert resources from key TRI programs" and force EPA to "devote resources to undoing the 2006 rule (revising forms, instructions, data systems, etc.)."

a. What amount of EPA resources has been spent on developing, implementing and defending the 2006 TRI rule? Please include all costs, including personnel time, materials, and contractor support services.

b. What amount of EPA resources has been spent on revising forms, instructions, data systems, etc. as a result of the 2006 TRI rule?

Please include all costs, including personnel time, materials and contractor support services

c. What has EPA done with the forms, instructions, and data systems that were in place before the EPA changes the rules? Have they been destroyed?

For more than two years (2005 and 2006), numerous EPA personnel at headquarters and throughout the regions have worked consistently, or at specific times, on crafting analyses, considering comments, organizing and participating in workgroup meetings, developing briefing packages, drafting responses, preamble language, and regulation text, and other activities related to the TRI rulemaking to expand Form A eligibility. Similarly, throughout the entire process, contractor support has been used when appropriate to help organize the comments entered into the rule's docket, to generate the economic analyses for both the proposed rule and the final rule, to work on other TRI data analyses as directed, and to complete other tasks as assigned. With the above circumstances in mind, EPA cannot provide a perfect accounting of all the costs, including personnel time, spent on the December 2006 TRI final rule; however, a rough estimate is thought to include 3 – 4 full-time employee equivalents for the two year period and $1 million in contractor support.

EPA has not calculated the resources spent specifically on revising forms, instructions, and data systems. Prior year versions of the RF & I and the TRI reporting software are preserved. Prior year versions of the TRI reporting software, which contain the respective year's RF & I, can easily be accessed from the TRI website at: www.epa.gov/tri.

16. In your written testimony, you stated that "environmental information is a strategic asset in the work to protect human health and the environment" and that it "underlies all decisions made by EPA and its partners." In its analysis of EPA's TRI rule change, GAO estimates that 64 counties in 28 States may no longer receive detailed information about any toxic chemical releases from facilities in their counties. Is it EPA's position that the environmental information that may be lost to these counties is not a strategic asset in the work to protect human health and the environment?

EPA believes that the TRI Form A as well as the more detailed TRI Form R provide important environmental information that can be used by communities and other TRI stakeholders as a strategic asset in the work to protect human health and the environment. However, EPA believes the statistic cited by GAO is misleading because it does not account for how much information was being received by these counties in the first place. In most cases where communities in a given zip code could receive only Form As under the new rule, the community received an average of two Form Rs in previous years . As noted above, on a national level, over 99% of releases and waste management quantities will continue to be reported on Form R under the 2006 rule. As a longstanding part of the TRI, Form A continues to provide communities with important information. Form A

provides the name of the chemical and certain facility identification information. In addition, Form A can be used by the public as a "range report," *i.e.*, an indication that the facility manages between 0 and 500 pounds of a PBT chemical as waste and has no releases of the chemical. For a non-PBT chemical, Form A means a facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released. Further, EPA recently added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who can respond to questions from the public about the facility's Form A. Like Form Rs, Form As are available to the public through the TRI Explorer (http://www.epa.gov/triexplorer) and Envirofacts (http://www.epa.gov/enviro) databases.

17. When EPA proposed changes to TRI reporting requirements, the agency stated that no critical information would be lost (Federal Register, December 22, 2006). According to GAO's analysis of the TRI Burden Reduction Final Rule, the State of Georgia could lose information on as many as 60 chemicals. This represents almost 30 percent of the total number of chemicals that have been monitored in Georgia, through TRI, up to this time. Does the EPA consider this potential loss of information in Georgia insignificant?

Again, EPA believes this statistic is misleading. It emphasizes the number of reports rather than the information in those reports. The percentage of releases and waste management quantities that would no longer be reported on Form R is less than 1% on a national level. Before the 2006 rule making, EPA received approximately 17,000 Form Rs that reported 2,000 pounds or less of toxic chemicals, including almost 3,000 that reported zero releases. Replacing the actual number with a range of between 0 and 2000 lbs (for non-PBT chemicals) continues to provide communities with important information. In contrast, reports with more than 2000 pounds of releases, which account for the vast majority (over 99%) of chemical releases nation-wide, will continue to be submitted on Form R.

Furthermore, EPA emphasizes the important purposes of the December 2006 TRI final rule expanding Form A eligibility. First, the final rule does not relieve any facilities of their obligation to report to TRI. As stated in Assistant Administrator Molly A. O'Neill's testimony for the October 2007 hearing, "No facilities were excused from reporting under the final TRI rule, and no chemicals were removed from the list for which covered facilities must report. The only change in requirements is that facilities are permitted to use the short form if they maintain releases and total wastes below limits established in the rule."

Second, while Form R provides more detailed information than Form A, as a longstanding part of the TRI, Form A continues to provide communities with important information. Form A provides the name of the chemical and certain facility identification information. In addition, Form A can be used by the public as a "range report," *i.e.*, an indication that the facility manages between 0 and 500 pounds of a PBT chemical as waste and has no releases of the chemical. For a non-PBT chemical, Form A means a facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more

than 2,000 pounds is released. Further, EPA recently added a "Public Contact" field to the Form A Certification Statement to provide the name, telephone number, and e-mail address of a person who can respond to questions from the public about the facility's Form A. Like Form Rs, Form As are available to the public through the TRI Explorer (http://www.epa.gov/triexplorer) and Envirofacts (http://www.epa.gov/enviro) databases.

Third, the final rule's coupling of a lower release limit with a higher other waste management limit (*i.e.*, zero release pounds and 500 recycling, energy recovery and/or treatment pounds for PBTs, and 2,000 release pounds and 5,000 total waste management pounds for non-PBTs) structured, for the first time, Form A eligibility in a way that promotes the use of preferred waste management methods such as recycling over disposal and other releases.

18. Has EPA made any plans or taken any actions to assist States, local emergency planning committees, and "first responders" with potential gaps in information on chemical releases? If so, please provide the name of the EPA office that is responsible for these plans and activities. What funding will be made available to this EPA office for these plans and activities? What funding will be made available to States, local emergency planning committees and "first responders" to assist with the potential gaps in information?

As discussed above in response to Question 7, local emergency planning committees, state emergency response commissions, and first responders such as local fire departments receive information from the chemical inventory reporting requirement established in Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA). The reporting requirements of Section 312 are specifically structured around the needs of first responders. For example, Section 312 requires reporting of both the quantity and the location of hazardous chemicals stored on site. This information is not gathered by the TRI program and the 2006 TRI rule does not affect the availability of this information in any way. The use of TRI data (collected under Section 313 of EPCRA for different statutory purposes) by these entities is supplemental to information provided to them under Section 312 and it would generally be of limited use to them. The following EPA website provides additional information about Section 312: **http://www.epa.gov/emergencies/content/epcra/epcra_storage.htm**.

Further, the December 2006 final rule expanding Form A eligibility does not relieve any facility of their obligation to report to TRI, but rather allows those facilities that eliminate or minimize their releases to use the shorter Form A in lieu of the more-detailed Form R. Form A also continues to provide useful information, identifying the chemical, the facility, and the range of release and other waste management amounts by chemical at the facility.

19. Changes to the TRI reporting thresholds were proposed by the Small Business Administration and the Electronics Industry Manufacturing Association in 1997. The proposed changes were not accepted by EPA based

on the potential for loss of data to the TRI. The TRI program has expanded since 1997, and is relied upon by more organizations, including academics and investment entities. Is it EPA's position that the potential for data loss to TRI is less important now than it was in 1997?

Today, as much as in the past, EPA values TRI as the cornerstone of successful environmental information programs. The TRI rule expanding Form A eligibility represents an innovative approach by the Agency to use TRI to encourage facilities to reduce their emissions and improve their environmental performance. Furthermore, the agency has always tried to balance the value of the information against the burden imposed on businesses, especially small businesses that do not have full-time environmental compliance managers, in providing it. The original Form A rule making was completed in 1994. After 10 years of experience with this rule, EPA determined that it would be reasonable to expand the eligibility thresholds in a way that ensured that over 99% of releases and waste management quantities are still reported on the Form R.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

February 26, 2008

Mr. John B. Stephenson
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Stephenson:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response. Please be advised that you will be receiving an additional set of questions within a week.

To facilitate the printing of the hearing record, your responses to these questions should be received by no later than the close of business on **Tuesday, March 11, 2008**. Your written responses should be delivered to room **2322-B Rayburn House Office Building** and faxed to **(202) 225-2899** to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at **rachel.bleshman@mail.house.gov**. Please send your response in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

JOHN D. DINGELL
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

GAO
Accountability • Integrity • Reliability

United States Government Accountability Office
Washington, DC 20548

May 9, 2007

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

Enclosed are GAO's responses to questions that were submitted by Representatives Joe Barton, Albert Wynn, and John Shimkus for the hearing record in response to our testimony, *Environmental Right-To-Know: EPA's Recent Rule Could Reduce Availability of Toxic Chemical Information Used to Assess Environmental Justice*, (GAO-08-115T). If you or your staff have any questions about our responses, please contact me at (202) 512-3841 or stephensonj@gao.gov.

Sincerely yours,

John B. Stephenson
Director, Natural Resources
and Environment

Enclosure

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

Enclosure

GAO Response to Questions

Questions from the Honorable Joe Barton and the Honorable John Shimkus

1. Did GAO find that raising Form A thresholds would increase pollution of air, water, and land with toxic substances as categorized by the TRI?

We did not assess the extent to which raising the Form A thresholds would increase pollution of air, water, and land. In our October, 2007 testimony[1], we reported that a change to TRI reporting requirements may not affect how much toxic waste is released to the environment, but it could affect how much communities will know about the toxic releases that occur in their environment. We also reported in November, 2007, that EPA's raising the Form A thresholds could significantly reduce the quantity and detail of information previously available to many communities about toxic chemicals used, transported, or released in their environment.[2] Given that EPA has credited the public release of TRI information with reductions in pollution, it is possible that a reduction in TRI information resulting from raising Form A thresholds could lead to increased release of toxic substances.

2. Your written testimony asserts that a "disproportionate" amount of now-Form A eligible facilities are located in predominantly minority or low-income communities. What percentage increase would GAO classify as "acceptable" in light of the principles of environmental justice?

In our written testimony, we reported that EPA's environmental justice analysis found that TRI-reporting facilities are in communities that are one-third more minority and one-quarter more low-income, on average, than the U.S. population as a whole. We further noted EPA's assertion that "the rule does not appear to have a disproportionate impact on these [minority and low-income] communities." Based on our review of EPA's analysis, we observed that, in comparison to the country at large, *minority and low-income populations* would likely be disproportionately affected by an across-the-board reduction in TRI information. We did not make an assertion about a disproportionate amount of *now-Form A eligible facilities* and therefore, we are not in a position to determine what increase, if any, would be acceptable.

3. Does an increase in Form A eligible facilities mean more pollution will occur in predominantly minority and low-income communities?

[1]GAO. *Environmental Right-To-Know: EPA's Recent Rule Could Reduce Availability of Toxic Chemical Information Used to Assess Environmental Justice*, GAO-08-115T (Washington, D.C., Oct. 4, 2007).

[2]GAO, *Toxic Chemical Releases: EPA Actions Could Reduce Environmental Information Available to Many Communities*, GAO-08-128 (Washington, D C.: Nov. 30, 2007).

To the extent that TRI facilities are more likely to be located in predominantly minority and low-income communities, an increase in Form A reporting will likely reduce the amount of information about toxic chemical releases in those communities. However, a reduction in information does not guarantee that more pollution will occur; it only guarantees that minority and low-income communities will know less about the toxins that nearby facilities release into their environments.

4. GAO found an average savings of just $900 per facility among those eligible to submit Form A instead of Form R. What was the range of savings among these facilities? The middle 50%? The median? What feedback did GAO analysts receive from small businesses now able to use Form A?

We derived our estimate of the average savings per facility (i.e., middle 50%) by dividing EPA's estimate of total savings ($5.9 million) by the 6,670 facilities we estimated to be eligible to switch at least one Form R to Form A. EPA estimated that each eligible non-PBT Form R would save the facility $438 and each eligible PBT Form R would save $748. Therefore, total savings at each facility would depend upon (1) how many eligible Form Rs the facility submitted on Form A instead and (2) whether the facility used Form A to report releases of a PBT- or non-PBT chemical. GAO did not estimate the range of savings or the median savings based on the facilities' reporting histories.

GAO spoke with representatives from trade associations representing major industries that report to TRI (e.g., mining, petroleum, chemicals), and they told us that the Form A expansion was not a high regulatory priority for their industries. Also, we met with officials from the Small Business Administration, which has advocated for the Form A for more than a decade, to better understand the small business perspective. Discussions with individual small businesses were outside the objectives, scope and methodology of our review. We reviewed the statements of the other witnesses from the October 4, 2007 hearing, and the Society of Glass and Ceramic Decorators illustrated the small business perspective.[3] The Society's testimony refers to Nancy Klinefelter, owner of Baltimore Glassware Decorators, who also provided testimony to a February 6, 2007 hearing for the Senate Committee on Environment and Public Works, before which GAO also testified.[4,5] We note that Ms. Klinefelter estimated that completing the TRI paperwork takes her company more than 130 hours a year (i.e., more

[3]http://energycommerce.house.gov/cmte_mtgs/110-ehm-hrg.100407.Bopp-testimony.pdf.

[4]http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=2873bacc-18b3-4ec4-9a04-4d619b997bd9

[5]http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=41b11407-5b5d-4b35-863e-c006dc4baa6c.

than 16 8-hour work days). We examined the publicly-available TRI reports for Baltimore Glassware Decorators, and we note that the company used Form R to report releasing 266 pounds of lead (a PBT chemical) in 2001, six pounds in 2002, one pound in 2003, and zero pounds in 2004 and 2005.[6] The company used the expanded Form A eligibility for PBT chemicals to report zero pounds in 2006. We do not believe that 130 hours for reporting is typical of the burden faced by small businesses reporting zero releases.

5. How many facilities are still required to complete Form R after EPA's ruling?

EPA reported that 23,461 facilities completed a Form R in 2005, and we estimated that approximately 3,565 facilities could choose to submit Form A in lieu of all currently-submitted Form R. Based on that estimate, approximately 19,900 facilities would be required to complete at least one Form R after EPA's ruling.[7]

Questions from the Honorable Albert Wynn

1. In the course of the Government Accountability Office's (GAO) evaluation of the rulemaking process that was used by the Environmental Protection Agency (EPA) for the development of the TRI Burden Reduction Rule, did GAO find any indication that the Office of Environmental Justice, the agency's lead office for environmental justice issues, was consulted on the proposed rule?

- **a. If so, what consultation process was used?**
- **b. If the Office of Environmental Justice was consulted, did it prepare comments on the proposed changes to TRI?**
- **c. If comments were prepared, did GAO review the comments?**
- **d. If comments were prepared, and GAO did not review the comments, why not?**

a. In the course of our evaluation of EPA's development of the TRI Burden Reduction Rule, EPA reported to us that the Office of Environmental Justice provided comments during the final agency review for the TRI Burden Reduction Rule. However, we did not find evidence that the office was consulted on the proposed rule and, as a result, we cannot comment on the process that may have been used by EPA.

[6] http://www.epa.gov/tri, Zip code 21206

[7] GAO used 2005 TRI data, the most recent data that was available from facilities at the time of our analysis

b-d. We requested documentation of any comments that the Office of Environmental Justice prepared during the rule development process, but EPA did not provide any documentation. We are unable to substantiate EPA's claim or determine the extent that the office was involved in the TRI rule's development. As we reported in our October 2007 testimony, EPA stated in the proposed rule that it had "no indication that either option [changing reporting requirements for non-PBT and PBT chemicals] will disproportionately impact minority or low-income communities. We stated that the reason EPA said it had no indication about environmental justice impacts is because the agency did not complete an environmental justice assessment before publishing the rule for comment in the Federal Register. Furthermore, we found that the statement concerning disproportionate impacts in the proposed rule was not written by EPA; rather, it was added by the Office of Management and Budget during its official review of the proposed rule.

EPA stated in the final rule that "while there is a higher proportion of minority and low-income communities in close proximity to some TRI facilities than in the population generally, the rule does not appear to have a disproportionate impact on these communities, since facilities in these communities are no more likely than elsewhere to become eligible to use Form A as a result of the rule." As we stated in response to question 2, above, we believe that minority and low-income populations would likely be disproportionately affected by an across-the-board reduction in TRI information because TRI facilities are more likely to be located near minority and low-income communities.

2. In the course of GAO's evaluation, did GAO find any indication that the Office of Environmental Justice concurred in the final rulemaking package for the TRI Burden Reduction Final Rule?

We found no documentary evidence that the Office of Environmental Justice concurred with the TRI Burden Reduction Final Rule.

ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515–6115

JOHN D. DINGELL, MICHIGAN
CHAIRMAN

February 26, 2008

The Honorable Thomas M. Sullivan
Chief Counsel for Advocacy
Office of Advocacy
U.S. Small Business Administration
409 Third Street, S.W. 7th Floor
Washington, D.C. 20416

Dear Mr. Sullivan:

Thank you for appearing before the Subcommittee on Environment and Hazardous Materials on Thursday, October 4, 2007, at the hearing entitled "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know" on H.R. 1103, the Environmental Justice Act of 2007, and H.R. 1055, the Toxic Right-To-Know Protection Act. We appreciate the time and effort you gave as a witness before the subcommittee.

Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's question along with your response.

To facilitate the printing of the hearing record, your responses to these questions should be received by no later than the close of business on **Tuesday, March 11, 2008**. Your written responses should be delivered to room **2322-B Rayburn House Office Building** and faxed to **(202) 225-2899** to the attention of Rachel Bleshman. An electronic version of your response should also be sent by e-mail to Ms. Bleshman at **rachel.bleshman@mail.house.gov**. Please send your response in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Rachel Bleshman at (202) 225-2927.

Sincerely,

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March 18, 2008

The Honorable John D. Dingell, Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for giving me the opportunity to testify before the House Energy and Commerce Subcommittee on Environment and Hazardous Materials on October 4, 2007. I appreciate the time and effort the Committee has devoted to understanding the small business perspective on regulatory relief.

Enclosed, please find my responses to the follow-up questions submitted by Representatives Barton and Shimkus, which were sent to me on February 26, 2008. In addition, I am submitting these documents electronically, as you requested. Please do not hesitate to contact me, or Kevin Bromberg of my staff at (202) 205-6964 or kevin.bromberg@sba.gov, if you have any questions.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Enclosures

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Albert Wynn, Chairman
Subcommittee on Environment and Hazardous Materials

The Honorable John Shimkus, Ranking Member
Subcommittee on Environment and Hazardous Materials

House Energy and Commerce
Subcommittee on Environment and Hazardous Materials
Hearing on "Environmental Justice and the Toxics Release Inventory Reporting Program: Communities Have a Right to Know"

Follow-up Questions from
The Honorable Joe Barton and the Honorable John Shimkus
March 18, 2008

1. **In your testimony, you described how EPA's December 2006 TRI rule will help small businesses and strengthen environmental protections. Please describe why you believe that this new rule improves EPA's ability to protect the environment.**

In addition to assisting small businesses via reduced recordkeeping/reporting requirements, EPA's TRI reporting burden reduction rule also provides TRI reporters with incentives to protect the environment. In order to qualify for the benefits associated with the short Form A, many facilities will need to reduce their emissions into the environment and perform more pollution prevention.

By limiting persistent, bioaccumulative and toxic chemicals (PBT) Form A eligibility to facilities with zero releases and 500 pounds or less (Annual Reportable Amount, or ARA)[1] of other waste management (i.e., recycling, energy recovery, and treatment for destruction), EPA is encouraging facilities to eliminate releases of PBT chemicals and reduce other waste management quantities to 500 pounds or less. Facilities that currently dispose of wastes, such as mercury, would be encouraged to recycle the mercury instead to achieve zero emissions into the environment. This new provision is especially important to the environment because it drives those releases of chemicals of "special concern" (PBTs) to zero.

For non-PBTs, EPA has designed the Form A eligibility criteria in such a way as to create an incentive for facilities to move away from disposal and other releases toward treatment and recycling. This incentive is created by raising the recycling, treatment, and energy recovery portions of the ARA to a 5,000-pound maximum, while capping releases at 2,000 pounds. This approach promotes pollution prevention, recycling, energy recovery, and treatment over releases. In addition, by including all waste management activities in the Form A eligibility criteria, EPA will be newly encouraging facilities above the 5,00-pound ARA to reduce their total waste management in order to qualify for Form A eligibility.

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[1] The annual reportable amount (ARA) is defined in the final rule as the sum of the quantities reported in sections 8.1 to 8.8 of the Form R, which reflect chemical disposal or other releases (8.1), energy recovery (8.2 and 8.3), recycling activity (8.4 and 8.5), treatment (8.6 and 8.7), and quantities associated with one-time events (8.8). In the pre-2006 version of the ARA, the ARA was defined as the sum of sections 8.1-8.7. The addition of 8.8 represented wastes generated from one-time events.

Through expanded Form A eligibility, EPA's burden reduction rule provides a major incentive for firms to bolster their reputations as environmentally responsible companies.

2. Please explain why small businesses with fewer than 10 employees are exempt from TRI reporting and why small businesses still need the additional burden reductions from EPA's December 2006 TRI ruling.

Congress originally set the employee and chemical throughput thresholds, based on data from New Jersey's right-to-know program, in order to capture the substantial majority of releases from industrial facilities. The original 10-employee statutory exemption was not established as a small business standard, but as a practical method of excluding facilities that were unlikely to pose a significant risk to the community. Now that EPA has nearly twenty years of TRI data, we know that additional burden reductions can be achieved without posing a significant risk to the community.

3. In your testimony, you mention that the Office of Advocacy contracted with a research firm to evaluate the impact EPA's December 2006 TRI rule will have on small businesses and local communities. Please explain what the research showed in terms of how EPA's rule will affect the public's access to information about toxic chemicals in their communities.

To evaluate claims of EPA rule impacts, Advocacy requested that E.H. Pechan & Associates, Inc. (Pechan) review information describing how TRI data are currently used, and to evaluate the impact of EPA's proposed reporting burden relief on these current uses.[2] Pechan's review focused on comments submitted to EPA in opposition to the proposed reporting revisions.

Pechan analyzed 17 national, state, and local TRI data use examples, and determined that, with the possible exception of one example, EPA's proposal will have insignificant effects on these data uses.[3] Pechan found several instances where the commenters either misunderstood or misreported the nature of the proposed TRI revisions, and several cases where they misreported the underlying facts. For example, commenters failed to understand that no changes were proposed for PBTs, such as mercury, when the facility

[2] E.H. Pechan & Associates, Inc., "Review and Analysis of the Effect of EPA's Toxics Release Inventory (TRI) Phase II Burden Reduction Proposal on TRI Data Uses," prepared for U.S. Small Business Administration, Office of Advocacy, June 2007. *See* http://www.sba.gov/advo/research/chron.html for research summary and report. The research summary is also appended to this document.

[3] In the case of the Louisville, Kentucky, area analysis, the effect of the proposal was to remove 2 of 19 chemicals from the chemical screening process, but the screening analysis relied on a conservative approach, and these low-risk chemicals accounted for a small portion of the overall risk in the area. It is unclear whether these two chemicals warranted attention, and therefore the true effect of the proposal on this use could not be determined without more analysis. However, under the final rule, the impact would be less, given the changes between the proposal and the final rule.

has any releases into the environment. Therefore, data users who were concerned about PBT releases going unreported were addressing a nonexistent issue. Additional examples of types of data uses where no impact is anticipated include uses to support chemical emergency planning and to support characterization of dioxin quantities (dioxins are exempt from EPA's proposal). In addition, many of the examples involve the use of TRI data to target facilities with the highest releases and/or total waste quantities for reductions. These uses are minimally (if at all) affected by EPA's proposal because the proposal limited Form A eligibility to small quantity waste reporters. As noted below, Form A eligibility changes implemented in the final rule and actual Form A utilization rates will only serve to strengthen the conclusions in the study.

Pechan's study identified various reasons for the large disconnect between public dissatisfaction with the TRI reform proposals, and the lack of significant impact found in the study. Two common explanations were: (1) ignorance about the specifics of the reporting revisions; and (2) ignorance about how TRI data are actually used. With respect to the first conclusion, many commenters appeared to be unaware that Form A does not represent a complete loss of Form R quantitative chemical information (a more apt characterization is that Form A creates an incentive for facilities to reduce their chemical use/releases by allowing small quantity handling facilities to use range reporting). Concerning the second reason, commenters often appeared to be unaware that data users understandably focus on large quantity emitters and PBT emitters that are not Form A eligible under EPA's December 2006 rule.

To illustrate assertions made by states and local communities opposing EPA's proposed reporting burden relief rule, Attachment A describes Pechan's evaluation of one claimed TRI data use impact example described by a State of Washington official. This example reflects the use of the TRI to enroll companies in Washington's pollution prevention (P2) program. A Washington official claimed that EPA's proposed TRI reporting changes would require 15 percent of the facilities to drop out of their P2 program. The Pechan study concluded that there was nothing in EPCRA or EPA's proposed regulation that would prevent the state from requiring Form A reporters to develop P2 plans. In fact, a different Washington official stated that the state had chosen to exclude Form A reporters from P2 planning requirements based on degree of risk.

Pechan determined that the State of Washington only requires that facilities' P2 plans cover 95 percent of their total hazardous products used and/or hazardous wastes generated. Pechan estimated that EPA's *proposed* rule would have reduced total Form R reported waste quantity for Washington by 0.31 percent and total release quantity by 0.64 percent. The analyses indicated that current and potential future Form A reporting involves quantities that are significantly less than the state's 5 percent hazardous waste quantity P2 plan exemption.

Implications of TRI Reporting Changes Adopted in Final Rule

It should be noted that the above study was performed for EPA's *proposed* rule. EPA's *final* rule differs significantly from the proposed rule in two ways: (1) the non-PBT annual reportable amount (ARA) has been revised to include section 8.8 (one-time event) quantities, and (2) non-PBT Form A eligibility has been narrowed by adding a 2,000-pound limit on releases of non-PBT chemicals that are considered for Form A. Assuming full use of Form A, EPA notes that the second change preserves almost 60 percent of the total release pounds that would no longer have been reported on Form R under the proposed rule.[4] This fact, coupled with the addition of Section 8.8 quantities in the ARA, will serve to further reduce the nominal impacts described in the Pechan study.

Zip Code Analysis

One of the most oft-cited EPA estimates of impact from the proposed rule is that over 650 zip codes would lose all Form R information (i.e., approximately 7 percent of all zip codes with Form R data). Advocacy requested that Pechan evaluate the significance of EPA's zip code finding with respect to the local community right-to-know. As described below, Pechan determined that these zip codes account for only 0.01 percent of nationwide releases, and the median release for the "all Form A eligible" zip codes is 2 pounds, while the median release for all other zip codes is 6,800 times higher (13,600 pounds).

Using 2002 TRI data, Pechan identified 663 additional zip codes for which all current Form Rs will become Form A eligible at the 5,000 pound ARA threshold.[5] The results are displayed in Figure 1 below. Pechan estimates that 554 of these zip codes have one or two Form Rs. Therefore, the large number of zip codes that can convert entirely to Form A is a function of the fact that a large number of zip codes have one or two reports.

It should be noted that the Figure 1 values reflect EPA's *proposed* rule. As noted above, EPA's *final* rule differs significantly from the proposed rule in such a way that will further reduce the impacts identified in Figure 1.

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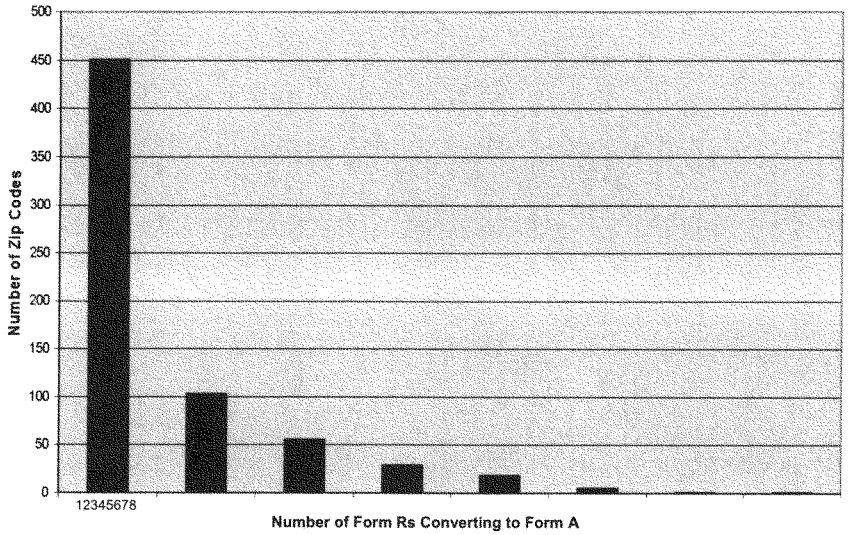
[4] U.S. Environmental Protection Agency, "Response to Comments, Toxics Release Inventory Phase 2 Burden Reduction Rule," Office of Information Analysis and Access, Office of Environmental Information, December 18, 2006.

[5] E.H. Pechan & Associates, Inc., "Additional Analysis of TRI Phase II Proposal, Technical Memorandum," prepared for U.S. Small Business Administration, Office of Advocacy, January 12, 2006. http://www.sba.gov/advo/laws/comments/epa06_0113.pdf.

Figure 1. Number of Zip Codes Where All Form Rs Become Form A Eligible



Pechan conducted an additional analysis of EPA's *proposed* rule that utilized reporting year (RY) 2004 TRI data.[6] This analysis compared release information for zip codes for which all Form Rs become Form A eligible with release information for other zip codes. Table 1 illustrates the very different release characteristics of the zip codes that would have all Form Rs become Form A eligible under EPA's proposed rule. Although more than 5 percent of RY 2004 zip codes would have all Form Rs become Form A eligible under EPA's proposed rule, these zip codes cumulatively accounted for 0.01 percent of total releases. The median release for the "all Form A eligible" zip codes is 2 pounds, while the median release for all other zip codes is 6,800 times higher (13,600 pounds). In other words, for 50 percent of the hundreds of zip codes with only Form A eligible facilities, Form R required reporting would account for 2 pounds or less in annual emissions to the environment. This reconfirms the point that a Form A is a mark of superior environmental stewardship, and not a cause for concern about missing data.

[6] Pechan data analysis (March 2007) using RY 2004 TRI data.

Table 1. Comparison Between Zip Codes where All Form Rs Become Eligible For Form A with Zip Codes where One or More Form Rs Are Not Form A Eligible: Reporting Year 2004

Item	All Form Rs Eligible	All/Some Form Rs Not Eligible	Total (All Form Rs)	All Form Rs Eligible as % of Total
Number of Zip Codes	569	10,122	10,691	5.32%
Total Releases	278,067	4,333,771,149	4,334,049,216	0.01%
Mean Releases/Zip Code	489	428,196	405,430	0.12%
Median Releases/Zip Code	2	13,600	10,922	0.02%
Maximum Releases/Zip Code	5,627	458,177,056	458,177,056	0.00%

4. There has been a lot of criticism that the switch to Form A will affect the right to know at a local level. Can you comment on what the research you commissioned found and if information availability will be curtailed?

First, there is no effect on facilities that release PBTs to the environment – these facilities do not qualify for the Form A. Second, every community receives annual information about every chemical. Third, with regard to the other less toxic chemicals (non-PBT), 99 percent of the information is still preserved on the Form R. With regard to the other 1 percent, communities have the range reporting information for the same chemical that was reportable on the Form R. In cases where Form R data was used by a community, it would be difficult to find a situation where a Form A range report would hurt the analysis, because the problems addressed by communities involve releases of non-PBT chemicals well beyond 2000 pounds. Finally, the response to question 3 provides additional details about the specific research findings by our contractor, E.H. Pechan & Associates, which demonstrate no significant impact on the local right-to-know.

In addition, in January 2005, the Office of Advocacy filed comments that included an analysis of RY 2000 TRI data to determine whether there was a significant risk change at the local level by substituting a Form A for a Form R. Our contractor, E. H. Pechan & Associates, reviewed the RSEI (risk-based) scores for both the 2,000-pound and 5,000-pound thresholds.[7] Under either the 2,000-pound or 5,000-pound threshold scenario, for 99 percent of all of the nation's 3,142 counties the changes in reported risk were not significant. Thus, at the local level, EPA's revised final rule (a release-based threshold

[7] E.H. Pechan & Associates, Inc., *"Risk-Based Analysis of Form A and Form NS Toxics Release Inventory Reform Proposal Alternatives, Final Report,"* prepared for U.S. Small Business Administration, Office of Advocacy, October 2004.

of 2,000 pounds) also involves very little change in the potential risk associated with releases that are being reported on Form R.

5. Mr. Sullivan, in your statement you suggest that the new EPA rules permitting certain firms to use Form A would actually provide an incentive for them to minimize their use of toxic chemicals. Could you please explain how this would work? Specifically, how would the new rules help small businesses?

Many thousands of small businesses will benefit from the December 2006 TRI reform. We estimate that about half of the new relief goes to small businesses.

The 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, found that small businesses are disproportionately affected by the total Federal regulatory burden.[8] This overall regulatory burden was estimated by Crain to exceed $1.1 trillion in 2004.[9] For firms employing fewer than 20 employees, the annual regulatory burden was estimated to be $7,647 per employee – nearly 45 percent greater than the $5,282 burden estimated for firms with 500 or more employees.[10] Looking specifically at compliance with federal environmental rules, the difference between small and large firms is even more dramatic. Small firms generally have to spend 4½ times more per employee for environmental compliance than large businesses do.[11] Environmental requirements, including TRI paperwork requirements, can constitute up to 72% of small manufacturers' total regulatory costs.[12]

Through expanded Form A eligibility, EPA's burden reduction rule provides a major incentive for firms to bolster their reputations as environmentally responsible companies. In addition to assisting small businesses via reduced recordkeeping/reporting requirements, EPA's TRI reporting burden reduction rule also provides TRI reporters with incentives to protect the environment. In order to qualify for the benefits associated with the short Form A, many facilities will need to reduce their emissions into the environment and perform more pollution prevention.

By limiting persistent, bioaccumulative and toxic chemicals (PBT) Form A eligibility to facilities with zero releases and 500 pounds or less (Annual Reportable Amount, or ARA)[13] of other waste management (i.e., recycling, energy recovery, and treatment for

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[8] W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (September 2005) available at http://www.sba.gov/advo/research/rs264tot.pdf.
[9] *Id.* at p. v.
[10] *Id.* at page 55, Table 18.
[11] *Id.*
[12] *Id.*
[13] The annual reportable amount (ARA) is defined in the final rule as the sum of the quantities reported in sections 8.1 to 8.8 of the Form R, which reflect chemical disposal or other releases (8.1), energy recovery (8.2 and 8.3), recycling activity (8.4 and 8.5), treatment (8.6 and 8.7), and quantities associated with one-

destruction), EPA is encouraging facilities to eliminate releases of PBT chemicals and reduce other waste management quantities to 500 pounds or less. Facilities that currently dispose of wastes, such as mercury, would be encouraged to recycle the mercury instead to achieve zero emissions into the environment. This new provision is especially important to the environment because it drives those releases of chemicals of "special concern" (PBTs) to zero.

For non-PBTs, EPA has designed the Form A eligibility criteria in such a way as to create an incentive for facilities to move away from disposal and other releases toward treatment and recycling. This incentive is created by raising the recycling, treatment, and energy recovery portions of the ARA to a 5,000-pound maximum, while capping releases at 2,000 pounds. This approach promotes pollution prevention, recycling, energy recovery, and treatment over releases. In addition, by including all waste management activities in the Form A eligibility criteria, EPA will be newly encouraging facilities above the 5,00-pound ARA to reduce their total waste management in order to qualify for Form A eligibility.

Therefore, the Federal government is properly concerned with environmental regulatory costs on small firms, and particularly those that fall on the manufacturing sector. Small businesses need regulatory relief and this TRI rule is a small but significant step in that direction.

6. In your testimony you mention the "substantial paperwork burdens" H.R. 1055 would impose on small business. Yet, to some, 10-15 hours may not sound like too much to ask if it means providing local communities with critical information on chemical releases. How would you respond to this view?

Small businesses have consistently voiced their concerns to Advocacy that the TRI program imposes substantial paperwork burdens with little corresponding environmental benefit, especially for thousands of businesses that have zero discharges or emissions to the environment. These businesses must devote scarce time and resources to completing lengthy, complex Form R reports each year, despite the fact that they have zero discharges. The Office of Advocacy believes the EPA rule strikes an appropriate balance by allowing meaningful burden relief while at the same time continuing to provide valuable information to the public.

In 2005, the Office of Advocacy released a study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, which found that small businesses are disproportionately affected by the total Federal regulatory burden.[14] This overall regulatory burden was estimated by Crain to exceed $1.1 trillion in 2004.[15] For firms

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time events (8.8). In the pre-2006 version of the ARA, the ARA was defined as the sum of sections 8.1-8.7. The addition of 8.8 represented wastes generated from one-time events.

[14] W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (September 2005) available at http://www.sba.gov/advo/research/rs264tot.pdf.

[15] *Id.* at p. v.

employing fewer than 20 employees, the annual regulatory burden was estimated to be $7,647 per employee – nearly 45 percent greater than the $5,282 burden estimated for firms with 500 or more employees.[16] Looking specifically at compliance with federal environmental rules, the difference between small and large firms is even more dramatic. Small firms generally have to spend 4½ times more per employee for environmental compliance than large businesses do.[17] Environmental requirements, including TRI paperwork requirements, can constitute up to 72% of small manufacturers' total regulatory costs.[18]

In 2007, Advocacy requested that E.H. Pechan & Associates, Inc. (Pechan) review information describing how TRI data are currently used, and to evaluate the impact of EPA's proposed reporting burden relief on these current uses.[19] Pechan reviewed over 2,000 comments submitted to EPA in opposition to the proposed reporting revisions and identified 17 specific uses of TRI data for examination, addressing national, state and local concerns. Based on this analysis, Pechan's June 2007 report found that EPA's final rule will not have significant impacts on data uses identified by the commenters.

Previously, in January 2005, the Office of Advocacy filed comments that included an analysis of RY 2000 TRI data to determine whether there was a significant risk change at the local level by substituting a Form A for a Form R. Our contractor, E. H. Pechan & Associates, reviewed the RSEI (risk-based) scores for both the 2,000-pound and 5,000-pound thresholds (Pechan, 2004). Under either the 2,000-pound or 5,000-pound threshold scenario, for 99 percent of all of the nation's 3,142 counties the changes in reported risk were not significant. Thus, at the local level, EPA's revised final rule (a release-based threshold of 2,000 pounds) also involves very little change in the potential risk associated with releases that are being reported on Form R.

EPA's TRI Burden Reduction rule will yield needed reductions in small business paperwork burdens, while preserving the integrity of the TRI program and strengthening protection of the environment. H.R. 1055 would essentially revoke the December 2006 rule of the U.S. Environmental Protection Agency (EPA).

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[16] *Id.* at page 55, Table 18.
[17] *Id.*
[18] *Id.*
[19] E.H. Pechan & Associates, Inc., "Review and Analysis of the Effect of EPA's Toxics Release Inventory (TRI) Phase II Burden Reduction Proposal on TRI Data Uses," prepared for U.S. Small Business Administration, Office of Advocacy, June 2007. *See* http://www.sba.gov/advo/research/chron.html for research summary and report. The research summary is also appended to this document.

7. Opponents cite the fact that a large number of zip codes could lose all or most of the detailed information contained in Form R. Do you believe this to be the case? Why would this not be a problem for local communities?

While there has been concern expressed over EPA's estimate of the large number of zip codes for which Form R information will no longer be required, this does not take into account that the number of Form A-eligible facilities is a direct reflection of their exemplary environmental performance – their status as zero/micro quantity releasers. The data indicates that a large number of manufacturing facilities have now achieved zero or very low releases, and, therefore, qualify for the new Form A. These facilities should be rewarded for their environmental performance via reduced reporting costs. As discussed in detail in the response to question 3, Pechan's review of the Form R data that would no longer be reported indicates that this information is of negligible value, especially when compared to the value of the information that EPA will continue to obtain through the required Form R reporting.

Based on the 2002 TRI, E.H. Pechan & Associates identified 663 zip codes for which all current Form Rs will become Form A eligible at the 5,000 pound ARA threshold. It is important to note that these estimates will overstate the actual impacts because many facilities will continue to use Form R regardless of a change in Form A eligibility. Moreover, the great majority of these zip codes involve reporting for only one or two Form Rs, and by definition, all of these involve very small quantities. The Office of Advocacy found that 554 of the total 663 zip codes have only one or two Form Rs in the 2002 TRI. Thus, the large number of zip codes that can convert entirely to Form A is a truly a function of the fact that more than 550 zip codes have only one or two reports.

8. How would you answer the criticism that the burden relief under the new EPA rules is meant to primarily help large businesses?

The Office of Advocacy believes that approximately half of the relief goes to small businesses. We are confident that thousands of small firm facilities will benefit from this reform.

9. Some cite GAO's work and insist that Form R reporting under TRI is not that expensive. Does this TRI reform help small businesses? Even EPA admits that this TRI relief provides only $6 million/year in cost savings?

Small businesses have consistently voiced their concerns to Advocacy that the TRI program imposes substantial paperwork burdens with little corresponding environmental benefit, especially for thousands of businesses that have zero discharges or emissions to the environment. These businesses must devote scarce time and resources to completing lengthy, complex Form R reports each year, despite the fact that they have zero discharges.

Small businesses continue to identify TRI paperwork relief as a priority. Paperwork reduction is essential because as Advocacy research has shown, small businesses are disproportionately affected by federal regulations. For the smallest firms, the annual regulatory burden in 2004 was $7,647 per employee – nearly 45 percent more than the $5,282 burden for their largest counterparts. For environmental rules, the difference is more dramatic with small firms spending 4½ times more per employee for environmental compliance than large businesses do.

The 2005 Advocacy-funded study by W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, found that small businesses are disproportionately affected by the total Federal regulatory burden.[20] This overall regulatory burden was estimated by Crain to exceed $1.1 trillion in 2004.[21] For firms employing fewer than 20 employees, the annual regulatory burden was estimated to be $7,647 per employee – nearly 45 percent greater than the $5,282 burden estimated for firms with 500 or more employees.[22] Looking specifically at compliance with federal environmental rules, the difference between small and large firms is even more dramatic. Small firms generally have to spend 4½ times more per employee for environmental compliance than large businesses do.[23] Environmental requirements, including TRI paperwork requirements, can constitute up to 72% of small manufacturers' total regulatory costs.[24]

Through expanded Form A eligibility, EPA's burden reduction rule provides a major incentive for firms to bolster their reputations as environmentally responsible companies. In addition to assisting small businesses via reduced recordkeeping/reporting requirements, EPA's TRI reporting burden reduction rule also provides TRI reporters with incentives to protect the environment. In order to qualify for the benefits associated with the short Form A, many facilities will need to reduce their emissions into the environment and perform more pollution prevention.

By limiting persistent, bioaccumulative and toxic chemicals (PBT) Form A eligibility to facilities with zero releases and 500 pounds or less (Annual Reportable Amount, or ARA)[25] of other waste management (i.e., recycling, energy recovery, and treatment for destruction), EPA is encouraging facilities to eliminate releases of PBT chemicals and reduce other waste management quantities to 500 pounds or less. Facilities that currently dispose of wastes, such as mercury, would be encouraged to recycle the mercury instead to achieve zero emissions into the environment. This new provision is especially important to the environment because it drives those releases of chemicals of "special

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[20] W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (September 2005) available at http://www.sba.gov/advo/research/rs264tot.pdf.

[21] *Id.* at p. v.

[22] *Id.* at page 55, Table 18.

[23] *Id.*

[24] *Id.*

[25] The annual reportable amount (ARA) is defined in the final rule as the sum of the quantities reported in sections 8.1 to 8.8 of the Form R, which reflect chemical disposal or other releases (8.1), energy recovery (8.2 and 8.3), recycling activity (8.4 and 8.5), treatment (8.6 and 8.7), and quantities associated with one-time events (8.8). In the pre-2006 version of the ARA, the ARA was defined as the sum of sections 8.1-8.7. The addition of 8.8 represented wastes generated from one-time events.

concern" (PBTs) to zero.

For non-PBTs, EPA has designed the Form A eligibility criteria in such a way as to create an incentive for facilities to move away from disposal and other releases toward treatment and recycling. This incentive is created by raising the recycling, treatment, and energy recovery portions of the ARA to a 5,000-pound maximum, while capping releases at 2,000 pounds. This approach promotes pollution prevention, recycling, energy recovery, and treatment over releases. In addition, by including all waste management activities in the Form A eligibility criteria, EPA will be newly encouraging facilities above the 5,00-pound ARA to reduce their total waste management in order to qualify for Form A eligibility.

Therefore, the Federal government is properly concerned with environmental regulatory costs on small firms, and particularly those that fall on the manufacturing sector. Small businesses need regulatory relief and this TRI rule is a small but significant step in that direction.

10. Some of my colleagues like to cite to numbers showing public criticism of the EPA rule and your own views. How do you explain the disconnect between this and your own views?

Our contractor, E. H. Pechan & Associates, identified various reasons for the large disconnect between public dissatisfaction with the TRI reform proposals, and the lack of significant impact on right-to-know found in the study. Two common explanations were: (1) ignorance about the specifics of the reporting revisions; and (2) ignorance about how TRI data are actually used. With respect to the first conclusion, many commenters appeared to be unaware that Form A does not represent a complete loss of Form R quantitative chemical information. (A more apt characterization is that Form A creates an incentive for facilities to reduce their chemical use/releases by allowing small quantity handling facilities to use range reporting.) Concerning the second reason, commenters often appeared to be unaware that data users understandably focus on large quantity emitters and PBT emitters that are not Form A eligible under EPA's December 2006 rule.

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Small Business Research Summary

Advocacy: the voice of small business in government

June 2007 No. 303

Review And Analysis of Effect of EPA's Toxics Release Inventory (TRI) Phase II Burden Reduction Proposal on TRI Data Uses

By E. H. Pechan & Associates, Durham, NC 27707
2007. [35 pages.] Under contract number SBAHQ-03C0020

Background

Section 313 of the Emergency Planning and Community Right to Know Act (EPCRA) requires facilities to report on various quantities of chemical releases, and the amounts of chemicals managed on and off site. The public uses this information to estimate local health risks associated with these chemicals, and to develop policies to reduce these risks. EPA and other regulators use this information to develop regulations and to track progress in reducing toxic chemical releases. The original regulations were adopted in 1987, and additional requirements have been added over the years.

The reporting burden on businesses, particularly small businesses, has been substantial. In 1994, EPA adopted a short form, Form A, to replace the longer Form R in an attempt to reduce the burden on small firms with small amounts of chemicals handled within a facility. In December 2006, EPA adopted another reform in response to concerns that the 1994 Form A reform did not provide relief to enough facilities.

Critics of the new reform claim that TRI data uses will be impaired by the 2006 changes. In the absence of previous analysis on this topic, this research was conducted to identify different types of TRI data uses and determine whether the public, government regulators, or other users would lose significant information about risks if facilities substitute the short form for the long form, as permitted in the 2006 reform.

Overall Findings

E.H. Pechan & Associates (Pechan) examined the effect of the October 2005 proposal on TRI data uses. Pechan reviewed over 2,000 comments on the proposed rule and identified 17 specific uses of TRI data, addressing national, state, and local concerns. Based on this analysis, the report found that the December 2006 final rule will not have significant impacts on data uses identified by commenters.

Highlights

- Of the 17 examples of TRI data use the report identified, there was either no effect or no significant effect on all but one use. With respect to an examination of chemical usage in the Louisville, Kentucky area, the effect of the substitution of Form A for Form R was indeterminate.
- In addition, the Pechan analysis was based on the proposal, and not the final rule, which added back 60 percent of the Form R release-related information that was previously substituted for Form A in the proposal. As a result, the conclusion of this report is even stronger than the analysis indicates: the TRI reform as adopted by EPA in December 2006 has an insignificant effect on all identified uses of TRI data.

Scope and Methodology

Pechan employed facility-level TRI data analyzed at the local, state, and national levels to estimate

the change in data utility that commenters identified as an effect of the reporting burden reduction. This approach allowed Pechan to examine specific changes in data reported on Form R for each listed chemical within the chosen geographic region. The default was to use 2003 TRI data, the most recent available when the analysis was undertaken, but Pechan also employed historic data when necessary and available to examine the specific data use identified in the comments.

Note

This report was peer-reviewed consistent with Advocacy's data quality guidelines. More information on this process can be obtained by contacting the Director of Economic Research at advocacy@sba.gov or (202) 205-6533.

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