



June 7, 2010

Office of Environmental Information (OEI) Docket  
Environmental Protection Agency  
Mail Code: 28221T  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Re: OMB Watch Comments on **Docket ID No. EPA-HQ-TRI-2010-0006**  
"Addition of National Toxicology Program Carcinogens; Community Right-to-Know  
Toxic Chemical Release Reporting"

Dear Sir/Madam:

OMB Watch is submitting these comments on the proposed rule that would add 16 chemicals to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA), 75 Fed. Reg. 17333-17349 (April 6, 2010).<sup>1</sup>

OMB Watch is a nonprofit research and advocacy organization whose core mission is to promote government accountability and improve citizen participation. Public access to government-held information has been an important part of our work for more than 15 years, and we have both practical and policy experience with disseminating government information. For example, in 1989, we created the Right-to-Know Network (RTK NET), an online service providing public access to environmental data collected by the Environmental Protection Agency (EPA). Ever since, defending and enhancing the public's right to know about environmental and public health threats has been a leading cause at OMB Watch. Additionally, we are engaged in agency regulatory processes and encourage agency rules to be sensible and more responsive to public needs. The Toxics Release Inventory (TRI) has long been a prominent feature of RTK NET and the work of OMB Watch.

OMB Watch strongly supports EPA's proposal to add to the TRI 16 chemicals classified by the National Toxicology Program (NTP) as reasonably anticipated to be human carcinogens. An expansion of the list of chemicals covered by the TRI program has been needed for years. The chemicals EPA has selected for this expansion are appropriate, and their inclusion will strengthen the TRI program. However, the agency is taking a very small step toward enhancing a

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<sup>1</sup> [http://www.epa.gov/tri/lawsandregs/ntp\\_chemicals/NTPchemicals\\_proposed%20Rule04062010.pdf](http://www.epa.gov/tri/lawsandregs/ntp_chemicals/NTPchemicals_proposed%20Rule04062010.pdf).

vital right-to-know program, and additional steps should be taken to expand the number of chemicals reported to TRI and the types and number of industries covered by the program.

According to the Government Accountability Office (GAO), approximately 700 new chemicals are introduced into commerce each year.<sup>2</sup> However, no chemicals – old or new – have been added to the TRI program since 1999 (for reporting year 2000).<sup>3</sup> Therefore, in the last ten years, approximately 7,000 new chemicals have been introduced into commerce, and not one is reported to the TRI program.

Obviously, not every chemical is dangerous enough to merit being tracked in the TRI program. But with numerous new chemicals being introduced and new facts about the toxicity and risks of existing chemicals being discovered all the time, a ten-year freeze on expanding TRI seems rather indefensible.

## **PREVIOUS TRI EXPANSIONS MAY SERVE AS MODEL**

At the time of the last expansion of TRI in 1999, only five years had passed since the previous expansion. In 1994, with one rulemaking, EPA added 286 chemicals and chemical categories to the TRI.<sup>4</sup> In the 1994 proposed rule, EPA stated, "EPA and State regulatory agencies have integrated TRI information as a critical component in their environmental decisionmaking and in many cases are constrained by the lack of similar information on chemicals of concern not covered by the TRI."<sup>5</sup> There is strong reason to believe such constraints continue to hinder the environmental decision making of state and federal agencies today.

The 1994 rulemaking involved a comprehensive review of possible additions to the TRI chemical list. The agency examined chemicals regulated under ten different federal or state statutes, such as the Clean Air Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substances Control Act (TSCA). In addition, EPA reviewed chemicals that were possible, probable, or known carcinogens according to the International Agency for Research on Cancer (IARC) and the sixth NTP Report on Carcinogens (RoC). To prioritize chemicals, EPA obviously first excluded all chemicals that were already on the TRI list, and then "applied a human health and ecotoxicity screen and a production volume screen." The toxicity screen involved a limited review of available toxicity data. For the production volume screen, EPA used production volume data primarily from the TSCA Inventory Update Rule reports (section 8) and FIFRA section 7.

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<sup>2</sup> GAO. Options for Enhancing the Effectiveness of the Toxic Substances Control Act. GAO-09-428T. <http://www.gao.gov/new.items/d09428t.pdf>.

<sup>3</sup> EPA added seven chemicals and two chemical compound categories, known as persistent, bioaccumulative toxics, for reporting year (RY) 2000. 64 Fed. Reg. 58665–58753, October 29, 1999, <http://www.epa.gov/fedrgstr/EPA-WASTE/1999/October/Day-29/f28169.htm>.

<sup>4</sup> 59 Fed. Reg. 61432–61502. [http://www.epa.gov/tri/archive/dialogues/natdiagphase1\\_oct02/phase2/chemicalexpfrule.pdf](http://www.epa.gov/tri/archive/dialogues/natdiagphase1_oct02/phase2/chemicalexpfrule.pdf).

<sup>5</sup> 59 Fed. Reg. 1788–1859. <http://www.epa.gov/tri/lawsandregs/trichemical/59fr1788.pdf>.

EPA recognized the need for the TRI to evolve and change as changes in industry and advances in scientific knowledge warranted. The comprehensive review and evaluation process that EPA undertook for the 1994 rulemaking is a strong example of the kind of analysis that should be a regular feature of the agency's implementation of the TRI program.

The state of California's chemical right-to-know law, commonly known as Proposition 65, offers another strong example of a regular process for evaluating chemicals.<sup>6</sup> Proposition 65 adds chemicals to its list of substances known to the state to cause cancer, birth defects, or other reproductive harm every year. The program also updates toxicity information for numerous listed chemicals each year. Proposition 65 draws on chemical data supplied by the EPA, U.S. Food and Drug Administration, National Institute for Occupational Safety and Health, NTP, IARC, and other experts.

### **OTHER CRITERIA FOR EVALUATING ADDITIONS TO TRI**

EPCRA Section 313(d)(2) lists several criteria by which a chemical may be added to TRI. The known or reasonably anticipated carcinogenicity of a chemical is just one criterion. The EPA may also add a chemical to TRI if it is known to cause or may be reasonably anticipated to cause birth defects, reproductive dysfunctions, neurological disorders, heritable genetic mutations, or other chronic health effects. The EPA may also add a chemical if it is known to cause or reasonably anticipated to cause a significant adverse effect on the environment because of the chemical's toxicity. EPA need only demonstrate that a chemical meets just one of these criteria to be considered for addition to the TRI list.

In its first proposed addition of chemicals to the TRI program in ten years, the EPA has chosen to focus on just one of the criteria it is authorized to use to evaluate chemicals for addition to TRI. Although the agency's evaluation is sound and the 16 proposed chemicals are entirely appropriate for inclusion in the TRI, we believe that EPA should also review chemicals based on every other criterion, as well. For example, EPA should evaluate non-TRI chemicals for their reproductive toxicity, genotoxicity, or their adverse environmental impacts. Chances are high that among the tens of thousands of chemicals in commerce today, a significant number would meet at least one of the Section 313(d)(2) criteria for inclusion in the TRI.

### **EPA NEEDS A REGULAR TRI REVIEW**

OMB Watch recommends that EPA establish a regular, periodic process for the agency to review and identify chemicals for possible addition to the TRI. Currently, the program allows the public and state governors to petition for the addition or removal of specific chemicals. But that process is too passive. Many in the public trust the EPA to be the expert voice on the issue of toxicity or risk from chemicals. A regular review will prevent the excessive, ten-year-long dearth of activity we just experienced.

The regular review process we are recommending should draw on data and expertise possessed by states, other nations, other federal and international authoritative bodies, and EPA's own

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<sup>6</sup> Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986) is administered by California's Office of Environmental Health Hazard Assessment (OEHHA), <http://oehha.ca.gov/prop65.html>.

experts. EPA should also consider the results of biomonitoring studies, such as those conducted by the Centers for Disease Control and Prevention's (CDC) National Biomonitoring Program.<sup>7</sup> Biomonitoring measures the presence of specific contaminants in human bodies. Such data could be used both to broaden the universe of chemicals under consideration for addition to the TRI program and to identify priority chemicals.

Given the vast number of chemicals worthy of evaluation for inclusion in TRI, and the extreme resource constraints afflicting the EPA, it is incumbent upon the agency to work with public stakeholders to develop a system for prioritizing specific chemicals or classes of chemicals for review. EPA has taken an important and deliberate first step toward prioritizing chemicals by selecting certain chemicals in the NTP's most recent RoC. However, this step is a very small one. The addition of only 16 chemicals and no new industry sectors after so many years of stagnation in the TRI program is a miniscule step in relation to the potential new and additional threats faced by citizens from toxic releases. The agency should now be working to identify additional chemicals, without waiting for the publication of the final rule regarding the NTP carcinogens.

## **SUMMARY**

OMB Watch, although highly supportive of the agency's proposal, encourages the EPA to expand its review of new chemicals to include the resources consulted in the 1994 rulemaking and any additional resources the agency identifies. EPA has the authority to evaluate chemicals for inclusion into TRI based on several criteria, in addition to a substance's carcinogenicity. All criteria should be applied. The EPA should establish a regular process for the this review that will also set priorities that recognize the agency's limited staff and funding resources and the scale of the review. We also encourage the agency to regularly analyze whether new industry sectors warrant addition to the list of covered industries. Finally, as the agency develops these processes, it should work with public stakeholders in a transparent and participatory manner.

We appreciate your consideration of our comments on this issue. Please do not hesitate to contact us at (202) 683-4840 if you have any questions.

Respectfully,

Brian Turnbaugh  
Policy Analyst, Environmental Right-to-Know

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<sup>7</sup> <http://www.cdc.gov/biomonitoring/index.html>.