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

Attention: Docket ID No. TRI-2005-0073

To Whom It May Concern:

Thank you for this opportunity to comment on the changes proposed to the Toxics Release Inventory (TRI) described on October 4<sup>th</sup>, 2005 in the Federal Register (Volume 70, No. 1971, "Toxics Release Inventory Burden Reduction Proposed Rule," pages 57822 ff., EPA Docket TRI-2005-0073).

The North American Hazardous Materials Management Association (NAHMMA) is a non-profit membership based association of individuals, businesses, government officials and non-profit organizations dedicated to pollution prevention and reducing the hazardous constituents entering municipal waste streams from households, small businesses, and other entities. We are open to the idea of reducing regulatory burdens on industrial facilities provided that the regulatory changes do not adversely effect public health and the environment. The reforms proposed by EPA do not meet this criterion. To the contrary, **we believe these proposed reforms will result in a significant step backwards with regards to community right-to-know and the capability of providing pollution prevention technical assistance to industry. We urge EPA to not move forward on any of the burden reduction proposals described in the Docket TRI-2005-0073, including EPA's intention to change the TRI from an annual reporting system to a biennial reporting system.** Our reasons are as follows.

**1. The analysis underlying these "burden reduction" proposals is incomplete.**

- EPA's analysis does not appear to reflect a complete understanding of the history of the Toxics Release Inventory program and the nature of the issues. Focusing the October 4th proposals on reducing burdens for zero-release chemicals demonstrates a lack of institutional knowledge with regards to the Toxic Release Inventory. Zero-release does not mean zero

risk. The Form R was expanded in 1991 to include data on other methods of toxic chemical waste management specifically to recognize that preventing pollution involves a great deal more than just reducing or eliminating the release of a toxic chemical. It is disappointing that fifteen years after the passage of the federal Pollution Prevention Act the U.S. EPA is proposing to ignore this key concept and to reverse its course.

- The burden analysis is overly narrow and incomplete. It focuses on reducing the hours devoted to completing reports without any discussion of the benefits associated with having the information contained in Form R.
  - **The information required by Form R is information that every business should know as part of good business practice.**

This is a benefit to the TRI reporter. As Kirk Thomson, Environmental Director for the Boeing Company notes, “It’s just a good business practice to track your hazardous materials, how much you’re using of each product, and how much you’re losing to the environment.”<sup>1</sup> This knowledge often spurs companies to make improvements and reduce the production of harmful chemical wastes. This in turn reduces their liability and often reduces their costs.

- **The information required by Form R helps to protect public health and safety, as well as the environment.**

For nearly 20 years, the data provided through the Toxic Release Inventory has been an essential tool in alerting communities, workers, first responders, and public health officials to the presence of chemicals. It provides vital information that is used in state and local pollution prevention programs, community environmental monitoring and local emergency response planning. TRI data has proven critical in dealing with highly hazardous situations. Most recently TRI data played a valuable role in identifying toxic chemicals in the aftermath of Hurricane Katrina.

It is especially disappointing to see EPA proposing to reduce reporting requirements in light of the toxic soup unleashed by Hurricane Katrina. If, as environmental professionals, we have learned anything from that tragedy, it is the importance of having as complete a picture as possible of the various toxic chemicals that are present in manufacturing and other industrial facilities and that can be released in the event of a natural disaster.

- EPA’s analysis only considers the burden placed on TRI reporters. It fails to acknowledge the burden placed on the public by the presence of chemicals in our communities, our environment, and our bodies. For example, researchers at two major laboratories found an average of 200 industrial chemicals and pollutants in umbilical cord blood from 10 babies born in August and September of 2004.<sup>2</sup> The U.S. Centers for Disease Control recently detailed exposure levels to 148 different environmental chemicals.<sup>3</sup> Many of the chemicals

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<sup>1</sup> Quoted in the Seattle Post-Intelligencer, October 22, 2005, by Robert McClure, Seattle Post-Intelligencer Reporter, in the article “Critics rip plan to relax chemical release rules.” Accessed on line at: [http://seattlepi.nwsourc.com/local/245592\\_polluters22.html?searchpagefrom=1&searchdiff=82](http://seattlepi.nwsourc.com/local/245592_polluters22.html?searchpagefrom=1&searchdiff=82)

<sup>2</sup> *Body Burden — The Pollution in Newborns:*, Environmental Working Group, July 14, 2005, <http://www.ewg.org/reports/bodyburden2/contentindex.php>

<sup>3</sup> *Third National Report on Human Exposure to Environmental Chemicals*, U.S. Centers for Disease Control and Prevention, July 21, 2005 <http://www.cdc.gov/exposurereport/>

found in these studies are tracked through the Toxic Release Inventory. It is of clear public benefit to have as much data as possible about the quantities and environmental fate of these chemicals. The TRI reporting changes proposed by EPA place an increased burden on the public by making it more difficult for citizens to track toxic pollution in their neighborhoods and to take steps to reduce the impact on their family's health. EPA's proposal thus is not a net burden reduction, but a burden shifting----from the businesses that profit from the chemicals to the people and communities who are at risk from the chemicals.

## **2. Increasing reporting thresholds will adversely impact community uses of the TRI data.**

State and local governments, community environmental and public health professionals, first responders, and the general public currently rely on and use TRI data in wide-ranging ways. The data is an important input to state and local pollution prevention and environmental monitoring programs, as well as in emergency preparedness. These programs rely on having access to detailed information about the management of chemicals in the community.

EPA's proposal to increase the reporting threshold for non-Persistent Bioaccumulative and Toxic (PBT) chemicals from 500 pounds to 5,000 pounds would have significant adverse impacts on state and local uses of TRI data. The proposed change would result in the loss of detailed data that is critical to a wide variety of programs at the state and local level. For example:

- In Washington State approximately **one third** (33%) of the **non- PBT reports** would qualify for the more general Form A. About **50** out of 350 current **TRI facilities** would move completely to Form A reports for all chemicals—meaning that they would no longer provide details about the chemicals they manage. **Eight** of these facilities were among the highest risk facilities in the 2002 reporting year.<sup>4</sup>
- In Minnesota, the proposed change would eliminate upwards of **300, or nearly 25%** of the 1,250 Form Rs submitted annually. It would eliminate currently available detailed data for **68** of the 418 industrial facilities that currently report to the Toxic Release Inventory.<sup>5</sup>

These losses of detailed information would significantly undermine the quality of state and local data that is used in tracking, targeting, and providing technical pollution prevention assistance which most often results in cost savings for industry from reduced waste and expenses associated with managing hazardous materials.

NAHMMA members are particularly concerned about the damaging effects of this proposal on pollution prevention programs, which we see as essential in making communities safer. The proposed tenfold increase in the reporting threshold would directly undercut and perhaps ruin state pollution prevention programs.

- It would make it harder to monitor and provide pollution prevention assistance for currently covered chemicals that move from Form R reporting to Form A certification. In addition state pollution prevention programs would be more difficult to carry out when state and local governments lose the ability to monitor entire facilities. For example the facilities that move entirely to Form A certification may no longer be covered under Washington's Pollution Prevention Planning regulations.

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<sup>4</sup> Data obtained from the Washington State Department of Ecology.

<sup>5</sup> Data obtained from the Minnesota Pollution Control Agency.

- In addition to losing essential data and reporting coverage, some states would lose funding for their pollution prevention programs. For example in Minnesota TRI data is used in collecting revenue that funds direct pollution prevention technical assistance to business and industry. Minnesota's pollution prevention fee is assessed to TRI reporters based upon the number of Form Rs they submit and the number of pounds of chemicals released and transferred off-site for treatment. As stated above, the proposal would considerably reduce the number of facilities that submit Form R reports. This in turn would cut revenue available for pollution prevention technical assistance programs. The states of Colorado, Maine, Massachusetts and Mississippi have similar mechanisms for funding pollution prevention technical assistance programs.

NAHMMA believes that all of the chemicals currently required to report under the Toxic Release Inventory are chemicals of sufficient concern to justify excluding them from reporting under Form A. The current threshold of 500 pounds should be retained.

### **3. Decreasing detailed reporting will adversely impact community uses of the TRI data.**

As EPA staff know well, persistent bioaccumulative toxins (PBTs) are of particular concern at the local, state, and federal levels because they are long lasting and build up in the ecosystem, wildlife, and humans. EPA itself has high priority programs that target elimination of these substances because they are so persistent and because they are bioaccumulative. Many states have followed suit and have established programs to reduce the generation of PBTs and to ensure that they are managed with utmost care.

NAHMMA opposes EPA's proposal to decrease reporting details for PBT chemicals (except for dioxin and dioxin compounds) provided they have no disposal or other releases to the environment, and do not manage more than 500 pounds (in sum) of the chemical by treatment, energy recovery, or recycling. This proposal completely ignores several key points:

- Persistent Bioaccumulative and Toxic pollutants pose risks because they are toxic, often in very small quantities, persist in ecosystems, and accumulate in fish and up the food chain. These pollutants have the ability to travel long distance, to transfer relatively easily among air, water and land, and to linger for generations. These characteristics apply to all PBT chemicals; they all are of high priority concern.
- PBT chemicals are associated with numerous adverse health and ecological effects. The fetus and children are especially vulnerable.
- EPA lowered TRI reporting thresholds for PBTs starting in 2000 (reporting year) because of their significant toxicity in very small quantities.
- As noted above, zero release is not the same thing as zero risk. Form R was expanded in 1991 to include data on other methods of toxic chemical waste management specifically to recognize that preventing pollution involves a great deal more than just reducing or eliminating the release of a toxic chemical.
- Reducing the reporting requirements ignores EPA's own findings with respect to the serious threats posed by PBTs and its own strategies for reducing PBT pollution. It eliminates important data for measuring results.<sup>6</sup>

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<sup>6</sup> EPA's Persistent Bioaccumulative Toxin Program proposes in several places to rely on environmental data from the Toxic Release Inventory. It is ironic to note that at the same time EPA is proposing to reduce reporting requirements on PBTs, the PBT program, directs people seeking information on PBTs and other

We believe that EPA's proposal to reduce reporting of PBT chemicals is contrary to everything that has been learned about the importance of monitoring even small volumes of PBTs throughout their life cycle. It ignores why lower PBT reporting thresholds were introduced for the 2000 reporting year. While we certainly applaud facilities that achieve zero release of PBT chemicals, we contend that it is important to be able to track the management of PBTs at the current thresholds with details about quantities at every stage in their storage, use, and disposal. Contrary to EPA's belief, stated in the Federal Register,<sup>7</sup> communities and other users of TRI information are concerned about on-site waste management of PBTs even when a facility is able to achieve zero release of these chemicals.

The decreased reporting requirement EPA proposes for PBT chemicals would have significant adverse effects at the state and local levels. It would undercut the ability of state and local programs working to eliminate PBT pollution.

- For example, in Washington State about **one third of PBT reports** would qualify to use Form A (and provide no details) rather than Form R (which required waste quantity information and other details). This would eliminate all of the currently collected detailed information about how the waste of up to 500 pounds per chemical is managed. This will undermine state and local programs addressing mercury and other PBTs, and adversely effect community efforts to monitor and eliminate PBTs at the community level.<sup>8</sup>
- In Minnesota approximately 1,250 Form R's are submitted annually by over 400 facilities. Approximately 20 percent of them are for PBT chemicals. The proposed change would eliminate approximately **50** of the 250 **Form Rs** the Minnesota Pollution Control Agency sees annually for **PBT chemicals**. It would also eliminate available TRI data for **14 Minnesota industrial facilities, nine of which are located in or near large populations** in the Twin Cities metropolitan area. This would significantly impact the quality of data used to track pollution prevention efforts for PBT chemicals including lead, benzo (g, h, i) perylene and polycyclic aromatic compounds.<sup>9</sup>

NAHMMA finds that EPA has not provided credible evidence to overturn its 1999 conclusion that "the level of information available to the agency from Form A was insufficient to do meaningful analysis on PBT chemicals (64 FR 58732)".<sup>10</sup> That conclusion certainly holds true for community users of the TRI data.

EPA should withdraw its proposal to alter the PBT reporting requirements. It is poor public policy to decrease the amount of information that is available on PBTs when evidence is building about PBT burdens in humans, wildlife, and the environment and when it will undermine local and state PBT programs and projects.

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chemicals to "refer to EPA's Toxic Release Inventory ("TRI), noting that "The TRI is a valuable source of information about toxic chemicals that are being used, manufactured, treated, transported or released into the environment." See <http://www.epa.gov/pbt/pubs/pbtsandyou.htm>

<sup>7</sup> 70 FR 57838

<sup>8</sup> Data obtained from the Washington State Department of Ecology.

<sup>9</sup> Data obtained from the Minnesota Pollution Control Agency.

<sup>10</sup> 70 FR 57826

#### **4. Decreasing reporting frequency will adversely impact community uses of the TRI data.**

When Congress established the Community Right to Know program it directed EPA to create an annual reporting program. Facilities are required to report their toxic chemicals every year under the Toxic Release Inventory so enforcement officials, company officers, the news media and ordinary citizens can find out about chemical management and toxic releases in our air, land and water. This data is widely used, and the program has worked reasonably well for nearly 20 years.

Unfortunately, even with annual reporting there is a significant lag time between the activities facilities report and the time the data becomes publicly accessible. For example EPA released the 2003 TRI data on May 11, 2005 and has not yet publicly released the 2004 TRI data <sup>11</sup>

NAHMMA strongly objects to EPA's proposal to switch to an every-other-year reporting system.<sup>12</sup> It is important for public to have access to as close to real-time data as possible. The current lag time already creates problems for state and local groups and members of the public that work with TRI data. Switching to an every other year reporting system would result in such a large gap between the reporting year and the data release that it would essentially destroy the program's utility to the many state and local programs that rely on it.

NAHMMA also objects to the proposal on the basis that it is a major step backwards for the facilities involved. For a wide variety of reasons it is in the best interest of TRI reporters to monitor their chemical use and management continually and carefully, and to know where each chemical goes. It is good business practice to monitor and report this usage annually. For their own benefit companies should be willing to continue, like the Boeing Company, to track and report on their hazardous materials annually.<sup>13</sup>

#### **5. The proposed changes will make our communities less safe.**

If adopted the proposed changes will undercut local and state efforts to monitor and prepare accurate local emergency response plans, promote pollution prevention, track and reduce persistent bioaccumulative toxins, and monitor local emissions and facilities.

As described at length above, the proposed regulatory changes will significantly damage the quantity and quality of TRI data that is available to state and local users. This in turn will hamper

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<sup>11</sup> According to the EPA web site <http://www.epa.gov/tri/#whatistri> the 2003 data was publicly released on May 11, 2005. The group RTK NET made the 2003 TRI data available to users on May 12, 2005. It is available from RTK NET at <http://www.rtknet.org/new/tri/> and from EPA at <http://epa.gov/tri/tridata/tri03/index.htm>. As of December 11, 2005 the 2004 data is available in a more preliminary form at <http://www.epa.gov/tri-efdr/>.

<sup>12</sup> EPA's intention to modify reporting frequency is described as part of its TRI burden reduction steps (70 FR 57825). The agency formally notified Congress of its intent to explore modifying the reporting frequency of TRI reporters, including consideration of alternate year reporting, in a separate section of the October 4, 2005 Federal Register at 70 FR 57871.

<sup>13</sup> As noted above, Kirk Thomsen of the Boeing Company commented that "It's just a good business practice to track your hazardous materials, how much you're using of each product, and how much you're losing to the environment." Robert McClure, "Critics rip plan to relax chemical release rules," [Seattle Post-Intelligencer](http://seattlepi.nsource.com/local/245592_polluters22.html?searchpagefrom=1&searchdiff=82), October 22, 2005, accessed on line at: [http://seattlepi.nsource.com/local/245592\\_polluters22.html?searchpagefrom=1&searchdiff=82](http://seattlepi.nsource.com/local/245592_polluters22.html?searchpagefrom=1&searchdiff=82)

and in some cases destroy programs that are essential in protecting public health and the environment. If adopted the proposals will undercut:

- Local, state, and federal technical assistance and pollution prevention programs
- Local, state and federal environmental monitoring programs
- Local, state and federal environmental health monitoring programs
- Programs to evaluate the effectiveness of public and private sector toxic reduction initiatives
- University and community-based research and
- Community efforts to monitor particular facilities.

In addition to undercutting the effectiveness of key pollution prevention and community monitoring programs, the proposed regulatory changes reduce community safety by reducing business accountability and public scrutiny. For example in King County, Washington, the increased reporting threshold would eliminate detailed reporting on more than 51,000 pounds of chemicals that were released from 44 businesses.<sup>14</sup>

The lack of scrutiny and lack of access will fall most heavily on the poorest among us who live in the same neighborhoods as many of these facilities. A recent study found that black Americans are 79% more likely than whites to live in neighborhoods where industrial pollution is suspected of posing the greatest health risk. It also found that residents in neighborhoods with the highest pollution scores tended to be poorer, less educated, and more often unemployed than those elsewhere in the country.<sup>15</sup> “Poor communities, frequently communities of color but not exclusively, suffer disproportionately,” according to former EPA Administrator Carol Browner.<sup>16</sup> The proposed changes to the TRI reporting will make it more difficult for this segment of the population, the poor and the minorities, to protect their communities by impeding their right to know about chemical management and toxic releases in their midst.

We have all seen the compelling images of the toxic pollution left behind on sidewalks and in homes from the aftermath of Hurricane Katrina. We need to know more, not less, about what chemicals and wastes are in our communities. Our right-to-know about pollution and waste should not be sacrificed to save companies the few pages of paperwork.

## **6. The proposed changes undercut the community right to know established by Congress**

As described above, members of the public, community organizations, state and local governments and others rely on and use the Toxic Release Inventory in many ways. These docket comments describe how the proposed changes, if adopted, will seriously erode the public’s right to know about the chemicals being used and emitted in our communities. The proposed changes run counter to the intent of the Community Right to Know established by Congress in the

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<sup>14</sup> Initial analysis by staff from the Local Hazardous Waste Management Program in King County using 2003 TRI data.

<sup>15</sup> David Pace, “AP Analysis of U. S. Research Shows Blacks More Likely to Live With Dangerous Pollution,” The Associated Press, Chicago, December 13, 2005, accessed at <http://abcnews.go.com/Health/wireStory?id=1402266> This story analyzed national data available from EPA’s Risk Screening Indicators Project at <http://www.epa.gov/oppt/rsei/>

<sup>16</sup> *Ibid.* Ms. Browner headed the U. S. Environmental Protection Agency when the scoring risk-screening scoring system was developed.

