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OVERSIGHT OF RECENT EPA DECISIONS

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

FEBRUARY 6, 2007

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED TENTH CONGRESS
FIRST SESSION

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C O N T E N T S

OVERSIGHT OF RECENT EPA DECISIONS

TUESDAY, FEBRUARY 6, 2007

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10 o'clock a.m. in room 406, Dirksen Senate Office Building, the Hon. Barbara Boxer (chairman of the committee) presiding.

Present: Senators Boxer, Inhofe, Lautenberg, Isakson, Cardin, Craig, Klobuchar, Vitter, Carper, Bond, Whitehouse, Alexander.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. The hearing will come to order.

I want to welcome everybody today. We have three panels. The first is Stephen Johnson, Administrator of the EPA. The second is the Government Accountability Office and the U.S. Small Business Administration. The third panel is the American Lung Association and American Thoracic Society, the Natural Resources Defense Council, the American Library Association, Holland and Hart, and Baltimore Glassware Decorators.

So we have a lot to get through. We are going to try to move through this hearing in 2 hours, 2½ hours.

We are going to have opening statements, 5 minutes each and then proceed to hear from the Administrator. At that point we will ask him some questions. Then we will move on.

So I would like my clock to start now, if I could.

Late in 2006, EPA rolled back several health protections and reduced public information about pollution. This was a series of unwelcome holiday gifts to the American people. These EPA rollbacks have common themes: they benefit polluters, bottom line, and they hurt our communities by allowing more pollution and reducing the information about pollution available to the public.

Today is the first in a series of hearings. EPA has gone too long without meaningful oversight, in my opinion. I want to send a clear signal to EPA and to this Administration that we are watching, and the American public is watching and no longer will EPA rollbacks quietly escape scrutiny. The first of these rollbacks was the weakening of the community's right to know.

Toxic Release Inventory. I am extremely concerned about the Agency's decision in December to weaken the community right to know rules for toxic chemicals used and released in communities across the Country. EPA's weakening of these rules will quadruple,

quadruple, the amount of toxic pollutants that companies can release before they have to tell the public, and will reduce the amount of public information on long-lasting toxins that can build-up in the body.

The chart I wanted to show you here, EPA went forward with these changes despite objections from 23 State agencies that are listed here, and attorneys general, and despite concerns raised by the Agency's own science advisory board. Oklahoma's Department of Environmental Quality is just one of the agencies that objected. You can see it is just a host of States.

EPA's libraries, closing them. Last year, EPA closed down or cut access to libraries across the Nation, including in my own State of California. EPA closed or reduced library operations in at least 7 EPA regions covering 31 States. Since 1970, EPA has gathered a vast treasure trove of public health and environmental information. Closure of the libraries hurts America's right to know about important information regarding the health and environmental hazards of pollution in their communities. The American Library Association and EPA scientists and staff opposed these actions. But despite letters from 18 members of the Senate and a public outcry, the fate of EPA's libraries remains uncertain.

Next, eliminating perchlorate testing. In December, EPA issued a rule which will result in no further testing of tap water for the toxin perchlorate. This toxin has been found in millions of Americans' drinking water systems. GAO says it pollutes 35 States. Perchlorate interferes with the thyroid. It is especially risky to pregnant women and newborns. Yet, EPA has still not issued a health standard for perchlorate in tap water.

EPA's original 1999 rule ordered testing for perchlorate and in 2005, EPA proposed to extend that requirement. But industry objected, and industry was heard. The new rule eliminated the perchlorate testing requirement. I am deeply distressed that not only has EPA failed to set a standard for perchlorate, but Americans will lack up to date information on whether their tap water is contaminated with this toxin.

Next, cutting scientists out of the process of setting air quality standards. In December, EPA also backtracked on its decades-long policy of having key scientists work closely with EPA experts to help develop a range of recommended safe levels for clean air. Now, consistent with the recommendations of the American Petroleum Institute, EPA has taken a dangerous turn. Instead of basing health standards on the best science, they will now inject politics into the entire decision. Under EPA's plan, key scientists will no longer work directly with top Government officials to help set health standards. EPA's new approach is bad for America's families, because it would likely lead to more politics rather than science-based standards, making weaker air standards and more early deaths and illnesses more likely.

Then there is the lead air quality standard. In December, EPA also announced it is considering whether to revoke the National Ambient Air Quality Standard for lead. The lead-acid battery industry had urged this step. If the standard is revoked, there is no assurance that lead will be monitored in air across the Country. Polluters could emit dangerous level of lead without being detected.

Yet if EPA were to use the new data showing that it is more toxic than previously known, the current lead standard would likely be substantially more stringent. That could force some poorly regulated lead polluters to use better controls.

Lead is a potent brain and nerve toxin that hurts children and the elderly the most. What does it say about our values if we endanger the most vulnerable Americans?

Increasing toxic air pollution. In December, EPA proposed to weaken its rules for controls on toxic air pollution. These rules apply to thousands of sources, including refineries, chemical plants and steel mills. EPA admits in its proposed rule that the rule could lead to an increase in toxic air emissions. The Agency's own regional offices sent a memo to headquarters saying the rule change could be "detrimental to the environment and undermine the intent of the Clean Air Act." Toxic air pollutants include some of the most dangerous cancer-causing and neurotoxic chemicals that pose a serious threat to America's families.

This is the conclusion I reach: the pattern of these year-end actions is striking. The public interest is sacrificed, and environmental protection compromised. Who gains from these rollbacks? Just look at who asked for them, like big oil and the battery industry. EPA's actions and proposed actions make it clear who EPA is protecting, and sadly, it is not the American people. The purpose of this oversight hearing is to remind EPA, please understand, you are only accountable to the American people, not the special interests.

Thank you.

[The prepared statement of Senator Boxer follows:]

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Late in 2006, EPA rolled back several health protections and reduced public information about pollution. This was a series of unwelcome holiday gifts to the American people.

These EPA rollbacks have common themes: they benefit polluters' bottom line, and they hurt our communities by allowing more pollution and reducing the information about pollution available to the public.

Today is the first in a series of hearings. EPA has gone too long without meaningful oversight. I want to send a clear signal to EPA and to this Administration. We are watching. The American public is watching. No longer will EPA rollbacks quietly escape scrutiny.

WEAKENING THE COMMUNITY'S RIGHT TO KNOW (TOXIC RELEASE INVENTORY)

I am extremely concerned about the Agency's decision in December to weaken the Community Right to Know rules for toxic chemicals used and released in communities across the country. EPA's weakening of these rules will quadruple the amount of toxic pollutants that companies can release before they have to tell the public, and will reduce the amount of public information on long-lasting toxins that can build up in the body, like lead.

EPA went forward with these changes despite objections from 23 State agencies and attorneys general, and despite concerns raised by the Agency's own science advisory board. Oklahoma's Department of Environmental Quality is just one of the agencies that objected.

CLOSING EPA LIBRARIES

Last year EPA closed down or cut access to libraries across the Nation, including in my State of California. EPA closed or reduced library operations in at least 7 EPA regions covering 31 States.

Since 1970, EPA has gathered a vast treasure trove of public health and environmental information. Closure of the libraries hurts Americans' right to know about important information regarding the health and environmental hazards of pollution in their communities. The American Library Association and EPA scientists and staff oppose these actions. Despite letters from 18 members of the Senate and a public outcry, the fate of EPA's libraries remains uncertain.

ELIMINATING PERCHLORATE TESTING

In December, EPA issued a rule which will result in no further testing of tap water for the toxin perchlorate. This toxin has been found in millions of Americans' drinking water. GAO says it pollutes 35 States. Perchlorate interferes with the thyroid and is especially risky to pregnant women and newborns. Yet EPA has still not issued a health standard for perchlorate in tap water.

EPA's original 1999 rule ordered testing for perchlorate, and in 2005 EPA proposed to extend that requirement. But industry objected, and the new rule eliminated the perchlorate testing requirement.

I am deeply distressed that not only has EPA failed to set a standard for perchlorate, but Americans will lack up-to-date information on whether their tap water is contaminated with this toxin.

CUTTING SCIENTISTS OUT OF THE PROCESS OF SETTING AIR QUALITY STANDARDS

In December EPA also backtracked on its decades-long policy of having key scientists work closely with EPA experts to help develop a range of recommended safe levels for clean air standards. Now, consistent with the recommendations of the American Petroleum Institute, EPA has taken a dangerous turn. Instead of basing health standards on the best science, they will now inject politics into the entire decision. Under EPA's plan, key scientists will no longer work directly with top government officials to help set health standards. EPA's new approach is bad for American families, because it will likely lead to more politics rather than science-based standards, making weaker air standards and more early deaths and illnesses more likely.

THE LEAD AIR QUALITY STANDARD

In December, EPA also announced that it is considering whether to revoke the National Ambient Air Quality Standard (NAAQS) for lead. The lead acid battery industry had urged this step.

If the standard is revoked, there is no assurance that lead will be monitored in air across the country. Polluters could emit dangerous levels of lead without being detected. Yet, if EPA were to use the new data showing lead is more toxic than previously known, the current lead standard would likely be substantially more stringent. That could force some poorly regulated lead polluters to use better controls.

Lead is a potent brain and nerve toxin that hurts children and the elderly the most. What does it say about our values if we endanger the most vulnerable Americans?

INCREASING TOXIC AIR POLLUTION

In December, EPA proposed to weaken its rules for controls on toxic air pollution. These rules apply to thousands of sources, including refineries, chemical plants and steel mills.

EPA admits in its proposed rule that the rule could lead to an increase in toxic air emissions. The Agency's own regional offices sent a memo to headquarters saying the rule change could be "detrimental to the environment and undermine the intent" of the Clean Air Act.

Toxic air pollutants include some of the most dangerous cancer-causing and neurotoxic chemicals that pose a serious health threat to American families, especially pregnant women, infants and children. Increased levels of toxic air pollutants will only increase these risks.

CONCLUSION

The pattern of these year-end actions is striking—the public interest is sacrificed and environmental protection compromised. Who gains from these rollbacks? Just look at who asked for them, like Big Oil and the battery industry. EPA's actions and proposed actions make it clear who EPA is protecting. The purpose of these oversight hearings is to remind EPA who they are truly accountable to—the American people.

Senator BOXER. Senator Inhofe.

OPENING STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator INHOFE. Thank you, Madam Chairman.

Before I start, let me just apologize, I will have to be going out and coming back during the course of this. We have a serious problem with other committee hearings taking place at the same time. I know that you have tried to work with us and some of the other committees are not quite as cooperative. So I will be in and out during this period of time.

In the early days of the Clean Water Act, the NAAQS process as a whole probably worked because it required the collection of all health science related to the relevant pollution issues. But increasingly, the sheer volume of scientific data, often irrelevant data, involved has slowed the gears of the EPA regulatory process. As a result, the NAAQS review process is no longer managed by the Agency but by the courts.

To meet statutorily required deadlines, the EPA needed a new approach, and I think the reforms that have been announced by the EPA are going to bring us in that direction.

Lead. The NAAQS staff paper on lead is an example of a document written by mid-level EPA staff, without input from high-ranking officials. It is only one step—and a sometimes unnecessary one—of the many steps in the NAAQS review process. I don't yet have a full enough understanding of this issue to have an informed opinion as to what direction EPA should take with its NAAQS standard for lead. The fact that we are discussing this today, however, is yet another example of why it is important that EPA reform the NAAQS process. I think it is important to point out that what we are talking about now this first step. This first step is a report, a preliminary report. It is my understanding it has not been reviewed by the Administration.

The Once-In, Always-In. Perhaps no rule better exemplifies the inflexible command-and-control mechanism than the "Once-In, Always-in" rule. The simple fact is, we have much anecdotal evidence that suggests many plants would reduce their emissions of air pollution to avoid the expensive paperwork and other compliance costs of being treated as a major source. I commend Administrator Johnson for publishing a proposal that will collect vital information to examine whether indeed a little flexibility here in Washington can lead to large pollution reductions in the rest of the Country.

Perchlorate and UCMR. Another subject we are going to discuss today is EPA's decision to not list perchlorate on its second Unregulated Contaminant Monitoring Report, or UCMR2 and, more broadly, EPA's process for determining whether perchlorate should be regulated under the Safe Drinking Water Act through the UCMR1. EPA now has data related to perchlorate occurrence in drinking water. Now the Agency must gather better information on the relative source contribution from other sources, primarily food. Perchlorate is not only an industrial product vital to our Nation's defense, industry and space exploration, but also a naturally occurring substance. It is critical that EPA fully understand how much exposure comes from drinking water and how much comes from

natural and other sources, before we set out creating an unfunded mandate on our local drinking water systems.

TRI. I would like to applaud the Agency's recent efforts to reduce the compliance burden associated with the Toxic Release Inventory, while at the same time giving reporters, and here we are talking about people who are reporting these releases, incentives to decrease their releases of toxins. EPA's revised TRI rule allows for certain reporters to use the shorter TRI Form A instead of the longer Form R. I appreciate the careful balance EPA has struck between the burden reduction efforts and the Agency's commitment to providing information to the public.

I am very pleased that the Small Business Administration is here today, as well as a bona fide small business representative from Baltimore, MD, Ms. Klinefelter. I look forward to hearing from both of them about the burdens placed on small business by the TRI program and how EPA's Form changes will ease those burdens.

Libraries. Nearly 4 years ago, the EPA began planning to modernize its library system, which has resulted in EPA consolidating its resources, making its information more accessible than ever before online, and saving $2 million in the process. EPA has maintained 26 libraries located in Washington and at its regional offices, but the number of people walking into any of these libraries has steadily decreased. Let me provide some examples. EPA reports that at the Region 6 library in Dallas, three people walked in per month over the past 3 years. At the Region 7 library in Denver, 20 people walked in during a 7-month period just last year. At the Region 5 library in Chicago, most people who walked in were simply looking for directions. At the library here in Washington, EPA's own employee use has dropped 71 percent over the past 2 years. It's no wonder some of the libraries are closing.

However, all information held at these closed libraries and the other remaining libraries remains available to EPA employees and the public online. Through EPA's Online Library System, anyone can access information in EPA's library collections and either view documents online or request documents through a library loan with EPA from nearly 42,000 libraries in the United States and around the world. In other words, you can go to the Sacramento library and get the same thing as if you were going to one of the libraries that allegedly is being closed.

Not surprisingly, these changes have been met with some hysterical criticism. One of our witnesses today has written that EPA is now withholding "life-saving information." The director of a public employees group has even gone so far to say that EPA's actions "threaten to subtract from the sum total of human knowledge." I have discovered that these criticisms appear to be unfounded, and I am glad the Administrator is here to shed further light on that.

I think there is, this is the information age. People are getting things, my grandkids are getting things online that I never dreamed possible in the whole library system. It has nothing to do with just this subject for today.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Thank you, Madam Chairman. I am glad to have the opportunity to speak about each of the six subjects we are addressing in today's hearing.

NAAQS REFORM

In the early days of the Clean Air Act, the NAAQS process as a whole probably worked because it required the collection of all health science related to the relevant pollution issues. But as the sheer volume of scientific information increased dramatically, what once worked became an unmanageable monstrosity of data—often irrelevant data—that slowed the gears of the EPA regulatory process.

So now, as a result, the NAAQS review process is no longer managed by the Agency, but by the courts. To meet statutorily required deadlines, the EPA needed a new approach. I think the reforms EPA has announced are a major step in the right direction. Perhaps the single most important reform that EPA has come forward with is the focus of its scientific research efforts toward answering the most relevant questions that need to be answered to effectively review the NAAQS standards.

NAAQS–LEAD

The NAAQS staff paper on lead is an example of a document written by mid-level EPA staff, without input from high-ranking officials, that is only one step—and a sometimes unnecessary one—of the many steps in the NAAQS review process.

In the past 35 years, we have taken 97 percent of the lead emissions out of the air in the United States one of the major environmental success stories in our Nation's history. While it is important to remember our successes, I believe we should focus our attention most directly on the major pollution problems still facing us. As I have not yet looked at the underlying science pertaining to this subject, I do not yet have a full enough understanding of the issue to have an informed opinion of what direction the EPA should take with its lead NAAQS program. However, the fact that we're discussing this today is yet another example of why it's important that EPA reform the NAAQS process.

ONCE IN, ALWAYS IN

Perhaps no rule better exemplifies the inflexible command-and-control mechanism than the "Once-in, always-in" rule. The simple fact is, we have much anecdotal evidence that suggests many plants would reduce their emissions of air pollution to avoid the expensive paperwork compliance costs of being treated as a major source. To my knowledge, anecdotal evidence does NOT exist that plants would increase their air pollution if they were instead treated as an area source. I commend Administrator Johnson for publishing a proposal that will collect vital information to examine whether indeed a little flexibility here in Washington can lead to large pollution reductions in the rest of the country.

PERCHLORATE/UCMR

Another subject we are going to discuss today is EPA's decision to not list perchlorate on its second Unregulated Contaminant Monitoring Report (UCMR2) and, more broadly, EPA's process for determining whether perchlorate should be regulated under the Safe Drinking Water Act. It should be noted that EPA did list perchlorate on its UCMR1. When this Committee created this process, it was designed to be a one-time occurrence to collect a discrete data set from which to judge the need for a drinking water standard. As stated in the Senate report to accompany the 1996 Safe Drinking Water Act amendments, "The Administrator is to revise the list every 5 years removing the contaminants for which sufficient information has been collected to satisfy future regulatory needs." As EPA noted in the final UCMR2 rule, "The data collected [from UCMR1] represents a statistically valid set of high quality data that will inform EPA on the occurrence and potential exposure to perchlorate from public drinking water supplies."

Now that EPA has data related to perchlorate's occurrence in drinking water, the Agency must gather better information on the relative source contribution from other sources, primarily food. Research into this very important subject, how much perchlorate comes from what source, continues aggressively.

Perchlorate is not only an industrial product vital to our national defense industry and space exploration, but also a naturally occurring substance. It has been found in places where there is absolutely no possible connection nexus to the Department of Defense or NASA. It has also been found in our Nation's food supply. So it is

critical that EPA fully understand how much exposure comes from drinking water and how much comes from natural and other sources before we set out creating an unfunded mandate on our local drinking water systems requiring them to spend scarce water resources chasing after a chemical over which mother nature has significant control.

TRI

I would like to applaud the Agency's recent efforts to reduce the compliance burden associated with the Toxic Release Inventory, while at the same time giving reporters incentives to decrease their releases of toxics. EPA's revised TRI rule allows for certain reporters to use the shorter TRI Form A instead of the longer Form R. I appreciate the careful balance EPA has struck between burden reduction efforts and the Agency's commitment to providing information to the public. I am very pleased that the Small Business Administration is here today, as well as a bona fide small business representative from Baltimore, Maryland—Ms. Nancy Klinefelter. I look forward to hearing from both of them about the burdens placed on small business by the TRI program and how EPA's Form changes will ease those burdens.

EPA LIBRARIES

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However, all information held at these closed libraries and the other remaining libraries remains available to EPA employees and the public online. Through EPA's Online Library System, anyone can access information in EPA's library collections and either view documents online or request documents through a library loan with EPA from nearly 42,000 libraries in the United States and around the world.

Not surprisingly, these changes have been met with some hysterical criticism. One of our witnesses today has written that EPA is now withholding "life-saving information." The director of a public employees group has even gone so far to say that EPA's actions "threaten to subtract from the sum total of human knowledge." I have discovered that these criticisms appear to be unfounded, and I am glad the Administrator is here to shed further light on EPA's library plans.

Thank you, Madam Chairman, and I look forward to hearing from our witnesses this morning.

Senator INHOFE. Madam Chairman, I may not be here to question the second panel, so I would like to submit several documents for the record. I have two letters DOD sent to GAO regarding its December 2005 report and study done by professors at Texas Tech. So I will be doing that.

Could I ask one question, to see how many people have opening statements, so I can know whether to go down to Armed Services?

Senator BOXER. Will colleagues raise your hand if you have an opening statement? One, two, three, four, five.

Senator INHOFE. OK, I will go down and come back. Thank you.

Senator BOXER. I am going to ask colleagues to try to keep it to 4 minutes. If you go over that, I will give you a little extra time, but we are trying to move forward.

Senator Lautenberg, welcome.

OPENING STATEMENT OF HON. FRANK LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you very much, Madam Chairman. Thank you for putting the energy and the leadership in fighting for

the health and well-being of Americans. It is a cause that looks like it is losing its present rules and we don't want that to happen. So I commend you for holding today's hearing on the environmental protections that the Bush administration has proposed to cut or already has cut and the effects of those decisions on public health.

Over the last 6 years, this Administration has made decisions that harmed the public it swore to protect. By way of example, proposed to allow some facilities to increase the air toxins they can release, such as benzene and arsenic. It shuts EPA libraries, keeping scientific research from staff and citizens. It stopped monitoring drinking water for perchlorate, a toxin that has been found in the water of 35 States, including New Jersey.

From air pollution to global warming, the Bush administration has shown too little concern for Americans' health, especially the health of children and too much care about the oil, chemical, coal and auto industries. Just this weekend, Chairman Boxer and I were at a Superfund site in New Jersey, working to get the program back on track. Today we can begin the task of putting the word protection back in the Environmental Protection Agency.

In 1986, with knowledge of what took place in Bhopal, that disaster led me to work to create the EPA's public right to know program, which gives Americans information on toxic chemicals released or stored in their communities. Yet last December, EPA gutted this program. Examining the data over the last 6 years, the EPA's weakened rules would have the following impacts on my home State of New Jersey: information on the release and disposal of 700,000 pounds of cancer-causing chemicals will not be available to the public.

Nearly a third of chemical facilities in the State will now be exempted from any reporting requirements. Now, 42 communities in New Jersey would no longer have access to information on the release of chemicals into their neighborhoods. The GAO report presented here today says that, in reference to a poster that it has, Delaware, Georgia, Oklahoma, Tennessee, Vermont, West Virginia, could no longer have quantitative information for at least 20 percent of all of the reported chemicals in their States. The EPA has justified this gutting of the law as burden reduction, mind you, burden reduction for industries.

But what about the burden of families and children? We cannot allow these changes to stand. That's why I plan to be introducing legislation that fully restores this important program. With my bill, I will return the public's right to know about toxics where they live. They deserve that information. Under Chairman Boxer's leadership, we will continue to conduct the type of oversight that EPA needs to help create those conditions and to prevent more rollbacks of laws that protect the American public.

Once again, I thank you, Madam Chairman, for your leadership.

Senator BOXER. Thank you so much, Senator, for staying within the time and for being very clear in your remarks.

Senator Isakson.

OPENING STATEMENT OF HON. JOHNNY ISAKSON, U.S. SENATOR FROM THE STATE OF GEORGIA

Senator ISAKSON. Thank you, Madam Chairman.

I welcome the Administrator to the hearing today and thank him for the many cooperative things he has done with my office since I have been in Washington. I appreciate it very much.

I want to for a minute address the ambient air quality standards, which as we know the Agency is required to set, and then on a 5-year basis, review and revise. For the last 15 years, quite frankly, EPA has had some real problems with this, which has resulted, more often than not, in judges setting standards and setting deadlines, not scientists or the Agency.

These delays are as a result of a combination of a number of things: the process of information gathering into a criteria document; the types and amounts of information that are available and examined has increased exponentially. The process has become so burdened that in practice, EPA staff and not the Clean Air Science Advisory Committee, a statutorily set part of the process, have prepared these reviews. CASAC's role has been to review and approve these EPA documents before they went to the Agency's appointee and the Administrator for final decisions. The result is that members of CASAC did not read all the materials that were presented to them, and instead, make individual judgments of what is and is not important.

Recognizing how cumbersome the National Ambient Air Quality Standards review process has become, EPA has rightfully begin an internal review in December 2005 on how to streamline the process. After a year, in December 2006, it revised the process to make it more manageable and to ensure it meets its 5-year statutory deadlines. The four key changes in that process are as follows: planning, integrated science assessment, risk exposure assessment and ANPR, replaced the staff paper with an advanced notice of proposed rulemaking, containing more narrowly focused assessment. ANPR will reflect the Agency's views and present a range of policy options and accompanying rationales for the discussion.

Even with these reforms, the CASAC will retain its advisory role in the National Ambient Air Quality Standard process on all four key elements. I believe EPA when they say that these improvements will help the Agency meet its goal of reviewing each ambient air quality standard on a 5-year scale, as required by the Clean Air Act, without compromising the scientific integrity of the process.

I might add here, part of our problems in Northwest Georgia have been precisely because of the deals in establishing these standards on a timely basis. I would like to take a minute to address the concern of those who say the influence of CASAC is diminished under the new system. It is my understanding that CASAC has the opportunity to, but chose not to issue a formal response to the December 7 memo in which the new process was outlined. In fact, in response to a draft of the changes, the CASAC made a number of suggestions which were incorporated in the final memorandum.

One of CASAC's suggestions, the convening of a science workshop at the outset of the process to better focus the review, addressed a major concern that the old process spent too much time compiling an encyclopedic review of literature which had little relevance to the policy questions that needed to be addressed. With respect to the concerns some have voiced with regard to the EPA

taking comments from CASAC at the same time that it considers comments from the public, I would direct them to the comments of Dr. Rogene Henderson of the CASAC chair and the press on December 14, 2006, where Dr. Henderson said the following: "Some of the members were concerned, but most are not, because it doesn't change CASAC's ability to comment on the system."

I commend EPA for streamlining this unwieldy process and look forward to hearing from our witnesses today. I yield back the balance of my time, Madam Chairman.

[The prepared statement of Senator Isakson follows:]

STATEMENT OF HON. JOHNNY ISAKSON, U.S. SENATOR FROM THE STATE OF GEORGIA

Thank you Madam Chairman, and Senator Inhofe. I'd like to begin by welcoming all our witnesses to the Committee today, but especially Steve Johnson. I have been impressed by his performance to date and, while we may not have always agreed, I have always found him responsive to the needs of my constituents when called upon by them.

As we conduct this hearing today to provide congressional oversight recent EPA decisions, I would like to focus my opening remarks on reforms to the process for setting National Ambient Air Quality Standards (NAAQS). As we all know, the Clean Air Act requires EPA to set NAAQS for pollutants considered harmful to public health and the environment.

The NAAQS are reviewed every 5 years and revised, if appropriate. By law, the NAAQS review results in rules that tighten, retain, or loosen the standards.

The NAAQS process, however, has become unwieldy. The EPA for the past 15 years has had a poor track record of meeting its 5-year statutory deadline. This has resulted in most NAAQS deadlines being set by the courts. This process has repeated itself without regard to which party is in power at the time of the deadline.

These delays are the result of a combination of a number of things. The process of information gathering into a Criteria Document—where all information is considered regardless of its relevancy in the decisionmaking process for evaluating and potentially changing the standard—is onerous. The types and amount of information that is available and examined has increased exponentially. The process became so burdensome that, in practice, EPA staff and not the Clean Air Science Advisory Committee (CASAC), a statutorily set part of the process, have prepared these reviews. CASAC's role has been to review and approve these EPA documents before they went to the Agency's appointees and the Administrator for final decisions.

The result is that the members of the CASAC do not read all the materials presented to them and instead make individual judgments of what is and is not important. Recognizing how cumbersome the NAAQS review process has become, EPA rightfully began an Agency internal review in December 2005 on how to streamline the process. After a year, in December 2006, it revised the process to make it more manageable, and to ensure it meets its 5-year statutory deadlines.

The four key changes to the process consist of the following:

1. Planning: Create one integrated plan early in the process so that all participants may focus on policy-relevant issues.

2. Integrated Science Assessment: Replace the voluminous Criteria Document with a more concise synthesis of the most policy-relevant science. This includes creating a state-of-the-art electronic databases to catalog new studies.

3. Risk/Exposure Assessment: Create a more concise document to focus on key results and uncertainties.

4. ANPR: Replace the Staff Paper with an Advance Notice of Proposed Rulemaking containing more narrowly focused assessment. ANPR will reflect Agency views and present a range of policy options and accompanying rationales for discussion.

Even with these reforms, the CASAC will retain its advisory role in the NAAQS process on all four key elements. I believe EPA when they say that these improvements, will help the Agency meet the goal of reviewing each NAAQS on a 5-year cycle as required by the Clean Air Act, without compromising the scientific integrity of the process.

I would like to take a minute to address the concerns of those who say the influence of the CASAC is diminished under the new system. It is my understanding that the CASAC had the opportunity to, but chose not to, issue a formal response to the December 7 memo in which the new process was outlined. In fact, in response

to a draft of the changes the CASAC made a number of suggestions which were incorporated in the final memorandum.

One of CASAC's suggestions, the convening of a science workshop at the outset of the process to better focus the review, addressed a major concern that the old process spent too much time compiling an encyclopedic review of the literature which had little relevance to the policy questions that needed to be addressed.

With respect to the concerns some have voiced with regards to EPA taking comments from CASAC at the same time that it considers comments from the public, I would direct them to the comments of Dr. Rogene Henderson, the CASAC Chair, in the press on December 14, 2006. Dr. Henderson said the following: "[S]ome of the members were concerned but most are not, because it doesn't change CASAC's ability to comment."

I commend EPA for streamlining this unwieldy process and look forward to hearing from our witnesses today. I yield back my time.

Senator BOXER. Thank you very much, Senator, for your views. Senator Cardin.

OPENING STATEMENT OF HON. BENJAMIN CARDIN, U.S. SENATOR FROM THE STATE OF MARYLAND

Senator CARDIN. Senator Boxer, thank you very much for convening this hearing. I welcome Administrator Johnson to our committee.

I also want to acknowledge one of my constituents who is here, Nancy Klinefelter, the president of the Baltimore Glassware Decorators. I look forward to hearing from all of our witnesses.

Madam Chair, generally speaking, people who run businesses don't like regulation. But if, according to Oliver Wendell Holmes, Jr., taxes are the price we pay for a civilization, then I would submit regulations are the cost of doing business in a civilization. We all struggle to try to protect human health and the environment in a way that is least burdensome to our industries.

This hearing will concentrate on six changes that EPA has put into effect. I want to just comment on two that are particularly troublesome to me. Scientists and public health experts at the Centers for Disease Control and Prevention have determined that no level of lead in a child's blood can be considered safe. Yet EPA is considering revoking the ambient air quality standard for lead. In my own State of Maryland, this has been of particular concern. We are doing what we can on the Chesapeake Bay. We have hot spots in which lead levels are contributing to the concerns within the Bay.

In our health issues with children, we have been very aggressive in our State, trying to deal with it from a legal and health point of view at the University of Maryland. Kennedy Kreiger Institute treats children that have high levels of lead. We have looked at the problems from lead paint, we have looked at the problems from lead in the air and drinking water. All that is important, but we need the Environmental Protection Agency working with us. The ambient levels are an important part of that effort. I am very concerned about revoking the ambient air quality standard for lead.

On the community right to know, according to the testimony we will hear today from John Stephenson of GAO, the new EPA rules regarding toxic release inventory could allow nearly 3,600 facilities to avoid reporting any quantitative information on the toxic chemicals they release into the air, water and land. In my own State of Maryland, we receive currently about 800 reports. This could re-

duce it by about 25 percent, the number of reports we will receive in our State. That could have a very dramatic impact on our own efforts within the State of Maryland and our communities' right to know. I am concerned about those standards.

So Madam Chair, I thank you for convening this hearing, because I think it will give us a chance to review all of the changes that have been implemented or suggested. We have a very important role on oversight. The standard that we must use is what is in the public health interest, which should always guide us in our judgment in oversight of the Agency.

I will yield back the balance of my time.

Senator BOXER. Thank you, Senator.

Senator Alexander.

OPENING STATEMENT OF HON. LAMAR ALEXANDER, U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator ALEXANDER. Thank you, Madam Chairman. I would only say two things. One is welcome, Administrator Johnson. I am here to hear your testimony and that of the witnesses.

Second, to use this opportunity to thank you for paying attention to the importance of high standards for sulfur pollutants, especially as they affect the Great Smoky Mountain region of east Tennessee and North Carolina, which has a particular problem with that. We have talked about that before. Just as one Senator, I want to urge you to continue to insist that those standards be high. Because there is no way that communities in our part of the Country can meet the Federal clean air standards unless there is a strong national law that limits the pollution, especially of sulfur. Nitrogen and mercury are also important and carbon is important as well. But sulfur is the focus and I wanted to keep that at the front of your thinking.

Thank you for being here.

Senator BOXER. Thank you so much, Senator.

Senator Klobuchar.

OPENING STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator KLOBUCHAR. Thank you, Senator Boxer, and thank you, Administrator Johnson, for being here. I am from Minnesota, where our license plates say Land of 10,000 Lakes when there is actually 15,000. So we of course are very focused on having clean air and clean water.

The things that I am most concerned about today are the perchlorate in the drinking water standard, the lead air standard, some of the things my colleagues have talked about with the toxics, and a general concern about the use of science in setting air quality standards. But the thing that I would like to focus on today is the weakening of the right to know rules that our Country has lived by for 20 years. I come from this from the standard of being in law enforcement, where over the years we have moved to a much more open approach, and we have found it is good when communities know things, when they know about sex offenders, when they have open court proceedings for child protection. We have found that we get better law enforcement when information is out there.

Unfortunately, the new EPA right to know standard announced in December of last year is a significant weakening of the Toxics Release Inventory, the TRI. This inventory, as you know, is a handy tool. It is user friendly. You just type in your zip code and you are able to get a list of toxic chemicals that are released in your neighborhood.

Increasing the amount of chemical releases and management that are exempt from the form are, I believe, undermines the purpose and effect of this whole reporting regime. I know Senator Cardin talked about this. But I just believe that this TRI gives communities the information they need to plan. It also helps first responders dealing with disasters. After Katrina, it was reported that TRI was a key source for determining what kind of industrial chemicals were stored by flooded companies. TRI helps investors, because it lets them know the difference between well and poorly managed companies. Some States also use TRI to impose fees on companies based on the types and amounts of hazardous chemicals that they report to the Federal inventory. Minnesota is one of those States.

Some States like Minnesota have actually built their whole reporting regimes around TRI. So weakening TRI weakens the whole regime. Those are my concerns, and I will look forward to hearing your testimony in this matter. Thank you.

Senator BOXER. Thank you very much, Senator.

Senator Craig.

OPENING STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM THE STATE OF IDAHO

Senator CRAIG. Madam Chairman, thank you very much. Thank you for bringing Administrator Johnson before us. Welcome. We are glad you are before the committee.

A couple of thank yous first. I do appreciate the way you are handling science. As it relates to drinking water standards, you know out west where arsenic is naturally occurring and the standards have been set, we are now still wrestling on how to bring about compliance in very difficult areas where the average human has consumed arsenic literally for hundreds of years with apparently no health problems. Perchlorate, let's deal with it in the appropriate scientific way, and I think you are doing that. Naturally occurring elements within our atmosphere or within normal conditions sometimes are very, very costly to clean up. I am not quite sure we yet know how to get all that done. It does not mean it is important, if it is realistic to be able to that.

Your work with my staff, myself and our State on obviously National Ambient Air Quality Standards, the Coarse Particulate Standard, or the PM_{10}, for rural counties, rural environments, we are pretty sensitive to that, as you know, Administrator Johnson, we appreciate it.

Now let me talk about something that up until a week ago I didn't know you had, and that is a large library system across our Country. I am not so surprised and somewhat frustrated by it, but I am a little curious about some of the testimony we are going to hear today that speaks of a concern about alarmist testimony that we are denying the public the right to know. A couple of Fridays

ago, on visiting with my fourth grade granddaughter, and she said, Granddad, for a school project, I need this particular items. I said, "oh, well, tomorrow I will go down to the library with you and we will get it". She said, "why would you want to do that? Let's go into Grammy's laptop and Google it." We did. Ten minutes later, it was printed out and in her hands.

The citizens of my State live 500 miles from your nearest library, and none of them make the great trek to Seattle to enter the library to get the information. They go to your Web site.

Today is a very different world, that that granddaughter of mine is living in. I don't think anyone in Idaho concerned about their environment is going to make the trek to Seattle. That doesn't mean they won't gain access to your information. They'll gain it in a more ready fashion than they have in the past.

You heard the Ranking Member talk, Madam Chairman, about those who come to the libraries nowadays. Few come. That doesn't mean many don't access the available information. Or they go and they use the library system in our Country to do so. It isn't that we are not developing effective and responsible repositories of information. It means that you are saving money by modernizing your system and by maybe putting it in a different form than it was historically.

So I compliment you for doing that, and I am very interested in whether the public is being denied their right to know or they are simply accessing it in a different form, like that granddaughter of mine who said, "Granddad, let's Google it."

Thank you for being here today.

Senator BOXER. Senator, I think the physicians in the Country and the librarians and many businesses are a little more concerned than your granddaughter.

Senator CRAIG. Madam Chairman, I appreciate that. I understand that librarians are members of national associations and none of them like to create environments that under or un-employ them.

Senator BOXER. I would also say, librarians as a group don't tend to be hysterical or—what was the other word? Alarmist. Alarmist or hysterical.

I think that the quote that was given by my dear, dear friend Jim Inhofe was that they were hysterical when they said, this closure of the libraries will subtract from the sum total of human knowledge. I don't think that's exactly hysterical. I think it's a pretty sobering, thoughtful statement. But we are going to see what happens.

Senator CRAIG. We will find out.

Senator BOXER. I agree.

Senator Vitter, you will close then the members' comments.

OPENING STATEMENT OF HON. DAVID VITTER, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator VITTER. Thank you, Madam Chair, for convening this hearing. Thank you, Mr. Administrator, for being here and for your work. I have a number of interests that will probably be covered today.

But one of them stems from the fact that I am the new Ranking Member of the subcommittee that has jurisdiction over water quality, and the Safe Drinking Water Act. One issue in that category in particular is how we handle and regulate perchlorate as a component of rocket fuel and explosives, it is widely used as an oxidizer by the military and NASA in solid rocket propellants.

In 2002, EPA first issued a draft drinking water equivalent of one part per billion as the safe human exposure level of perchlorate. More recently, in January 2005, the National Academy of Sciences published a report recommending a safe level of 24.5 parts per billion as the drinking water standard equivalent.

As I understand it, you are looking at this very carefully. Right now, you have a guidance on the subject pegged at that 24.5 parts per billion. But you are particularly focused on other sources of perchlorate in the environment, because there seem to be other significant sources, perhaps other dominant sources, besides drinking water. I know it has been found significantly in food sources, lettuce, milk, other things. As I understand it, the focus is on understanding those other sources so that you get any drinking water standard right, considering the universe we live in.

I consider all of this the right approach and I support that approach. I think all of us would have a greater comfort level with it, however, if you can perhaps discuss it in a little bit more detail and also discuss a reasonable time line that you think are on with regard to examining perchlorate from all of its sources and therefore coming up with the right standards, including drinking water, so that there isn't any fear that this is just slow walking the issue into oblivion, that we are on some reasonable time line to address it.

But certainly we do need to get the right science together and address it in the right way. Obviously, a drinking water standard has to account for other sources and has to understand what those other sources are or are not, and how dominant they are, et cetera. So I appreciate your work in that regard. As I understand it, you are actively engaged with FDA and CDC in particular with regard to those other sources.

So I would be very, very interested in that ongoing work and what reasonable time line that is on, so we can decide if there needs to be a standard versus an advisory and what that statutory legal standard should eventually be.

Thank you very much, Mr. Administrator.

Senator BOXER. Thank you, Senator Vitter.

By the way, I really want to associate myself with your remarks about getting to a standard. Today we are really looking at the other question of why they are going to stop testing the water. But I think you are right, we need to finally solve this perchlorate problem, which you have described very well, I think. Thank you.

Senator Carper, I think you will be the last Senator. You have 4 minutes.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thank you, Madam Chair.

Mr. Johnson, welcome. It is good to see you again.

On December 22d, I believe EPA finalized a ruling that was supposedly intended to reduce the paperwork burden of Toxic Release Inventory, something that I worked with when I was Governor and frankly found of great value, every year. In fact, we keyed on it every year in terms of the progress that we were making in my State of Delaware.

Unfortunately many others, and it includes me, believe that this new rule will only result in denying some very important information to a number of States and communities, including my own State. So I approach it with real caution and trepidation.

Specifically, this new rule will allow facilities that release or dispose of, I believe, 5,000 pounds or less of toxic chemicals to use a short certification to satisfy their Toxic Release Inventory reporting requirements. The short certification does not require facilities to disclose the actual amount of toxins they release or dispose of. Prior to this change, the cutoff for full disclosure was, I believe, 500 pounds or one-tenth of what it is now.

At first, this may not sound like this rule change is merely a paperwork exercise. At first blush, it is difficult to perceive how filling out a long form or a short form could have any impact on the environment.

However, all one must do is to look at how the information in these reports is used. State officials in my State, and most if not all other States, have utilized these TRI reports to not only track pollution but to also determine where to focus our efforts on pollution reduction. I know that from personal experience.

According to Delaware's Department of Natural Resources and Environmental Control, this is what they say, my old team, the Toxic Release Inventory or TRI provides information that is not only crucial for making decisions concerning health and environment, but also has proven a valuable tool for more efficient environmental management. In Delaware, officials have found the TRI program extremely helpful in setting environmental and public health policy. Pollution has been reduced as a direct result of facility participation in the TRI program. Now is not the time to turn back the clock. Those are their words, and I would just say they're my words as well. Unfortunately, according to Delaware and many other States who weighed in on these proposed changes, that is exactly what EPA is doing.

In their formal comments to EPA on these rule changes, State agencies expressed their concerns that valuable and substantial information concerning the release and disposal of the most toxic chemicals reported under TRI would be lost. With these changes, our citizens will be told that a certain toxic chemical is in use or being produced in their community, but they will no longer be privy to how these toxic chemicals are being released in their environment, if at all.

Additionally, our State agencies will no longer be able to track hot spots. They do not have the data on amounts and locations of toxins being used in their States. For example, in my State, 50 percent of one highly toxic chemical and 85 percent of another will no longer be required to be reported in new detail. These numbers represent important information to citizens in the communities where these facilities operate.

In closing, in my opinion, we should be encouraging facilities to be reducing or discontinuing the use of TRI chemicals, not hiding how much they are using. The most troubling aspect of these rule changes is EPA's unwillingness to listen. According to OMB Watch, EPA received literally hundreds of thousands of comments opposed to these changes. Of those comments were 23 States like my own who expressed their opposition and outlined in detail the problem this rule change would cause. But these comment were ignored, and now communities will suffer. That is not environmental protection.

Thank you very much, Madam Chair.

Senator BOXER. Thank you so much, Senator Carper.

Senator Bond, would you care to make an opening statement? You have 4 minutes, if you wish.

OPENING STATEMENT OF HON. CHRISTOPHER S. BOND, U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Thank you very much, Madam Chair. I appreciate your holding this hearing over the regulatory actions.

I think too often we get bogged down in details, policy minutiae, arcane regulatory angles and obscure legal arguments. I am afraid this hearing today could be a casualty of that affliction. I hope we will not lose sight of the forest as we examine the trees. The forest, the Bush administration, this EPA, has a strong environmental record. They are just a couple of examples. The Bush diesel rule will cleanup diesel truck exhaust, avoiding 37,000 premature deaths and provide over $250 billion in health and welfare related benefits annually. How can we seriously hold a hearing on whether library resources should be online or hard copy in the face of 37,000 lives extended and $250 billion annually in health and welfare related benefits?

Another example is the Bush Clean Air Interstate Rule. The politics of polarization and gridlock blocked the President's Clear Skies proposal, which I thought made a great deal of sense. It would have reduced smog, soot and mercury pollution from powerplants by 70 percent. So he went ahead with it administratively. The result, by 2015, the President's Clean Air Interstate Rule will provide $85 billion to $100 billion annually in health benefits, prevent 17,000 premature deaths and prevent 12,300 hospital admissions.

But this doesn't inspire commendation from the majority on the committee. They want to debate whether the EPA should require that respondents file Form A in lieu of Form R to the TRI program. I mean, are you kidding? We are focusing on the wrong things.

Let's talk about another tree sought for promotion instead of the forest. It really isn't a tree, it is more like a little sapling. Most of you may find it obscure, I do. But EPA has guidance referred to as the Once-In, Always-In policy. Intended to be temporary in nature, it was issued as a memorandum in 1995. Of course, I might add, this was also a good way to avoid open and public process that would allow for public comment, require Agency response, and subject the Agency to judicial review.

It is a lucky situation, because the legality of the situation is tenuous at best. The guidance says the requirements to the Clean Air Act no longer apply to you, will still be enforced against you by the

EPA. That doesn't sound fair to me. According to EPA guidance, facilities that in the past emitted above a certain level established by section 112, major sources, which then reduce their emissions below that statutory level in an enforceable way, becoming a nonmajor, what EPA calls an area source, will still meet the requirements of a major source.

That is like the IRS saying that a salesman making $150,000 and paying the top tax bracket one year and then having a bad year and making only $35,000 in the second year would still have to pay the top tax bracket in the second year. Or like the gas company, which sends me a huge bill for natural gas during the winter, too high, of course, it's artificially high because so many utilities are burning natural gas. That's another debate.

But when I turn down my thermostat and when warming may occur some time in March or April, if I use less gas, would they still send me a bill for my January gas usage? It doesn't sound fair to me, it isn't right. But that is not an incentive to improve the environment. So EPA stumbling into some common sense and fairness proposed to change the situation, they haven't decided to make it, but instead they are gathering information.

Today's hearing, are we going to attack that? I prefer to focus on what the Administration has accomplished. I commend you, Mr. Administrator, for those accomplishments.

Thank you, Madam Chair.

Senator BOXER. Thank you very much, Senator.

I just want to point out that I totally respect your view that this, I guess I would say using your words, we are focusing on minutiae. But I would also say that 23 States, agencies and attorneys general agree with this, that we should focus on this. They oppose the weakening of the public's right to know. The investigative arm of Congress, the GAO, as you will hear, has many problems, the American Lung Association and others.

So I think, but I do respect the fact that you consider this small compared to the bigger picture.

Senator BOND. I appreciate your view.

Senator BOXER. Yes. That is why we have two parties, I think. Anyway, thank you.

Administrator, welcome. We have your testimony in full and I understand you are going to summarize it in how many minutes?

Mr. JOHNSON. Shortly. Briefly.

Senator BOXER. Well, just give me an idea of time.

Mr. JOHNSON. Three minutes.

Senator BOXER. Oh, you can have 5 minutes or 6 minutes, what would you prefer.

Mr. JOHNSON. Really, 3 to 4 minutes.

Senator BOXER. We will give you 5 minutes. So let's go.

STATEMENT OF STEPHEN L. JOHNSON, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. JOHNSON. Good morning, Chairman Boxer, and thank you, and Senator Inhofe and members of the committee. This is my first appearance before the 110th Congress, and it is an honor to have this opportunity to discuss EPA's progress in accelerating the pace

of environmental protection and how to build on that record of success.

Our environmental record is clear. America's water, air, land, are cleaner today than they were a generation ago. Under the Bush administration, this progress continues. Two of the five most health protective clean air rules in EPA's history—the Clean Air Non-Diesel rule and the Clean Air Interstate Rule—were adopted during the tenure of President Bush. We were the first Country in the world to adopt controls on mercury emissions from powerplants. As part of our new Clean Diesel rules, America's gas stations are primed to pump ultra-low sulfur diesel fuel, the single greatest achievement in clean fuel since the removal of lead from gasoline.

In addition to strengthening our standards, EPA is vigorously enforcing our Nation's environmental laws. In fiscal year 2006, we obtained commitments to reduce pollution by nearly 900 million pounds. Our enforcement work has resulted in a sustained 3-year record of pollution cuts, totaling almost 3 billion pounds and requirements that companies invest almost $20 billion in pollution control equipment.

Through innovation and partnerships, EPA is moving beyond traditional regulatory and enforcement approaches to achieve even greater environmental gains. Over 2 million children across the Nation are now riding in cleaner buses as a result of our Clean School Bus USA program, a public-private partnership. Through the brownfields program, EPA and our State partners have leveraged nearly $9 million in private investment and helped create more than 41,000 jobs.

Also, EPA's leadership in the mercury switch recovery program will remove 75 tons of mercury from the environment over the next 15 years. At EPA, we are meeting the President's goal of accelerating the pace of environmental protection while maintaining our Nation's economic competitiveness. As we celebrate our environmental gains, we also look to the future, and I look forward to working with you and others in Congress to build on that record of success.

As the Administrator of the premier environmental Agency in the world, I believe the first step in preparing for the future is investing in our employees. Our people are our greatest strength. In order to build an even stronger EPA, we need to continue to develop a highly trained, motivated work force and ensure that we have provided them with the right tools to meet the environmental challenges of tomorrow. I am ready to respond to your questions on the six specific issues you wished to discuss today. I have with me senior managers who can speak in greater detail.

Each of these topics have been the subject of misinformation, and I welcome this opportunity to set the record straight. We are eager to continue a constructive dialog on these and other issues facing EPA. By working together, we can meet today's challenges, while ensuring we hand down a healthier, cleaner environment to future generations.

Thank you, and I would be happy to address any questions you may have.

[The prepared statement of Mr. Johnson follows:]

STATEMENT OF STEPHEN L. JOHNSON, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good morning Madam Chairman and Members of the Senate Committee on Environment and Public Works. I appreciate the opportunity to appear before you today to discuss EPA's significant progress in our efforts to accelerate the pace of environmental protection.

INTRODUCTION

Regardless of rhetoric, our environmental record is clear. America's air, water and land are cleaner today than it was a generation ago; and under the Bush administration this progress continues.

Two of the five most health protective clean air rules in EPA's history—the Clean Air Nonroad Diesel Rule and the Clean Air Interstate Rule (CAIR)—were implemented during the tenure of President Bush. And, as part of our new clean diesel rules, last October, America's gas stations were primed to pump ultra-low sulfur diesel fuel—the single greatest achievement in clean fuel since lead was removed from gasoline. When fully implemented, these efforts are estimated to prevent approximately 37,000 premature deaths and result in well over $250 billion in health and welfare-related benefits annually.

The Bush administration's recent record of success also includes the introduction of the Clean School Bus USA program to help protect our Nation's children from diesel exhaust, the establishment of the renewable fuel standards to spur the Nation's progress on energy security and cleaner-burning fuels, and the removal of the reformulated gasoline oxygenate requirement that resulted in MTBE threatening the quality of our drinking water.

At EPA, we are meeting the President's goal of accelerating the pace of environmental protection while maintaining our Nation's economic competitiveness by putting both people and property back to work. By encouraging the cleanup and redevelopment of America's abandoned and contaminated waste sites, EPA's Brownfields program has leveraged more than $8.8 billion in private investment, helped create more than 41,000 jobs, and resulted in more than 9,100 site assessments.

In addition to strengthening standards and promoting stewardship, EPA is committed to vigorously enforcing our Nation's environmental laws. In fiscal year 2006, we obtained commitments from industry, governments, and other regulated entities to reduce pollution by nearly 900 million pounds. Our enforcement work has resulted in a sustained 3-year record of pollution reduction, totaling almost 3 billion pounds, and requiring companies to invest almost $20 billion in pollution control equipment.

The American people deserve environmental results, and that is exactly what EPA and the Bush administration are delivering. I look forward to continuing a constructive dialogue on how to build on this record of success. Environmental responsibility is everyone's responsibility, and by all of us working together, we can meet today's challenges, while ensuring we hand down a healthier, cleaner environment to future generations.

Now let me turn my attention to the actions or decisions you asked me to address at this hearing. Unfortunately, each of these topics has been the subject of misinformation, and I welcome the opportunity to set the record straight. Regardless of the rhetoric, EPA's strong environmental record is clear. These decisions and actions all accelerate the pace of environmental protection. They all deliver environmental results. They all encourage innovation and collaboration by using the best available science to inform decisionmaking.

MODERNIZATION OF EPA LIBRARIES

One way EPA is accelerating environmental progress is by making an unprecedented amount of environmental information more accessible to the public than ever before by posting materials on the Internet and converting paper documents to digital format. Demand for this type of information is high. In December 2006 alone, we received more than 230 million hits and more than 92 million page requests from EPA's Web site, an increase of about 40 percent over this same time in 2005 [see attachments]. This does not happen by accident—much work has been done to make information available to the widest possible audience. For several years we have been looking at ways to provide the public with better access to EPA materials through the use of the Internet and modernization of our library systems. EPA is in good company with this effort as more and more libraries across the country are proceeding with modernization efforts.

EPA is committed to providing the broadest possible access to environmental information, including the technical documents and reports currently contained in our libraries. To act on this commitment, we are making our full collection of environmental information accessible to scientists and the public through a variety of mechanisms [see attachment]. Our vision is to be the premier model for the next generation of Federal libraries by enhancing the electronic tools and resources that people use to look for information, while continuing to provide traditional library services. Let me also assure you that unique EPA material has been retained, catalogued, and is available to EPA and the public.

EPA began this modernization effort to provide more people with better access. Over the last several years, EPA saw a decline in the walk-in traffic at many of our libraries. Coupled with the explosive growth in on-line and other electronic media, we examined ways to modernize our library system to seek a balance between physical library space and automated resources. We discontinued walk-in services at five of our 26 libraries and reduced the hours of operations at some other libraries. However, the services provided remain unchanged.

Through this modernization effort, we are providing more information to a greater audience than ever before. Our research libraries remain open for use by our scientists, and EPA employees continue to have electronic access to additional information from more than 120,000 resources from their desktops. We also plan on continuing a strong network of physical libraries. Some will serve as repositories to hold hard copies of our collection and some will continue to provide walk-in services.

To ensure that our efforts move forward, I have asked the Agency's new Assistant Administrator for Environmental Information and Chief Information Officer, Molly O'Neill, to conduct an assessment of where we are and to evaluate our overall library modernization effort. As we have throughout this effort, we will continue to share our information with our employees, stakeholders, and library users.

In the meantime, our collection of approximately 500,000 items (including books, journals, microfiches and other items) is accessible today, and digitized versions of EPA documents will allow even greater access to more people, in a more timely and efficient manner. We will complete digitization of the unique EPA documents[1] that were held by EPA libraries that no longer provide walk-in services in the near future.

In summary, our library modernization effort has and will continue to provide more people with more access to EPA information, both online and through traditional library services. The public and EPA scientists continue to have access to EPA's robust Online Library System (*http://www.epa.gov/natlibra/ols.htm*), as well as EPA documents digitized to date (more than 25,000) from the National Environmental Publications Internet site (*http://nepis.epa.gov/*), and over 7,000 titles in hard copy free of charge from the National Service Center for Environmental Publications. To facilitate access to materials, EPA libraries post information on its web site about how to request hard copy documents and obtain answers to questions. Members of the public who do not have Internet access can request EPA documents from their public library via the On-Line Computer Library Center's (OCLC's) Interlibrary Loan Services. OCLC includes 41,555 libraries across the world.

TOXICS RELEASE INVENTORY (TRI) PROGRAM IMPROVEMENTS

Our programs in air, water, land and toxics are all designed to ensure the health and safety of the American people and our environment. The Toxics Release Inventory (TRI) program is one of those programs. TRI has contributed to the reduction of chemical releases and better waste management practices. We want to see this trend continue.

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. As successful as the program has been, we have been challenged by the fact that, at a national level, reductions in TRI releases have plateaued [see attachment]. So we have asked ourselves: How do we achieve further reductions? How do we encourage zero releases and better waste management practices? How do we accelerate this program?

We began looking at these questions in response to requests that the Agency consider whether the reporting burdens associated with TRI could be reduced. We agreed, but only if the burden reduction opportunities identified allowed us to con-

[1] Unique EPA documents are documents created for or by EPA. Due to copyright law, EPA cannot digitize copyrighted materials.

tinue to provide useful information to communities. Our changes to the TRI program have accomplished this goal.

In short, providing incentives to encourage better waste management practices is good for the environment, good for facilities, and good for the people who live around them. The final rule provides such incentives.

As a result of our review, on December 18, 2006, EPA announced a final rule that expands eligibility for TRI reporters who meet certain narrow criteria to use the shorter "Form A" in lieu of the "Form R." In the new final rule, certain facilities will be able to provide more efficient reporting if they can meet one of two requirements: (1) completely eliminate environmental releases of Persistent, Bioaccumulative, and Toxic chemicals (known as "PBTs"); or (2) reduce the non-PBT chemical releases to no more than 2,000 pounds over the course of a year as part of an overall limit of 5,000 pounds of total waste management. The reduction in reporting is about 15 hours for each PBT report submitted on a short form and about 9 hours for a non-PBT chemical. Under this rule, facilities must continue to report for dioxin and dioxin-like compounds on the more detailed Form R regardless of the amount used or released.

For the first time, facilities may use the shorter, less onerous reporting form for PBTs when there have been no releases into the environment and the total amount of the PBT chemical managed by treatment, energy recovery, and/or recycling is not more than 500 pounds. The final rule enables us to reduce the reporting burden for those reporters that are successfully managing their facilities to ensure there are zero releases to the environment.

The final rule encourages businesses to reduce their chemical emissions and increase proper recycling and treatment, which are both good for the environment and good for the economy. By structuring expanded "short form" eligibility for TRI chemicals in this way we are encouraging practices such as recycling and treatment over disposal and other releases. The result is a cleaner environment for us all.

Members of the Committee, I want to provide clarification on two important points regarding this rule: (1) The final rule does not exempt any facility from reporting its releases, nor does it remove any chemicals from the TRI; and, (2) It has no impact on the primary source of information for emergency responders—first responders receive chemical inventory data under Section 312 of the Emergency Planning and Community Right to Know Act, not from TRI.

In all, the Agency has spent many years evaluating various ways to strengthen the TRI program. As part of this effort, EPA announced in the fall of 2005 that it was exploring possible revisions to the frequency of reporting. No changes were proposed, but EPA notified Congress and the public that it was considering such changes. After careful consideration of the issues involved and the public comment received, EPA announced on December 18, 2006 that it will maintain annual TRI reporting. EPA concluded that consistent annual reporting adds significant value to the information collected, and furthers the statutory purposes of the program.

Additionally, beyond just utilizing the Agency's regulatory authorities, EPA is improving TRI by expanding the use of available technology to expedite the submission and availability of TRI data. Technological improvements to the TRI Program include: the Electronic-Facility Data Release (E–FDR); and, a new web-based version of the Toxics Release Inventory—Made Easy (TRI–ME) software. Through these improvements to the TRI, we are expediting the submission and availability of TRI data. We expect this trend to continue in the future.

I am committed to providing the public timely and reliable information. By retaining annual reporting and encouraging businesses to reduce their chemical emissions and increase recycling and treatment, EPA is ensuring the TRI will continue to serve as an important source of information on chemical releases from facilities nationwide.

NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) REVIEW PROCESS

Central to ensuring clean air across the Nation are the national ambient air quality standards (NAAQS) that EPA sets under the Clean Air Act (CAA). As part of this charge, we are required to review the science upon which the NAAQS are based and the standards themselves every 5 years. But the fact is the process is broken. In the past, EPA has often failed to complete reviews in the statutory timeframe [see attachment]. We have also found it impossible to use the most up-to-date scientific information when following the inefficient past process for NAAQS review.

In an effort to address these issues, Deputy Administrator Marcus Peacock requested a thorough review of the process. In particular, he asked that the review focus on four key areas: (1) timeliness (i.e. how to complete NAAQS reviews on a 5-year cycle as required by the CAA); (2) consideration of the most up-to-date sci-

entific information; (3) clarifying the differences between scientific and policy judgments; and, (4) defining and expressing uncertainties in scientific and technical information. To help accomplish this task, EPA formed an internal workgroup that consulted with environmental and public health groups, industry, States, and the Clean Air Scientific Advisory Committee (CASAC)—the group of independent scientific experts established under the CAA to provide the Agency with advice and recommendations on the scientific basis and adequacy of NAAQS. CASAC indicated that "[N]ow is the time to think 'outside the box' and develop a significantly-enhanced and streamlined NAAQS review process." I agree.

As a result of our internal deliberations and input from stakeholders and CASAC, EPA is changing the way we review NAAQS to enhance the efficiency, transparency, and accountability of the process while protecting its scientific integrity.

To ensure a more effective, streamlined process, EPA will develop and implement a single integrated plan to guide the entire review of each NAAQS, rather than the two-phased planning approach that has been used in the past. We will focus on providing the complete record of the available scientific information in a science assessment support document and producing a concise Integrated Science Assessment—rather than a voluminous Criteria Document—to inform decisionmaking. We are also moving towards a continuous review of the latest scientific evidence, supported by a state-of-the-art scientific database. In addition, we will issue a concise Risk and Exposure Assessment focused on identifying the major risks and uncertainties.

Finally, we will issue our policy assessment as an Advance Notice of Proposed Rulemaking (ANPR) that will reflect Agency views on the appropriate range of policy options. The addition of an ANPR will result in a more open and transparent process by seeking the public's input on Agency management's views earlier and more frequently than what previously occurred. In this way, the NAAQS process will be consistent with EPA's approach to rulemaking in virtually every other arena.

CASAC will continue to have multiple opportunities to provide advice and recommendations throughout the NAAQS review process, both with regard to the underlying scientific and risk information and the policy options being considered by the Agency [see attachment]. EPA appreciates the important contribution CASAC makes to the NAAQS process and the revised process respects and preserves CASAC's role.

EPA is committed to meeting the 5-year deadline for review of the NAAQS through this improved process. The changes we are instituting will enhance the Agency's ability to issue timely, well-informed policy decisions based on the best available science while continuing to promote broad participation by experts in the scientific community.

LEAD NAAQS REVIEW

Exposure to lead poses significant dangers, particularly to children, and we are committed to protecting public health and welfare from the dangers of lead. EPA is currently reviewing the NAAQS for lead, which was listed as a criteria pollutant in 1976, and EPA issued the first lead NAAQS in 1978. As with all of our reviews and regulations, we undertake this effort to help ensure that we continue to protect public health and our environment.

We are proud of the progress EPA has made since the 1970s in reducing lead emissions and levels of lead in ambient air. As a result of the ban on lead additives in motor vehicle gasoline, implementation of the NAAQS, and other EPA regulations and programs, including efforts to reduce lead in housing, average lead concentrations in the air have dropped by more than 95 percent since 1980. There has been a significant shift not only in the magnitude of emissions, but also in the types of sources with the greatest lead emissions. In addition, the 1990 CAA Amendments required EPA to regulate lead compounds as hazardous air pollutants under section 112. As required by section 112, EPA has established technology-based emission standards (called Maximum Achievable Control Technology, or "MACT," standards) for many facilities emitting lead compounds, and will establish additional risk-based standards for those industries where additional protection from residual risks is necessary. Moreover, EPA has worked hard to reduce the risk of lead exposure through a variety of other programs, including Superfund and drinking water programs and lead paint initiatives. EPA remains strongly committed to protecting public health and the environment from the dangers of lead pollution, and will carefully consider potential impacts—including impacts on children—of any regulatory decision regarding lead.

We are still very early in the process of reviewing the NAAQS. As part of our review, we have issued a completely revised lead Criteria Document that presents a comprehensive, up-to-date summary of our knowledge about lead and its effects on

human health and the environment. We have a great deal of scientific evidence that associates lead with significant adverse effects on human health, especially for children, at much lower levels in the body than we previously knew. We will consider all of this information in reviewing the lead NAAQS and making decisions about whether revisions to the standards are appropriate. As we move forward in this lead NAAQS review, we will review the most up-to-date science, assess risks and exposures, and develop appropriate policy options in light of all the available information.

EPA'S RECENT PROPOSAL TO REPLACE THE ONCE-IN-ALWAYS-IN POLICY

Another vital component of our clean air program is the comprehensive regime established by section 112 of the CAA for reducing toxic air pollutants. CAA section 112 lists over 180 chemicals as hazardous air pollutants and includes several provisions requiring control of emissions of these pollutants into the air. Under section 112, EPA establishes Maximum Achievable Control Technology (MACT) standards, and these standards generally apply only to "major sources." Major sources are facilities that emit or have the potential to emit, "considering controls," 10 tons per year or more of a single toxic air pollutant or 25 tons per year or more of any combination of toxic air pollutants. Facilities that emit less than these amounts are called "area sources." The CAA requires EPA to establish standards for area sources, and these standards can be less stringent than the MACT standards. While the law plainly defines what constitutes a "major" and "area" source, the CAA is silent as to when controls must be in place for the purpose of assessing a source's emissions and determining whether that source is a major or area source.

In May 1995, EPA issued the "once in, always in" policy to address the issue of when controls must be in place. The policy generally provides that only the controls in place by the deadline for complying with the MACT standard count in determining whether the facility is a major or area source. Under the policy, if a facility emits at or above the major source threshold levels on the compliance date of the MACT standard, the facility will always be subject to that MACT standard, even if the facility later adds controls that reduce its emissions below major source levels.

The current policy is environmentally counterproductive. For example, we heard from several States and industry representatives that the current policy discourages facilities from instituting new pollution prevention measures after a MACT standard applies because, even if a facility later reduces toxic emissions through pollution prevention measures, it must continue to comply with the MACT standard and other related requirements. The policy also creates an uneven playing field by allowing facilities to avoid major source status if they put on controls before the MACT standard applied, but not if they added controls after that date.

The "once in, always in" policy was issued in the form of a memorandum and was intended to be only temporary. In light of its importance in determining the applicability of MACT standards, the Agency stated in the memorandum announcing the policy that it intended to arrive at a final approach through rulemaking. In December of last year, EPA began that rulemaking process by announcing a proposal that would replace the once-in-always-in policy. Under the December proposal, a major source could become an area source at any time if it limits its potential to emit toxic air pollutants to below the major source threshold levels. The source would be required, however, to obtain a permit that limits it emission to below the major source levels, and would be subject to any area source standard applicable to its industry sector.

A major source that made the capital investment necessary to reduce its potential to emit to below the major source threshold levels could become an area source at any time, provided it has a permit that appropriately limits its potential to emit. As part of the rulemaking, we are seeking more information on sources' likely responses to the proposed approach so that the Agency can better assess the potential emissions implications before making a final decision. We look forward to receiving and evaluating public comments on the proposal.

PERCHLORATE AND THE IMPORTANCE OF SCIENCE

One of my key principles is to use the best available science for decisionmaking to accelerate the pace of environmental protection in our country, and this principle extends to perchlorate. To inform our decisionmaking, we are working with other Federal Agencies, such as the Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and the Centers for Disease Control (CDC), to gather and understand information on the sources of perchlorate exposure.

When looking at specific contaminants, one of the key factors we must consider is the reference dose (RfD). The reference dose is an estimate of a daily oral expo-

sure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of adverse effects during a lifetime. To develop the RfD for perchlorate, EPA consulted the National Academy of Sciences (NAS) to ensure a thorough, unbiased application of science. The NAS reviewed available data on the effects of perchlorate, selected the most appropriate study, and applied EPA's science policy guidance in developing an RfD of 0.0007 mg/kg/day, which was subsequently adopted by the Agency.

In carrying out their analysis, the NAS used an approach that protects the most sensitive population, the fetuses of pregnant women who might have hypothyroidism or iodide deficiency. To protect this subpopulation, the NAS recommended that the RfD be derived by taking the dose at which no observable effect (whether adverse or not), is anticipated in healthy adults, and reducing it by a further 10-fold factor to account for sensitive sub-populations. Deriving the RfD to prevent a nonadverse precursor effect is a more conservative and health-protective approach to perchlorate hazard assessment compared to our traditional approach of basing RfDs on prevention of adverse effects.

We know that questions have been raised about the current RfD, particularly given recently published scientific articles. EPA is reviewing and analyzing these findings to assess the relevance of the study results for predicting adverse health effects that may result from perchlorate exposure. The Agency has a great deal of interest in the findings regarding perchlorate exposure and thyroid function that were recently reported by CDC researchers. The CDC researchers acknowledged that there is a need for additional research to confirm their results and improve upon some of the limitations of the study, and we look forward to reviewing these additional studies.

Regarding the need for Federal regulation to address perchlorate, the Safe Drinking Water Act (SDWA) has an established process for determining if unregulated contaminants pose a sufficient risk to public health to warrant regulation. Perchlorate is on our second Contaminant Candidate List (or CCL), which was published in February 2005. The CCL is a list of unregulated contaminants that may (or may not) require regulation. In the near future, we will propose regulatory determinations on a number of contaminants from that list. This notice will include an extensive update on the Agency's review of perchlorate, including a summary of recent research.

Before the Agency can make a determination as to whether it is appropriate to regulate perchlorate in drinking water (i.e. whether setting a drinking water standard would provide a meaningful opportunity to reduce risk for people served by public water systems), we need to better understand total perchlorate exposure and the relative exposure to perchlorate from water as opposed to food sources, which we refer to as the "relative source contribution." An increasing number of studies have reported the presence of perchlorate in samples of various foods (e.g. milk, lettuce, melons) and with this and other food information becoming available, use of a default assumption for the relative source contribution may not be the best means to determine whether it is appropriate to regulate perchlorate in drinking water. We need to determine whether setting a drinking water standard would provide a meaningful opportunity to reduce risk for people served by public water systems, and we need to understand how public exposure compares to the RfD and what portion of the exposure comes from food versus water.

The Food and Drug Administration (FDA) has been conducting surveys to determine perchlorate levels in food since FY 2004. The Agency is particularly interested in reviewing the results and associated planned exposure assessment from FDA's 2006 Total Diet Study when it has been peer reviewed and finalized. This will be the most comprehensive assessment of food exposure to date and is designed to provide estimates of total food exposure by region based on a representative market basket approach. Additionally, the CDC has included perchlorate in its National Biomonitoring Program which develops methods to measure environmental chemicals in humans, for example, by analyzing blood and urine samples. With this information, the CDC can obtain data on levels and trends of exposure to environmental chemicals in the U.S. population. EPA may be able to use the results of CDC's studies to estimate perchlorate exposure and inform a determination as to whether regulation of perchlorate in drinking water is necessary to protect public health.

Finally, I would like to clarify an issue related to monitoring for perchlorate in public water systems. To support our regulatory development process, the Agency requires short-term monitoring for specific contaminants under the Unregulated Contaminant Monitoring program (UCMR). During the first round of this program, 3,858 water systems were monitored for perchlorate during a 1-year period between 2001 and 2003. This monitoring was designed to provide an assessment of perchlorate occurrence in public water supplies that was broadly representative of com-

munity water systems throughout the country. Perchlorate was detected at levels above the minimum reporting level of 4 parts per billion (ppb) in approximately 2 percent of the more than 34,000 samples analyzed. The average concentration of the detected values was 9.8 ppb and the median concentration was 6.4 ppb. (For context, the reference dose is equivalent to about 25 ppb in water.) The samples in which perchlorate was detected were collected from 160 of 3,858 public water systems (4 percent of systems) located in 26 States and 2 territories. We have determined that the existing data is sufficient to support our regulatory decisionmaking and, as such, it is not necessary to conduct additional perchlorate monitoring under the second UCMR, which in any case would not be completed until 2010. Of course, if EPA determines that regulation of perchlorate in drinking water is necessary, ongoing compliance monitoring of perchlorate would be part of any new standard.

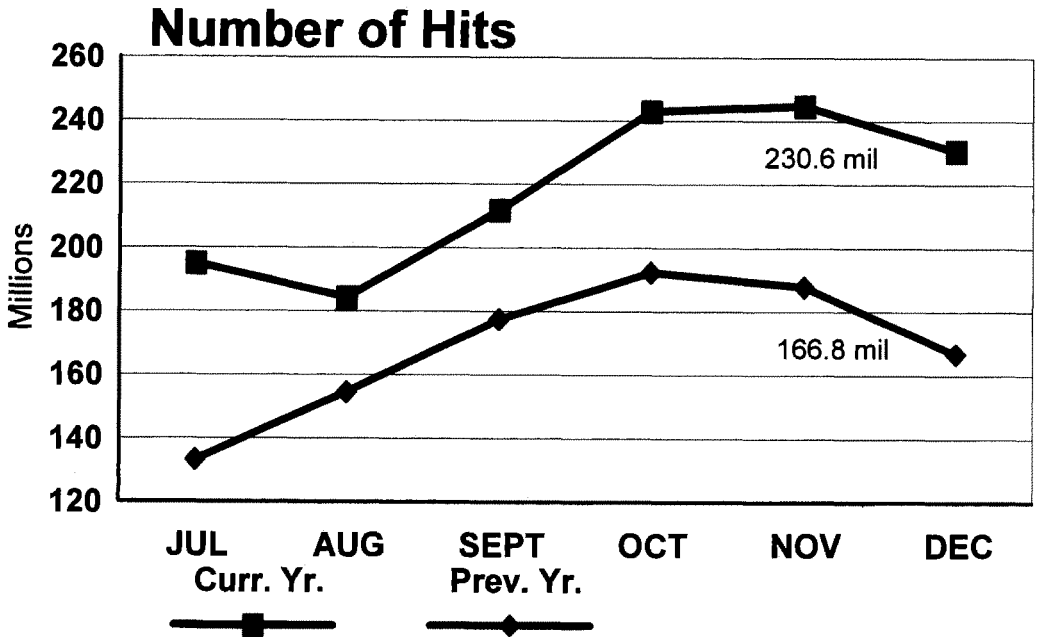
Considering this new information in conjunction with the wider body of research in this area will improve our understanding of perchlorate toxicity and exposure. If necessary, EPA can require additional monitoring at a later time if new information indicates that additional sampling is warranted. EPA will continue to review and analyze new science and information on perchlorate as it becomes available and will rely on the best available science as we move toward a decision on whether or not to regulate perchlorate. EPA is committed to protecting public health, including sensitive populations.

CONCLUSION

Madam Chairman, as I mentioned before, regardless of rhetoric, our environmental record is clear. America's environment has steadily improved over the past 30 years, and under the Bush administration this progress continues. I am proud of EPA's environmental record. Each of the six actions or decisions that I have described will provide the American people with beneficial environmental results through efficiency, transparency, innovation, collaboration, and the use of the best available science. Thank you for providing me with an opportunity to explain the goals of and reasoning for our decisions. I look forward to working with you in the future and to providing additional information about the activities of this Agency.

I would be happy to address any questions that you may have at this time.

EPA WEB SITE STATISTICS
DECEMBER 2006



EPA WEB SITE STATISTICS
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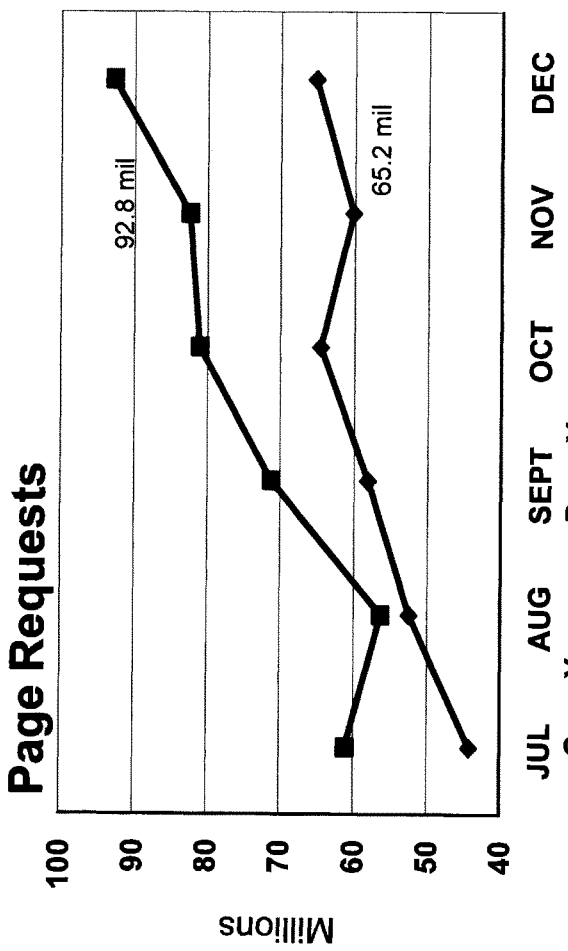
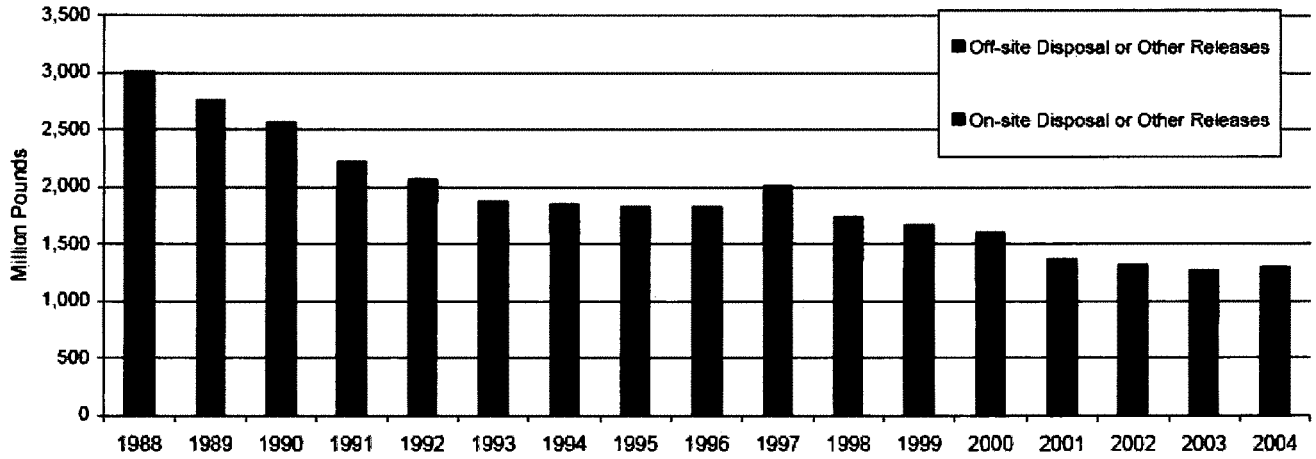


EPA Library Services for EPA Employees and The Public

	Public Access	EPA Employee Access
Online Library System (OLS): EPA's card catalog that enables searches for materials in any EPA library across the country.	X	X
Interlibrary Loan: from other libraries for EPA staff and to requesting libraries outside of the EPA network for the public.	X	X
National Environmental Publications Internet Site (NEPIS): Provides access to over 24,000 EPA documents in digital form.	X	X
National Service Center for Environmental Publications (NSCEP): Provides hard copies of over 7,000 titles free of charge from NSCEP - EPA's distribution arm for print publications.	X	X
Frequently Asked Questions: EPA provides online access to a user friendly, dynamic Frequently Asked Questions (FAQs) knowledge base.	X	X
Desktop Subscriptions: Provides access to over 120,000 information sources from EPA. Due to EPA's licensing agreement, desktop subscriptions are not available to the public.		X
Reference Services: Provides professional librarians with advanced reference services.	X	X

TRI Total Disposal or Other Releases, 1988-2004

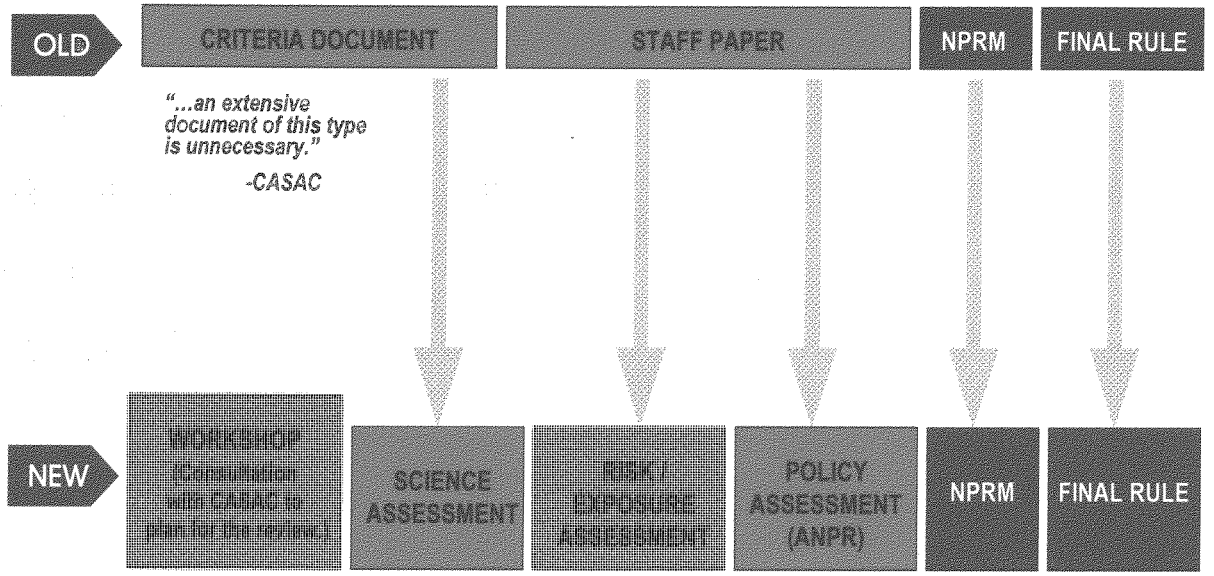


Note: This information does not indicate whether (or to what degree) the public has been exposed to toxic chemicals. Therefore, no conclusions on the potential risks can be made based solely on this information (including any ranking information). For more detailed information on this subject refer to The Toxics Release Inventory (TRI) and Factors to Consider When Using TRI Data document at www.epa.gov/tri/tridata. Data are from TRI Form, Section 5 (all parts) and Section 6.1 (metals and metal compounds only) and Section 6.2 (disposal codes only and metals and metal compounds reported under codes M40 and M61). Does not include delisted chemicals, chemicals added in 1990, 1994 and 1995, aluminum oxide, ammonia, hydrochloric acid, PBT chemicals, sulfuric acid, vanadium and vanadium compounds. For the years 1998 and after, does not include industries, other than manufacturing industries, that are required to report for 1998 and later years only. Data as of April 2006.

NAAQS Deadlines

Pollutant (Year Review Completed)	Statutory Deadline Met
Ozone (1979)	✓
Ozone (1993)	⊘
Ozone (1997)	✓
Ozone (Pending)	⊘
PM10 (1987)	⊘
PM (1997)	⊘
PM (2006)	⊘
SOx 3-hr secondary (1993)	⊘
SOx primary (1996)	⊘
SOx (Pending)	⊘
NO2 (1985)	⊘
NO2 (1996)	⊘
NO2 (Pending)	⊘
CO (1985)	⊘
CO (1994)	⊘
CO (Pending)	⊘
Lead (1978)	⊘
Lead (Pending)	⊘

NAAQS Documentation



CASAC must comment on these documents. CASAC must recommend NAAQS standards prior to NPRM.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

PERCHLORATE

Question 1a. Does EPA's Drinking Water Equivalent Level (DWEL) and Preliminary Remediation Goal (PRG) for perchlorate:

Address the amount of perchlorate exposure an individual could receive from consuming food as well as drinking water? If so, what percent does EPA assign to each route of exposure? Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe EPA's process for selecting these exposure figures.

Response. The Drinking Water Equivalent Level (DWEL) is a lifetime exposure concentration protective of non-cancer health effects that assumes all of the exposure to a contaminant is from drinking water. The DWEL does not address or account for contaminant exposure from sources other than drinking water.

EPA's Assessment Guidance for Perchlorate (January 26, 2006) provides guidance on the development of preliminary remediation goals (PRG) for perchlorate. Typically, PRGs are specific statements of desired endpoint concentrations or risk levels (55 Fed. Reg. 8713 (March 8, 1990)) that are conservative, default endpoint concentrations used in screening and initial development of remedial alternatives before consideration of information from the site-specific risk assessment.

However, PRGs are not final cleanup levels, but merely the starting point for identifying site-specific goals. As a matter of standard practice (and in accordance with the National Contingency Plan), preliminary remediation goals are further evaluated and modified, if necessary, before final clean-up goals are established based on information that becomes available during the remedial investigation/ feasibility study. This may include assessing factors, such as actual and potential exposure pathways through environmental media and actual and potential exposure routes. While there is information available that indicates that perchlorate has been found in food, EPA believes that the currently available data are too limited to calculate, on a national level, the relative exposure to perchlorate from water as opposed to food (the RSC). Therefore, EPA's Assessment Guidance for Perchlorate recommends that contribution from non-water sources of perchlorate should be considered based onsite-specific data where assessors believe that there may be significant exposures to perchlorate from such sources. In such instances, it is appropriate to consider such information in determining the final cleanup goal, and thus, the remedy for the site.

We are continuing to search for the specific records that you have requested and will update our response as our search progresses.

Question 1b. Account for children's unique exposure and vulnerabilities, including making adjustments for infants and children's weight and the lack of a biological reserve of thyroid hormone to off-set potential exposures to perchlorate?

Response. The Drinking Water Equivalent Level (DWEL) is a lifetime exposure concentration protective of non-cancer health effects that assumes all of the exposure to a contaminant is from drinking water. The DWEL is based on the Reference Dose (RfD), body weight (BW) and Drinking Water Intake (DWI).

DWEL = (RfD) x (BW)/(DWI)

The RfD is an estimate of a daily oral exposure to the human population (including sensitive subgroups, including infants and children) that is likely to be without an appreciable risk of adverse effects during a lifetime. To develop the RfD for perchlorate, EPA consulted the National Academy of Sciences (NAS) to ensure a thorough, unbiased application of science. The NAS reviewed available data on the effects of perchlorate, selected the most appropriate study as the basis, and applied EPA's science policy guidance in developing an RfD of 0.0007 mg/kg/day, which was subsequently adopted by the Agency. In carrying out their analysis, the NAS used an approach to protect the most sensitive population, the fetuses of pregnant women who might have hypothyroidism or iodide deficiency. To protect this subpopulation, the NAS recommended that the RfD be derived by taking the dose at which no observable effect, non-adverse or adverse, is anticipated in healthy adults, and reducing it further by an order of magnitude. Using a non-adverse effect that is upstream of the adverse effect is a conservative and health protective approach to perchlorate hazard assessment. Because the NAS determined that the most sensitive subpopulation is the fetuses of iodide deficient or hypothyroid pregnant women, EPA used a body weight (70 kg) and drinking water intake (2 liters/day) relevant to the pregnant woman to derive the DWEL.

Question 2. Did leading scientists from the National Academies of Sciences' National Research Council panel on perchlorate recommend that their suggested safe

level of exposure to perchlorate be adjusted when used to create any type of standard, such as a drinking water standard, for the different levels of exposure from water and food, as well as the need to account for the weight of children relative to adults?

Response. No recommendations were made regarding adjustments for varying sources of exposure or body weight differences in standard setting for perchlorate exposure. The NAS panel evaluated the scientific evidence on perchlorate and recommended a single safety level (i.e., referred to as a chronic reference dose or RfD) that would be protective of the most sensitive subgroup in the population, the fetuses of iodide deficient or hypothyroid women.

Question 3. EPA issued an Unregulated Contaminant Monitoring Rule in December 20, 2006 that excluded perchlorate from tap water testing requirements. Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe any interaction between EPA and the Office of Management and Budget, Department of Defense, National Aeronautics and Space Administration, other Federal Agencies contractors for the Department of Defense, National Aeronautics and Space Administration other Federal Agencies, or any non-Federal individuals or institutions concerning this rule.

Response. We are continuing to search for the specific records that you have requested and will update our response as our search progresses.

Question 4. In 2005, the Government Accountability Office (GAO) issued a report on the status of perchlorate monitoring in the United States. In this report, the GAO recommended that "EPA use existing authorities or seek additional authority, if necessary, to establish a formal structure to centrally track and monitor perchlorate detections and the status of cleanup efforts across the Federal Government and State agencies." Describe whether EPA has implemented GAO's recommendations. Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe the status of the Agency's efforts to implement these recommendations.

Response. EPA does not agree with the proposed GAO recommendation that "EPA establish a formal structure to centrally track and monitor perchlorate detections and the status of cleanup efforts across the Federal Government and State agencies." EPA already has significant information and data on perchlorate concentrations in various environmental media; which is available on our Web site. Much of the information is obtained from our partners in other Federal Agencies and States and by private parties, among others. The currently available information indicates the extent of contamination nationally. While it is true that EPA does not have all the data that a tracking system could provide, the benefits of such a tracking system as GAO recommended are unclear. In order to justify a tracking system, EPA would have to analyze its associated costs and benefits and weight them against projects in other environmental programs. At this time, EPA does not see sufficient benefit for establishing such a system.

We are continuing to search for the specific records that you have requested and will update our response as our search progresses.

Question 5. Describe the status of EPA's efforts to establish a drinking water standard for perchlorate. Include a timeline for the Agency's activities, the anticipated date that EPA will issue a proposed and final drinking water standard, and describe whether EPA will rely on the studies that the Centers for Disease Control published in 2006. Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe any interaction between EPA and the Office of Management and Budget, Department of Defense, National Aeronautics and Space Administration, other Federal Agencies, contractors for the Department of Defense, the National Aeronautics and Space Administration, other Federal Agencies, or any non-Federal individuals or institutions concerning EPA's activities to establish a drinking water standard for perchlorate.

Response. EPA is currently working to gather the data to make a determination as to whether or not to establish a drinking water standard for perchlorate in accordance with the Safe Drinking Water Act (SDWA) section 1412.b.1. On May 1, 2007, EPA published a Federal Register notice providing regulatory determinations for 11 CCL 2 contaminants, and discussing the status of the Agency's evaluation of perchlorate. EPA has not made a preliminary regulatory determination for perchlorate because the Agency believes additional information is needed to fully characterize perchlorate exposure and determine whether a national drinking water regulation for perchlorate presents a meaningful opportunity for public health risk reduction. This is one of the three criteria under the SDWA that EPA must determine before it can make a preliminary regulatory determination.

The May 1, FR Notice describes several potential options for characterizing perchlorate exposure and proceeding with a regulatory determination for perchlorate. These options include using the forthcoming Food and Drug Administration's (FDA) Total Diet Study and/or further analysis of the Center for Disease Control and Prevention's (CDC) biomonitoring data. Currently, FDA anticipates the Total Diet Study for perchlorate will be published in the fall of 2007 and EPA is working with the CDC to conduct additional analyses of biomonitoring data. EPA intends to move expeditiously to publish a preliminary determination for perchlorate once the Agency has analyzed these data and determined the best approach to evaluating the opportunity for public health risk reduction. EPA anticipates this could be done within 2 months of the release of the FDA Total Diet Study for perchlorate. EPA may be able to publish a final regulatory determination for perchlorate as part of the final CCL 2 regulatory determinations due by July 2008. If not, the Agency will publish its final determination for perchlorate as soon as possible thereafter.

If EPA makes a determination to regulate perchlorate, the SDWA provides EPA with 24 months to propose a standard and another 18 months after the proposal to issue a final regulation. Final promulgation can be extended for up to 9 additional months. A considerable amount of work needs to be done to propose and finalize a national primary drinking water regulation. As part of the rulemaking process, the Agency must complete a Health Risk Reduction and Cost Analysis (HRCCA), identify feasible technologies, and identify small system compliance technologies.

We are continuing to search for the specific records that you have requested and will update our response as our search progresses.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATORS BOXER AND LAUTENBERG

Question 1a. EPA Libraries.—The Environmental Protection Agency (EPA) claims that it is closing libraries in an effort to modernize its library collections by emphasizing the electronic access and retrieval of EPA documents, especially including unique Agency documents. Please describe:

Whether EPA personnel have ever ordered the removal of on-line material—including archival material—from the Office of Prevention, Pesticides and Toxic Substances' (OPPTS) library. Please do not include routine maintenance activities (i.e. updating WebPages) as a removal of material. If this occurred, please provide copies of the material that EPA personnel ordered to be removed (provide these documents in paper and electronic format).

Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe the date that the order to remove the material was given, the reason for the removal, whether any EPA staff or contractors raised concerns or asked for confirmation of the removal order, the reason for replacing any of the material on EPA's Web site, and the date such material was replaced.

Response. On December 1, the Agency updated the OPPTS library web site to note that the Library had closed and to provide information to the public on how to access publications and other documents. Unfortunately, several links were inadvertently dropped during this update process. Once the Agency discovered the links were dropped, they were promptly restored. Here is the chronology and the specific links.

On Friday, December 1, 2006, OPPTS updated its chemical library site. These pages were taken down:

http://www.epa.gov/opptintr/library/pubs/archive/
http://www.epa.gov/opptintr/library/pubs/collectn.htm
http://www.epa.gov/opptintr/library/pubs/currents.htm
http://www.epa.gov/opptintr/library/pubs/journals.htm

On Monday, December 4, 2006, OPPTS re-established these pages:

http://www.epa.gov/opptintr/library/pubs/archive/
http://www.epa.gov/opptintr/library/pubs/collectn.htm

On Thursday, December 7, 2006 OPPTS re-established these pages:

http://www.epa.gov/opptintr/library/pubs/currentjs.htm
http://www.epa.gov/opptintr/library/pubs/journals.htm

We are continuing to search for the specific records that you have requested and will update our response as our search progresses.

Question 1b. Whether EPA personnel have ever ordered the removal of on-line material from other EPA libraries. Please do not include routine maintenance activities (i.e. updating WebPages) as a removal of material. If this occurred, please pro-

vide copies of the material that EPA personnel ordered to be removed (provide these documents in paper and electronic format).

Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe the date that the order to remove the material was given, the reason for the removal, whether any EPA staff or contractors raised concerns or asked for confirmation of the removal order, the reason for replacing any of the material on EPA's Web site, and the date such material was replaced.

Response. The Agency is not aware of any such order being given to remove online materials. As is routine practice with any Web site, the information for individual libraries is reviewed for accuracy by the central program managers. Where information was outdated (such as stating that a physical library was still open when in fact it had closed to walk in traffic), libraries were asked to correct their Web sites. In some cases public access to that Web site may have been briefly interrupted while the site was updated. In all cases the material being changed focused on ensuring that service delivery information was accurate rather than any attempt to limit either internal or external access to any documents.

Question 1c. The handling of any inquires to EPA librarians from EPA staff, agencies, individuals or institutions that could not access on-line material during any time period that on-line material was removed from EPA's Web site, as described in the paragraphs above.

Response. The Agency is not aware of any such order being given to remove online materials. However; OPPTS received one request for information that was inadvertently removed through broken links as described in the response to 1(A) above. This request alerted OPPTS to the inadvertent removal of materials which were subsequently restored.

Question 1d. Whether EPA used any formal or informal standards or guidelines to determine how to close libraries and digitize their holdings. If so, please provide the document or documents, the name of the governmental or non governmental entity that authored the material and the date that the standard or guideline was published.

Response. The 2007 Library Plan, issued on August 15, 2006, provides Agency-wide guidance for offices to utilize when determining the status of their physical library space. For your convenience, a copy of the Plan has been attached to this response. Developed by EPA professional librarians and individuals with related professional credentials, the plan outlines a process whereby libraries that closed were required to review their collections and thoughtfully prepare unique EPA titles for digitization (see further discussion in F). At the same time, such materials were required to be available to meet the needs of in-house staff or for inter-library loan. This Plan drew upon both the extensive experience of these individuals as well as best library practices as identified by the Library of Congress, professional library associations and other professional organizations. Ultimately, the criteria used to review collections are set by each library to be certain that they are appropriate to that collection and its users.

Question 1e. Whether EPA considered leaving all of its libraries open while the Agency digitized documents, rather than closing its libraries and then digitizing documents. Please also provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe the Agency's consideration and rejection of this option, as well as the reason for any such rejection.

Response. Utilizing the 2007 Library Plan, each library in the Network considered many factors in determining the status of their physical library spaces. Such decisions were made at the local level based upon various factors including the annual costs associated with having facility agreements and contracts for library services in place for fiscal year 2007 and walk-in traffic in the physical library space to name a few. In all cases however, EPA made every effort to ensure that the holdings of each of the libraries which decided to close their physical space were available to the staff and to the public.

Question 1f(1). The number of documents that the Agency does not intend to digitize that are held or that were formerly held at EPA libraries that are now closed. Describe the types of documents by category, the total number of documents in each category, the total number of documents that EPA will not be able to digitize, and the percentage of the documents in each category and in the aggregate that the Agency will not be able to digitize.

Response. Overall, EPA's collection includes approximately 500,000 library items; however, EPA estimates that only 51,000 are unique EPA titles (across the entire Network, not just the closed libraries). EPA has digitized over 14,000 items from those libraries which have closed their physical space. The remaining items are pub-

lished by organizations outside EPA including grantees which the Agency is prohibited from digitizing due to copyright laws. These items also include monographs, microfiches, journals, maps, audiovisual materials, CDs and documents published by non-EPA entities. All of these items are still available to EPA staff from their servicing library and the public via interlibrary loans.

Question 1f(2). Also describe the total amount of money that EPA needs to digitize all of the documents that the Agency intends to digitize and the timeline for digitizing all of the documents.

Response. EPA spent approximately $78,950 for digitizing materials for closed libraries in fiscal year 2007. EPA has an additional $170,000 remaining for digitization in fiscal year 2007.

Question 1f(3). Provide any formal or informal estimate that the Agency has on the cost of digitizing the documents that EPA does not intend to digitize.

Response. EPA plans to digitize all documents in our collection which we have the right to digitize. The digitization of the remaining unique EPA documents awaits the completion of the independent expert review of our digitization specifications and procedures. Once the review is both completed and peer-reviewed, we will develop a revised digitization plan, including budget requirements.

Question 1g. Whether EPA analyzed the number of people who do not have or use the Internet and the impact that the library closures would have on these individuals' ability to access library material. Please also provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe the Agency's analysis and plan to address the needs of these types of library users.

Response. EPA did not conduct such an analysis as it would have been cost prohibitive to try to ascertain who in the general public did not have access to the Internet. However, all 18,000+ EPA employees continue to have access to library materials, both in electronic and hard copy format. Additionally, the public will continue to have access to EPA library materials through interlibrary loans via any of the 57,000 libraries in the U.S. and abroad which participate in the Online Computer Library Center (OCLC).

Question 1h. Whether EPA intends to maintain paper copies of digitized documents. Please describe the number of such documents that EPA intends to maintain and the Agency's reasons for maintaining this number of documents.

Response. After additional discussions with our stakeholders, EPA has modified our plans to maintain a minimum of two paper copies of digitized documents within our library network. Originally the Agency had discussed keeping one copy in the repository, but as part of our continuing dialog with stakeholders it was recommended that two copies be kept. This will be incorporated in the Repository Procedures document which should be finalized by the 1st quarter of fiscal year 2008.

Question 1i. Whether EPA librarians have had difficulty finding and providing documents from EPA libraries that the Agency has closed or at which the Agency has reduced staff and hours of operation. If this has occurred, please provide all EPA records, including memoranda, email, meeting notes, telephone logs or other EPA records that describe the title and subject matter of the material at issue, the reason for the difficulty in finding or providing the document and whether EPA ever satisfied the request, including the amount of time it took the Agency to satisfy the request.

Response. The Agency is not aware of any reports of EPA librarians having difficulty finding and providing documents from EPA libraries which have closed or at which the Agency has reduced hours of operation.

As an illustrative example of the efforts EPA has made to ensure documents are still available for use by staff and the public, EPA received a request on the afternoon of Thursday, June 7, from the congressional Research Service at the Library of Congress, for a print copy of a document identified in EPA's Online Library System (OLS) as being held in the EPA Headquarters Repository. This document is available online and is also held in several of the libraries in the EPA National Library Network. Because the person for whom he was requesting the item specifically wanted to use a print copy of the document, the requestor wanted to come to EPA Headquarters to get the physical document (picking up the document in person would not only allow faster access to the item, but would avoid the risk of damage to our document due to Library of Congress mailroom procedures for x-raying items arriving via mail or courier).

The requested item was among the materials that had been transferred from the Region 5 Library. The contract librarian at the EPA Headquarters Repository was able to locate the document within the hour. EPA made arrangements with the re-

questor for the librarian to meet him and the document was delivered to him on Friday morning, June 8. Follow-up contact with the requestor confirmed that he received what he needed and was very pleased with the quick response from EPA Libraries.

Question 1j. Whether, when EPA has switched a journal subscription from paper to electronic format in fiscal years 2005, 2006, and 2007, the Agency has ensured that it has the right to access—at any time—material published during the subscription period, including the right to use software needed to read the material.

For example, when EPA goes from subscriptions for paper copies of material to subscriptions for electronic copies of material, does EPA's contract guarantee the Agency free access to on-line content that was published when the Agency had a valid subscription?

Response. As long as EPA maintains its online subscription, Agency employees have full access to back issues of the publication. Should the Agency terminate its subscription for any reason, the Agency has access to the material published during the time when a subscription was in place. The exact method varies by the contractual requirements of the subscription publisher. In some cases a small fee must be paid for such access.

Question 2. Provide the names of the current librarians and library managers at EPA regional, headquarters, and specialized libraries, including contract libraries and EPA personnel. Please also include the librarians and library managers who worked at EPA regional, headquarters and specialized libraries during the 2006 and 2007 fiscal years. Please include the names of individuals who still work for EPA and individuals who no longer work for the Agency. The total number of years of experience at EPA libraries that EPA no longer has with the loss of librarians that occurred in fiscal year 2006 and 2007? Staffing levels at each of EPA's libraries for fiscal years 2005, 2006, 2007, and projected staffing levels for 2008.

Response. The attachment "EPA Library Staffing" provides this information. [The attachment is retained in the committee's file.] This attachment includes the names of individual librarians and library managers at EPA regional, headquarters, and specialized libraries, including contract libraries and EPA personnel per your request. EPA respectfully asks that you not further disseminate this information beyond the Committee members and their staffs in order to minimize the potential for public scrutiny or harassment of these individuals or disruption of Agency services. Based on long-standing executive branch practices, EPA also respectfully requests that you and your staff continue to coordinate all of your requests for information or interviews through the Office of congressional and Intergovernmental Relations.

Question 3a(1). Numerous library organizations representing a wide range of librarians and library users have voiced concerns that EPA's closure and management of its libraries is degrading the Agency's library system. Please confirm the following: In 2004, did an EPA document analyze the costs and benefit of the Agency's library system and did this analysis: Show that every $1 spent on the libraries returned $2 to $5.7 in services to EPA staff and non-EPA individuals who used the Agency's libraries?

Response. The report "Business Case for Information Services: EPA's Regional Libraries and Centers" (attached) did show that our library services are a tremendous resource to our staff and the public and that is why the Agency continues to provide (and expand) these core library services. EPA strongly believes that cost savings associated with closure of physical library space does not equate to reduced library services.

Question 3a(2). Conclude that EPA librarians saved EPA personnel and non-EPA personnel between 1 and 8 hours for every reference question answered, and approximately 1 hour for every document delivered.

Response. The report did show that our library services are a tremendous resource to our staff and the public and that is why the Agency continues to provide (and expand) these core library services. EPA strongly believes that cost savings associated with closure of physical library space does not equate to reduced library services.

Question 3a(3). Find that in 2003, librarians successfully answered 56,175 reference questions from EPA staff and others and conducted 90,116 database searches and that the librarians that conducted these activities (answering reference questions and searching databases) saved more than 323,000 hours of work and more than $10 million for EPA and non-EPA users?

Response. The report did show that our library services are a tremendous resource to our staff and the public and that is why the Agency continues to provide

(and expand) these core library services. EPA strongly believes that cost savings associated with closure of physical library space does not equate to reduced library services.

Question 3a(4). Recommend that EPA take five steps prior to changing its library system, including that the Agency survey information users at each library location and characterize the needs of end users, inventory EPA information resources, characterize and assess factors that enable or constrain the sharing of resources and services between libraries, develop models of cooperative services, and review and revise as appropriate EPA's existing policy framework for information services? Please describe whether EPA conducted these activities, including the date that EPA completed these activities, and provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records demonstrating the Agency's completion of these activities.

Response. Each of the 26 libraries within the EPA National Library Network was given the opportunity to solicit library user input from October 15, 2004 through March 15, 2005. The surveys were conducted online and the results provided individually to each location that initiated a survey. The overall response rate to the survey was approximately 14 percent. The Agency developed the 2007 Library Modernization Plan with this feedback and from our discussions with stakeholders. Each of the libraries used this information, along with many other factors to make the ultimate determination as to the status of their individual physical libraries.

As Administrator Johnson committed to in his testimony before the Committee in February 2007, EPA is undertaking a broad assessment of our overall library modernization efforts. EPA is working closely with both internal and external stakeholders to ensure that as we continue to move forward with making more information available to a broader audience we do so understanding we are meeting their library service needs.

Question 3b(1). In 2005, did an internal EPA report on the potential effects of a large reduction in funding in fiscal year 2007: State, "Although the demand for library services remains high, EPA libraries have been receiving less funding every year for the past 4 or 5 years."

Response. Over the past several years, the Agency's budget, which includes libraries, has experienced reductions. However, these challenges have encouraged the Agency to streamline and modernize service delivery in many areas including libraries. The Agency continues to provide (and expand) these core library services. EPA strongly believes that cost savings associated with closure of physical library space does not equate to reduced library services.

Question 3b(2). Find that if EPA's libraries suffered a $1.5 million funding reduction that "Regional libraries' capacity to handle the tens of thousands of core service requests from EPA users could be greatly diminished" and that "[Oven the large number of library service requests that the Regional libraries receive . . . , it is unlikely that all of these requests will be able to be handled by the Library Network's remaining library staff in fiscal year 2007."

Response. The Agency has never contemplated the elimination of library services for. Agency staff or the public. All Agency staff and the public continue to have access to core library services. EPA strongly believes that cost savings associated with closure of physical library space does not equate to reduced library services.

Question 3b(3). Conclude that closing regional libraries was "not a good option for any EPA Regional office . . . [and that] could adversely affect Regional staff persons' ability to function. Therefore, the workgroup did not consider this option any further."

Response. The workgroup did examine and reject the option to have Regional libraries close their physical space and "discontinue support of all core library services, thereby eliminating all library resources for their Regional staff." [See attached: "Optional Approaches to U.S. EPA Regional Library Support."] The Agency agrees with the rejection of this option and never has contemplated the elimination of library services for Agency staff or the public. All Agency staff and the public continue to have access to core library services.

Question 3b(4). Provide the Agency with a variety of options other than closing libraries? Describe whether EPA implemented or assessed any of these activities, including the date that EPA completed any such activity. Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records demonstrating the Agency's completion of such activities.

Response. Yes, the internal workgroup report discussed a number of options and made four recommendations to EPA management. The Agency examined these recommendations and has embraced all of them. The 2007 Library Plan (attached) incorporates these recommendations and cites this report as a key input.

Question 3c(1). In 2006, did EPA's Office of Enforcement and Compliance Assurance (OECA) draft a "position paper" on EPA's libraries that: Stated, "OECA is concerned that the loss of institutional memory as well as the loss of expertise from professional libraries in the regions will hamper OECA's enforcement program."

Response. During early discussions on the Agency's plan to streamline and modernize its library services, the enforcement office did identify issues with respect to ensuring the timely accessibility of library material, the need to maintain critical staff expertise, and the costs and funding arrangements for providing library services. The enforcement office is continuing to work cooperatively with the Office of Environmental Information (OEI) to make certain that resources and procedures are in place to ensure that material continues to be accessible and that the unique requirements of the enforcement program are addressed.

Question 3c(2). Found that EPA Region 5's library has begun to disperse collection its collection and that, "flinformation from the collections regarding the Great Lakes Initiative or data surrounding human health studies may have been dispersed and OECA and the Agency may not be able to locate this essential information."

Response. OECA's draft position paper dated September 15, 2006 did state this. Region 5's library closed to foot traffic in August 2006. The unique EPA documents from Region 5 were digitized as of January 2007 and all other holdings were sent to the library repositories.

Question 4. Describe whether EPA has maintained all reports that it is legally required to have publicly accessible, including but not limited to risk management plans for chemical facilities and Superfund National Priorities List Dockets in fiscal years 2005, 2006, and 2007. Describe the title and type of documents that EPA is required to maintain and the methods that EPA has used to ensure such accessibility. If the Agency has failed to maintain such accessibility, describe the length of time that access was limited and the reasons for the limitation.

Response. In light of the September 11 events, EPA has removed Risk Management Plan (RMP) information from its Web site. RMP information is available to the public on request. Access to one part of the RMPs, the Off-Site Consequence Analysis Information (Chemical Accident Scenarios) is restricted by law. However, at Federal Reading Rooms, the public may access Offsite Consequences Analysis (OCA) Information, in the form of paper copies. Federal Reading Rooms are operated by the US EPA and the Department of Justice in all 50 States. Information on location of reading rooms and procedures for visiting the reading rooms can be found on EPA's Web site at http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/readingroom.htm.

As to materials associated with listing sites on the Superfund National Priorities List (NPL), EPA operates a physical docket in EPA Headquarters and a docket in each of the 10 EPA Regions. EPA also operates a public electronic docket that provides access to listing documents. The dockets were in operation during fiscal years 2005 and 2006, and are currently in operation. The public has the opportunity to comment on EPA's proposed addition of sites to the NPL at http://www.epa.gov/superfund/sitesinpl/newprop.htm. EPA publishes notices in the Federal Register listing which sites are being proposed to the NPL.

EPA considers all comments received during a 60-day comment period following the publication date in the Federal Register. During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately 1 week after the formal comment period closes.

The Headquarters Superfund docket contains:

- HRS scoresheets for each proposed site;
- a documentation record for each site describing the information used to compute the HRS score;
- information for any site affected by particular statutory requirements or EPA listing policies; and
- a list of documents referenced in the documentation record.

Each Regional docket contains all of the information in the Headquarters docket for sites in that Region, plus reference documents containing the data principally relied upon and cited by EPA in evaluating the listing of sites in that Region. The public may access EPA Dockets electronically by going to http://www.regulations.gov

Question 5. Has the EPA's National Enforcement Investigations Center Environmental Forensics Library experienced an increase in the number of requests for assistance in answering reference questions or searching databases for documents? If so, please describe the level of increase compared to the past number of requests.

Please also provide any records describing complaints concerning the length of time or difficulty in finding documents at this library after EPA began to disperse material and close its regional and specialized libraries.

Response. Since the libraries have closed only recently, there is limited data. According to the limited data available, there has been an increase in the database searches, extended reference searches and quick reference searches. Data base searches have increased from January with 3 searches to April which had 6 searches. The highest month was in March with 13 searches. Extended reference searches rose from 4 in January to 10 in April, with the highest being 18 searches in March. Quick reference searches rose from 24 in January to 33 in April, with March being the highest at 35 quick reference searches.

NEIC has received no complaints concerning the length of time or difficulty in finding documents.

Question 6. Describe the purpose of EPA's On-Line Library Service, including the name of the software that runs this service, the date that the software was created, and whether any Agency staff, including librarians who are contractors, have formally or informally requested that EPA modernize this service over the last 6 years.

Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe the request and EPA's response to the request.

Response. EPA's Online Library System (OLS) is the Agency's online "card catalog." The OLS is a self-contained data management system that enables EPA staff and the general public to search for documents, books, journals, or reference materials held by any of EPA's libraries and repositories. Users can search for items by author names, keywords, titles, publication year, publisher, and EPA document number, using both exact searches and full text searches. The system will indicate how many times the search criteria are found within each record.

The Online Library System was created in the mid 1980's using BASIS, a database management system that employed a hierarchical architecture. Over the years there have been continuous improvements to the system, many at the request of network librarians. In 1993 OLS was migrated to BASIS Plus which uses a relational database architecture. In 1994 a circulation system module was developed using the BASIS PROC language. In 1998 OLS was migrated to an IBM AIX/UNIX server to facilitate Internet access which was accomplished using BASIS Webserver as the front end. In 2001 a serials management module was added to the system to enable network librarians to more easily manage journal holdings. The current version of BASIS software is 8.2.4.

Since late 2006, the database administrator has been working on a development version of OLS using ORACLE software as the database management system and ColdFusion as the user interface for Internet access. The OLS national catalog and supporting programs have been successfully migrated, and the circulation and serials modules are in process. Once complete, the system will be moved to production in the ORACLE environment.

EPA librarians catalog or input records for materials acquired by their individual libraries into the Online Computer Library Center (OCLC) system. More than 57,000 libraries worldwide use OCLC services to catalog, locate, acquire, lend, and preserve library materials. EPA's OLS database administrator receives EPA's new or revised catalog records from OCLC on a regular basis and promptly updates OLS so that the latest information on EPA holdings is available to both EPA staff and the public. Using OLS or OCLC, other libraries or the general public through their'local library, can easily identify materials in the EPA National Library Network and make requests for interlibrary loan of needed items.

We are continuing to search for the specific records that you have requested and will update our response as our search progresses.

Question 7. In the 2006 or 2007 fiscal year, has any EPA official stated, either verbally or in writing, including any email, memo, note or other record, that EPA personnel or contractors should not tell members of the public or other individuals that EPA's libraries were closing or that the Agency was modifying library operations in a way that could reduce or slow down services?

Please also provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that describe such statements and any concerns or reactions from EPA staff or contractors to any such statement.

Response. The Agency is not aware of any such instruction being given. EPA has striven to be transparent with our plans. On August 15, 2006, EPA issued the FY2007 Library Plan: National Framework for the Headquarters and Regional Libraries. Additionally, on September 20, 2007, EPA issued the Federal Register Notice "Notification of Closure of the EPA Headquarters Library."

EPA has consistently communicated to its staff and the public that the closure of these physical library spaces did not mean that library services would be curtailed; they would simply be received in a different manner through servicing libraries in RTP, NC, Cincinnati, OH or Washington, DC.

Question 8a. Describe whether EPA personnel ordered material, including journals, from the Office of Prevention, Pesticides and Toxic Substances' library to be discarded or recycled in November 2006.

Provide all EPA records, including any memoranda, email, meeting notes, telephone logs or other EPA records that pertain to involvement by Agency personnel in any of the instances described.

Response. OPPT followed the EPA FY2007 Library Plan in determining the disposition of library materials. The process in the Framework document to offer library holdings to other libraries and to make determinations about the final disposition of materials was followed. An EPA staff person expressed concern that some non-unique documents that were scheduled for recycling could be of use to another library if additional time were allowed to make arrangements. These documents were previously evaluated and determined to be non-unique. In addition, these same non-unique documents had already been offered to other libraries. In order to address the staff person's concerns, senior managers moved quickly—on the next business day—to delay the final recycling of these materials. The staff person was given additional time to find a home for these materials at another EPA library.

Question 8b. Was this order given despite a request by another library to review and retain some of the material?

Response. No, the other libraries had already been offered these materials and had declined them. The EPA staff person took it upon himself to find a home for them.

Question 8c. Was any of the material taken out of bins or other canisters, where it had been placed for disposal or recycling, and distributed for review and possible retention?

Response. Yes, these materials had previously been offered to other libraries and those libraries declined to take the materials. As they were not needed by other libraries and were not unique EPA documents, they were designated to be recycled.

Question 8d. Did other libraries retain any of the material taken from the bins or canisters?

Response. Yes, the materials identified by the EPA staff person were ultimately accepted by another EPA library.

Question 8e. Was any internal investigation into the potential disposal or discarding of materials ever threatened or undertaken?

Response. The EPA staff person made a telephone call to the Office of the Inspector General concerning this issue. After looking into the issue further, the Office of the Inspector General (OIG) declined to pursue it (see attached email from EPA's OIG).

We are continuing to search for the specific records that you have requested and will update our response as our search progresses.

Question 9. Describe all EPA library material that the Agency has discarded or recycled at Agency libraries that are now closed, including the date that the material was discarded or recycled, the location at which the material was discarded or recycled, the titles and types of documents discarded Or recycled, and the estimated value of the material discarded or recycled. If EPA has discarded or recycled material at other Agency libraries due to budget constraints, including a reduction in the amount of space available to a library, please also include the same information for this material.

Response. Generally, EPA did not keep a record of all the documents that were recycled as part of this process (it is not standard industry practice to do so). However, we have instructed all EPA libraries to stop recycling of library materials until we complete responding to all congressional inquiries, and to keep a complete list of materials when recycling is resumed.

A good faith effort was made to evaluate the collections contained in the closed libraries based on the dispersion criteria included in the EPA FY2007 Library Plan. Unique EPA titles were identified, digitized, and then sent to one of the three EPA repositories. Non-unique materials held by the closed EPA libraries, such as journals, were evaluated based on usage patterns and their availability elsewhere. Only excess non-unique materials were dispersed or recycled according to the criteria included in the EPA FY2007 Library Plan. However, all libraries have been instructed to cease any dispersion and recycling until further notice and begin keeping such records when recycling and dispersion is authorized to continue.

All journals in the EPA HQ collection were moved to the Documents collection. Some journal issues were requested by and sent to RTP and Cincinnati. All remaining journal materials, both print and microfilm were recycled (in the case of the paper) or discarded (in the case of the film cassettes).

Although not required, the EPA HQ library did keep dispersion/recycling records, and this information is contained in the following four attachments:

(1) EPA HQ Library Journals Collection showing cataloging changes and disposition.

(2) EPA HQ Library monograph/document collection showing unique items kept and items dispersed/weeded.

(3) HQ Journals Dispersed to the OARM Cincinnati Library to Replace Missing Issues or Extend the Depth of Holdings within that Library.

(4) Disposition of HQ Library Reference Materials—showing disposition of materials. (EJBR refers to JQ reference collection. Other 4-letter codes identify other libraries within the EPA Library Network that have a copy of the same material in their collections.

Question 10a. Toxic Release Inventory (TRI).—On January 26, 2007, President Bush signed Executive Order 13423, that, among other things, revoked Executive Order 13148, which the prior Administration created in 2000. Executive Order 13148 required the head of each Federal Agency to take "all necessary actions . . . to integrate environmental accountability into Agency day-to-day decisionmaking and long-term planning processes" in order to make "environmental management considerations, a fundamental and integral component of Federal Government policies, operations, planning, and management." The order made each Federal Agency responsible for reducing "its reported Toxic Release Inventory (TM) releases and offsite transfers of toxic chemicals for treatment and disposal by 10 percent annually, or by 40 percent overall by December 31, 2006." Please provide the following information concerning Executive Order 13148:

All annual reports that agencies submitted to EPA under section 307, which described an Agency's implementation of the order.

Response. Executive Order (E.O.) 13148, "Greening the Government Through Leadership in Environmental Management," established goals for the integration of environmental considerations into Federal Agency planning, programs and policies. Section 307 of E.O. 13148 states, "(E)ach Agency shall submit an annual progress report to the Administrator [of the EPA] on implementation of this order." Each year, those Federal agencies that met the requirements of the order provided an annual report based on guidance that was prepared in coordination with the Interagency Environmental Leadership Workgroup (Workgroup) convened under section 306 of E.O. 13148 to develop policies and guidance required by the order. The reports frequently focused on progress toward environmental management systems that were required under E.O. 13148. It should be noted that the reports did not include TRI data since this information is already reported to EPA under the TRI reporting program as called for in section 501 of the order.

For the past several years, EPA has received reports ranging from 10 to 50 pages from 15–20 agencies each year. Therefore the number and volume of annual reports is considerable. We are sending a representative sample of the reports submitted electronically to EPA during the past year for your review and would be happy to provide additional reports if the committee would find that useful.

While E.O. 13423 revoked E.O. 13148, the requirement. for Federal Agencies to continue reporting under the TRI program, is explicit in the E.O. 13423 Implementing Instruction issued by CEQ in late March. Further, the Instruction requires that by January 24, 2008, agencies develop written goals and support actions to reduce the release and use of toxic chemicals, hazardous substances, ozone depleting substances and other pollutants.

Question 10b. Descriptions of pilot studies that EPA coordinated at Federal facilities under section 501(e) of the order, which concerned agencies' collection and dissemination of information on the release and other waste management of chemicals associated with the environmental response and restoration at Federal facilities.

Response. No Federal Agencies showed an interest in participating in pilot studies conducted under section 501(e) of E.O. 13148.

Question 10c. The list of priority toxic chemicals that EPA created under section 503(b), which agencies used to guide their toxic chemical use reduction programs. If EPA modified this list over time, provide the list for each year that EPA maintained such a list. Also provide information on the known or suspected health effects of all chemicals that EPA included on a list, highlighting chemicals that are known to cause cancer, harm the reproductive system, or damage the nervous system.

Response. The list of priority toxic chemicals under section 503(b) of E.O. 13148 consisted of Mercury, Cadmium, Lead, Napthalene and, PCBs at concentrations greater than 500 ppm. Information on health effects of the Federal priority chemicals may be found at http://www.epa.gov/epaoswer/hazwaste/minimize/chemlist.htm.

Question 10d. All requests for waivers of reporting requirements under this order that Federal Agencies submitted to EPA under section 502(b). Include the agencies' descriptions of the need for a waiver and EPA's response to the waiver request.

Response. There were no requests made to EPA for a waiver under section 502(b) of E.O. 13148.

Question 11. Describe the methodology, database, and analysis that EPA used to determine the impact on small businesses from the Agency's December 18, 2006 TRI rulemaking. Provide all EPA records, including memoranda, email, and meeting notes, telephone logs or other EPA records that describe concerns that EPA staff or contractors had over the adequacy of EPA's methodology, database, or analysis.

Response. The overwhelming impact of the rule on all reporters, including small businesses, is beneficial. The rule is expected to save reporters approximately $6 million, a significant portion of which will be saved by small businesses.

However, a small number of facilities that currently file the shorter Form As will be required to file Form Rs as a result of the final rule's requirement that facilities now include amounts associated with catastrophic or other non-production related events in their Form A eligibility determinations. In these limited situations, the rule is expected to adversely affect 19 parent companies that own 32 facilities. Nine of these 19 parent companies are small businesses as defined by the Small Business Administration. All nine are expected to experience incremental cost impacts of less than 1 percent of annual revenues.

The methodology, data, and analysis EPA used to quantify this impact on small businesses is explained in Chapter 7 of the Economic Analysis (EA) done in support of the rule. The entire EA has been placed in the docket for this final rule and can be accessed at www.regulations.gov under docket TRI–2005–0073; entries 4,988 to 4,997. For your convenience, a copy of the entire analysis has been attached to this response. In addition, we are attaching two additional relevant documents completed by a contractor.

Based on a limited data set of commercially available information, EPA estimates that approximately one quarter of the reports that would be newly eligible to use Form A would be filed by small businesses, thereby saving these businesses the difference in time associated with completing the short form instead of the longer reporting form. This is about the same as the percentage of reports from small businesses in the entire TRI reporting universe. The analyses conducted to arrive at this estimate and to assess the benefits to small businesses are included with this response.

A search of records concerning potential small business impacts did not reveal any memos, emails, meeting logs, or other evidence of EPA staff or contractor expressions of concern over the methodology, database, or analysis of these issues.

Responses by Stephen L. Johnson to Additional Questions from Senator Whitehouse

Question 1. TRI.—Under the EPA's new Toxics Release Inventory rule, many facilities that fall below a certain threshold of releases of certain chemicals are exempt from detailed reporting; and instead are able to use a different reporting form that requires only the name of the chemical, but no other data on waste management or releases. This new rule raises the original threshold for the exemption by four-fold—from 500 pounds to 2,000 pounds (with a total cap of 5,000 pounds). EPA claims that this new rules provides savings between $438 and $748 per form and 9.1 to 15.5 work hours per form. Has EPA analyzed the impact of the new TRI rule on any of the following issues?

- Which chemicals will now be unreported as a result of the new rule.
- The quantity of chemicals that will no longer be reported as a result of this new rule.
- The identity and number of communities that will lose reporters.
- The socio-economic status of the people who live in those communities.
- The environmental justice impacts of this rule on these communities.
- The public's right to know what is happening in their neighborhoods.

Please provide all documents that were produced as a result of any of these analyses.

Response. No facilities have been exempted from TRI reporting in this final rule, and no chemicals have been eliminated from the list for which facilities must report. Instead, if companies want to save time by using the shorter Form A for reporting, they will have to make sure that they eliminate or minimize releases and other disposal, and shift to environmentally preferable ways of managing chemicals. For both PBTs and non-PBTs expanded Form A eligibility under the final rule is structured in a way that favors recycling and treatment over releases, thereby discouraging chemical releases and encouraging preferred waste management practices such as recycling.

While Form A does not provide the same details as Form R about the releases and other waste management of a chemical, Form A provides information beyond the name of the chemical. In addition to providing facility identification information Form A can be used by communities as a "range report," i.e., an indication that the facility manages between 0 and 500 pounds of a persistent, bioaccumulative and toxic (PBT) chemical as waste and has no releases or other disposal of the PBT chemical. For a non-PBT chemical, a Form A will indicate 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. The remainder is treated, recycled, or used for energy recovery.

The total amount of releases that may no longer be reported on Form R is 5.7 million pounds, which is 0.14 percent of the total releases reported to TRI annually. Table A–3 of the Appendix to the Economic Analysis conducted in support of the rule lists the 26 chemicals for which TRI may no longer receive Form R detailed release information due to expanded Form A eligibility. For your convenience, a copy of the entire EA has been attached to this response.[1]

EPA also considered the specific communities impacted by this rule including the socioeconomic status of the residents and the environmental justice implications. EPA used a postal zip code analysis to assess how the rule would affect the distribution of TRI reporting at the community level. We estimated that 47 percent (4,246) of all zip codes with Form R reports would have at least one Form R become eligible for Form A reporting and 6 percent (557) would have all current Form Rs become eligible for Form A reporting.

EPA also considered potential effects on the level of detail of the information available to minority and low-income communities. 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. For your convenience, a copy of this assessment has been attached to this response.[2] [The copy is retained in the committee's file.]

Question 2. PERCHLORATE.—Does perchlorate present a public health concern?

Response. In order to assess the public health concern of perchlorate, EPA believes additional information is needed to fully characterize perchlorate exposure to assess the opportunity for health risk reduction through a national primary drinking water standard. Perchlorate can interfere with normal functioning of the thyroid gland by competitively inhibiting the transport of iodide into the thyroid. EPA has adopted a reference dose (RfD) for perchlorate based upon the January 2005 recommendations of the National Academies of Science (NAS) entitled "Health Implications of Perchlorate Ingestion." The Agency is committed to examining the perchlorate science to ensure that our policies are protective of public health.

Question 3. There are scientific data demonstrating measurable levels of perchlorate in breast and store milk (Kirk, et al., 2005), in numerous common food items (El Aribi et al., 2006; FDA, 2004), and in human urine (Blount, et al., 2006). Please explain how EPA has incorporated these studies into its assessment of perchlorate, and into its assessment of aggregate exposure levels to the population from multiple sources, including food, contaminated water, and breast milk. How has EPA considered the aggregate exposure to perchlorate specifically for vulnerable populations including infants and young children?

Response. EPA considers aggregate exposure to a chemical such as perchlorate through the development of a Relative Source Contribution (RSC). The RSC is a means by which the amount of exposure to a chemical resulting from sources other than drinking water is incorporated into the assessment of the potential health impacts of drinking water exposure. Developing an RSC requires an evaluation of the

[1] The entire EA, by chapter, has been placed in the docket for this final rule and can be accessed at www.regulations.gov under docket TRI–2005–0073; entries 4,988 to 4,997.

[2] Results of the environmental justice assessment on the final rule are available in the docket as entry 5,007.

exposure to the chemical from sources other than water, such as from foods. EPA's May 1, 2007 Federal Register (FR) notice (72 FR 24016) presents for public comment approaches for using the types of data listed in this question.

As required by the Safe Drinking Water Act, EPA will consider the effect of perchlorate on subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly and individuals with a history of serious illness) to assess if any are at greater risk of adverse health effects as a result of perchlorate in drinking water. EPA will use the available scientific data including the recommendations of the National Academies of Science (NAS). NAS identified the fetuses of pregnant women who have hypothyroidism or iodide deficiency as the subpopulation most sensitive to the effects of perchlorate exposure. To protect this subpopulation, the NAS recommended that EPA derive a Reference Dose (RfD) by taking the dose at which no observable effect (adverse or non adverse) is anticipated in adults and reducing it by a factor of 10.

Question 4. The current perchlorate assessment posted on the IRIS database (www.epa.gov/iris) does not represent the result of a full hazard assessment and was not provided for public comment in its draft form. Further, it did not consider aggregate (multiple sources) exposures. Will EPA work with the staff of IRIS to develop a rigorous scientific hazard assessment for perchlorate?

Response. The draft assessment for perchlorate was provided for public review as well as expert scientific review by the National Research Council of the National Academies of Science (NAS). In reviewing EPA's draft assessment, the NAS recommended an RfD and included the rationale for their recommendations in the report "Health Implications of Perchlorate Ingestion (2005)" [www.epa.gov/iris]. The NAS report was itself subject to the detailed independent peer review process routinely conducted by the National Academies, and overseen by members of the National Academies of Science. EPA adopted the report and recommendations and developed an IRIS Summary based on this NAS report which can be found on the IRIS Web site [www.epa.gov/iris]. The IRIS Summary provides a link for users to obtain the full NAS report.

As is the case for other assessments, the perchlorate assessment available on IRIS reflects the hazard component of the risk assessment only. IRIS assessments do not incorporate any component of exposure. The IRIS assessment was developed pursuant to an in-depth analysis by the NAS and reflects the deliberations of that body.

EPA believes that the NAS analysis reflects the best available science regarding the hazard of perchlorate to all age groups, including sensitive subgroups.

Question 5. Does EPA plan on conducting a probabilistic risk assessment for perchlorate, with consideration of aggregate exposures and vulnerable populations?

Response. EPA will collaborate with other agencies such as FDA and CDC to analyze the available data on total exposure to perchlorate including perchlorate in foods to enable the Agency to determine if a national primary drinking water regulation for perchlorate presents a meaningful opportunity for health risk reduction. EPA will consider the effect of perchlorate on subgroups that comprise a meaningful portion of the general population (such as infants, children, pregnant women, the elderly and individuals with a history of serious illness) to assess if any are at greater risk of adverse health effects as a result of perchlorate in drinking water.

If EPA makes a determination to regulate perchlorate in drinking water, then the Agency will, in accordance with SDWA 1412.b.3, present a risk assessment for perchlorate that will include to the extent practicable: identification of populations at risk of perchlorate exposure through public water systems, the expected or central estimate of risk for the populations, and the appropriate upper bound and lower bound estimate of risk. EPA would also prepare a Health Risk Reduction Cost Analysis (HHRCA) that would include an assessment of the effects of perchlorate on the general population and on groups identified as likely to be at greater risk of adverse health effects due to exposure to perchlorate in drinking water than the general population.

Question 6. Will EPA list perchlorate on the CCL 3 (Contaminant Candidate List)? Will EPA establish a science-based drinking water standard for perchlorate that reflects aggregate exposures and considers sensitive populations? If so, what is the timeline for progress on finalizing a drinking water standard?

Response. EPA expects to publish the draft CCL 3 in 2008 for public comment. As a currently unregulated contaminant perchlorate is among the contaminants that the Agency is considering for CCL 3. However, EPA does not intend to wait for the CCL 3 regulatory cycle to complete its regulatory determination for perchlorate. EPA may be able to provide a final regulatory determination for perchlorate as part of the final CCL 2 regulatory determination which is due by July

2008. Otherwise, EPA will publish its final determination for perchlorate as soon thereafter as possible.

If EPA decides to regulate perchlorate, EPA would develop a proposed drinking water standard within 24 months of that determination. The proposed standard would be based in part upon consideration of a Health Risk Reduction and Cost Analysis (HRRCA). In accordance with SDWA 1412.b.3, EPA would prepare a HRRCA that would include an assessment of the effects perchlorate on the general population and on groups identified as likely to be at greater risk of adverse health effects due to exposure to perchlorate in drinking water than the general population. The Agency would promulgate the drinking water standard within 18 months of proposal (SDWA provides for an additional 9-month extension if needed).

Question 7. EPA LIBRARIES.—Please provide the committee with a detailed catalog of documents that were destroyed before an electronic record was made. Are those documents now available to the public? (If not, when will they be?)

Response. No unique EPA documents were destroyed. All unique EPA documents were digitized and continue to be available to EPA staff and the public via Interlibrary Loan (ILL) and online via the National Environmental Publications Internet Site (NEPIS). Documents were not recycled before ensuring that other copies are available either in the EPA library network or beyond through interlibrary loan.

Some materials that were non-unique EPA documents and available through other libraries or bookstores were recycled as they were not intended to be digitized.

Question 8. How many full time employees are dedicated to digitizing the information from EPA libraries?

Response. Full-time EPA employees are not dedicated to digitizing the information from EPA libraries. Contractor support is used to digitize EPA library information via a contract with Lockheed Martin Services, Inc. and entered into the National Environmental Publications Internet Site (NEPIS) by Integrated Information Systems, Inc.

Question 9. What is the budget that EPA has earmarked specifically for the task of digitizing information from EPA libraries?

Response. For you information, EPA spent approximately $78,950 for digitizing materials for closed libraries in fiscal year 2007. EPA has an additional $170,000 remaining for digitization in fiscal year 2007.

Question 10. What is the timeline that EPA has developed for digitizing information from EPA libraries?

Response. As per our public commitment, EPA completed digitization of all unique EPA documents in the closed physical libraries of Headquarters and Regions 5, 6, and 7. Access to these documents was made available through NEPIS as of January 31, 2007.

EPA had previously planned to digitize all remaining unique documents from the remaining libraries by the end of 2008. While this remains our goal, EPA has temporarily suspended further digitization. In response to our stakeholders, EPA is currently conducted an independent, third-party review of our procedures. Once the review is both completed and peer-reviewed, we will develop a revised digitization plan, including budget requirements and a schedule. This plan will also address the approximately 1950 unique EPA documents from the OPPT Chemical Library.

Question 11. How has EPA prioritized its selection of information to be digitized? Please, identify the list of priorities, by indicating what information will be digitized first, second, third, and so on, and by indicating the deadline for digitizing that information? With whom did EPA work to develop its priorities and deadlines? Please provide documentation of these deliberations and final decisions.

Response. EPA completed digitization of all unique EPA documents in the closed physical libraries of Headquarters and Regions 5, 6, and 7. Access to these documents was made available through NEPIS as of January 31, 2007. EPA plans to digitize all remaining documents in our collection which we have the right to digitize (i.e. published by EPA and in the public domain). The digitization of these remaining EPA documents awaits the completion of the independent expert review of our digitization specifications and procedures. Once the review is both completed and peer-reviewed, we will develop a revised digitization plan, including budget requirements.

Question 12. Will all digitized information be searchable by key words or by words in the document? Will all digitized information be freely available through the World Wide Web?

Response. Digitized information can be accessed at http://epa.gov/ncepihom/ or by contacting an EPA reference librarian for assistance at a repository library in Wash-

ington, DC, Cincinnati, OH or Research Triangle Park, NC. Digitized documents can be searched by key word or words in the document.

Question 13. How will digitized information be accessed?

Response. Digitized information can be accessed at http://epa.gov/ncepihom/ or by contacting an EPA reference librarian for assistance at a repository library in Washington, DC, Cincinnati, OH or Research Triangle Park, NC.

Question 14. Has EPA analyzed exactly what information has already been lost by the closing of these libraries? Please provide the results of any analyses.

Response. The Agency does not believe any information has been lost through our process to transform EPA's libraries. EPA is striving to be more transparent and forthcoming with information by enhancing our online holdings for free and easy public and staff access.

Question 15. How long will all other EPA Libraries remain open?

Response. EPA has no plans to close or adjust hours of operation for the remaining libraries in the Network.

RESPONSES BY STEPHEN L. JOHNSON TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. What is the process for developing a regulatory standard under SDWA as amended? Is there a reason why this process is inadequate with respect to perchlorate?

Response. In accordance with SDWA Section 1412(b), EPA must determine whether or not to regulate a contaminant after providing notice of a preliminary determination and opportunity for public comment. EPA's determination to regulate a contaminant must be based on the following findings:

- the contaminant may have an adverse effect on the health of persons
- the contaminant is known to occur or there is a substantial likelihood that it will occur with a frequency and at levels of public health concern, and
- regulation of the contaminant presents a meaningful opportunity for health, risk reduction for persons served by water systems.

EPA has not made a preliminary regulatory determination for perchlorate because the Agency believes additional information is needed to more fully characterize perchlorate exposure and determine whether regulating perchlorate presents a meaningful opportunity for public health protection.

If EPA were to decide to regulate perchlorate, the process for developing a drinking water standard is defined in Sections 1412 (b) 3–7 of the SDWA. This process includes a significant amount of analysis including;.

- establishing a Maximum Contaminant Level Goal (MCLG),
- determining the feasible level,
- preparing a Health Risk Reduction Cost Analysis (HRRCA),
- determining if benefits justify costs, and
- identifying affordable small system compliance technologies.

We do not believe there is any reason why the SDWA regulatory determination process or the standard setting processes are inadequate with respect to perchlorate.

Question 2. It is my understanding that the National Academy of Sciences based its recommendation upon a level that does not actually produce an adverse health effect on human beings. Is that approach more conservative than EPA's traditional approach?

Response. Yes, the approach used by the NAS is more conservative than EPA's traditional approach. Using a non-adverse effect (NOEL) that is upstream of the adverse effect is a conservative and health-protective approach to perchlorate hazard assessment. The IRIS Program's definition of a reference dose (RfD) is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime. It can be derived from a point of departure defined as a no-observed-adverse-effect-level (NOAEL), a low-observed-adverse-effect-level (LOAEL), or benchmark dose with uncertainty factors generally applied to reflect limitations of the data used (www.epa.gov/iris). Depending on the available data for a specific chemical, the point of departure may be an overtly adverse effect or an effect that occurs earlier on a continuum leading to an adverse effect. EPA's most common approach identifies an adverse effect as the starting point for the RfD derivation. However, as is stated in the EPA IRIS file for perchlorate (available at http://www.epa.gov/iris/subst/1007.htm): "The use of a NOEL differs from the traditional approach to deriving an RfD, which bases the

critical effect on an adverse outcome. Using a nonadverse effect that is upstream of the adverse effect is a more conservative and health-protective approach to perchlorate hazard assessment."

Question 3. The NAS's recommended level, upon which EPA's reference dose is based, is protective of all sensitive populations and that conclusion has since been reiterated by the National Academy members, including the Chair. Is there anything to suggest that the National Academy was wrong?

Response. EPA continues to support the NAS report and continues to endorse the EPA RfD. The NAS's evaluation was based on the scientific evidence available at the time of their report in 2005. A number of studies have since been published that have extended our knowledge of the relationship between levels of human exposure to perchlorate and hormone levels. In addition, the Agency is currently monitoring ongoing analyses of National Health and Nutrition Examination Survey (NHANES) data by CDC and other research activities from the private sector. These data will be evaluated as they are made available to inform future directions, including research on human health effects, if needed. A thorough discussion of new data and analyses that are underway is available in EPA's recently released Preliminary Regulatory Determinations for Priority Contaminants on the second Contaminant Candidate List. This discussion is available at: http://www.epa.gov/safewater/ccl/reg—determine2.html.

Question 4. As I understand it, allowing certain TRI reporters, most of which are small businesses, to use the shorter, simpler Form A is akin to allowing certain individuals to file their Federal income taxes using the 1040EZ form. Is it not true that this change to Form A does not relieve them of their duty to report data anymore than using the EZ form allows taxpayers to get out of paying taxes?

Response. The December 2006 final rule expanding eligibility for the shorter Form A has not exempted any facilities from reporting to TRI and no chemicals have been eliminated from the list for which facilities must report. Instead, if companies want to save time by using the shorter Form A for reporting, they will have to make sure that they eliminate or minimize releases and other disposal, and shift to environmentally preferable ways of managing chemicals such as through recycling.

While Form A does not provide the same details as Form R about the releases and other waste management of a chemical, Form A nevertheless provides important information. In addition to providing the name of the chemical and facility identification information Form A can be used by communities as a "rage report," i.e., an indication that the facility manages between 0 and 500 pounds of a persistent, bioaccumulative and toxic (PBT) chemical as waste and has no releases or other disposal of the PBT chemical. For a non-PBT chemical, use of a Form A indicates the facility manages between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds is released.

Question 5. Critics of the TRI rule have maintained that emergency responders would be disadvantaged by the EPA reform. Do you agree?

Response. Emergency responders primarily rely on information from the chemical inventory data reporting requirement established in Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), which provides information to State and local emergency planning committees on inventories and locations of hazardous chemicals that may be present at a facility at the time of an incident. The use of TRI data (collected under Section 313 of EPCRA for different statutory purposes) by emergency responders is supplemental to information provided to State and Local Emergency Planning Committees under Section 312. TRI provides information on releases and other waste management activities during a prior reporting year.

The December 2006 final rule 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. In addition to providing the name of the chemical and facility identification information Form A can be used by first responders as a "range report," i.e., an indication that the facility managed between 0 and 500 pounds of a persistent, bioaccumulative and toxic (PBT) chemical as waste and had no releases or other disposal of the PBT chemical during the prior reporting year. For a non-PBT chemical, use of a Form A indicates the facility managed between 0 and 5,000 pounds of the chemical as waste, of which no more than 2,000 pounds was released.

Question 6. Testimony provided by the Natural Resources Defense Council stated that methyl isocyanate (MIC) reporting would "disappear" from TRI Form R's. Is this statement correct, and is it not true that in 2004, MIC was not even eligible

for the new Form A because all three potentially eligible facilities treated more than 500 pounds of MIC?

Response. For reporting year 2004, the only (three) facilities that filed Form Rs for methyl isocyanate treated well in excess of 5,000 pounds. Therefore, none of these would have qualified for Form A under the expanded eligibility provided by the December 2006 final rule.

Question 7. Given that EPA determined in 1997 to pursue burden reduction for TRI, is it not true that EPA is simply finally delivering on a promise made by the Clinton administration?

Response. Since the beginning of the TRI program 20 years ago, the Agency has implemented measures to reduce the TRI reporting burden on the regulated community while still ensuring the provision of valuable information to the public that fulfills the purposes of the TRI program. Through a range of compliance assistance activities, such as a reporting forms and instructions document, industry training workshops, guidance documents, and a TRI call hotline, the Agency has shown a commitment to enhancing the quality and consistency of reporting and assisting those facilities that must comply with the TRI reporting requirements. The final rule expanding Form A eligibility provides new incentives to facilities by allowing companies to reduce the amount of detail in which they report in return for emitting less of the chemical into the environment.

Senator BOXER. Thank you, Mr. Johnson.

I am a little confused, you say you are happy to be here to celebrate your environmental successes. The hearing is entitled Hearing on Oversight of Recent EPA Decisions. Six, you never mentioned any of them. You said you would answer questions. So I don't—and by the way, some of the things you said I would have issue with. But today isn't the place, we will do that when we have you back when we talk about the budget.

But I am going to get to the issues at hand. The Medical Library Association and the Association of Academic Health Professionals, which represents thousands of health science information professionals and more than 140 American and Canadian medical schools wrote me a letter describing their opposition to EPA's closure of its libraries. They believe the closure of the libraries threatens thousands of scientific studies and hinders emergency preparedness and anti-pollution enforcement activities. They also describe the importance of EPA's librarians in helping Agency staff and the public find important information.

Are you aware that the Medical Library Association and the Association of Academic Health Science Libraries have expressed concern on your program?

Mr. JOHNSON. Yes.

Senator BOXER. How do you respond to that?

Mr. JOHNSON. Our goal is to modernize, to have better access to a broader audience. We have a record of results, we are a science-based Agency, and it is really important for me and for us to make sure that that cutting-edge research is not only available just across the street, but that it is really available around the world.

Senator BOXER. So you are doing it to get more information out? That is your purpose? It is to get more information out?

Mr. JOHNSON. The purpose is to get better access for a broader audience.

Senator BOXER. Did you write to them and tell them that this is what you want to do? We will send them your testimony.

Did an EPA official order staff to throw away journals from the Office of Prevention, Pesticides and Toxic Substances Library?

Mr. JOHNSON. Not that I am aware of, no.

Senator BOXER. I have a copy of an internal EPA email that directs staff to discard journals from this library. I will give that to you. Can you provide me with all the information regarding EPA's decision to dispose of journals and other materials? I have this for you.

Mr. JOHNSON. Thank you.

Senator BOXER. So you don't know anything about this internal memo?

Mr. JOHNSON. Madam Chairman, what I am certainly aware of is that, in the case of the OPPTS Chemical Library, there was a flood. When the flood happened, it destroyed a number of documents, also caused books to be contaminated with mold. So to protect our employees, we restricted access to those materials. Those materials, if they were unique, have been going through a very deliberate process to digitize and make them available to everyone.

Senator BOXER. So let me ask you this. Did an EPA official order staff to throw away journals from the Office of Prevention, Pesticides and Toxic Substances library?

Mr. JOHNSON. I am not aware of that, Madam Chairman.

Senator BOXER. OK. Here it is, discard remaining journals. We will get that to you. Would you answer me in writing after you have seen this?

Mr. JOHNSON. I would be happy to, for the record.

Senator BOXER. Thank you. Did an EPA official order the removal of information from the EPA's—let me see this one. The Special Library Association, whose 11,000 members include librarians in business, academia, and government are concerned. Because many of their members have told them that the closure of EPA's libraries will impact their work directly. Did EPA conduct a survey of business, academics, government agencies and other library uses prior to closing and reducing services at its libraries?

Mr. JOHNSON. Madam Chairman, it was a plan that actually began in 2003, to evaluate our libraries' effectiveness. As a result, we had 26 libraries, and we did close 5. The rest of the libraries remain open and they will remain open. We also are maintaining our National Environmental Publications Internet site, maintaining our inter-library loan program, maintaining our online computer library center, maintaining EPA's library network; and, all of our research libraries remain open.

Senator BOXER. Administrator Johnson, is EPA Region 4's library in Atlanta, GA open to the public and capable of handling such things as research and inter-library loan requests?

Mr. JOHNSON. Our Atlanta office remains open.

Senator BOXER. Then why does an internal email from EPA state that the Agency's library in Cincinnati, OH will handle EPA Region 4's core services activities, such as research and inter-library loan requests?

Mr. JOHNSON. I am not aware. I don't know. I would be happy to look into it and respond to the record for you.

Senator BOXER. Either you are not getting information or these emails we have are made up. They are not made up.

Has the Agency closed EPA's Region 3 environmental science library at Fort Meade?

Mr. JOHNSON. No.

Senator BOXER. Then why does the Agency's Web site for the library say it is currently unstaffed? Consequently, public access to the library facility has been suspended. That is on your Web site.

Mr. JOHNSON. I will have to look into it.

Senator BOXER. Are you aware that your own librarians are deeply concerned about your dismantling of EPA's library? One librarian who worked at EPA for 21 years, including at EPA's National Enforcement Investigation Center for the Agency, wrote to me and Senator Lautenberg, stating "As I left the Agency, there was an embargo on information about what was happening to EPA libraries, including the closure of several of the regional libraries. Contract librarians were forbidden to speak out. There was an atmosphere of intimidation and a lack of transparency."

Are you aware that your own librarians were deeply concerned?

Mr. JOHNSON. What I am aware of is that we began a very open and transparent process back in 2003 to modernize, to provide better access to a broader audience, and to be good stewards not only of the environment but also taxpayers' dollars. Again, focus is on a record of results. As was mentioned earlier, for example, Dallas, TX, that library over the last 4 years, averaged four visitors per month. Four visitors per month. Again, our focus is to make the research available to a broader audience.

Senator BOXER. I know, Mr. Johnson, you are reading those notes very well. But you are unaware of what is going on in the Agency. You obviously don't know, when you tell me some place is open and then I talk to you about an email and Web sites that say it is not open, when I talk to you about Atlanta, you don't know what is going on. I want to ask you this. Would you agree to a moratorium on closing these libraries and disposing of documents until we have a little time to sort all this out? Would you agree to that today?

Mr. JOHNSON. Madam Chairman, we are not closing any more libraries. So it is easy to agree to a moratorium, because we are not closing any more.

Senator BOXER. So you would agree not to close any more, and not to dispose of any more documents?

Mr. JOHNSON. We have not been disposing of any documents. We have been boxing them up, going through——

Senator BOXER. Even though I have emails that show that documents should be destroyed, you are saying that is not true?

Mr. JOHNSON. Well, it is not true as of today. I don't know.

Senator BOXER. Great. I have gone over my time, so thankfully for you, I will move to Senator Isakson.

[Laughter.]

Senator ISAKSON. I don't have any emails.

[Laughter.]

Senator BOXER. I will send you a few.

Senator ISAKSON. In fact, I would appreciate that, if you would. I would like to see the copies. I will be the first person to tell you that Atlanta must be one of those that has only had four visitors. I was unaware we had a library in Atlanta until preparing for this hearing today.

Now, as I understand it, on the libraries, and I was trying to read your extensive testimony that was printed, you began a proc-

ess 4 years ago to modernize the libraries. The result of that was the closing of public access to 5 out of 26, the other 21 remain open.

Mr. JOHNSON. That is correct.

Senator ISAKSON. Second, all of the information in the EPA library system, whether it was in a library that is now closed or not, is available online?

Mr. JOHNSON. We are in the process of making all that information available.

Senator ISAKSON. In the process, that is some of the digitizing?

Mr. JOHNSON. That is correct.

Senator ISAKSON. Third, going back to destroyed documents, that is a serious allegation and should be dealt with, so I am glad that the Chairman is going to give me a copy of that and give you a copy as well. I would like to know what the result is.

But the only thing you are aware of is the destruction of documents that became polluted or otherwise affected by mold and water from the flooding of one library, is that correct?

Mr. JOHNSON. Those that were not unique documents. Our libraries have a lot of documents that are not unique to EPA, magazines, books that are widely available across a number of the library systems.

Senator ISAKSON. On the remarks that I gave on the ambient air quality, and by the way, I would call everybody's attention on the committee to the last page of your prepared document, which is this slide here, which is a graphic of the modernization of the process by which you are going to establish those. There have been some allegations that the new process reduces the input of science. What you have displayed here, it shows that the very first step in the process is a workshop involving CASAC and a scientific assessment before you do anything else, is that correct?

Mr. JOHNSON. That is correct.

Senator ISAKSON. OK, then on the old system, which it is replacing, it refers to the first step was a criteria document which, in asking questions, the best I can determine is kind of everybody just piles in every document they can possibly pile and collects them, but there is not a workshop or an analysis of those documents in that information, is that correct?

Mr. JOHNSON. That is correct.

Senator ISAKSON. So it would be fair to say, then, in setting the ambient air quality standards now under the new process—the new process is in place?

Mr. JOHNSON. We are transitioning to that new process now.

Senator ISAKSON. That CASAC will be the first step of input in a scientific assessment through a workshop interface session?

Mr. JOHNSON. Yes, that is correct.

Senator ISAKSON. Do you believe, there is another chart in here that I read while I was listing some of the other questions, I think EPA has only met 2 of I think 20 deadlines since 1985, is that correct? There it is.

Mr. JOHNSON. Yes, sir, this is the chart. Since 1979, EPA has only met the statutory deadline twice. Therein lies one of the problems with the existing process. The Agency is not meeting its statutory requirements.

Senator ISAKSON. So what happens is similar to what has happened in northwest Georgia with regard to non-attainment, is that correct?

Mr. JOHNSON. Well, in that case, it is looking at the best available data to make a decision whether Catoosa County was in attainment or not in attainment.

Senator ISAKSON. Best available data under the current process is delinquent at best, is that fair to say?

Mr. JOHNSON. That is the other problem. That is correct.

Senator ISAKSON. Is it also not true that on the one hand, some people are alleging that there is less science in the process. I think what you have said in this chart dictates that not true.

But it is even worse to have a judge who may or may not have any scientific background making an arbitrary decision because the Agency has such a cumbersome process that it can't meet the deadlines that it imposes upon itself, or the law imposes. Is that a fair statement?

Mr. JOHNSON. That is true.

Senator ISAKSON. I would just say, Madam Chairperson, in my private life, for 33 years, I dealt with a lot of things, regulatory situations, from EPA, primarily more with the Clean Water Act than the Clean Air Act. But it is, everybody wants to try and do the right thing. But the worst environment possible to be in is to have arbitrary standards that are outdated based on the body of knowledge that is continuing, and an inability for those reviews to take place in a timely fashion. You end up having the wrong thing happen more often than not.

So I want to commend you for modernizing that process in terms of ambient air quality. I am sure there may be other questioners that might disagree. But it appears to me that you have taken a pile of documents and replaced them with actual scientists in the room at a workshop taking the results of that information and trying to apply it to a decisionmaking process, which is a scientific enhancement of the process at its inception stage. That is the only other question I have. Thank you.

Senator BOXER. I just want to make sure I understood you so we can correct the record. When I asked you about disposing of documents, you said you never did it. Then you said you did it if they were not unique. Is that correct?

Mr. JOHNSON. To my knowledge, as of today, we are not disposing of any documents. What I understood in the early days of the library closure, those documents that were not unique, that were widely available, they were disposed of and recycled, if you will.

Senator BOXER. Well, thank you for—recycled meaning in the wastepaper basket?

Mr. JOHNSON. Documents were made available to other libraries, these were the not unique ones.

Senator BOXER. So they weren't disposed of, they were just given away to other people, you never destroyed any documents?

Mr. JOHNSON. In some cases they may have been disposed of. For example——

Senator BOXER. Destroyed.

Mr. JOHNSON. Well, again, for example, if there were multiple copies of a magazine, and that magazine was available through library loan process, was not a unique EPA document, that there were copyright restrictions so that we were unable to digitize them, then in the early days of the process, yes, they were disposed of.

Senator BOXER. OK. I think it is, the reason I picked up on that, and I do appreciate that it came out, is because there is something about Americans, they don't like things destroyed, libraries, books burned and things like that. The image of it is discomforting. So what I want to make sure I understand, and then I am going to stop and turn it over to Frank Lautenberg, is this. What you are saying is, in the early days of the library closure, which was October?

Mr. JOHNSON. I don't recall the date.

Senator BOXER. I believe it was October when you started this whole thing. There were documents disposed of, but they were not unique documents. Some of them were given to other libraries? You have a list of where they went, I assume, somewhere? Yes?

Mr. JOHNSON. I don't know. I would have to ask.

Senator BOXER. Do you have a list of where you gave these documents, ma'am?

Female SPEAKER. When they went to other EPA——

Senator BOXER. No, the Administrator was saying sometimes they were given to other libraries.

Female SPEAKER. Sometimes they were given to other EPA libraries. They were offered to libraries, local libraries, regional libraries. But I do not know if we had a list, per se, if they went to other local libraries. But we can definitely check on that for you.

Senator BOXER. If you would, I would appreciate it. Because you know, we have things here from people who said they had a report, disposal of documents to the Inspector General. This story has a lot of legs to it, and I won't belabor it.

Senator Lautenberg.

Senator LAUTENBERG. Thanks, Madam Chairman. Welcome, Mr. Johnson. I note that you start off in your statement taking pride in the fact that air, land and water are cleaner today than it was a generation ago. But I sense that your mission is to make sure that if they are improved, you don't want that to last, that you are taking steps that are going to endanger that air quality and the TRI and things that help make the environment better.

I ask you this, Mr. Johnson. Is a science advisory board a responsible organization?

Mr. JOHNSON. Yes.

Senator LAUTENBERG. Do you place any value on public opinion when they respond to changes that EPA contemplates?

Mr. JOHNSON. Yes.

Senator LAUTENBERG. Well, if that is the case, your own science advisory board and the Republican-controlled House of Representatives oppose your changes to the TRI rule. If that is the case and these are responsible, important views, why do that?

Mr. JOHNSON. We took into, and my responsibility as Administrator is to take into account all public comments, and certainly value all of our science advisory committees, as part of that process. Our goal for the TRI program was, and continues to be, it is

an important program, to make this program not only a successful program, but to make it better.

Senator LAUTENBERG. But the public opinion is opposed to it, and so many comments that, so many commentaries, why do you dismiss it? Ninety-nine point nine seven percent of public comments on this rule, more than 122,000 oppose it. You are saying that that is of value. But you really don't pay any attention to it.

Mr. JOHNSON. That is not the case, sir. We had 5,000 unique comments that were submitted to the Agency on TRI. Among the comments we received there were overwhelming comments, and in fact, documentation, saying that our proposal to report alternately, alternate year reporting was not a good idea and too much information would be lost.

Based upon those comments, I made the decision to abandon the alternate year reporting. So we certainly listened to the comments.

Senator LAUTENBERG. Well, but at the same time, you are reducing the requirements in volumes of material by raising those amounts that are exempt from having to report. Does that help protect the public? I take some pride in the fact that I am the principal author of TRI.

[Laughter.]

Senator LAUTENBERG. But as contrasted with our colleague who talked about his granddaughter, I have 10 grandchildren. The one thing I don't want to have to do is permit them to be the proverbial canaries in the coal mine. I don't want to wait until they get good and sick before I do things to protect them. We are aware of the fact that things like asthma, diabetes, et cetera, are on the increase substantially. It relates somehow or other to these changes that we want to make in environmental law.

Now, again, conceding that, I know that you have some comments that agree with you, you said 5,000 responsible comments. I just said 122,000 opposed it. Only 34 comments that we are aware of supported the changes that you contemplate, 29 of which were from industry groups. Now, which has more weight, Mr. Johnson?

Mr. JOHNSON. Senator, my interests, (by the way, and I have four grandchildren and one more on the way, to total five), is to do anything that I can do to encourage businesses to reduce their chemical emissions and increase recycling and treatment. By this rule, we are in fact doing that.

I would much rather have a business move from reporting persistent and bio-accumulative and toxic chemicals, whatever their numbers are, to zero. By this rule, we are encouraging companies to move from whatever they are doing to zero. That is one aspect of that.

Senator LAUTENBERG. How do we encourage them? Do we ask them to adhere to a safer available materials? Is there anything that you are proposing in law that would make that an enforceable condition?

Mr. JOHNSON. Well, again, the TRI program is just one of a number of opportunities——

Senator LAUTENBERG. Please tell me how you are going to reduce it to zero when there is no punitive action taken if people don't report. The public scorn, perhaps, or media interest. But otherwise,

and the program is successful. You want to reduce the pressure that exists just from the public perspective on these things and make a grand statement that says, well, we would rather reduce them to zero. Yes, of course we would rather. But there isn't anything that you are proposing, in my view, that is going to help that take place.

What do you subscribe to that says that they will be working toward that?

Mr. JOHNSON. My conversation with businesses, specific to TRI, leads me to believe that. Of course, we have other programs, like our Green Chemistry program, to get them to reduce or eliminate emissions. It makes sense both for their bottom line as well as for the environment. Of course, that is my interest, to do what we can do to provide those incentives. This final rule provides an incentive for moving from a long form to a short form.

Senator LAUTENBERG. So it is a subjective, your subjective analysis that is going to help get these emissions to zero.

Mr. Johnson, it is frustrating, and I speak for myself, to see what has happened at EPA and their lack of interest in keeping the public in touch, whether it is the library discussion, and part of the library discussion includes the fact that there is a heck of a lot of material that has not been yet digitized, it is not available to be Googled or otherwise. The disposal material, there is no concern apparently whether it is unique and that maybe we would be throwing something away.

But I will close with this. Seven of ten EPA regional offices oppose your new toxic emissions proposal. Now, given this opportunity, why does the EPA insist on the rule that would allow companies to emit larger amounts? Does the opinion of the regional offices matter in these kinds of things?

Mr. JOHNSON. Yes, the opinions of our regional offices matter a great deal. This is a proposal. Again, we are looking for results. We want to achieve a record of results. Here is an opportunity for, we believe, significant voluntary emission reductions through incentives.

Senator LAUTENBERG. Well, Madam Chairman, forgive me for running over. I have more questions.

Senator BOXER. You can have an extra minute. Do you want another minute? You can have it.

Senator LAUTENBERG. I would. I would say that these are burning questions.

[Laughter.]

Senator LAUTENBERG. We are disappointed that headquarters formulated revisions to the Once-In, Always-In policy without seeking regional input. Reluctant to share the draft policy with regional offices. This trend of excluding the regionals from involvement in rule and policy development is disturbing. This is a memo from seven EPA regional offices to the headquarters in December 2005, they reinforced that with an even stronger objection to the fact that we continue to have significant concerns about the increases and the emissions of hazardous air pollutants that will likely occur from revisions to the Once-In, Always-In policy as currently drafted. That is in March 2006.

So once again, Mr. Johnson, in fairness, it doesn't look like you have much trust in the view of the people in your regional offices. Because otherwise we could march ahead without giving them notice or effect.

Mr. JOHNSON. Senator, I would like to quote from that same memo from our regional offices to headquarters, "We appreciate that changes were made to the proposed revisions to address the regions' concerns regarding enforcement and compliance issues in the revised draft." That is the third paragraph of that particular memo.

So we did listen. This is one of the great benefits of notice and comment rulemaking, is that we have the opportunity——

Senator LAUTENBERG. To disagree.

Mr. JOHNSON [continuing]. To share a wide range of opinions, to gather information and then make an informed decision. By the way, I have not made any final decision on this.

Senator LAUTENBERG. Well, boy, we are getting awful close, I'll tell you, at putting it out, floating this balloon. These are lead balloons.

Mr. Johnson, do you meet with your regional offices?

Mr. JOHNSON. I do, in fact I did so last week——

Senator LAUTENBERG. How frequently?

Mr. JOHNSON. Frequently. I just had our regional administrators and deputy regional administrators in last week. I routinely visit all of our regions. I have been in all of our regional offices. I am heading out to one of our regions this week, at the end of this week, on Thursday or Friday.

Senator LAUTENBERG. We will submit questions in writing. Thank you very much, Madam Chairman. Thanks, Mr. Johnson.

Senator BOXER. Senator Inhofe, please take 10 minutes.

Senator INHOFE. OK.

[Laughter.]

Senator INHOFE. Senator Lautenberg, I know how proud you are of your 10 grandchildren. I have 12. Gotcha.

[Laughter.]

Senator LAUTENBERG. We are working on it.

[Laughter.]

Senator INHOFE. Yes, but we are still working, too.

[Laughter.]

Senator INHOFE. Administrator Johnson, I want to make sure I understand, the purpose of the library modernization effort is to make all the EPA materials more readily available and all of this. I want to ask you if the following books are still available at the EPA libraries. The first one I would like to ask you about is Lorax. Is this available?

Mr. JOHNSON. Yes.

Senator INHOFE. About how many copies are available?

Mr. JOHNSON. I understand that there are nine.

Senator INHOFE. Are any checked out right now?

Mr. JOHNSON. Not that I am aware of.

Senator INHOFE. The author?

Mr. JOHNSON. Dr. Suess.

Senator INHOFE. Dr. Suess, very good. Next we have WordStar made easy. Is this available?

Mr. JOHNSON. Yes, sir.

Senator INHOFE. I understand that this is a computer software book for pre-1983 computers, is that correct?

Mr. JOHNSON. That is correct, published in 1982.

Senator INHOFE. Published in 1982. A lot of demand for this book? Never mind.

The next one is Memoirs of a Geisha. Do you have this available?

Mr. JOHNSON. Yes, sir.

Senator INHOFE. OK. How about Bonesetters Daughter?

Mr. JOHNSON. Yes.

Senator INHOFE. What collection is this in?

Mr. JOHNSON. It is in our technical library in Region 8.

Senator INHOFE. OK, great demand? Here's one, how about this one. This is called Fat Chicks Rule: How to Survive in a Thincentric World. Do you have this?

Mr. JOHNSON. Yes, sir.

Senator INHOFE. How about Imperial Hubris: Why the West is Losing the War on Terror? Do you have this?

Mr. JOHNSON. Yes, sir.

Senator INHOFE. That is interesting. How about more of the items, the video, Fern Gulley, is that in? The Last Rainforest, do you have that?

Mr. JOHNSON. I believe we have it on video tape.

Senator INHOFE. I believe that is a children's movie, is that correct?

Mr. JOHNSON. Yes.

Senator INHOFE. How about a health issue, do you have a video, Windsor Pilates Ab Sculpting?

Mr. JOHNSON. Yes, we do have Windsor Pilates Ab Sculpting.

Senator INHOFE. One of the things, in a very serious vein, as I said in my opening statement, it is a fact that we have, this is the information age, and people are changing their behavior. I don't know about Senator Lautenberg's grandchildren, but I would put my 12 up against his and it would probably be a pretty close contest as to——

[Laughter.]

Senator INHOFE. It would be close in any way, I say to my good friend.

On the next process, Administrator Johnson, I noticed on your chart that EPA has been able to meet their NOx decision deadline only twice in the years. Now, you received a lot of criticism. I have two charts, I would like to put the first one up here. A lot of criticism from my colleagues saying that you based, the extremist groups, some of them, claiming that you based all of the process changes on recommendations from the API. That's the American Petroleum Institute. In fact, some have claimed that you let the API write the proposal.

My staff has prepared two charts, outlining the recommendations you received from API and the recommendations made by CASAC. By the way, I would have to say about CASAC, and you were not in your position at that time, but during the Carol Browner days, and you will remember this, Senator Boxer, the 2.5 issue that we were, the $PM_{2.5}$. Of the 21 scientists on the Clean Air Scientific Advisory Committee, CASAC, 19 of them had one position and she

took the position that 2 of them had. So it is not as if these are always followed.

However, in this case, I believe they were. So you did receive some recommendations from API, and other recommendations by CASAC. Let's take a look at these. From the API recommendations, that is the first chart there, it appears that only one, that out of seven, you only accepted one in its entirety and one partially, is that correct?

Mr. JOHNSON. That is correct.

Senator INHOFE. OK, the second one is the chart that would be the scientific advisory committee. They made five recommendations. Tell me if this chart is correct in terms of their accepting these recommendations.

Mr. JOHNSON. That is correct. Senator, if I may point out that in fact there was a recommendation that was in common, and that was the electronic database.

Senator INHOFE. I should have mentioned that. I knew that that was recommended by both sides.

Mr. JOHNSON. By both sides. So that was the one that we recommended, we adopted fully.

Senator INHOFE. So you really didn't accept the recommendations of the API?

Mr. JOHNSON. No.

Senator INHOFE. The report does not reflect that you did.

Many have said that the EPA's MCL process is flawed and that the Agency is intentionally delaying its decision on MCL for perchlorate. Is that a fair assessment of what the Agency has done with regard to perchlorate?

Mr. JOHNSON. No, it is not a fair assessment. We are science-based Agency, and where the science directs us, that is where we go.

Senator INHOFE. Listing perchlorate on the UCMR2 would have indicated that more data is needed. First, is that true of drinking water data? Further, would it have been seen as premature for the EPA to issue a regulatory determination for perchlorate prior to the completion of the UCMR2 monitoring cycle? In fact, wouldn't listing of perchlorate under that UCMR2 have only further delayed the MCL determination?

Mr. JOHNSON. That is correct, sir. If we had listed it, then we would have begun monitoring. That monitoring data would not have concluded until the year 2010. I did not want to send any signal that we were going to wait until after 2010 to evaluate the science and make a decision as to whether a health advisory in MCL was appropriate.

Senator INHOFE. In my opening statement, I talked about the fact that reform is needed. There have not been reforms. I just want to applaud you, you are getting into these things and I appreciate very much the courage that you are exhibiting by changing. Change is a hard thing to do in Government. Everyone says they want change until you start changing, then they don't want change. So I thank you for the work that you have been doing.

Madam Chairman, I am coming back. I want to Armed Services and be back in just a few minutes. Will you be all right without me here?

Senator BOXER. Can't wait for you to get back.

[Laughter.]

Senator BOXER. Senator Klobuchar.

Senator KLOBUCHAR. Thank you, Chairman Boxer. I am just going to take 5 minutes, because I have to go to the floor. I would have loved to ask some questions about ab sculpting, but I will save those until later.

[Laughter.]

Senator KLOBUCHAR. You stated in your testimony, Administrator Johnson, that changes in TRI reporting requirements will not affect first responders seeking information on chemical inventories. I believe you said that the final rule has no impact on the primary source of information for emergency responders. First responders receive chemical inventory data under section 312 of the Emergency Planning and Community Right to Know Act, not from TRI.

To the extent that the chemicals reported under this section overlap with TRI chemicals, won't companies still have to maintain extensive chemical records anyway, if they are reporting them for the Community Right to Know Act?

Mr. JOHNSON. They still have to, as you correctly point out, as part of the Emergency Planning and Community Right to Know Act, to maintain detailed information from an emergency perspective. That is correct.

Senator KLOBUCHAR. Then I can't figure out, why would this additional task of filling out the Form Rs, when they already are collecting this information anyway, be such a burden?

Mr. JOHNSON. Well, it is our understanding that it is a burden. Certainly, our analysis of the economic impacts indicate that it is a burden. Again, what was our focus? Our focus was to make a successful program even better, to provide incentive to get people to reduce chemical emissions. That is what we are trying to do.

What our experience is, in a cleaner business, it is not only good for business but it is good for the environment and certainly good for the American people.

Senator KLOBUCHAR. But isn't it, 90 percent of it is electronic reporting?

Mr. JOHNSON. Yes, we have moved to electronic reporting. But it is still a lot of detailed information. Probably one of the reporters would be the best one to ask how burdensome they find it.

Senator KLOBUCHAR. Again, though, if they are collecting this information anyway, for this other law, it just seems to me that if it is 90 percent electronic reporting and they are putting this same information in that there is no reason we shouldn't be using the old standards in Form R. So we are able to get that out to the community. I may be submitting some more questions in writing about that.

The other question I had is, if you conduced an analysis of the number of small businesses as opposed to businesses owned by large parent companies who somehow benefited from this change.

Mr. JOHNSON. Yes. As part of our analysis, we did look, and it is my understanding there are some 5,000 to 6,000 small businesses that are part of the TRI reporting, have TRI reporting requirements.

Senator KLOBUCHAR. OK. But do you know what percentage of the benefits went to large businesses as opposed to small?

Mr. JOHNSON. I don't recall off the top of my head. But we have that information and I would be happy to provide it for the record.

Senator KLOBUCHAR. Thank you. Thank you, Madam Chair.

Senator BOXER. Thank you very much, Senator.

We are going to, to your great relief, move on. I am going to make a closing statement here, which is that we have a number of questions we want to send to you. So how long do you think you would need, Mr. Johnson, to complete the answers?

Mr. JOHNSON. Well, if I know the number of questions——

Senator BOXER. I would say we would have around 30 questions we would like answered in writing.

Mr. JOHNSON. If you can give us a month, that would be wonderful.

Senator BOXER. You have a month. That would be good.

Mr. JOHNSON. Thank you.

Senator BOXER. Because in essence, when you spoke to us, you didn't really address, you gave this happy picture and you didn't really address the rollbacks. But I need some more answers.

Let me say in that little repartee with my Ranking Member, I found it very entertaining. I am amazed that the Administrator of the Environmental Protection Agency would know what books are in the library. You are a multi-tasker, that is for sure.

[Laughter.]

Senator BOXER. But let me just say this. While we now know that you can get a Dr. Suess book, unfortunately, according to your own staff, in one of the libraries, 600 to 700 linear feet worth of the chemical library collection was discarded, despite this particular staffer's attempt to save it. She was told it was too late, they were out of time. The journals were to be disposed of. She was ordered not to remove any journals from the recycling bins, and to dispose of all the journals. She said, 25 or so of those titles would be irreplaceable. But her superior said she didn't care and so this particular employee had to go to the Inspector General.

As I said, this is an area that there are many, many question about. The emails have given us a story that you apparently didn't know about or were unaware of. But it is disturbing.

Then the question of following the science, I couldn't agree more that we should follow the science. But you took the science out of the Clean Air Rule and stuck it at the end of the process. Nobody's fooled by this. Here's the point. These rollbacks were done in the dead of night, in December. I watched it. I predicted it. I said, what are we going to get tomorrow, what are we going to get tomorrow, what are we going to get tomorrow. It is over in terms of your not having to come before the committees of Congress to respond to them.

This is just the start. Because we are going to stay on these rollbacks and whatever else that you do. Some of us believe that these rollbacks are so against the public interest that you are probably going to wind up in court, which is something I know my good colleague here feels you are trying to avoid. But some of these are going to, you are going to wind up in court about them.

What I hope is you will take a look, you will take a deep breath and look at them and reverse yourself. You reversed a few of them, by the way, I noticed after the elections, that you were thinking of doing. So I would urge you, especially on the ones that you haven't finalized now, these involve lead and perchlorate, community right to know, the libraries, the role of science and the setting of air standards.

I would just urge you, for the good of the people, to revisit these issues. If you don't revisit these issues, we will be revisiting them with you as we go on. Because we are not talking about theory here, we are talking about people who get sick from dirty, filthy, toxic pollution. We are going to protect them in this committee. The majority is going to protect them.

So I thank you, and I hope that we can work together. I thought we could, so far we haven't been able to. But I hope in the future we will.

I want to place in the record letters from the Association of Academic Health Science Libraries, the Society of Environmental Toxicology and Chemistry, the U.S. National Commission on Libraries and the Special Libraries Association, to show that this issue is way more broad-based than one would suspect.

[The referenced material follows.]

MEDICAL LIBRARY ASSOCIATION

Association of Academic Health Sciences Libraries

February 5, 2007

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

Dear Chairman Boxer,

As representatives of the Medical Library Association (MLA) and the Association of Academic Health Sciences Libraries (AAHSL), we are writing to express our opposition to the administration's $2 million cut to the Environmental Protection Agency (EPA) Library Network. This $2 million cut reduced the EPA Library Network's budget by 80%. In response, the EPA has begun to shut down libraries and reassign staff.

Over the past 35 years, the EPA libraries have accumulated a vast trove of information on public health and the environment, including over 504,000 books and reports, 3,500 journals, 25,000 maps and 3.6 million items on microfilm. Unfortunately, in the process of closing the libraries, the EPA is dispersing and destroying many of these materials.

MLA and AAHSL are very concerned about the loss of the materials. We agree with the Public Employees for Environmental Responsibility (PEER), which represents more than 10,000 EPA scientists and whose letter of June 29th, 2006 contends that the closing of the libraries threatens thousands of scientific studies and hinders emergency preparedness and anti-pollution enforcement activities.

Furthermore, MLA and AAHSL believe that the role of librarians in knowledge management and the value that they bring to the delivery of the EPA's information services must be addressed. Prior to the closing of the EPA libraries, each one of them was staffed by experts who assisted the EPA's staff and the public in accessing the library's materials. Librarians have the training, the skill and the expertise to collect, find and organize information. While individual scientists can accomplish a great deal on their own, librarians possess specialized knowledge that allows them to access the most accurate, reliable and up-to-date resources in the most effective way. Since librarians are central to the intellectual capital of the EPA, it is essential that these key personnel not be lost through the closing of the libraries.

The valuable information maintained by the EPA libraries must be preserved. MLA and AAHSL respectfully ask that you support the full restoration of funding for the

EPA Library Network. We also ask that you request clarification and justification from the EPA on how the agency will ensure that the information services provided by the EPA libraries are preserved and continue to be made accessible during this time of transition. As associations of health information professionals, MLA and AAHSL believe that it is crucial to have a clear road map for how the EPA will manage information to support sound science and effective regulation. For this reason, we ask that you direct the EPA to keep the libraries open, and the collections and services intact, until these issues have been fully explored and brought to successful resolution.

Thank you for your leadership on environmental issues, and for scheduling this timely hearing on "Oversight of Recent EPA Actions." The hearing is especially critical in light of PEER's January 31st, 2007 press release that documents problems librarians are having in gaining access to the EPA online collections. MLA and AAHSL appreciate the opportunity to share their views with you.

Sincerely,

Jean P. Shipman

Elaine Q. Martin

Jean Shipman, AHIP, President
Medical Library Association

Elaine Russo Martin, DA, President
Association of Academic Health Sciences Libraries

MLA, a nonprofit educational organization, is comprised of more than 4,500 health sciences information professionals. Through its programs and services, MLA provides lifelong educational opportunities, supports a knowledgebase of health information research and works with a global network of partners to promote the importance of quality health information research.

AAHSL is composed of the directors of the libraries of 142 accredited American and Canadian medical schools that belong to the Association of American Medical Colleges (AAMC). AAHSL's goals are to promote excellence in academic health sciences libraries and to ensure that the next generation of health practitioners is trained in information-seeking skills that enhance the quality of healthcare delivery.

Environmental Quality Through Science®

Society of Environmental Toxicology and Chemistry

North America | Asia/Pacific | Europe | Latin America

12 January 2007

Mr. Stephen L. Johnson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave, N.W. – MC 1101A
Washington, D.C. 20460

Dear Mr. Johnson:

I am writing on behalf of the Society of Environmental Toxicology (SETAC), North America, to request that you reconsider plans to close EPA scientific libraries. The 5,000 members of SETAC are among the many scientists who rely on the data and literature housed in EPA libraries and upon the services of EPA librarians. In the absence of sufficient funding to transfer all of this information to an electronic format, we are very concerned that access to this valuable resource will be irretrievably lost. I can personally attest to the value of the library at the Research Triangle Park facility.

SETAC is a nonprofit, worldwide professional society comprised of individuals and institutions seeking to promote the advancement and application of scientific research related to contaminants and other stressors in the environment, education in the environmental sciences, and the use of science in environmental policy and decision-making. Our mission cannot be advanced without scientific data and literature.

Sincerely,

Jane P. Staveley

Jane P. Staveley
President
SETAC North America

cc.
Sen. Barbara Boxer, Committee on Environment and Public Works
Rep. Bart Gordon, Committee on Science and Technology

1010 North 12th Avenue
Pensacola, FL 32501-3367 U.S.A.
T 850 469 1500 F 850 469 9778
setac@setac.org www.setac.org

NCLIS
U.S. National Commission on
Libraries and Information Science

Phone: (202) 606-9200 • Fax: (202) 606-9203
E-Mail: info@nclis.gov • Web: www.nclis.gov

1800 M Street, NW • Suite 350 North Tower
Washington, DC 20036-5841

January 29, 2007

Dear Senator:

The purpose of this letter is to address the closing of libraries at the U.S. Environmental Protection Agency and library closures and library service reductions at other Federal agencies.

At its meeting December 11-12, 2006, the U.S. National Commission on Libraries and Information Science (NCLIS) discussed the subject extensively and approved the attached resolution dealing with access to information in federal libraries.

The U.S. National Commission on Libraries and Information Science is responsible for addressing the library and information services needs of the American people, and in addressing those needs, to submit its advice to the President and to the Congress.

Therefore, in my capacity as Chairman of the Commission, I request your serious consideration to review the aforementioned resolution and to take such actions as are necessary to review and, if necessary, to re-state guidelines for the Nation with respect to library closures and library service reductions in Federal agencies.

Yours sincerely,

C. Beth Fitzsimmons

C. Beth Fitzsimmons Ph.D.
Chairman
U.S. National Commission on Libraries and Information Services

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

RESOLUTION

RECOGNIZING THE

Need for Access to Information in Federal Libraries

WHEREAS the National Commission on Libraries and Information Science (NCLIS) affirms that the Federal government's public information resources are a strategic national asset owned by the people, held in trust by the government, and should be permanently available to the people, except when restricted by law; and

WHEREAS public information resources serve a clear, broad national public policy interest by ensuring the recording, preservation, and availability of the nation's heritage as that heritage is documented by its public information resources; and

WHEREAS public information resources serve as a building block for the national policy of freedom of opinion and expression and enable wide, easy, and equitable public access to government information resources; and

WHEREAS public information resources guarantee researchers, students, parents, teachers, and businesses, policymakers, entrepreneurs, and ordinary citizens access to a comprehensive and authoritative research collection of the government's knowledge holdings; and

WHEREAS public information resources facilitate active and informed citizen participation in government programs and processes; and

WHEREAS the U.S. National Commission on Libraries and Information Services (NCLIS) has addressed and provided recommendations on these issues in its "A Comprehensive Assessment of Public Information Dissemination" published in 2001: Now, be it therefore

RESOLVED, that the U.S. National Commission on Libraries and Information Science (NCLIS) urges that prior to making any decision to close a Federal library, cut services, or dramatically restructure an agency's library system, public and Congressional input be solicited in an open process.

NCLIS is an independent agency of the United States Government created by Public Law 91-345 (July 20, 1970) to advise the President and Congress on national and international library and information policies, to appraise and assess the adequacies and deficiencies of library and information resources and services, and to develop overall plans for meeting national library and information needs in support of the law's Statement of Policy, as recorded in the law:

> ***The Congress hereby affirms that library and information services adequate to meet the needs of the people of the United States are essential to achieve national goals and to utilize most effectively the Nation's educational resources and that the Federal Government will cooperate with State and local governments and public and private agencies in assuring optimum provision of such services.***

Adopted by the U. S. National Commission on Libraries and Information Science on December 11, 2006.

International Headquarters
331 S. Patrick St.
Alexandria, VA 22314
703.647.4900
www.sla.org

February 5, 2007

Senator Barbara Boxer
112 Hart Senate Office Building
Washington, D.C. 20510-0505

Dear Senator Boxer,

The Special Libraries Association (SLA), which represents information professionals in the global information society and librarians in corporate, academic, and government environments, is pleased to have an opportunity to provide the following information to the Senate Environment and Public Works Committee regarding the proposed closure of the Environmental Protection Agency's (EPA) network of regional specialty libraries.

SLA was the first library association to publicly denounce the proposed EPA closures, and the Association played a pivotal role in raising this important issue with you and your legislative colleagues. Further, we have encouraged our Association's 11,000 members who collect, analyze and disseminate information to facilitate accurate decision-making in the public and private sectors to communicate their views on this matter to their Congressional representatives.

We are particularly concerned about the effects the proposed closures will have, and are having, on the public's ability to access data and information necessary to scientists, policy makers and corporate entities to operate in the public good. We have heard from many SLA members in the scientific and medical community who have told us the closure of the EPA libraries will impact their work directly. While the loss of some libraries may be inevitable, our primary concern is the loss of access to the crucial information contained in these libraries, which could have devastating long-term impacts on public health and safety.

Many SLA members have special expertise in creating, organizing, disseminating and ensuring access to digital resources. They are gravely concerned about EPA's apparent lack of preparation and understanding of the sophisticated processes and procedures necessary to digitize and logically present an enormous body of information in a way that is easily accessible and usable by those who rely on it.

Also of particular concern to SLA are issues related to the authenticity of documents housed in EPA libraries that have or are being digitized, and may be required for legal purposes in the future. This is a separate issue from the destruction and disposal of documents that could be required in legal proceedings, which also is a very serious matter.

SLA is prepared and willing to provide the Committee with more detail about these issues and concerns in a written testimony for the Record should you request that we do so.

Thank you very much for your concern about and action on this important matter. If you need additional information, please do not hesitate to contact me.

Sincerely,

Janice R. Lachance, CEO
Special Libraries Association

CC: Grant Cope

Senator BOXER. I thank you and we will look forward to seeing you when you come back to talk about the budget.

Mr. JOHNSON. Next week. Thanks.

Senator BOXER. Thank you.

We will ask our next panel to come up, the GAO and the U.S. Small Business Administration.

I want to welcome our second panel. We will hear from John Stephenson, Director, Natural Resources and Environment, U.S. Government Accountability Office; and U.S. Small Business Administration, Thomas Sullivan, Chief Counsel for Advocacy, will follow.

Mr. Stephenson, do you think you can summarize in about 6 or 7 minutes?

Mr. STEPHENSON. I can do that.

Senator BOXER. Thank you.

STATEMENT OF JOHN B. STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STEPHENSON. Madam Chairman, members of the committee, I am pleased to be here today to discuss our ongoing work for this committee on EPA's Toxic Release Inventory, or TRI. We have heard a lot about it already.

You also asked us to provide an update to the committee on the recommendations from our 2005 report on perchlorate, an ingredient in rocket fuel used primarily by the defense industry that is being found in drinking water and food, such as lettuce and milk.

Each year, billions of pounds of chemicals are used in the production of important goods and services that we all enjoy. However, some are toxic and may adversely affect human health and/or the environment. TRI is the primary data system EPA developed to meet the intent of the Emergency Planning and Community Right to Know Act, EPCRA, for making information available to the public on about 600 hazardous chemicals used by facilities around the Country.

TRI is also intended to encourage companies to take account of and reduce the amounts of toxic substances they use. More importantly, the cornerstone of EPCRA is to empower local communities and not EPA to determine what risks are acceptable to them.

While our full study of TRI will not be completed until June, our preliminary observations suggest that EPA did not adhere to its own rulemaking guidance in implementing its burden reduction rule in December. First, late in the rulemaking process, senior EPA management directed consideration of an option to increase the reporting threshold from 500 to 2,000 pounds to allow more companies to use the shorter, less informative Form A to report their use of toxic chemicals, an option EPA's own TRI work group had previously rejected.

Second, EPA developed this option on an expedited schedule that afforded limited time for an impact analysis. Third, EPA may not have conducted a proper final Agency review. This is one that seeks input from EPA's internal program and regional offices.

According to EPA documents, this expedited approach was taken in part to meet a commitment to OMB to implement TRI burden reduction by December 2006. EPA estimates that TRI reporting

changes will have minimal impact, affecting reporting on less than 1 percent of the chemical releases annually. While this is true in terms of total pounds of chemicals nationwide, it underestimates the significant impact the loss of this specific information will have on States and local communities.

I have a series of charts, Madam Chairman, behind you that shows these specific impacts for the States. The first chart shows the impact in terms of the 22,200 fewer Form R reports. These reports containing detailed information about toxic releases from 6,620 facilities would no longer be required. That is one-third fewer reports in States such as yours, Connecticut and New Jersey.

The second chart shows the State by State impact in terms of the number of chemicals for which no detailed information will be required, and these range from 3 chemicals in South Dakota to 60 chemicals in Georgia.

The third chart shows the impact in terms of the 3,565 facilities dispersed across the States that would no longer have to report any detailed information about the chemicals they use. One such facility is ATSC Marine Terminal, a bulk petroleum storage facility in Los Angeles. It reported releases totaling 5,000 pounds of 13 different chemicals into the air in 2005, including highly toxic benzene, toluene and xylene. However, none of the individual chemical releases exceeded the new 2,000 pound threshold, making it eligible for reduced reporting.

EPA estimates that the total savings from this burden reduction rule is $5.9 million. This is less than $900 per facility and is based on paper reporting, not electronic reporting. We believe that our final analysis, once completed, will show that more savings will come from electronic reporting and other burden reduction matters than this threshold.

Now for perchlorate. As depicted in the final chart, our May 2005 report identified more than 400 sites in 35 States where perchlorate has been found. As you know, EPA has not established a drinking water standard for perchlorate, citing the need for more research on health effects. Thus perchlorate and such potential contaminants are not now included in the Toxic Release Inventory.

However, with the National Academies concerned about the health effects of perchlorate on children and pregnant women, we recommended that EPA develop a mechanism to track perchlorate releases and cleanups to keep the public better informed. In December 2006, EPA reiterated its disagreement with that recommendation as not needed and too costly.

In conclusion, we believe that the spirit of EPCRA dictates more and not less disclosure of environmental information to the public, and that any changes to reduce the amount of such information should be carefully considered, particularly where the savings to industry are relatively small and not all that burdensome in the first place.

Thank you, Madam Chairman. That concludes my summary. I will be happy to answer questions.

[The prepared statement of Mr. Stephenson follows:]

STATEMENT OF JOHN B. STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Madam Chairman and Members of the Committee, I am pleased to appear here today before the Committee to discuss our ongoing work regarding the Environmental Protection Agency's (EPA) Toxics Release Inventory (TRI) and to provide you with an update on our 2005 report on perchlorate, a primary ingredient in solid rocket propellant that recent studies have shown to affect human health.[1]

Each year, U.S. industry uses billions of pounds of toxic chemicals to produce the Nation's goods and services. However, the release of these chemicals during transport, storage, use, or disposal as waste can potentially harm human health and the environment. Congress passed the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) to inform citizens about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; 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 use 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. EPCRA also requires EPA to make this information available to the public, which the Agency does through the TRI database. The Pollution Prevention Act of 1990 (PPA) expanded the TRI by requiring facilities to report certain data about their waste management practices, including amounts of TRI chemicals recycled or treated.

Facilities comply with TRI reporting requirements by submitting what is referred to as Form R for each TRI-listed chemical that they use in excess of certain thresholds. Form R captures information about the facility, such as address, parent company, industry type, and detailed information about the chemicals it released, such as quantity of the chemical disposed or released onsite to the air, water, land, and injected underground, or transferred for disposal or release off-site. Since 1995, EPA has allowed certain facilities to submit information on a brief form—referred to as the Form A Certification Statement—in lieu of the detailed Form R report if they release or manage no more than 500 pounds of chemicals that are not persistent, bioaccumulative and toxic (PBT) during the year. Form A provides the same facility identification information as Form R along with basic information about the chemical's identity, but it does not contain any of the detailed information about the quantities of chemicals used, released, or managed as waste found on Form R.

During the past several years, EPA has engaged in a multi-phase effort to reduce the burden on industry by revising TRI regulations and increase Form A eligibility. EPA's Action Development Process (ADP) outlines a series of steps that the Agency is to follow when developing actions such as rules, policy statements, and risk assessments. The purpose of the ADP is ensure that scientific, economic, and policy issues are adequately addressed at the appropriate stages of action development and to ensure cross-agency participation until the final action is completed. On December 22, 2006, EPA issued the TRI Burden Reduction proposed rule, an action that increased the Form A threshold for certain facilities to 2,000 pounds of releases for a non-PBT chemical. The action also allows, for the first time, certain facilities to use Form A for non-dioxin, PBT chemicals, provided they have no releases of the PBT chemical.

My testimony is based on ongoing work that we expect to complete in June 2007 and, therefore, the information I am presenting is preliminary. My statement today addresses two areas related to EPA's changes in TRI reporting requirements: (1) the extent to which EPA followed internal rulemaking guidelines when developing its December 2006 TRI burden reduction rule and (2) our preliminary estimates of the impact that these changes will have on TRI data available to the public and on costs to industry. In addition, as you requested, my statement includes a brief summary of our May 2005 report on perchlorate and EPA's December 2006 response to our recommendation that the Agency develop a tracking system for perchlorate releases and cleanup efforts across the Federal Government and State agencies.

SUMMARY

Although we have not yet completed our review, our preliminary observations are that EPA did not adhere to all aspects of its rulemaking guidelines when developing the new TRI reporting requirements. EPA's Action Development Process outlines a series of steps to help guide the development of new environmental regulations.

[1] GAO, Perchlorate: A System to Track Sampling and Cleanup Results is Needed, GAO–05–462 (Washington, D.C.: May 20, 2005).

Throughout this process, however, the senior EPA management has the authority to accelerate the rule development process. Nevertheless, while we continue to pursue a clearer understanding of EPA's actions, we have identified several significant differences between the guidelines and the process EPA followed in this case: (1) late in the rulemaking process, senior EPA management directed consideration of a burden reduction option that the TRI workgroup had previously dropped from consideration; (2) EPA developed this option on an expedited schedule that appears to have provided a limited amount of time for conducting various impact analyses; and (3) EPA may not have conducted a Final Agency Review, where EPA's internal and regional offices discuss whether they concur with the final proposal. The TRI workgroup charged with identifying options to reduce reporting burdens on industry identified three possible options for senior management to consider. The first two options allowed facilities to use Form A in lieu of Form R for PBT chemicals, provided the facility has no releases to the environment, and the third created a "no significant change" reporting option in lieu of Form R for facilities with releases that changed little from the previous year. Information from a June 2005 briefing for the Administrator indicated that, while the Office of Management and Budget (OMB) had suggested increasing the Form A eligibility for non-PBT chemicals from 500 to 5,000 pounds, the TRI workgroup dropped that option from consideration. Moreover, EPA's economic analysis—dated July 2005—did not consider the impact of raising the Form A reporting threshold. However, the TRI burden reduction rule that EPA published in October 2005 included the proposal to increase Form A eligibility threshold from 500 to 5,000 pounds. Although we could not determine from the documents provided by EPA what actions the Agency took between the briefing and the issuance of the TRI proposal, the Administrator provided direction after the briefing to expedite the process in order to meet a commitment to OMB to provide burden reduction by the end of December 2006.[2] Subsequently, EPA revised its economic analysis to consider the impact of raising the Form A eligibility threshold. However, that analysis was not completed before EPA sent the proposed rule to OMB for review and was only completed just prior to the proposal being signed by the Administrator and published in the Federal Register for public comment. Furthermore, the extent to which senior EPA management sought or received input from internal stakeholders, including the TRI workgroup, after resurrecting the option to increase the Form A reporting threshold from 500 to 5,000 pounds remains unclear. Additionally, we have been unable to determine whether EPA conducted a Final Agency Review for the Form A reporting threshold proposal, where EPA's internal and regional offices would have discussed whether they concurred with the final proposal. We will continue to pursue the answer to this and other questions as we complete our work. Finally, in response to the public comments on the proposal, nearly all of which were negative, EPA considered alternative options and revised the proposal, thereby allowing facilities to report releases of up to 2,000 rather than 5,000 pounds on Form A.

We believe that the TRI reporting changes will likely have a significant impact on information available to the public about dozens of toxic chemicals from thousands of facilities in States and communities across the country. EPA estimates that the TRI reporting changes will affect reporting on less than 1 percent of the total chemical releases reported to the TRI annually. While our analysis supports EPA's estimate of this aggregate impact, it also suggests that changes to TRI reporting requirements will have a significant impact on the amount and nature of toxic release data available to some communities. To develop a more specific picture of the impact of the TRI reporting changes at a local level, we used 2005 TRI data to estimate, by State, the number of detailed Form Rs that could no longer be reported and the effect this would have on publicly available data about individual chemicals and facilities. We analyzed, by State, the number of chemicals for which there would no longer be quantitative information and the number of facilities that would no longer have to provide quantitative information about their chemical releases and waste management practices. First, we estimate that the detailed information from more than 22,000 Form R reports may no longer be included in the TRI if all eligible facilities use Form A. More specifically, Alaska, California, Connecticut, Hawaii, Massachusetts, New Jersey, and Rhode Island could have 33 percent fewer chemical reports. Second, we estimate that the number of chemicals for which no information could be reported under the new rule ranges from 3 chemicals in South Dakota to 60 chemicals in Georgia. Thirteen States—including Tennessee, Missouri, Maryland, Oklahoma, Delaware, Vermont, and Georgia—could have no detailed reports on

[2] Executive Office of the President of the United States, Office of Management and Budget, Progress in Regulatory Reform: 2004 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities, 2004.

more than 20 percent of reported chemicals. Third, we estimate that a total of 3,565 facilities would no longer have to report quantitative information about their chemical use to the TRI. In fact, more than 20 percent of facilities in Colorado, Connecticut, Hawaii, Massachusetts, and Rhode Island, could have no detailed information about their chemical use. Furthermore, citizens living in 75 counties in the United States—including 11 in Texas, 10 in Virginia, and 6 in Georgia—could have no numerical TRI information about local toxic pollution. In addition, preliminary results from our survey of State TRI coordinators indicates that many States believe that EPA's changes to TRI reporting requirements will have a negative impact on various aspects of TRI. Finally, with regard to the impact of the rule change on industry's reporting burden, EPA estimates that, if all eligible facilities take advantage of the reporting changes, they will save a total of about $5.9 million—about 4 percent of the estimated annual cost of TRI reporting. This is the equivalent of less than $900 per facility. However, because not all eligible facilities will use Form A, the actual savings to industry are likely to be less.

With regard to your request for an update on our May 2005 report on perchlorate, it should be noted that perchlorate releases are not reported to the TRI. Ammonium perchlorate (perchlorate) is a salt that is easily dissolved and transported in water and has been found in groundwater, surface water, drinking water, soil, and food products such as milk and lettuce across the country. Health studies have shown that perchlorate can affect the thyroid gland and may cause developmental delays. We identified more than 400 sites in 35 States where perchlorate had been found in concentrations ranging from 4 parts per billion to more that 3.7 million parts per billion, and that more than one-half of the sites were in California and Texas. However, Federal and State agencies are not required to routinely report perchlorate findings to EPA, and EPA does not centrally track or monitor perchlorate detections or the status of cleanup efforts. As a result, a greater number of contaminated sites than we reported may exist. Although concern over potential health risks from perchlorate has increased, and at least 9 States have established non-regulatory action levels or advisories, EPA has not established a national drinking water standard citing the need for more research on health effects. We concluded in our report that EPA needed more reliable information on the extent of sites contaminated with perchlorate and the status of cleanup efforts, and recommended that EPA work with the Department of Defense and the States to establish a formal structure for tracking perchlorate information. Both agencies continue to disagree with the recommendation stating that perchlorate information already exists from a variety of other sources. However, we continue to believe that the inconsistency and omissions in available data that we found during the course of our study underscore the need for a more structured and formal tracking system.

BACKGROUND

In 1984, a catastrophic accident caused the release methyl isocyante—a toxic chemical used to make pesticides—at a Union Carbide plant in Bhopal, India, killing thousands of people, injuring many others, and displacing many more from their homes and businesses. One month later, it was disclosed that the same chemical had leaked at least 28 times from a similar Union Carbide facility in Institute, West Virginia. Eight months later, 3,800 pounds of chemicals again leaked from the West Virginia facility, sending dozens of injured people to local hospitals. In the wake of these events, Congress passed the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Among other things, EPCRA provides access by individuals and communities to information regarding hazardous materials in their communities. Section 313 of EPCRA generally requires certain facilities that manufacture, process, or otherwise use 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 information about where they released those chemicals. EPCRA also requires EPA to make this information available to the public, which the Agency does in a national database known as the Toxics Release Inventory. The public may access TRI data on EPA's Web site and aggregate it by zip code, county, State, industry, and chemical. EPA also publishes an annual report that summarizes national, State, and industry data.[3]

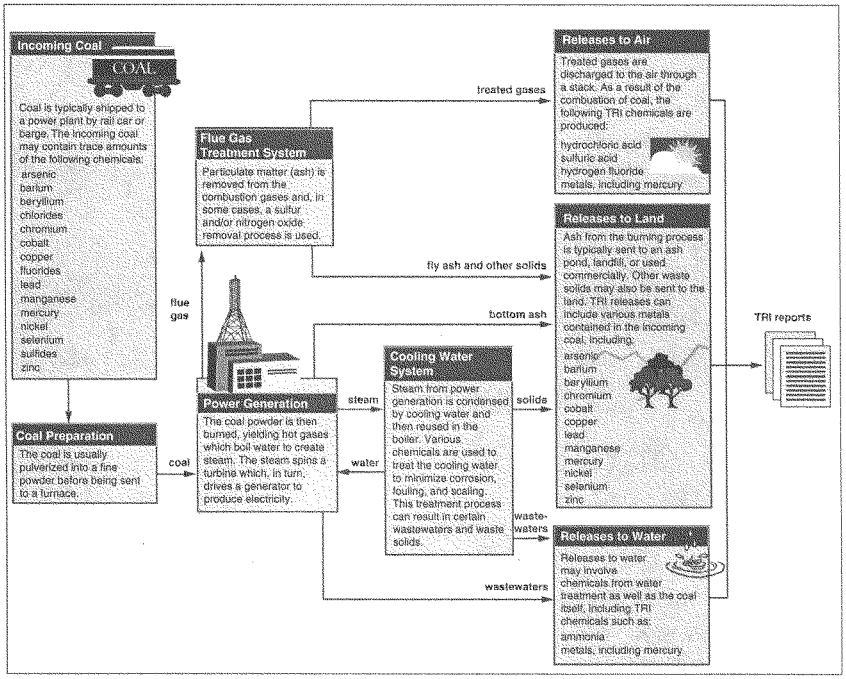
Figure 1 illustrates TRI reporting using a typical, large coal-fired electric powerplant as an example.[4] The figure notes the chemicals that the facility may have to

[3] http://www.epa.gov/triexplorer and http://www.epa.gov/enviro

[4] These facilities were not included in the original manufacturing industries, but EPA began requiring TRI reports from seven new industries—including electric utilities that burn coal or oil—starting in 1998.

report to the TRI. The primary input to this facility is coal that contains small amounts of a number of toxic chemicals such as arsenic, chromium, and lead. The facility pulverizes coal and burns it to generate electricity. As part of its standard operations, the facility releases TRI chemicals such as hydrochloric acid and sulfuric acid to the air through its stack. The facility may also send ash from the burning process to an ash pond or landfill, including TRI chemicals such as arsenic, lead, and zinc. In addition, the facility may release chemicals in the water it uses for cooling. The facility will have to complete a TRI report for air, land, and water releases of each chemical it uses above a certain threshold.

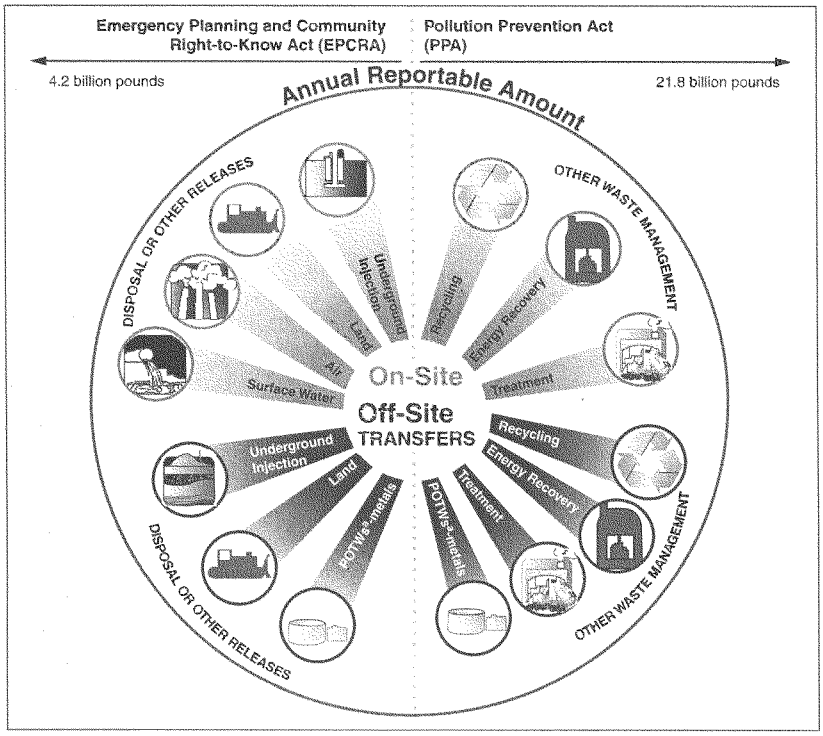
Figure 1: TRI Reporting at a Typical Coal-fired Electric Generation Facility



Source: GAO based on Waste Policy Center data.

Owners of facilities subject to EPCRA comply its reporting requirements by submitting an annual Form R report to EPA, and their respective State, for each TRI-listed chemical that they release in excess of certain thresholds. Form R captures information about facility identity, such as address, parent company, industry type, latitude, and longitude and detailed information about the toxic chemical, such as quantity of the chemical disposed or released onsite to air, water, land, and underground injection or transferred for disposal or release off-site. This information is labeled as "Disposal or Other Releases" on the left side of figure 2.

Figure 2: Types of TRI Data Reported on Form R



Source: GAO based on 2004 EPA TRI data.

The Pollution Prevention Act of 1990 (PPA) expanded TRI by requiring facilities to report additional information about their efforts to reduce pollution at its source, including the quantities of TRI chemicals they manage in waste, both on- and off-site, including amounts recycled, burned for energy recovery, or treated. EPA began capturing this information on Form R in 1991, as illustrated by "Other Waste Management" on the right side of figure 2.

Beginning in 1995, EPA allowed facilities to use a 2-page Certification Statement (Form A) to certify that they are not subject to Form R reporting for a given chemical provided that they (1) did not release more than 500 total pounds and (2) did not manufacture, process, or otherwise use more than one-million total pounds of the chemical. Form A contains the facility identification information found on Form R and basic information about the identity of the chemical being reported. However, Form A does not contain any of the Form R details about quantities of chemicals released or otherwise managed as waste.

Beginning with Reporting Year 2001, EPA has provided the Toxics Release Inventory—Made Easy software (TRI–ME) to assist facilities with their TRI reporting. TRI-ME leads prospective reporters interactively through a series of questions that eliminate a good portion of the analysis required to determine if a facility needs to comply with the TRI reporting requirements, including threshold calculations needed to determine Form A eligibility. If TRI–ME determines that a facility is required to report, the software provides guidance for each of the data elements on the reporting forms. The software also provides detailed guidance for each step through an integrated assistance library. Prior to submission, TRI–ME performs a series of validation checks before the facility prints the forms for mailing, transfers the data to diskette, or submits the information electronically over the Internet. More than 90 percent of forms are submitted electronically to EPA.

Each year, EPA compiles the TRI reports and stores them in a database known as the Toxics Release Inventory (TRI). In 2004—the latest year for which data are publicly available—23,675 facilities filed a total of nearly 90,000 reports, including

nearly 11,000 Form As. In total, facilities reported releasing 4.24 billion pounds of chemicals to the environment and handling 21.8 billion pounds of chemicals through other waste management activities.

EPA recently embarked on a three-phase effort to streamline TRI reporting requirements and reduce the reporting burden on industry. During the first phase, EPA removed some data elements from Form A and Form R that could be obtained from other EPA information collection databases to simplify reporting. As part of the second phase, EPA issued the TRI Burden Reduction Proposed Rule, which would have allowed a reporting facility to use Form A for (a) non-PBT chemicals, so long as its releases or other disposal were not greater than 5,000 pounds, and (b) for PBT chemicals when there are no releases or other disposal and no more than 500 pounds of other waste management (e.g., recycling or treatment). The phase III changes that EPA was considering proposing would have allowed alternate-year reporting, rather than yearly reporting. The phase II and III changes generated considerable public concern that they will negatively impact Federal and State Governments' and the public's access to important public health information.

EPA DOES NOT APPEAR TO HAVE FOLLOWED INTERNAL GUIDELINES IN ALL RESPECTS WHEN DEVELOPING TRI RULE

Although we have not yet completed our review, our preliminary observations are that EPA did not adhere to its own rulemaking guidelines in all respects when it developed the new TRI reporting requirements. EPA's Action Development Process outlines a series of steps to help guide the development of new environmental regulations. Throughout the rule development process, senior EPA management generally has the discretion depart from the guidelines, including by accelerating the development of regulations. Nevertheless, we discovered several significant differences between the guidelines and the process EPA followed in this case: (1) late in the rulemaking process, senior EPA management directed consideration of a burden reduction option that the TRI workgroup had considered but which had subsequently been dropped from consideration; (2) EPA developed this option on an expedited schedule that appears to have provided a limited amount of time for conducting various impact analyses; and (3) the expedited schedule afforded little, if any, time for internal stakeholders to provide input to senior EPA management about the impacts of the proposal during Final Agency Review.

The TRI workgroup charged with identifying options to reduce reporting burdens on industry identified three possible options for senior management to consider. The first two options allowed facilities to use Form A in lieu of Form R for PBT chemicals, provided the facility has no releases to the environment. Specifically, the workgroup considered and analyzed options to facilities to:

- report PBT chemicals using Form A if they have zero releases and zero total other waste management activities; or
- report PBT chemicals using Form A if they have zero releases and no more than 500 pounds of other waste management activities.

The third option was to create a form, in lieu of Form R, for facilities to report "no significant change" if their releases changed little from the previous year.

Information from a June 2005 briefing for the Administrator indicated that, while the Office of Management and Budget (OMB) had suggested increasing the Form A eligibility for non-PBT chemicals from 500 to 5,000 pounds, the TRI workgroup dropped that option from consideration. Moreover, EPA's economic analysis—dated July 2005—did not consider the impact of raising the Form A reporting threshold. However, the TRI burden reduction rule that EPA published in October 2005 included the proposal to increase Form A reporting eligibility from 500 to 5,000 pounds.

Although we could not determine from the documents provided by EPA what actions the Agency took between the briefing and the issuance of the TRI proposal, the Administrator provided direction after the briefing to expedite the process in order to meet a commitment to OMB to provide burden reduction by the end of December 2006. Subsequently, EPA staff worked to revise the economic analysis to consider the impact of raising the Form A reporting threshold. However, that analysis was not completed before EPA sent the proposed rule to OMB for review and was only completed just prior to the proposal being signed by the Administrator on September 21, 2005 and ultimately published in the Federal Register for public comment on October 4, 2005.

Furthermore, it appears that EPA management received limited input from internal stakeholders, including the TRI workgroup, after directing that the proposal include the option to increase the Form A reporting threshold from 500 to 5,000 pounds. EPA conducted a Final Agency Review of the Form A reporting threshold

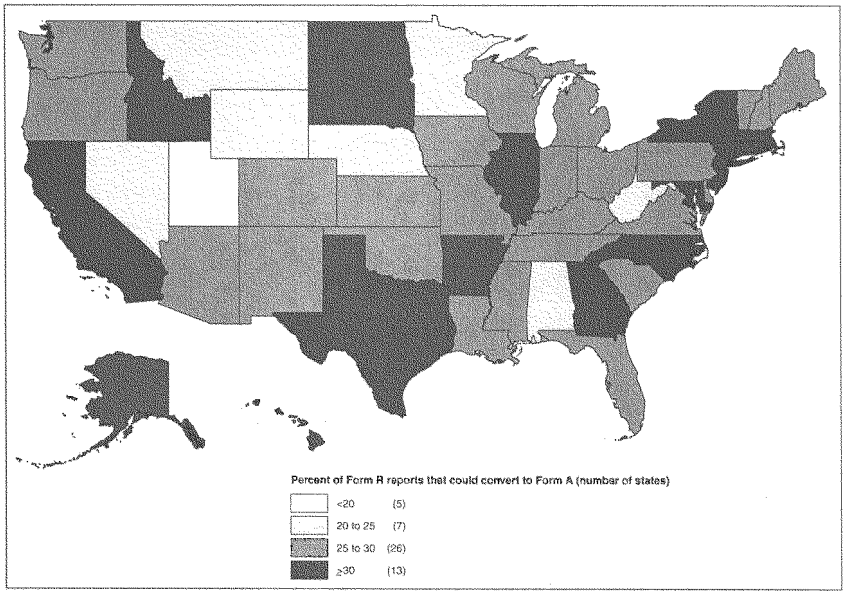
proposal, as provided for in the internal rulemaking guidelines. Final Agency Review is the step where EPA's internal and regional offices would have discussed with senior management whether they concurred, concurred with comment, or did not concur with the final proposal. However, it appears that the discussion pertained to the "no significant change" option rather than increased threshold option. As a result, the EPA Administrator or EPA Assistant Administrator for Environmental Information likely received limited input about views of internal stakeholders about the increased Form A threshold prior to sending the TRI Burden Reduction Proposed Rule to OMB for review. Finally, in response to the public comments to the proposal, nearly all of which were negative, EPA considered alternatives options and revised the proposal to allow facilities to report releases of up to 2,000 pounds on Form A. We are continuing to review EPA documentation and meet with EPA personnel to understand the process followed in developing the TRI burden reduction proposal. We expect to have a more complete picture for our report in June.

IMPACT OF REPORTING CHANGES ON INFORMATION AVAILABLE TO THE PUBLIC IS LIKELY TO BE SIGNIFICANT

While our analysis confirms EPA's estimate that the TRI reporting changes could result less than 1 percent of total pounds of chemical releases no longer being included in the TRI database, the impact on information available to some communities is likely to be more significant than these national aggregate totals indicate. EPA estimated that these reports amount to 5.7 million pounds of releases not being reported to the TRI (only 0.14 percent of all TRI release pounds) and an additional 10.5 million pounds of waste management activities (0.06 percent of total waste management pounds). Examined locally, the impact on data available to some communities is likely to be more significant than these national totals indicate. To understand the potential impact of EPA's changes to TRI reporting requirements at the local level, 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 the impact this would have on data about specific chemicals and facilities. We provide estimates of these impacts, by State, in Appendix I. In addition, preliminary results from our January 2007 survey of State TRI coordinators indicate that they believe EPA's changes to TRI reporting requirements will have, on balance, a negative impact on various aspects and users of TRI information.

We estimate that a total of nearly 22,200 Form R reports could convert to Form A if all eligible facilities choose to take advantage of the opportunity to report under the new Form A thresholds. The number ranges by State from 25 Form Rs in Vermont (27.2 percent of Form Rs in State) to 2,196 Form Rs in Texas (30.6 percent of Form Rs in State). As figure 3 shows, Arkansas, Idaho, and Nevada, North Dakota and South Dakota could lose less than 20 percent of the detailed forms, while Alaska, California, Connecticut, Georgia, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New York, North Carolina, Rhode Island, and Texas could lose more than 30 percent of Form R reports.

Figure 3: Impact of TRI Reporting Changes on Number of Form R Reports

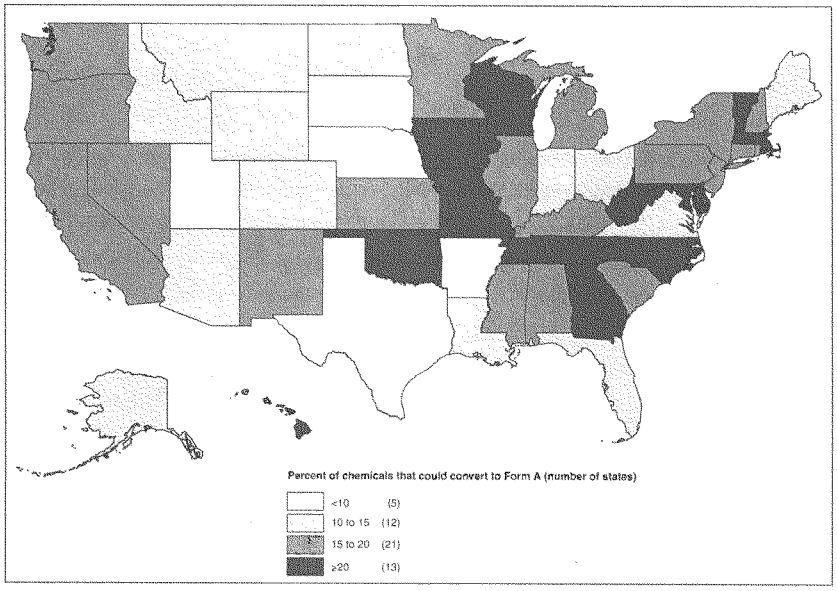


Sources: GAO based on 2005 EPA TRI data and Map Info (map).

For each facility that chooses to file a Form A instead of Form R, the public would no longer have available quantitative information about a facility's releases and waste management practices for a specific chemical manufactured, processed, or otherwise used at the facility. Form R and Form A both capture information about a facility's identity, such as mailing address, parent company, and basic information about a chemical's identity, such its generic name. However, only Form R provides detailed information about the chemical, such as quantity disposed or released on-site 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 managed in waste, both on- and off-site, 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 II.

One way to capture the impact of the loss of these Form R reports is to examine their impact on publicly available data about specific chemicals at the State level. The number of chemicals for which no information is likely to be reported under the new rule ranges from 3 chemicals in South Dakota to 60 chemicals in Georgia. That means that all quantitative information currently reported about those chemicals could no longer appear in the TRI database. Figure 4 shows that 13 States—including Tennessee, Missouri, Maryland, Oklahoma, Delaware, Vermont, and Georgia—would no longer have quantitative information for more than 20 percent of all reported chemicals in the State.

Figure 4: Impact of TRI Reporting Changes on Number of Chemicals Reported on Form R

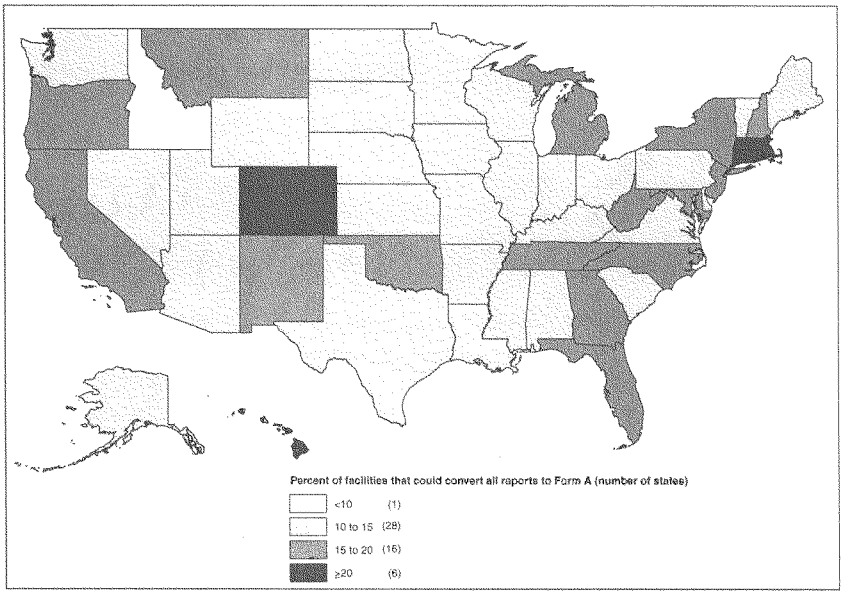


Sources: GAO based on 2005 EPA TRI data and Map Info (map).

The impact of the loss of information from these Form R reports can also be understood in terms of how many facilities would no longer have to report any quantitative information about their chemical releases and waste management practices to the TRI. EPA estimated that 6,670 facilities will be affected nationwide. Of the total number of affected facilities, we estimate that over 50 percent would be eligible to convert all their Form Rs to Form A. That is, 3,565 facilities could chose not to report any quantitative information about their chemical releases and other waste management practices. The number of facilities ranges from 5 in Alaska to 302 in California.[5] As an example, one of these facilities is ATSC Marine Terminal—a bulk petroleum storage facility in Los Angeles County, California. In 2005, it 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. As a result of EPA's new reporting rules 3,500 facilities across the United States would no longer have to disclose details about their chemical releases and other waste management practices. As figure 5 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, 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.

[5] Appendix I provides the number of affected facilities for each State.

Figure 5: Impact of TRI Reporting Changes on Number of Facilities Reporting on Form R



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

The Environmental Protection and Community Right-to-Know Act requires that facilities submit their annual TRI data directly to their respective State, as well as to EPA. Last month, we surveyed the TRI program contacts in the 50 States and the District of Columbia to gain their perspective on the TRI, including an understanding of how TRI is used by the States. We also asked for their beliefs about how EPA's increase in the Form A eligibility threshold would affect TRI-related aspects in their State, such as information available to the public, efforts to protect the environment, emergency planning and preparedness, and costs to facilities for TRI reporting. Although our analysis of the survey is not final, preliminary results from 49 States and the District of Columbia show that the States generally believe that the change will have a negative on various aspects of TRI in their States.[6] Very few States reported that the change will have a positive impact. The States most commonly reported that the TRI changes will have a negative impact on such TRI aspects as information available to the public and efforts to protect the environment. Specifically, 23 States (including California, Maryland, New York, and Oklahoma) responded that the changes will negatively impact information available to the public, 14 (including Louisiana, Ohio, and Wyoming) reported no impact, and only Virginia reported a generally positive impact. Similarly, 22 States responded that the change negatively impact efforts to protect the environment, 11 reported no impact, and only 5 said it will have a positive impact. States most commonly responded that raising the eligibility threshold will have no impact TRI aspects such as emergency planning and preparedness efforts and the cost to facilities for TRI reporting. For example, 22 States responded that the change will have no impact on the cost to facilities for TRI reporting, 12 said it will have a positive impact, and no States said it will have a negative impact. The totals do not always sum to 50 because some States responded that they were uncertain of the impact on some aspects of TRI.

Finally, we evaluated EPA's estimates of the burden reduction impacts that the new TRI reporting rules would likely have on industry's reporting costs, the primary rationale for the rule changes. EPA estimates that the TRI reporting changes will result in an annual cost savings of about 4 percent—totaling approximately $5.9 million out of an annual total cost of $147.8 million. (See table 1.)

[6] Survey results from those States responding as of February 1, 2006.

Table 1: 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.

This amounts to an average savings of less than $900 annually for each facility. EPA also projected that not all eligible facilities will chose to use Form A, based on experience from previous years. Furthermore, according to industry groups, much of the reporting burden comes from the calculations required to determine and substantiate Form A eligibility, rather than from the amount time required to complete the forms. As a result, EPA's estimate of nearly $6 million likely overestimates the total cost savings (i.e., burden reduction) likely to be realized by reporting facilities.

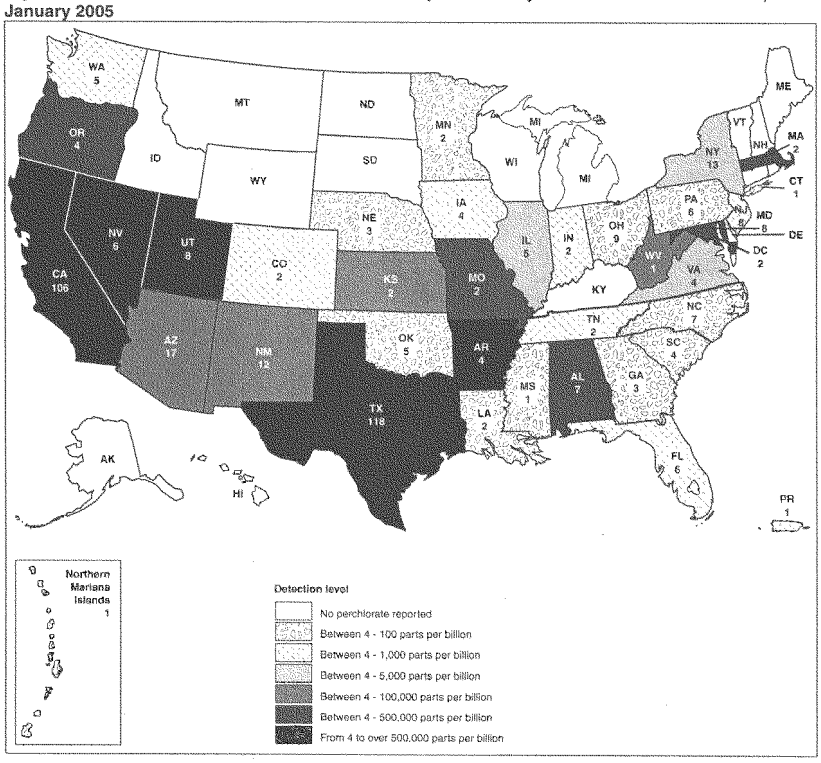
We are continuing to review EPA documentation and meet with EPA officials to understand the process they followed in developing the TRI burden reduction proposal. We expect to have a more complete picture for our report later this year.

A SYSTEM TO TRACK PERCHLORATE SAMPLING AND CLEANUP RESULTS IS STILL NEEDED

Perchlorate is a salt that is easily dissolved and transported in water and has been found in groundwater, surface water, drinking water, soil, and food products such as milk and lettuce across the country. Health studies have shown that perchlorate can affect the thyroid gland and may cause developmental delays. However, EPA has not established a national drinking water standard, citing the need for more research on health effects. As a result, perchlorate, like other unregulated contaminates is not subject to TRI reporting. In May 2005 we issued a report that identified (1) the estimated extent of perchlorate found in the United States; (2) what actions the Federal Government, State governments, and responsible parties have taken to clean up or eliminate the source of perchlorate; and (3) what studies of the potential health risks from perchlorate have been conducted and, where presented, the author's conclusions or findings on the health effects of perchlorate.

Perchlorate has been found by Federal and State agencies in groundwater, surface water, soil, or public drinking water at almost 400 sites in the United States. However, because there is not a standardized approach for reporting perchlorate data nationwide, a greater number of sites than we identified may already exist in the United States. Perchlorate has been found in 35 States, the District of Columbia, and 2 commonwealths of the United States, where the highest concentrations ranged from 4 parts per billion to more than 3.7 million parts per billion. (At some sites, Federal and State agencies detected perchlorate concentrations as low as 1 part per billion or less, yet 4 parts per billion is the minimum reporting level of the analysis method most often used.) More than one-half of all sites were found in California and Texas, and sites in Arkansas, California, Texas, Nevada, and Utah had some of the highest concentration levels. However, most sites did not have high levels of perchlorate. Roughly two-thirds of sites had concentration levels at or below 18 parts per billion, the upper limit of EPA's provisional cleanup guidance, and almost 70 percent of sites had perchlorate concentrations less than 24.5 parts per billion, the drinking water concentration calculated on the basis of EPA's recently established reference dose (see fig. 6).

Figure 6: Maximum Perchlorate Concentrations Reported in any Media and Number of Sites, January 2005



Sources: Environmental Protection Agency, Department of Defense, U.S. Geological Survey, and state environmental agencies.

At more than one-quarter of the sites, propellant manufacturing, rocket motor testing, and explosives disposal were the most likely sources of perchlorate. Public drinking water systems accounted for more than one-third of the sites where perchlorate was found. EPA sampled more than 3,700 public drinking water systems and found perchlorate in 153 systems across 26 States and 2 commonwealths of the United States. Perchlorate concentration levels found at public drinking water systems ranged from 4 to 420 parts per billion. However, only 14 of the 153 public drinking water systems had concentration levels above 24.5 parts per billion. EPA and State officials told us they had not cleaned up these public drinking water systems, principally because there was no Federal drinking water standard or specific Federal requirement to clean up perchlorate. Further, EPA currently does not centrally track or monitor perchlorate detections or the status of cleanup activities. In fact, several EPA regional officials told us they did not always know when States had found perchlorate, at what levels, or what actions were taken. As a result, it is difficult to determine the extent of perchlorate in the United States or the status of cleanup actions, if any.

Although there is no specific Federal requirement to clean up perchlorate or a specific perchlorate cleanup standard, EPA and State environmental agencies have investigated, sampled, and cleaned up unregulated contaminants, such as perchlorate, under various Federal environmental laws and regulations. EPA and State Agency officials have used their authorities under these laws and regulations, as well as under State laws and action levels, to sample and clean up and/or require the sampling and cleanup of perchlorate by responsible parties. For example, according to EPA and State officials, at least 9 States have established non-regulatory action levels or advisories, ranging from under 1 part per billion to 18 parts per billion, under which responsible parties have been required to sample and clean up perchlorate. Further, certain environmental laws and programs require private companies to sample for contaminants, which can include unregulated substances such

as perchlorate, and report to environmental agencies. According to EPA and State officials, private industry and public water suppliers have generally complied with regulations requiring sampling for contaminants and Agency requests to sample or clean up perchlorate. DOD has sampled and cleaned up when required by specific environmental laws and regulations but has been reluctant to sample on or near active installations, EPA and State officials said. Where there is no specific legal requirement to sample at a particular installation, DOD's policy on perchlorate requires sampling only where a perchlorate release due to DOD activities is suspected and a complete human exposure pathway is likely to exist. Finally, EPA, State agencies, and/or responsible parties are cleaning up or planning cleanup at 51 of the almost 400 sites where perchlorate was found. The remaining sites are not being cleaned up for a variety of reasons. The reason most often cited by EPA and State officials was that they were waiting for a Federal requirement to do so.

We identified and summarized 90 studies of perchlorate health risks published since 1998. EPA and DOD sponsored the majority of these studies, which used experimental, field study, and data analysis methodologies. For 26 of the 90 studies, the findings indicated that perchlorate had an adverse effect. Eighteen of these studies found adverse effects on development resulting from maternal exposure to perchlorate. Although the studies we reviewed examined whether and how perchlorate affected the thyroid, most of the studies of adult populations were unable to determine whether the thyroid was adversely affected. Adverse effects of perchlorate on the adult thyroid are difficult to evaluate because they may happen over longer time periods than can be observed in a research study. However, adverse effects of perchlorate on development can be studied and measured within study time frames. We found some studies considered the same perchlorate dose amount but found different effects. The precise cause of the differences remains unresolved but may be attributed to an individual study's design type or physical condition of the subjects, such as their age. Such unresolved questions are one of the bases for the differing conclusions among EPA, DOD, and academic studies on perchlorate dose amounts and effects.

In January 2005, NAS issued its report on the potential health effects of perchlorate. The NAS report evaluated many of the same health risk studies included in our review. NAS reported that certain levels of exposure may not adversely affect healthy adults but recommended that more studies be conducted on the effects of perchlorate exposure in children and pregnant women. NAS also recommended a perchlorate reference dose, which is an estimated daily exposure level from all sources that is expected not to cause adverse effects in humans, including the most sensitive populations. The reference dose of 0.0007 milligrams per kilogram of body weight is equivalent to a drinking water concentration of 24.5 parts per billion, if all exposure comes from drinking water.

We concluded that EPA needed more reliable information on the extent of sites contaminated with perchlorate and the status of cleanup efforts, and recommended that EPA work with the Department of Defense, other Federal Agencies and the States to establish a formal structure for better tracking perchlorate information. Both agencies continue to disagree with the recommendation stating that perchlorate information already exists from a variety of other sources. However, we found that the States and Federal Agencies do not always report perchlorate detections to EPA and as a result EPA and the States do not have the most current and complete accounting of perchlorate as an emerging contaminant of concern. We continue to believe that the inconsistency and omissions in the available data that we found during the course of our study underscore the need for a more structured and formal system, and that such a system would serve to better inform the public and others about the locations of perchlorate releases and the status of clean ups.

PRELIMINARY OBSERVATIONS

We believe that EPA's recent changes to the Toxics Release Inventory would reduce the amount of information available to the public about toxic chemicals in their communities. Indeed, EPA's portrayal of the potential impacts of the TRI reporting rule changes in terms of the aggregate amount of pollution runs contrary to the legislative intent of EPCRA and the principles of the public's right-to-know. TRI is designed to provide States and public citizens with information about the releases of toxic chemicals by facilities in their local communities. Citizens drink water from local sources, spend much of their time on land near their homes and places of business, and breathe the air over their local communities. We believe that the likely reduction in publicly availability data about specific chemicals and facilities in local communities should be considered in light of the relatively small cost savings to industry afforded by the TRI reporting changes.

Madam Chairwoman, this concludes my prepared statement. I would be happy to respond to any questions that you and Members of the Committee may have.

Appendix 1: GAO Estimates of the Impact of Reporting Changes on TRI Data

We analyzed 2005 TRI data provided by EPA to estimate the number of Form Rs that could no longer be reported in each state and determine the possible impacts that this could have on data about specific chemicals and facilities.[7] Table 2 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 the number of unique chemicals for which no quantitative information would have to be reported, including the percent of the total number of chemicals reported in each state. The last two columns provide the number of facilities, and percent of total facilities in each state, that could choose to submit only the brief TRI Form A.

Table 2: Impact of TRI Reporting Changes on Forms, Chemicals, and Facilities, by State

	Form Rs		Chemicals		Facilities	
State	Number eligible	Percent of total	Number eligible	Percent of total	Number eligible	Percent 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
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

[7]The EPA anticipates issuing the 2005 TRI Public Data Release in April, 2007.

State	Form Rs		Chemicals		Facilities	
	Number eligible	Percent of total	Number eligible	Percent of total	Number eligible	Percent of total
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	2196	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 2005 TRI data.

Appendix II: Comparison of TRI Data Provided on Form R and Form A

Form R	Form A
Facility Identification Information • TRI Facility ID Number • Reporting year • Trade secret information (if claiming that toxic chemical is trade secret) • Certification by facility owner/operator or senior management official • Facility name, mailing address • Whether form is for entire facility, part of facility, federal facility, or contractor at federal facility • Technical contact name, telephone number, Email address • Public contact name, telephone number • Standard Industrial Classification (SIC) code • Dun & Bradstreet number • Parent company information (name, Dun & Bradstreet number)	**Facility Identification Information** • TRI Facility ID Number • Reporting year • Trade secret information (if claiming that toxic chemical is trade secret) • Certification by facility owner/operator or senior management official • Facility name, mailing address • Whether form is for entire facility, part of facility, federal facility, or contractor at federal facility • Technical contact name, telephone number, Email address • Public contact name, telephone number • Standard Industrial Classification (SIC) code • Dun & Bradstreet number • Parent company information (name, Dun & Bradstreet number)
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: o produced or imported for on-site use/processing, for sale/distribution, as a byproduct, or as an impurity o processed as a reactant, a formation component, article component, repackaging, or as an impurity o 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 Specific Information** • Chemical Abstracts Service (CAS) registry number • EPCRA Section 313 chemical or chemical category name • Generic name

Form R	Form A
On-site Chemical Release Data • Quantities released on-site to: o air as fugitive or non-point emissions o air as stack or point emissions o surface water as discharges to receiving streams or water bodies (including names of streams or water bodies) o underground injection o land o RCRA Subtitle C landfills o other landfills o land treatment/application farming o surface impoundments o RCRA Subtitle C surface impoundments o 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	**On-site Chemical Release Data** Not reported on Form A
On-site Chemical Waste Management Data • Quantities managed on-site that are: o recycled o energy recovery o 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	**On-site Chemical Waste Management Data** Not reported on Form A

Form R	Form A

Off-site Transfers for Release or Other Waste Management
• Quantities transferred to any Publicly Owned Treatment Works (POTW)
  o POTW name(s), address(es)
• Quantities transferred to other location for disposal or other release
  o underground injection
  o other land release
• Quantities transferred to other location for waste management
  o treatment
  o recycling
  o 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 estimate for amounts transferred
• Whether receiving location(s) is/are under control of reporting facility/parent company
	Off-site Transfers for Release or Other Waste Management
	Not reported on Form A

Source Reduction and Recycling Activities
• Total quantities, for the prior and current reporting years, and estimated totals for the (3) following and (4) second following year, total quantities for:
  o on-site disposal to underground injection wells, RCRA Subtitle C landfills, and other landfills
  o other on-site disposal or other releases
  o off-site transfer to underground injection wells, RCRA Subtitle C landfills, and other landfills
  o other off-site disposal or other releases
  o on-site treatment
  o on-site recycling
  o on-site energy recovery
  o off-site treatment
  o off-site recycling
  o off-site energy recovery
• Production ratio or activity index
• Source reduction activities the facility engaged in during the reporting year (e.g., inventory control, spill/leak prevention, product modifications)
• Option to submit additional information on source reduction, recycling, or pollution control activities
	Source Reduction and Recycling Activities
	Not reported on Form A

Sources: EPA Form R and Form A.

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Highlights

Highlights of GAO-07-464T, a testimony before the Committee on Environment and Public Works, United States Senate. February 6, 2007

Why GAO Did This Study

U.S. industry uses billions of pounds of chemicals to produce the nation's goods and services. Releases of these chemicals during use or disposal can harm human health and the environment. The Emergency Planning and Community Right-to-Know Act of 1986 requires facilities that manufacture, process, or otherwise use more than specified amounts of nearly 650 toxic chemicals to report their releases to water, air, and land. The Environmental Protection Agency (EPA) makes this data available to the public in the Toxics Release Inventory (TRI). Since 1995, facilities may submit a brief certification statement (Form A), in lieu of the detailed Form R report, if their releases of specific chemicals do not exceed 500 pounds a year. In January 2007, EPA finalized a proposal to increase that threshold to 2,000 pounds, quadrupling what facilities can release before they must disclose their releases and other waste management practices.

Today's testimony addresses (1) EPA's development of the proposal to change the TRI Form A threshold from 500 to 2,000 pounds and (2) the impact these changes may have on data available to the public. It also provides an update to our 2005 report recommendations on perchlorate.

GAO's preliminary observations on TRI are based on ongoing work performed from June 2006 through January 2007.

www.gao.gov/cgi-bin/getrpt?GAO-07-464T.

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

ENVIRONMENTAL INFORMATION

EPA Actions Could Reduce the Availability of Environmental Information to the Public

What GAO Found

Although we have not yet completed our evaluation, our preliminary observations indicate that EPA did not adhere to its own rulemaking guidelines when developing the proposal to change TRI reporting requirements. We have identified several significant differences between the guidelines and the process EPA followed. First, late in the process, senior EPA management directed the inclusion of a burden reduction option that raised the Form R reporting threshold, an option that the TRI workgroup charged with analyzing potential options, had dropped from consideration early in the process. Second, EPA reviewed this option on an expedited schedule that appears to have provided a limited amount of time for conducting various impact analyses. Last, the decision to expedite final agency review, when EPA's internal and regional offices determine whether they concur with the final proposal, appears to have limited the amount of input they could provide to senior EPA management.

We believe that the TRI reporting changes will likely have a significant impact on information available to the public about dozens of toxic cfffhemicals from thousands of facilities in states and communities across the country. First, we estimate that detailed information from more than 22,000 Form Rs could no longer be reported to the TRI if all eligible facilities choose to use Form A, affecting more than 33 percent of reports in California, Massachusetts, and New Jersey. Second, we estimate that states could lose all quantitative information about releases of some chemicals, ranging from 3 in South Dakota to 60 in Georgia. Third, we estimate that 3,565 facilities—including 50 in Oklahoma, 101 in New Jersey, and 302 in California—would no longer have to report any quantitative information to the TRI. In addition, preliminary results from our survey of state TRI coordinators indicate that many believe the changes will negatively impact information available to the public and efforts to protect the environment. Finally, EPA estimates facilities could save a total of $5.9 million as a result of the increased Form A eligibility—about 4 percent of the total annual cost of TRI reporting. According to our estimates, facilities will save less than $900 a year, on average. Because not all eligible facilities will utilize the increased eligibility, actual savings to industry are likely to be less.

In our May 2005 perchlorate report, we identified over 400 sites in 35 states where perchlorate has been found in concentrations ranging from 4 parts per billion to more than 3.7 million parts per billion. We concluded that EPA needed more reliable information on the extent of contaminated sites and the status of cleanup efforts, and recommended that EPA work with the Department of Defense and the states to establish a way to track perchlorate information. In December 2006, both agencies reiterated their disagreement with our recommendation. We believe that the inconsistency and omissions in available perchlorate data underscore the need for a tracking system.

RESPONSES BY JOHN B. STEPHENSON TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. In January 2006, the Department of Defense updated its sampling policy to be consistent with the National Contingency Plan. Your testimony speaks to DOD's previous policy. You failed to mention that DOD, in January 2006, adopted 24 ppb as a "level of concern" that the Department uses to determine what kind of action is needed. Have you had any follow-up with or spoken to DOD between the publication of your 2005 report and your testimony?

Response. We have had follow-up with DOD between the publication of our report and the testimony. In October 2005, GAO received a letter from the Deputy Under Secretary for Defense (Installations & Environment) that provided comments on GAO's analytical process, an assessment of DOD policy and actions, and a summary of health studies related to perchlorate.

In our February 6, 2007 statement before the Senate Committee on Environment and Public Works, we were asked to provide a brief summary of our May 2005 report on perchlorate and an update to the report's recommendation—that EPA develop a tracking system for perchlorate releases and cleanup efforts across the Federal Government and State agencies.[1] To encourage prompt, responsive actions to GAO's recommendations, we systematically follow up on them and annually report to Congress on their status. Because our recommendation was directed solely to EPA, we provided an update on EPA's original disagreement with our recommendation, and we did not discuss DOD's updated perchlorate sampling policy.

Although we did not discuss DOD's policy, we agree that the department established 24 ppb as the level of concern for managing perchlorate in January 2006. However, we have not evaluated the implications of that policy, nor have we been asked to do so. Our testimony summarized the 2005 report's finding that DOD has sampled and cleaned up when required by specific environmental laws and regulations but has been reluctant to sample on or near active installations unless a perchlorate release due to DOD activities is suspected and a complete human exposure pathway is likely to exist. This was, in short, DOD's September 2003 interim policy on perchlorate sampling that was in effect at the time of our report.[2]

Question 2. In your criticism of the internal process at EPA, you complained that EPA senior management had accelerated the TRI rulemaking process. Given that EPA determined in 1997 to pursue burden reduction for TRI, is a final decision in 2006 really so accelerated?

Response. EPA has pursued a number of burden reduction options for TRI since at least 1997, and its December 2006 TRI Burden Reduction Rule is just the latest outcome from that overall effort. GAO evaluated the extent to which EPA followed internal rulemaking guidelines from the time that EPA initiated the rulemaking process in early 2004 until the Agency issued the proposed rule in October 2005. Our findings are specific to that rulemaking process. We found that senior EPA management accelerated the rulemaking process in June 2005 while also directing the TRI workgroup to reconsider a burden reduction option that had previously been dropped. We concluded that management's inclusion of this option relatively late in this process, coupled with pressure to meet a December 2006 commitment to the Office of Management and Budget (OMB) to finalize the rule, led to problems that EPA's rulemaking process was designed to avoid.

As you point out, EPA has pursued burden reduction for TRI since at least 1997. Our testimony provided background information about some of EPA's other TRI burden reduction efforts. Specifically, we mentioned that EPA created the 2-page Certification Statement (Form A) in 1995 and implemented electronic TRI-Made Easy reporting software in 2001. We also stated that the present rulemaking was part of an initiative to reduce TRI reporting requirements and burden on industry that began with a stakeholder dialog between Fall 2002 and early 2004. Through the dialog, a wide range of stakeholders identified improvements to the TRI reporting process and discussed a number of burden reduction options. After reviewing the options, EPA initiated two phases of burden reduction rulemakings. Phase 1 provided several relatively simple, quick-fix solutions for reducing the time, cost, and complexity of reporting requirements. EPA finalized phase 1 in a July 2005 rulemaking, the TRI Reporting Forms Modification Rule. Phase 2 provided a broader, more com-

[1] GAO, Perchlorate: A System to Track Sampling and Cleanup Results is Needed, GAO–05–462 (Washington, D.C.: May 20, 2005).

[2] DOD's interim policy stated that the military services shall sample for perchlorate where service officials suspect the presence of perchlorate on the basis of prior or current DOD activities, and where a complete human exposure pathway is likely to exist.

plex set of regulatory burden reduction alternatives. For the purposes of our testimony, GAO evaluated EPA's internal processes for the phase 2 rulemaking.

As part of our work, GAO found that senior EPA management accelerated the rulemaking process between June and October 2005 in order to meet a commitment to OMB to provide a final burden reduction rule by the end of December 2006. The decision to expedite was made relatively late in the process, after an early June 2005 options selection briefing for the Administrator. For the briefing, EPA's TRI workgroup laid out 3 burden reduction options from the stakeholder dialog for which the workgroup had developed detailed analyses. We also found that senior EPA management subsequently directed inclusion of an option that the TRI workgroup had considered but dropped before performing detailed analysis of the option's costs and benefits. That option was to increase the limit for the use of Form A for reporting non-PBT chemicals from 500 pounds to 5,000 pounds. The problems that we found are a consequence of the acceleration that occurred in June 2005 and the inclusion of this burden reduction option.

Specifically, we found that EPA did not complete its economic analysis of the non-PBT option before the holding the Final Agency Review meeting later in June 2005—a step in the process when EPA's internal and regional offices discuss with senior management whether they concur with the rulemaking. That is, internal stakeholders reviewed a rule and analysis of the three original burden reduction options rather than an analysis and rule that included the non-PBT option. Consequently, the EPA Administrator and Assistant Administrator for Environmental Information received limited input about the impacts of the new burden reduction option before approving the proposed rule for publication in the Federal Register for public comment. As we discussed in testimony, nearly all the over 100,000 public comments were negative and many cited specific impacts that EPA had not thoroughly considered prior to issuing the rule. Specifically, the changes were said to adversely affect the ability of data users to perform local trend analyses, monitor the performance of individual facilities, and more generally, meet the intended purpose of the data collection to inform the public, government, and other data users about releases of toxic chemicals to the environment.

Question 3. Did you consider in your analysis that the Form A/PBT reports provide quantitative information to the public that no releases are being made to the environment?

Response. We considered in our analysis that Form A provides the public with quantitative information that the facility is not releasing the PBT chemical to the environment. For our testimony, we evaluated EPA's TRI Burden Reduction Rule that allows facilities currently reporting zero releases on Form R to use Form A for PBT chemicals, provided they do not exceed the 1 million pound alternative reporting threshold and have 500 pounds or less of total other waste management quantities (e.g., recycling or treatment).[3] Because eligible facilities must have zero release quantities for a PBT chemical, the public will still learn that the facility has reported no releases. However, we also considered in our analysis the other quantitative and qualitative information the facilities will no longer have to provide if they begin using the Form A.

As we detailed in appendix II of our statement, Form A does not provide information to the public that is reported on Form R regarding the use(s) of the chemical (i.e., was the chemical manufactured, processed, or otherwise used), the maximum amount of the chemical on site at any time during the calendar year, and the production ratio. EPA reported in its economic analysis that, with regard to the maximum amount of the chemical on site, information would not be reported that, in the past, has been useful in (1) emergency planning and response, (2) environmental data analyses as a proxy for throughput, and (3) compliance targeting analysis to identify facilities that are not compliance with other EPA regulations. For this information, Form A serves as a range report of 0 to 500 pounds.

As mentioned in our previous answer, EPA's rule also increased eligibility for facilities to report non-PBT chemicals on Form A. In our analysis, 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 under EPA's new rule. We also determined the possible impact that EPA's rule could have on quantitative information about specific chemicals and facilities. In table 2 of the statement's appendix I, we provided the number of unique chemicals for which no quantitative information would have to be reported in each State and the number of facilities that would no longer have

[3] EPA excluded dioxin and dioxin-like compounds from eligibility for Form A reporting of PBT chemicals.

to provide quantitative information about their chemical releases and waste management practices.

Question 4. Would you agree that the TRI reform provides incentives to small businesses to reduce emissions to zero for PBTs?

Response. EPA stated in its economic analysis that the rule will provide incentives to reduce or eliminate releases (especially for PBT chemicals) and encourage source reduction. This will happen if facilities choose to reduce their releases of PBT chemicals to zero in order to use the Form A instead of Form R. However, the Agency added that it was not able to estimate quantitatively how much releases would be eliminated, or other waste management activities replaced by source reduction, due to lack of data. For our part, we did not attempt to evaluate the extent to which the TRI rulemaking provides incentives to small businesses to reduce emissions of PBT chemicals to zero.

Question 5a. We know that GAO did interview staff at the SBA Office of Advocacy about its observations on the TRI rule. Did you analyze the information value of the Form A range reports for non-PBT chemicals?

Response. In our testimony, GAO did not specifically quantify the information value of Form A as a range report. However, for comparison purposes we detailed the chemical information that is provided on Form R and Form A in appendix II. This analysis shows that Form R and Form A provide substantially different information. None of the quantitative chemical release and waste management information that we list under Form R is provided on Form A. That is, Form R captures detailed information about the chemical, such as quantity disposed or released on-site to air, water, and land or injected underground, or transferred for disposal or release off-site. Form A does not. In addition, Form R provides details about the facility's efforts to reduce pollution at its source, including the quantities managed in waste, both on- and off-site, such as amounts recycled, burned for energy recovery, or treated. Form A does not.

EPA's final rule increased the eligibility thresholds such that a facility may use Form A if its (1) total releases of a non-PBT chemical to all media (i.e., air, water) are not greater than 2,000 pounds and (2) total waste management quantities, including releases, do not exceed 5,000 pounds. Therefore, a non-PBT Form A serves as a range report—certifying that the facility released between 0 and 2,000 total pounds of the chemical and managed between 0 to 5,000 total pounds of waste (including releases). However, the Form A does not provide information about where the facility released the chemical (i.e., air, water) and how it managed the chemical in waste (i.e., recycling, energy recovery).

Question 5b. Did you evaluate the Office of Advocacy's October 2004 report that 99 percent of all 3,142 counties would not be significantly affected by a change in the non-PBT threshold from 500 to either 2,000 or 5,000 pounds?

Response. We have been aware of the October 2004 report that Pechan and Associates prepared for the Small Business Administration Office of Advocacy since early in our review.[4] However, we did not evaluate the study because of the serious methodological concerns that EPA raised during our discussions. The study uses substantially different methodology than EPA used in its economic analysis or GAO used in our analyses for the testimony. In short, the study used EPA's Risk Screening Environmental Indicators (RSEI) model to perform a risk-based analysis of the impact of EPA's changes on information that would be reported to the TRI. The study compared the relative impacts of several different non-PBT threshold options, but it excluded from consideration many TRI Form R reports that are eligible to convert to Form A. Based on EPA's methodological reservations, we excluded from consideration the results of Pechan's analyses. Instead, GAO conducted our own independent analysis of the costs and benefits of EPA's changes to the TRI reporting requirements.

Regardless of these methodological concerns, the Pechan and Associates report does not specifically conclude that 99 percent of all 3,142 counties would not be significantly affected by a change in the non-PBT threshold from 500 to either 2,000 or 5,000 pounds. Rather, it states on page 29:

> Pechan also evaluated the potential county-level impacts for each Form A reform proposal alternative. In order to examine the worst case situation, Tables IV-3 through IV-9 present results for the top 20 counties impacted by each reform proposal (the counties in each table are sorted in descending order by reduction in risk score). Since the United States has 3,142 counties, more than

[4] E.H. Pechan and Associates, Inc., Risk-Based Analysis for Form A and Form NS Toxics Release Inventory Reform Proposed Alternatives (Durham, N.C.: October 14, 2004).

99 percent of the counties will show data losses that are less than these tables show. It is important to note that all county-level results are presented relative to the current 500-pound reporting threshold (i.e., all Form Rs with an ARA of 500 pounds or less are removed before calculating relative impacts). Not surprisingly, the top 20 counties account for anywhere between 36 percent and 51 percent of the national change in risk score under each of the Form A reform proposals.

Question 6. Is it not the role for EPA management to make decisions in the rulemaking process, including decisions that were not originated by their staff?

Response. EPA management's role is to make decisions throughout the rulemaking process, and the Agency developed its Action Development Process (ADP) to ensure that EPA management uses quality information to support its actions and to ensure that scientific, economic, and policy issues are adequately addressed at the right stages in action development.[5] EPA's process (1) includes steps for planning sound scientific and economic analyses to support rulemaking, including peer review when necessary, (2) includes steps for developing and selecting regulatory options based on relevant scientific, economic, and policy analyses, (3) calls upon affected headquarters and regional managers to get involved early in developing an action and to stay involved until the final action is completed, (4) ensures active and appropriate cross-Agency participation, and (5) encourages appropriate and meaningful consultation with stakeholders in the process through substantive consultative procedures.

As GAO highlighted in its testimony, EPA management generally has the discretion to depart from these guidelines, including by accelerating the development of the proposed TRI Burden Reduction Rule. Nonetheless, those decisions created differences between EPA's guidelines and the process that the Agency followed—differences that had an impact on the quality of support for the proposed rule that the ADP is designed to ensure. Given the questions we were asked to respond to as part of our review, we believe it was appropriate to assess and report on the consequences of the decisions we cited.

Senator BOXER. Thank you, Mr. Stephenson.

Mr. Sullivan.

STATEMENT OF THOMAS M. SULLIVAN, CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Mr. SULLIVAN. Chairman Boxer, thank you for giving me the opportunity to appear before the committee. My name is Tom Sullivan. I am the Chief Counsel for Advocacy at the U.S. Small Business Administration.

My office is an independent office within SBA, so the comments expressed in this oral statement, questions and answers and in my written statement do not necessarily reflect the position of the Administration or the SBA. My written statement was not submitted to OMB in draft form for approval prior to this hearing.

I ask the Chairman if my full written statement can be entered into the record.

Senator BOXER. Surely.

Mr. SULLIVAN. 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, the short form for TRI reporting. Adopted as a less burdensome alternative to the long Form R, the original Form A allowed companies to report their releases as a range, instead of a specific number.

[5] EPA, EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions, June 30, 2004. EPA defines actions to include rules, policy statements, risk assessments, guidance documents, models that may be used in future rulemakings, Reports to Congress that are statutorily mandated, and strategies that are related to regulations. EPA uses the term "action" in its broadest sense. For the purpose of our answer, we use the terms "rulemaking" and "action" synonymously.

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 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 business that have zero discharges or emissions to the environment. These businesses must devote scarce time and resources to completing lengthy, complex Form R reports every year, despite the fact that they have zero discharges.

The reason for my office's involvement is simple: small businesses are disproportionately impacted by regulation. The overall regulatory burden in the United States exceeds $1.1 trillion. For firms employing fewer than 20 employees, the most recent estimate of their regulatory burden is $7,647 per year per employee.

Looking specifically at compliance with the Federal environmental rules, the difference between small and large firms is dramatic. Small firms spend 4½ times more per employee for environmental compliance than their larger business counterparts. Environmental requirements, including TRI paperwork requirements, can comprise up to 72 percent of small manufacturers' total regulatory cost.

EPA's reform to the TRI reporting rules allows more small business to use Form A instead of the longer Form R. This will save money. As the Administrator commented, it provides an incentive for companies to recycle chemicals instead of disposing.

I spoke last week with a TRI expert who runs Advanced Environmental Management Group, a consulting firm that works with small businesses on environmental management issues. He is proud of his work, helping a paper mill recycle small amounts of mercury generated when switches and other process control circuits undergo maintenance in the mill's power house. Amerjit "Sid" Sidhu 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 that Sid works with to recycle their TRI chemicals, rather than disposing of them.

Although this rule does not go as far as some small businesses would prefer, the Office of Advocacy supports EPA's TRI burden reduction rule. The rule demonstrates that EPA is listening to the concerns of small business. The TRI reform should be a model for other agencies to reform their existing regulations to reduce costs while preserving or strengthening regulatory objectives.

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

[The prepared statement of Mr. Sullivan follows:]

STATEMENT OF THOMAS M. SULLIVAN, CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Chairman Boxer and Members of the committee, 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 committee is reviewing several recent regulatory actions of the U.S. Environmental Protection Agency (EPA), including a December 2006 rule 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. Advocacy has worked with the EPA since 1988 on TRI issues, and we have developed substantial expertise with TRI and other right-to-know programs. 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.

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 chemicals.

Following EPCRA's passage, American businesses have taken unprecedented action to reduce the amount of toxic chemicals used in their plants. Some companies followed the initial publication of TRI data in 1989 by pledging to reduce 80 to 90 percent of their chemical releases. The American Chemistry Council member companies implemented a "Responsible Care" initiative which has reduced environmental releases by 78 percent over the past 19 years.

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 original 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 handles 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.

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 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. In 1997, Advocacy's Chief Counsel Jere Glover testified that:

The Office of Advocacy has had the same position about small sources and the Toxic Release Inventory since 1988. In 1988, we supported exempting certain facilities with less than 50 employees for TRI reporting. In 1991, we supported exempting reports from facilities that emitted less than 5,000 pounds per year of listed toxic chemicals, and in 1994, EPA enacted this exemption. Recently, with the proposal of TRI Phase II, this office also supported eliminating from reporting industry sectors with small releases. Thus, the Office of Advocacy adheres to a standard that maximizes the impact of regulations on a problem while minimiz[ing] the impact on small firms that contribute little to the problem.[3]

In this decade, small businesses have continued to identify TRI paperwork relief as a priority. In 2001, 2002, and 2004, for example, TRI burden reduction was

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

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

[3] Testimony of Jere W. Glover, Chief Counsel for Advocacy, before the House Committee on Small Business, Subcommittee on Government Programs and Subcommittee on Regulatory Reforms and Paperwork Reduction, "Small Business Involvement in the Regulatory Process and Federal Agencies' Compliance with the Regulatory Flexibility Act" (April 17, 1997).

named as a high-priority candidate for regulatory reform in response to the Office of Management and Budget's public call for reform nominations.[4]

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 properly complete the forms.[5] 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 impacted by the total Federal regulatory burden.[6] 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.[7] 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 percent of small manufacturers' total regulatory costs.[8]

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's "Innovation Alley." 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.

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.[9] 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 formal 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. To respond to these concerns, EPA

[4] See, e.g., Office of Management and Budget, Draft Report to Congress, 67 Fed. Reg. 15014, 15015 (March 28, 2002).

[5] See, e.g., 66 Fed. Reg. 4,500, 4538 (January 17, 2001) (EPA estimated that first-time filers of TRI annual reports of lead and lead compounds would need an average of 50 hours, and as many as 110 hours, to prepare their Form R's.).

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

[7] Id at page 55, Table 18.

[8] Id.

[9] 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.").

placed a 2,000-pound limit on releases of chemicals that can be considered for Form A reporting. Under the TRI Burden Reduction rule, each Form A will be a range report, telling the public that total releases from a facility is in the range of zero to 2,000 pounds. Facilities that have any emissions or discharges of highly toxic materials (defined as Persistent, Bioaccumulative and Toxic (PBT) chemicals) still cannot use Form A.

The expanded Form A continues to obtain reporting on a substantial majority of total releases of every TRI-listed chemical at all facilities required to submit TRI reports. Form A provides much of the important information that Form R does. TRI data users are currently able to gain access to Form A facility information via Envirofacts[10] and TRI Explorer[11] in the same way that they can access Form R facility information. Form A tells the user whether a facility is a potential source of releases and other waste management activities.

EPA's TRI Burden Reduction rule continues to require firms to report all of the chemicals they have been reporting each year on the Form R. Following the same principles that governed the 1994 TRI paperwork reform, more firms will now be able to use the short form (Form A) to report a range of use, rather than detailed amounts on the longer, more complex Form R.

Advocacy agrees with EPA that the rule's approach to expanded Form A eligibility for chemical use reporting 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. In the same way that the initial Form R reports in 1989 provided an incentive for large companies to dramatically reduce their subsequent chemical releases, the expanded Form A will provide an incentive for business to reduce their overall chemical usage to be able to use the short reporting form.

As an example of this, I spoke last week with a TRI expert who runs Advanced Environmental Management Group, a consulting firm that works with small businesses on environmental management issues. He was proud of his work helping a paper mill recycle small amounts of mercury generated when switches and other process control circuits undergo maintenance in the mill's powerhouse. Amerjit "Sid" Sidhu 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.

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 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—with an estimated total of 1/10 of a pound of lead per year—that ends up in their garbage, 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

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[10] (http://www.epa.gov/envirofacts). Using EZ Query in Envirofacts, data users are able to access individual chemical Form As along with the TRI Facility Identification Numbers (TRIFIDs) and the names of facilities submitting Form A's.

[11] (http://www.epa.gov/triexplorer).

agencies to reform their existing regulations to reduce costs while preserving or strengthening the original regulatory objectives.

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

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Regulatory reform, not rollback

By Thomas M. Sullivan
Published February 1, 2007

Since 1986, when President Reagan signed the Emergency Planning and Community Right to Know Act (EPCRA) into law, Americans and the environment have benefited. EPCRA created the Toxics Release Inventory (TRI) which requires companies to report their handling, management, recycling, disposal, and allowable emissions and discharges of chemicals. Corporate executives, plant managers, and boards of directors, when faced with annual reports of the chemicals used in their operations, took unprecedented action to reduce the toxic chemicals in their plants.

Some companies followed the initial publication of data in 1989 by pledging to reduce 80 percent to 90 percent of their chemical releases.

The American Chemistry Council member companies implemented a "Responsible Care" initiative which has reduced environmental releases by 78 percent over the last 19 years.

In 1991, when the U.S. economy was saddled with $400 billion of regulatory costs, the U.S. Small Business Administration petitioned the U.S. Environmental Protection Agency to reduce reporting costs under TRI, which were then estimated to cost a business up to $10,000 per year for a single form. EPA agreed, recognizing TRI's paperwork burden could be reduced without compromising the public's access to information on chemicals used in their community. In 1994, EPA Administrator Carol Browner introduced a short form for TRI reporting called "Form A."

Form A allows companies to report their releases as a range, instead of a specific number, for key chemical management information. Form A informs the public that a facility handles less than a small threshold quantity in the management, recycling, and disposal of the reported chemical. Significant chemical management activities are required to be reported on the longer, more detailed Form R.

Now, in 2007, the overall cost to comply with federal rules and regulations exceeds $1 trillion. The smallest firms pay about 41/2 times the amount of their larger business counterparts per employee to comply with federal environmental requirements, including TRI paperwork. Once again, reacting to this increased regulatory burden, leaders at the U.S. Environmental Protection Agency (EPA) have found a way to reduce paperwork without affecting environmental protection.

Last month, EPA finalized the TRI paperwork burden reduction rule. The rule, responding to the concerns of small businesses and the U.S. Small Business Administration, allows more firms to report chemical use information on the shorter Form A. Some critics of EPA's action rushed to call the agency's final rule a rollback of environmental law. From the perspective of small business, they are wrong.

First, EPA's rule still requires all firms to report the same chemicals they have been

reporting annually. However, following the same principles that governed the Clinton administration's 1994 TRI paperwork reform, more firms will now be able to use the short form (Form A) to report a range of use, rather than detailed amounts on the longer Form R.

Second, EPA is using the TRI reform as a way to recognize users of the short form (Form A) as top environmental performers within industry. To qualify for using Form A, firms must minimize their use of all chemicals and sharply curtail their use of highly toxic materials (defined as Persistent, Bioaccumulative and Toxic (PBT) chemicals). Most important, to use Form A, contrary to what critics have alleged, firms may not emit or discharge any PBT chemicals into the environment.

EPA's reforms to the Toxic Release Inventory will reduce 25 pages of reports to two pages while continuing to provide communities with information on the use of chemicals by their industrial neighbors. EPA's reforms will save businesses more than $6 million annually. More importantly, EPA's recent reforms to the TRI program set a new standard where only the top environmental-performing businesses can take advantage of the simpler reporting form.

The EPA reforms show leadership in an administration that realizes the cumulative regulatory burden of $1 trillion, which hits small business hardest, slows our nation's economy and hinders our ability to compete in a global marketplace. EPA has provided small business with a good start.

Thomas M. Sullivan is the presidentially appointed and Senate-approved chief counsel for advocacy, Office of Advocacy, U.S. Small Business Administration. The Office of Advocacy is an independent voice for small business within the federal government.

RESPONSES BY THOMAS M. SULLIVAN TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. The Small Business Administration Office of Advocacy is charged with advocating on behalf of small business. However, EPA's reforms to the TRI program have been described as helping large industrial companies, not small businesses. Please explain the disproportionate impact of Federal regulations on small businesses and the relevance to TRI reform and how EPA's reforms to the Toxics Release Inventory program benefit small business.

Response. 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.[1] This overall regulatory burden was estimated by Crain to exceed $1.1 trillion in 2004.[2] For firms employing fewer than 20 employees, the annual regulatory burden 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.[3] 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.[4] Environmental requirements, including TRI paperwork requirements, can constitute up to 72 percent of small manufacturers' total regulatory costs.[5] 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.

Question 2. In your testimony, you described how EPA's December 2006 TRI rule will help small business and strengthen environmental protections. Please describe why you believe that this new rule improves EPA's ability to protect the environment.

Response. 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)[6] 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 5,000-pound ARA to reduce their total waste management in order to qualify for Form A eligibility.

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[1] W. Mark Crain, The Impact of Regulatory Costs on Small Firms (September 2005) available at http://www.sba.gov/advo/research/rs264tot.pdf.

[2] Id. at p. v.

[3] Id at page 55, Table 18.

[4] Id.

[5] Id.

[6] 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.

Question 3. 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 rule.

Response. 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 20 years of TRI data, we know that additional burden reductions can be achieved without posing a significant risk to the community.

Question 4. In your written statement you referred to EPA's action in 1994 to create Form A, as a simpler form for reporting chemical use under TRI than the more complicated Form R. You also referred to "principles that governed the 1994 TRI paperwork reform . . . ." Please explain what you meant by "principles" that governed the creation of Form A, and please describe how those same principles apply to EPA's December 2006 TRI rule.

Response. As we discussed in our January 2006 comments on the proposal,[7] EPA proposed to expand the Form A non-persistent, bioaccumulative, and toxic (non-PBT) annual reportable amount (ARA) threshold from 500 pounds to 5,000 pounds. EPA's choice of the proposed 5,000-pound non-PBT ARA threshold was based on several considerations that were first identified in the determinations made in the 1994 final rule establishing the Form A and the 500 pound ARA threshold (59 Fed. Reg. 61488, November 30, 1994). As such, EPA was only recalibrating the 1994 ARA to a higher threshold, based on a review of more current data (2002, instead of 1992). Below are the three principles that I referred to in my statement that underlie the proposal and the final rule:

In 1994, the Form A, and the 500 pound threshold, were justified on the following three findings:

(1) Chemical reporting on a substantial majority of the releases is maintained with the Form A;

(2) Little production-related waste information (approximately 0.1 percent) will be excluded from Form Rs; and

(3) Each Form A would provide the public with a range report that informs the public that total releases as well as total production-related waste is below a certain threshold.[8]

EPA used the same three criteria in determining and justifying the new 5,000-pound threshold in the December 2006 final rule. EPA asserts a strong factual and legal foundation for the new revisions by using the 1994 approach. An examination of how the above three findings apply to the new 5,000-pound threshold indicates the following. With regard to the first finding, chemical reporting on a substantial majority of releases is maintained by requiring the Form A as part of the reporting, just as in 1994. With regard to the second finding on the new threshold, Table 3 of the preamble to EPA's proposal shows that 99.9 percent of total production-related wastes will still be reported via Form R, even if all the eligible Form R non-PBT reporters switch to use of Form A.[9] The 5,000-pound threshold is simply a recalibration of the 500 pound threshold from 1994, based on the large number of new chemical reports introduced since 1994 and the continuing reduction in wastes handled by facilities. With regard to the third finding, Form A provides the identical range report information that the total production-related waste is below a certain threshold. The findings for the 2005 proposal are equally applicable to the 2006 final rule because the final rule only increased the number of forms subject to the Form R requirements relative to the proposed rule. See the Table below for a comparison of the 1994 final rule and the 2006 final rule.

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[7] www.sba.gov/advo/laws/comments/epa06—0113.pdf

[8] 1994 EPA Response to Comments Document, Establishment of Alternate Threshold, November 1994, EPA Docket No. OPPTS–400087A, at page 52.

[9] 70 Fed. Reg. 57822, 57843 (October 4, 2005).

Comparison of 1994 Form A Final Rule and 2006 Form A Final Rule

EPA Criteria-ARA	2006 Final 5,000 lbs Non-PBT	2006 Final 500 lbs PBT	1994 Final Rule 500 lbs Non-PBT
Substantial Majority of Releases Captured	Yes	Yes	Yes
99.9 percent of Waste Data on Form R	Yes	Yes	Yes
Form A—Range Report between Zero and Threshold Amount	Yes	Yes	Yes

Question 5. The SBA Office of Advocacy has contracted with research firms to document the impact EPA's December 2006 TRI rule will have on small businesses and local communities. Please explain how EPA's rule will impact communities based on research procured by your Agency.

Response. 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.[10] 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.[11] 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 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 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 prevented the State from requiring Form A re-

[10] 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.

[11] 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.

porters to develop P2 plans. In fact, a different Washington official stated that they 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.[12] 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).

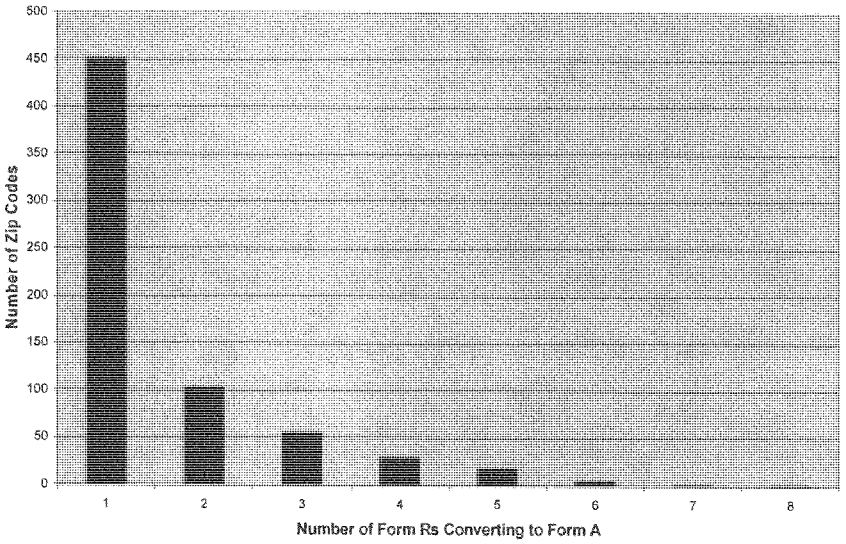
Using 2002 TRI data, Pechan identified 663 additional zip codes for which all current Form Rs will become Form A eligible at the 5,000 pound ARA threshold.[13] The results are displayed in Figure 1 below. Pechan estimates that 554 of these zip codes have one or two Form Rs. Therefore, the large number 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.

[12] 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.

[13] 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.[14] 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 account 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 simply reconfirms the point that a Form A is a mark of superior environmental stewardship, and not a cause for concern about missing 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 Percent of Total
Number of Zip Codes	569	10,122	10,691	5.32 percent
Total Releases	278,067	4,333,771,149	4,334,049,216	0.01 percent
Mean Releases/Zip Code	489	428,196	405,430	0.12 percent
Median Releases/Zip Code	2	13,600	10,922	0.02 percent
Maximum Releases/Zip Code	5,627	458,177,056	458,177,056	0.00 percent

Question 6. Is it not true that the original journey towards changes to TRI forms was more substantial in scope and that what EPA is doing is finally delivering on a promise made by the Clinton administration?

Response. EPA's efforts at TRI burden reduction started in 1991 and have spanned both Republican and Democratic Administrations. In 1994, EPA Administrator Carol Browner approved the adoption of the original Form A.[15] In 1997, when EPA expanded the scope of TRI reporting requirements, EPA promised that it would

[14] Pechan data analysis (March 2007) using RY 2004 TRI data.
[15] 59 Fed. Reg. 61488, November 30, 1994.

seek additional reductions in the TRI paperwork burden.[16] 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 notice and comment rulemaking process. The TRI Burden Reduction rule signed in December 2006 is the result of this process.

The Office of Advocacy's involvement started with our initial comments on the TRI rule in August 1987, suggesting an exemption for all facilities with fewer than 100 employees. This was followed by a formal Advocacy petition in August 1991 to exempt all releases of less than 5,000 pounds per year. EPA responded in 1994 with the original Form A, based on an annual reporting amount (ARA) of 500 pounds. In October 2005, EPA proposed an ARA of 5,000 pounds for non-PBT chemicals, with no additional restriction on releases. In balancing the right-to-know and burdens on reporters, EPA crafted its final relief in December 2006, by introducing a 2,000-pound release restriction on the newly eligible short forms. Thus, in the end, EPA responded to critics on both sides of the issue in fashioning the final rule, and reduced the scale of the proposed relief.

Question 7. There has been a lot of criticism that the switch to Form A will impact right to know at a local level. Can you comment on what you found and if information availability will be curtailed?

Response. The answer to this question is the same as the answer to question No. 5 and is repeated here for ease of reference.

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.[17] Pechan's review focused on comments submitted to EPA in opposition to the proposed reporting revisions.

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[16] 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 State—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.").

[17] 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.

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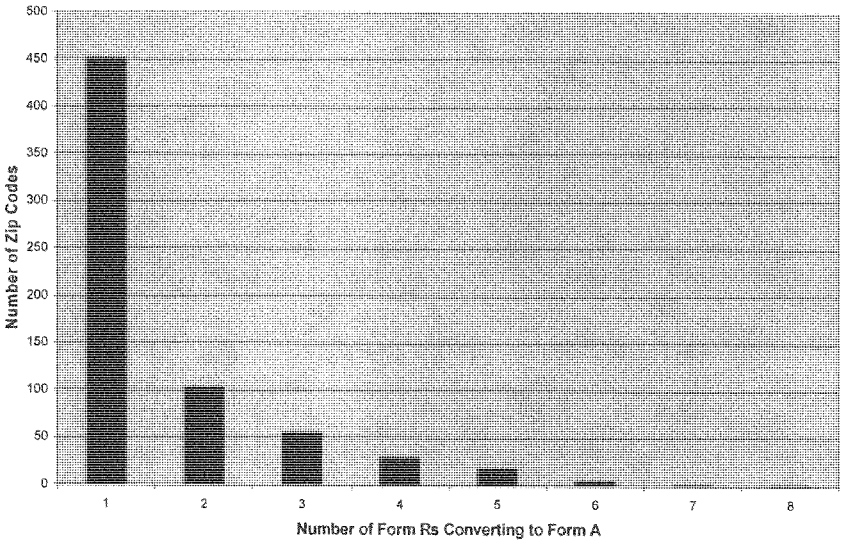
[19] U.S. Environmental Protection Agency, "Response to Comments, Toxics Release Inventory Phase 2 Burden Reduction Rule," Office of Information Analysis and Access, Office of Environmental Information, December 18, 2006; EPA–HQ–TRI–2005–0073–5008 at www.regulations.gov.

[20] 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.[21] 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 account 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 simply reconfirms the point that a Form A is a mark of superior environmental stewardship, and not a cause for concern about missing 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 Percent of Total
Number of Zip Codes	569	10,122	10,691	5.32 percent
Total Releases	278,067	4,333,771,149	4,334,049,216	0.01 percent
Mean Releases/Zip Code	489	428,196	405,430	0.12 percent
Median Releases/Zip Code	2	13,600	10,922	0.02 percent
Maximum Releases/Zip Code	5,627	458,177,056	458,177,056	0.00 percent

Question 8. Is there any clarification that you would like to make to comments made during the Question and Answer period?

Response. We were disappointed that the testimony offered by John Stephenson of GAO did not reflect our extensive discussions with them on this subject. In particular, I was surprised that the GAO would state that the new Form A would contain "no quantitative information" when it is very clear that all PBT Form As, by definition, mean that there are no releases to air, water and land. Zero releases is a key piece of quantitative information. GAO also declined to mention the fact that

[21] Pechan data analysis (March 2007) using RY 2004 TRI data.

each non-PBT Form A is in itself a range report between zero and the relevant threshold quantity, and that the total information preserved on the Form R represented 99.9 percent of the quantitative information currently reported on the Form R. Nor did GAO mention that our October 2004 report conclusion indicated that 99 percent of all 3,142 counties in the United States would not be significantly affected by a change in the non-PBT threshold from 500 to either 2,000 or 5,000 pounds.

Review and Analysis of the Effect of EPA's Toxics Release Inventory (TRI) Phase II Burden Reduction Proposal on TRI Data Uses

by

E.H. Pechan & Associates, Inc.
Durham, NC 27707

for

Under contract SBAHQ-03C0020

Release Date: June 2007

This report was developed under a contract with the Small Business Administration, Office of Advocacy, and contains information and analysis that was reviewed and edited by officials of the Office of Advocacy. However, the final conclusions of the report do not necessarily reflect the views of the Office of Advocacy.

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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

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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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A. BACKGROUND

Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires facilities to report the quantities of routine and accidental releases, and releases resulting from catastrophic or other one-time events of subject chemicals, as well as the maximum amount of each chemical on-site during the calendar year, and the amount contained in wastes managed on-site or transferred off-site.

EPCRA Toxics Release Inventory (TRI) information is used by both the public and EPA. The public uses this information to understand who the largest toxic chemical emitters are in their local community, to estimate local health risks associated with these chemical releases, and to develop policies to reduce these risks. The EPA uses this information to track progress in reducing toxic chemical releases and to assist the Agency in determining the need for future regulations.

TRI reporting was initially required of facilities in the manufacturing sector (i.e., Standard Industrial Classification [SIC] codes 20-39) that have 10 or more full-time employee equivalents and manufacture (including import), process, or otherwise use any EPCRA section 313 (TRI) chemical in calendar year quantities greater than the established thresholds.

As originally promulgated in 1988, the thresholds for manufacturing and processing were 25,000 pounds and the otherwise use threshold was 10,000 pounds. These thresholds were later modified for persistent, bioaccumulative and toxic (PBT) chemicals. In addition, the original rule provided for range reporting, instead of point estimates, for certain sections of the Form R report, as a means for reducing the burden of reporting small quantities of up to 1,000 pounds.

Section 6607 of the Pollution Prevention Act of 1990 expanded reporting requirements to include toxic chemical source reduction, energy recovery, recycling, and treatment data. In 1993, EPA expanded the list of covered chemicals for the first time. In 1994 it added 286 more chemicals and chemical categories. Also in 1994, EPA amended TRI regulations to permit facilities with low levels of waste to report via a shorter Form A Certification Statement, beginning in 1995. The Form A allows facilities that generate small quantities of chemical waste to file abbreviated annual reports, saving businesses millions of dollars every year. All other facilities continued to use the standard Form R.

A facility may currently use the Form A only if their total waste for a given chemical does not exceed 500 pounds in a single year. For the purpose of defining Form A eligibility, the concept of total wastes refers to the "annual reportable amount" (ARA). As originally specified, ARA was identified as the sum of Form R Sections 8.1 through 8.7 (Section 8.8, which reflects quantities released as a result of remedial actions, catastrophic events, or one-time events not associated with production processes, was excluded). In order to qualify for the Form A, the facility must also process, manufacture or otherwise use less than one million pounds, which is the alternate threshold amount that applies to the Form A universe of reporters. The Form A provides the name of the chemical and some facility identification information, but no information regarding the disposition of the waste chemical (e.g. air or water release).

In 1999, EPA expanded the chemical list yet again and divided it into two categories: PBT chemicals and non-PBT chemicals. PBT chemicals are subjected to stricter reporting thresholds and are currently ineligible for Form A. For PBT chemicals, the thresholds are 100 pounds for manufacture, process or otherwise use. The threshold for a subset of PBT chemicals found to be highly bioaccumulative and persistent was lowered to 10 pounds. For dioxin and dioxin-like compounds, the threshold was lowered further to 0.1 gram. Additionally, for PBT chemicals, the use of Form A, range reporting, and a *de minimis* concentration exemption are not available, thus increasing the burden of reporting for PBT chemical filings. In 2001, EPA added lead and lead compounds to the PBT chemical list, resulting in a fourfold increase in Form R filings for that chemical category (the number of filings grew from 2,025 in 2000 to 8,734 in 2001). Many of the new reports describe zero on-site releases whose right-to-know value to the public is questionable. Lead reporting in 2001 accounted for 59.3 percent of the total number of PBT reports (JFA, 2004).

The EPA committed to further reduce the burden of paperwork associated with reporting as far back as 1997 when it expanded the number of covered chemicals and industries.[1] In its October 1, 1996, Terms of Clearance document for TRI data collection, the Office of Management and Budget (OMB) asked EPA to investigate changes, including specifically the adoption of a higher reportable amount for Form A eligibility. In 1998, the Toxics Data Reporting Subcommittee to the National Advisory Council for Environmental Policy and Technology (NACEPT) offered opinions on raising the alternate threshold, but the Subcommittee never filed formal recommendations and no action was considered by EPA. The OMB has continued issuing requests for burden reduction since 1996 as part of the Information Collection Request process.

On December 18, 2006, EPA promulgated TRI (phase II) reporting burden relief for both non-PBT and PBT chemicals. In addition to expanding Form A eligibility to some PBT chemical forms with zero releases when they have other waste management quantities of no more than 500 pounds, EPA expanded Form A non-PBT eligibility by increasing the ARA threshold from 500 lbs to 5,000 lbs (provided that total releases/other disposal quantities are not greater than 2,000 pounds).[2]

B. PURPOSE AND ORGANIZATION

The purpose of this report is to review information describing how TRI data are currently used, and to identify the impact of EPA's reporting burden relief on these current uses. Because the data for this study were compiled in Spring 2006, the results pertain to the TRI reporting changes reflected in EPA's proposed rule (70 FR 57822, 2005) and generally reflects impact estimates based on TRI data from reporting year (RY) 2003. However, section C.2. of this report describes

[1] 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." (62 FR 23834, 1997).

[2] As part of the final TRI rule, EPA revised the non-PBT ARA to include Form R Section 8.8 quantities.

how the conclusions from the Spring 2006 analysis are affected by the Form A eligibility changes incorporated into the final rule (71 FR 76932, 2006).

Pechan's review of the impacts of EPA's proposal on TRI data users focused on data use examples described in comments submitted to EPA in opposition to the proposed reporting revisions. Pechan reviewed the names of more than 2,000 comment entries submitted in response to the proposed TRI reporting burden relief rule. From this list, Pechan identified the following five comments that provided discussion of specific examples of TRI data use:

- comments submitted by OMB Watch (Moulton, 2006);
- comments from the Attorneys General in twelve States (Frank, 2006);
- comments from the Society of Environmental Journalists (Davis, 2006);
- comments submitted by the National Environmental Trust (Natan, 2006); and
- comments from the Maine's Department of Environmental Protection (Littell, 2005).

Pechan then selected 17 specific data uses from these comments for evaluation of the potential impact of EPA's TRI reform proposals on each use. The comments describe TRI data uses that represent the full spectrum of described uses at various geographic levels (i.e., local, state/regional, and national) and generally assert that such uses will be seriously harmed by EPA's proposal. Because Pechan has obtained TRI data from EPA for recent analyses of TRI reform proposals, the SBA's Office of Advocacy requested that Pechan independently evaluate the impact of EPA's proposal on the local, regional, and national examples of TRI data uses described in the above comments.

Although Pechan did not exclude examples that focus on data for one TRI reporting facility, Pechan gave preference to examples that reflect use of data for multiple TRI reporting facilities. Pechan used this approach to avoid data uses that would tend not to be affected by EPA's proposal (it is more likely that single facility examples will not be affected because they typically involve very large facilities). Although Pechan was able to analyze the impact of EPA's proposal on most of the identified data use examples, some examples reflect specific uses from the early 1990s. In many cases, Pechan simulated these uses using recent TRI data; however, some data use examples could not be replicated.[3]

It should be noted that the impacts cited in this report are generally based on the changes in the quantity of hazardous waste reported on Form R. These estimates assume that all Form Rs that become Form A eligible will actually choose to report using Form A. In reality, it is expected that many Form A eligible facilities will continue to report their toxic chemical information using Form R. Based on Form R ARA data, an additional 9,878 Form Rs, or 15.7 percent of total non-PBT Form Rs, were eligible for Form A reporting in 2000 (Pechan, 2004). Some facilities that are eligible to use Form A may choose to use Form R because they manage multiple chemicals and find it easier to use a consistent reporting system. Others may want to be

[3] Pechan also considered a review of the TRI data uses described in a 2003 EPA report (EPA, 2003), but determined that most of these examples are from the early and mid 1990s--in fact many of the examples date back to a 1995 EPA data use report (EPA, 1995). Because efforts to analyze the impact of EPA's TRI reform proposal on these examples would be problematic given the many changes that have occurred to the reporting requirements over the last decade, Pechan chose to focus on the comments submitted in response to EPA's proposal.

viewed as a "good corporate citizen" or consider Form R reporting as consistent with corporate environmental goals/policies. It is likely that many of the facilities that continue to use Form R are larger firms that can more easily absorb the burden of preparing Form R. It is expected that continued use of Form R reporting will occur if the ARA thresholds are raised, thereby reducing their impact with respect to TRI data that will no longer be reported on Form R.

Furthermore, to the extent that the ultimate purpose of TRI data is to assist in characterizing (and potentially reducing) health risks, a full evaluation of the impact of EPA's proposal would supplement the waste quantity impact estimates described herein with toxicity, dose, and exposure estimates. Such a risk assessment was beyond the scope of this effort.[4]

The remainder of this document is organized into the following sections:

- Section C – summary of the TRI data use impacts analyzed in this report;
- Section D – local community/government use of TRI data;
- Section E – State government use of TRI data;
- Section F – national use of TRI data; and
- Section G – the references that were consulted in preparing this report.

C. SUMMARY OF DATA USE IMPACTS

1. Summary of Proposed Rule Data Use Impacts

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. Although all of the commenters either explicitly or implicitly provided data use examples to demonstrate problems created for TRI data users, for the most part, commenters appeared to assume without examination that any revision in data availability would significantly harm data use. As described later in this report, 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 appreciate that no changes were proposed for PBTs, such as mercury, when the facility 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 limits Form A eligibility to small waste quantity reporters.

The one example where EPA's proposal may have a potential for significant impact is a TRI data use identified in the Louisville, Kentucky, area. This example is unique in that it relies on the use of Form R data in EPA's Risk Screening Environmental Indicators (RSEI) Chronic Human

[4] As an alternative, EPA's Risk Screening Environmental Indicators (RSEI) Chronic Human Health Model is a screening tool that can be used to estimate relative changes in potential health risks.

Health Model as one of the model's inputs for developing risk scores. Pechan's analysis of the Louisville use indicates that 3 of the 19 chemicals with risk scores of 500 or above, which was the threshold determination for requirement for additional health risk modeling as part of the area's Strategic Toxic Air Reduction (STAR) program, would have their risk scores drop below 500 when Form A eligible Form Rs are eliminated.[5] In addition to these chemicals, EPA's proposal results in risk scores for Cobalt/Cobalt compounds and Chlorine that decrease by more than 25 percent from baseline levels. It is not possible to state that any of the RSEI risk score changes resulting from EPA's proposal are indicative of actual changes in ability to characterize significant health risks. A detailed quantitative risk assessment, which is beyond the scope of this effort, would be required to support such a conclusion.

The following sections describe each of the 17 reviewed data uses, and provide Pechan's analysis of how EPA's proposed TRI reporting burden relief would impact each use.

2. Implications of TRI Reporting Changes Adopted in Final Rule

The final TRI reporting burden reduction rule differs from the proposed rule in two significant ways: (1) the non-PBT ARA has been revised to include section 8.8 (one-time event) quantities; and (2) non-PBT Form A eligibility has been narrowed by an additional criterion that places a 2,000-pound limit on releases of non-PBT chemicals. Assuming full use of Form A, EPA notes that the second change preserves almost 60 percent of the total release pounds that would have no longer been reported on Form R under the proposed rule (EPA, 2006a). This fact, coupled with the addition of Section 8.8 quantities in the ARA, will only strengthen the insignificant data use impact conclusion reached in the Spring 2006 study.[6] Furthermore, many Form A eligible facilities are expected to continue to report their toxic chemical information using Form R. As noted in its Response to Comments document, EPA states that: "...the Agency has observed that only slightly over half of the forms (54 percent) potentially eligible for Form A use take advantage of that option. ...the Agency does not believe the rate of Form A utilization is likely to be significantly higher at a 5,000-pound ARA with a 2,000-pound release limit for non-PBTs or at a 500-pound ARA with a zero release requirement for PBTs than it has been to date at the 500-pound ARA threshold for non-PBTs" (EPA, 2006a). Such continued Form R reporting will serve to further reduce the effects of EPA's final reporting burden relief rule on TRI data users. The balance of this document describes the Spring 2006 analyses that assessed the impact of EPA's proposed burden relief rule on TRI data users.

D. LOCAL USE OF TRI DATA

The local community TRI data use examples described in the comments submitted on EPA's proposal fall into one of two general categories: (1) examples where data are used to identify the facilities with the largest releases in a community for the purpose of applying public pressure on these facilities to reduce these releases; and (2) examples where data are used to track/reduce

[5] Note that one of these three chemicals would have been excluded if all currently eligible Form Rs reported using Form A.

[6] Because EPA estimates that less than 4 percent of all non-PBT chemical Form Rs have a value greater than zero in section 8.8 (EPA, 2006), Section 8.8 quantities are not expected to play a major role in most Form A eligibility determinations.

community-wide toxic releases. The following subsections describe six examples that are representative of these types of local TRI data uses, and provide Pechan's analysis of the impact of EPA's TRI reform proposals on these examples.

1. Chicago, Illinois

The following is the OMB Watch's description of use of TRI data by the residents of a neighborhood in Chicago, Illinois.

"*Neighborhood Group Takes Action Against Local Polluters*

Chicago, Illinois -- The Chicago Tribune reports that TRI data informed concerned residents of Chicago's Pilsen neighborhood that the nearby brass foundry was the city's largest emitter of airborne lead. In 2004, the residents formed the Pilsen Environmental Rights and Reform Organization and pushed for air testing, which found highly elevated levels of lead in the area. As a result the group was able to secure agreements from the company to reduce emissions" (Moulton, 2006 at pg. 16).

Pechan's review indicates that elevated lead levels were found in a portion of soil samples taken near the facility, and that the facility in question (H. Kramer & Company) continues to deny that their facility is the cause of high levels of lead in nearby soil. In addition, Kramer has not agreed to reduce their lead emissions, but did agree to remediate soil at two specific locations near their facility. To analyze the impact of EPA's proposal on this data use, Pechan reviewed 2003 TRI data to determine if this facility would become eligible for Form A reporting. Because the facility had non-zero lead releases in 2003, it would not be eligible for Form A reporting under EPA's PBT chemical proposal (lead is a PBT chemical).[7]

In the course of conducting research into this example, Pechan identified an article that asserted that EPA's proposal would eliminate all TRI Form R reporting for Pilsen's zip code (Bess, 2006). Pechan's review of the Illinois Public Interest Research Group (PIRG) report that was the original data source for this article (Illinois PIRG, 2005) was unable to identify information supporting this conclusion. Therefore, Pechan performed an independent analysis of 2002 TRI data that indicated that 14 of the 30 total Form Rs (approximately 45 percent) in Pilsen's zip code (60608) would become Form A eligible under EPA's proposal. The 14 reports account for 4.5 percent of total zip code releases, and 0.7 percent of total zip code waste quantity as measured by annual reportable amount (ARA). Pechan's analysis also indicates that this zip code would experience no loss of any of the five PBT chemical Form R reports.

2. Memphis, Tennessee

The OMB Watch comments described the following use of TRI data by the local Memphis, Tennessee, Sierra Club.

[7] 2003 year releases were 3,530 pounds; 2002 year releases were 4,000 pounds.

"*TRI Exposes the Top Terrible Ten Polluters*

Memphis, Tennessee -- The Memphis Sierra Club uses the TRI to educate the community in their annual Terrible Ten Report. This report highlights the top ten polluters in the county, showing their estimated emissions for the year. To encourage users of the report to engage in dialog with local environmental agencies about discharges, pollution reduction plans, and emergency management planning, the Sierra Club lists hotline numbers and the names and phone numbers of plant managers. The Terrible Ten brings information on chemical releases still closer to home by listing health effects for the toxic substances to which people are exposed. While no claims are made that the toxic discharges are causing specific health problems, the report provides the information needed for people to form their own conclusions" (Moulton, 2006 at pg. 18).

Based on 2003 TRI data for the top ten facilities in Shelby County, Pechan estimates that EPA's proposal will result in 417 pounds of releases reported on Form R newly becoming Form A eligible (see Table 1). Relative to the 9 million pounds of baseline releases for the top 10 county facilities, this represents less than 0.005 percent of releases in that year.

Table 1. Comparison of Current 2003 RY Releases and Post-EPA Proposal Releases for Top 10 Facilities in Shelby County, Tennessee

2003 RY TRI RECORDS FOR SHELBY COUNTY, TENNESSEE			NON-FORM A ELIGIBLE RECORDS		
Rank TRI Facility ID	Facility Name	Total Releases	Total Releases	Difference	% Difference
1 38109STVLL2574P	U.S. TVA ALLEN FOSSIL PLANT	3,151,580	3,151,580	0	0.00
2 38127WRGRC5790O	PCS NITROGEN FERTILIZER LP	1,323,459	1,323,459	0	0.00
3 38116MXWLL828EA	QW MEMPHIS CORP	1,181,926	1,181,926	0	0.00
4 38108WTCCR1231P	CROMPTON CORP	803,541	803,541	0	0.00
5 38127CCRYL2665F	LUCITE INTERNATIONAL INC.	799,120	799,120	0	0.00
6 38113CRGLL2330B	CARGILL INC	787,225	787,225	0	0.00
7 38127DPNTM2571F	DU PONT MEMPHIS PLANT	321,489	321,442	47	0.01
8 38108NNCNC3018B	ENENCO INC	303,450	303,080	370	0.12
9 38108STHRN2782C	SOUTHERN COTTON OIL CO	293,986	293,986	0	0.00
10 38108QCHMC3324C	PENN SPECIALTY CHEMICALS	110,828	110,828	0	0.00
	Subtotal	**9,076,604**	**9,076,187**	**417**	**0.0046**

Although OMB Watch described use of TRI data only for the top 10 county facilities, Pechan also analyzed the change in reported releases for all Form Rs in the county that become newly eligible for Form A reporting. Pechan estimates that 0.52 percent of total Shelby County releases would become newly Form A eligible under EPA's proposal.

3. Dallas/Forth Worth, Texas

The following is the OMB Watch's description of how TRI data are used to inform the Dallas/Fort Worth area of potential public health concerns related to toxic air releases.

"*TRI Data Used by Public Health Physician to Monitor Air Pollution*

Dallas, TX -- The Fort Worth Star Telegram reports that Dr. Arnold Schecter, a public-health physician at the University of Texas School of Public Health in Dallas, uses TRI data to monitor toxic releases in the Dallas/Fort Worth region and protect the public against air pollution which is "responsible for some increase in illness, possibly even increased mortality." The Dallas/Fort Worth region contains large power plants that rank among the largest polluters of mercury in North America. "Without periodic monitoring, it will not be possible to determine whether the air is becoming more or less polluted," Schecter said. "Decreasing the amount of information available on air quality seems a step backwards with respect to health" (Moulton, 2006 at pg. 20).

Pechan evaluated the impact of EPA's proposal to increase Form A reporting eligibility using 2003 TRI data. Pechan was unable to obtain the original news article to determine whether the Dallas/Forth Worth region that was mentioned referred to the 12 counties that comprise the entire Dallas/Forth Worth metropolitan area, or the two counties (Dallas and Tarrant) that closely approximate the Dallas and Fort Worth municipal boundaries. Therefore, Pechan conducted the TRI analyses for both geographic areas. As demonstrated in Table 2, EPA's proposal will have minimal impact on TRI reporting of releases in the Dallas/Fort Worth region. As noted in Table 2, air release quantities associated with Form A eligible forms that currently report using Form R are similar to the quantities associated with EPA's proposal. Although the commenter expressed a concern about large mercury releases from the power plants in the Dallas/Fort Worth area, the commenter overlooked the fact that mercury releases by power plants will be unaffected by EPA's proposal since there will be no change in PBT release reporting under the proposal.

Table 2. Dallas-Fort Worth Impacts of EPA's Proposed TRI Reform Regulations

2003 Reporting Year Air Release Quantities (pounds)			% Reduction from Current Form A Eligible	% Reduction from Newly Form A Eligible
Total Air Releases	Current Form A Eligible*	Newly Form A Eligible		
Dallas-Fort Worth-Arlington Metropolitan Statistical Area				
5,442,925	158,726	162,884	2.9%	3.0%
Dallas And Tarrant Counties				
2,433,195	151,658	119,294	6.2%	4.9%

* Reporting year release quantities that are currently Form A eligible based on the 500 pound ARA threshold.

4. Louisville, Kentucky

The comments supplied by 12 State's Attorneys General describe the use of TRI and other data by the Louisville Metro Air Pollution Control Board (LMAPCB) in devising a program to reduce toxic air pollutant emissions (Frank, 2006 at pg. 4). The LMAPCB's Strategic Toxic Air Reduction (STAR) program is a multi-year effort that will require companies with higher toxic chemicals air releases to significantly reduce their emissions. In addition to the 18 chemicals that air quality monitors determined to be local health risks, LMAPCB used the EPA's Risk Screening Environmental Indicators (RSEI) Chronic Human Health model, which uses TRI air

release data, to identify 19 additional chemicals for potential regulation (pending further modeling) in their STAR program.

The LMAPCB has identified 19 chemicals "that may exceed health risk goals" based on chemicals with year 2002 RSEI model risk scores of 500 or above. In a press release, LMAPCB summarizes the STAR program as requiring "...approximately 170 companies that emit the largest amounts of chemicals to conduct modeling to determine if emissions exceed the health risk goal for 37 targeted chemicals – the 18 toxic chemicals already proven to exceed the (sic) health risk goal and another 19 chemicals that may exceed the new goal based on aggregate data supplied to the EPA by local companies" (LMAPCB, 2005 at pg. 2).[8] Many industry commenters indicated that the STAR approach was technically deficient, and that the requirements were overly stringent. Ford Motor Company indicated that the goals were "several orders of magnitude more restrictive than necessary to protect public health and welfare" (Karl, 2005 at pg. 5). In this particular area, the total RSEI score of the 19 chemicals was about one quarter of the total RSEI risk score (however, the RSEI model does not indicate the presence of 5 of the 18 chemicals in Jefferson County that local air quality monitors indicate as exceeding the health risk goal).

Pechan queried the latest version of the RSEI model for Jefferson County, Kentucky, and identified the same 19 chemicals listed by LMAPCB as having 2002 RSEI scores of 500 or above. Table 3 summarizes the results of Pechan analyses that remove Form Rs for these chemicals that (a) are currently Form A eligible based on the current 500 pound non-PBT ARA threshold; and (b) that would be Form A eligible under EPA's proposal. This table indicates that 3 of the listed chemicals that have RSEI scores of at least 500 would no longer have RSEI scores of 500 or above under EPA's proposal, and that one of these (Diisocyanates) would be below this threshold if all Form Rs that are currently Form A eligible were to report using the shorter form. *It should be emphasized that an RSEI score of 500 is not indicative of a health risk, but rather represents the LMAPCB's threshold for requiring health risk modeling.*

Table 3. Chemicals in Jefferson County, Kentucky, with 2002 RSEI Scores of 500 or Above

1,2,4-Trimethylbenzene	Hydrochloric acid
Aluminum (fume or dust)	Hydrogen fluoride
Ammonia	Lead & Lead compounds
Boron Triflouride	Manganese & Manganese compounds
Butyl Acrylate	Naphthalene
Chlorine	Nitric acid
Cobalt & Cobalt compounds	Sulfuric acid
Copper & Copper compounds	Toluene
Diisocyanates	Xylene (mixed isomers)
Glycol ethers	

Under EPA's proposal, risk scores drop below 500 for chemicals identified in shaded cells; Diisocyanates also drops below 500 when current Form A eligible forms are removed.

[8] Note that some commenters questioned the use of the RSEI, and in particular, use of a risk score threshold of 500, as a criterion for requiring additional health risk modeling under the STAR program (Keane and Darling, 2005).

Table 4 displays the 2002 RSEI risk scores for the 19 chemicals, the risk scores when all current Form A eligible records are removed, and the risk scores after removing all records with reportable amounts below EPA's proposed Form A eligibility thresholds. This table also indicates that, post-EPA proposal, the majority of chemicals that continue to have risk scores of above 500 would see a modest decrease in their scores. Exceptions include Cobalt/Cobalt compounds and Chlorine, both of which see risk score decreases of more than 25 percent from baseline levels. To determine that these large percentage changes in risk scores are indicative of significant changes in health risk would require a detailed quantitative risk assessment that is beyond the scope of this effort. It may be instructive to review the results of the screening analysis/regulatory requirements in future years to determine what, if any, effect the EPA proposal would have.

Table 4. Chemicals in Jefferson County, Kentucky, with 2002 RSEI Scores of 500 or Above

Chemical	Actual 2002 Form Rs*	RSEI Score With Currently Eligible Form As Removed	EPA Proposal
1,2,4-Trimethylbenzene	13,644	13,644	13,339
Aluminum (fume or dust)	11,427	11,427	11,427
Ammonia	7,385	7,385	7,374
Boron trifluoride	1,890	1,890	0
Butyl acrylate	3,712	3,707	2,813
Chlorine	3,049	3,049	536
Cobalt & Cobalt compounds	66,201	45,356	1,588
Copper & Copper compounds	2,612	2,546	122
Diisocyanates	586	42	42
Glycol ethers	10,178	10,168	10,142
Hydrochloric acid	3,297	3,297	3,297
Hydrogen fluoride	1,518	1,518	1,518
Lead & Lead compounds	3,249	3,249	3,249
Manganese & Manganese compounds	8,881	8,733	8,587
Naphthalene	806	806	629
Nitric acid	3,311	3,311	3,311
Sulfuric acid	17,945	17,929	17,929
Toluene	1,455	1,454	1,447
Xylene (mixed isomers)	3,055	3,054	3,026

* Includes records that are currently Form A eligible

5. Richmond, California

In Richmond, California, concerned citizens used TRI data to support negotiations that resulted in chemical release reductions for a Chevron oil refinery (Frank, 2006 at pg. 5). In the late 1980s, the West County Toxics Coalition teamed with Citizens for a Better Environment (CBE), a statewide environmental organization, to investigate industrial generated pollution in Richmond, California (EPA, 2003). Using the TRI and other databases, they published a report that identified the Chevron oil refinery as the top emitting facility (CBE, 1989). The report helped spur discussions that ultimately resulted in Chevron agreeing in 1994 to close down older portions of the plant and to install equipment to achieve zero net toxic chemical releases on a

reformulated fuel project (EPA, 2003 at pg. 7). Pechan queried the 2003 TRI database and identified 35 Form Rs for the Chevron Products Company in Richmond, California. An analysis of these records indicated that two Form Rs are currently eligible for Form A reporting based on the existing 500 pound non-PBT ARA threshold. An additional 5 Form Rs would be Form A eligible under EPA's proposal. Table 5 presents the Form R release quantities associated with all 2003 RY Form Rs, and Form Rs that are currently Form A eligible, and Form Rs that would be eligible for Form A reporting under EPA's proposal. This table indicates that EPA's proposal would result in a reduction of less than 1 percent in reported releases relative to all current Form R releases.

Table 5. Richmond, California, Impacts of EPA's Proposed TRI Reform Regulations

2003 Reporting Year Release Quantities (pounds)			% Reduction from Current Form A Eligible	% Reduction from Newly Form A Eligible
Total Releases	Current Form A Eligible*	Newly Form A Eligible		
Chevron Products Co. Richmond Refinery, California				
1,059,321	302	8,803	0.03%	0.83%

* Reporting year release quantities that are currently Form A eligible based on the 500 pound ARA threshold.

6. Minneapolis, Minnesota

Representatives from neighborhoods in southeast Minneapolis used TRI information to convince Ritrama, a facility producing adhesives for labels and decals, to sign an agreement in 2003 to voluntarily reduce toluene emissions by 98 percent (Frank, 2006 at pg. 5). Pechan's analysis determined that all 3 current Form Rs for this facility would be ineligible for Form A reporting under EPA's proposal, and that the lowest non-PBT ARA in 2003 for Ritrama was 30,000 pounds.

E. STATE/REGIONAL USE OF TRI DATA

Pechan analyzed the impact of EPA's proposal on eight examples where TRI data have been used at a State or regional level.

1. Washington State Department of Ecology

The following Washington State TRI data use example was reported in OMB Watch's comments on EPA's proposed TRI reform regulation.

"*TRI Used in State Pollution Prevention Program*

Olympia, Washington -- Idell Hansen from the Washington State Department of Ecology tells OMB Watch, "We use the TRI to enroll companies in the states 'pollution prevention' program. EPA's proposed changes to the TRI program would compel up to 15 % of the facilities to drop out of our pollution prevention program -- lost opportunities for pollution reductions. For this reason alone, we think the proposed rule is a bad idea." (Moulton, 2006 at pg. 19).

Based on Pechan's review of available State pollution prevention (P2) program information and contact with State officials, the above impact results from how the State implements their pollution prevention program, not from a State statute that mandates that the program include only Form R reporters. Specifically, under Chapter 173-307 of the Washington Administrative Code, "facilities that report under Section 313 of the EPCRA, or that generate more than 2,640 pounds of hazardous waste per year, must prepare pollution prevention plans." There is no statutory distinction between EPCRA filers that use Form A versus Form R. On a related note, when a program participant switches from Form R to Form A reporting due to a reduction in waste quantity, the State no longer requires their participation in the P2 program.[9]

Although the Department of Ecology uses both annual TRI Form R reports and the State's Dangerous Waste Annual Reports to identify and notify facilities that they are required to submit a P2 plan, there is no reason why they could not use Form A information in the same manner. As noted by one program official, Washington's P2 program excludes Form A reporters "because there are not very many and the environmental risks seem minimal. However...there is nothing in (a) statute or regulation that prevents us from requiring Form A reporters to develop pollution prevention plans. At this point, we have chosen to exclude them based on degree of risk" (Morgan, 2006).

Therefore, a change in EPA's TRI reporting requirements would not require Washington to drop facilities from their P2 program in that the State has chosen to implement their program in this way because Form A filers have been deemed to create minimal health risks. In other words, EPA's TRI program reporting thresholds do not preempt the States' ability to determine the parameters of their own P2 programs. To the extent that Washington believes that Form A filers or other entities represent a significant health risk, then Washington can choose to include such entities in their P2 program regardless of EPA's Form A eligibility thresholds.

In addition, any claims of impact from EPA's proposal should take into consideration the fact that Washington requires only that facilities' P2 plans cover 95 percent of their total hazardous products used/hazardous wastes generated (Washington, 2005).[10] Pechan generated an estimate of the proportion of the 1996 RY total State waste handled that was reported on Form A. Pechan first attempted to estimate this value by obtaining all available 1995 or 1994 RY Form R data for facilities/chemicals listed on the 1996 RY Form As. However, this approach was abandoned because 1994 or 1995 RY data were available only for 56 out of the 95 Form As. Ultimately,

[9] Pechan was unable to get a response from the State to the question whether they allow program participants that switch to Form A to continue in their program, or if the State allows only Form R filers to participate.

[10] "Processes subject to planning include all processes that use products containing hazardous substances (hazardous products) or generate hazardous wastes up to a 95% threshold" (Washington, 2005 at page 21).

Pechan estimated the proportion by applying a conservative assumption that each 1996 Form A is associated with the maximum Form A ARA (i.e., 500 pounds). Pechan estimates that Form As accounted for a maximum of 0.025 percent of the total ARA in Washington in 1996.[11]

Pechan also estimated the proportion of total 2003 RY waste quantity that would not be reported under EPA's proposal. First, Pechan identified the 2003 RY Form Rs that are currently not eligible for Form A reporting that become eligible under the proposal. This step confirmed the statement attributed to Idell Hansen that 15 percent of current Form R reporting facilities would no longer report on Form R under the proposal. In addition, Pechan estimates that EPA's non-PBT Form A proposal will result in a reduction in 2003 RY non-PBT ARA (sum of 8.1-8.7) of 0.18 percent. Similarly, EPA's PBT Form A proposal is expected to result in a total PRA (sum of 8.2-8.8) that is 0.25 percent less than reported in the 2003 TRI. Pechan also conducted comparisons of pre- and post-EPA proposal waste quantity values for total waste (EPA proposal reduces total waste quantity by 0.31 percent) and for releases (EPA proposal reduces 8.1 release quantity by 0.64 percent). The analyses all indicate 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.

2. Arizona Department of Environmental Quality

The following is the OMB Watch's description of how Arizona uses TRI data to identify facilities to target for HAP emission reductions.

"*TRI Data Used to Reduce Hazardous Air Pollutants*

Phoenix, Arizona -- The Arizona Department of Environmental Quality (ADEQ) also uses the TRI to address Hazardous Air Pollutants (HAPs) emissions. The ADEQ used TRI data to identify facilities that had significantly increased their HAP releases from 2002 to 2003. The agency works with these facilities to reduce their air emissions. Alternate-year reporting would have missed these pollution increases." (Moulton, 2006 at pg. 19).

In contacting ADEQ for clarification on this data use, Pechan learned that Arizona had used 2002 TRI data to identify the industry sectors to which the State's recent HAP regulation would apply.[12] The remainder of this section summarizes how ADEQ used TRI data to support HAP regulation development, and provides Pechan's analysis of how EPA's proposal would have affected its ability to use these data for this purpose.

For most HAP emission sources, Arizona used Form R release data to model the air quality impacts of facility air emissions -- Arizona specifically modeled facilities that either had 2002 annual emissions of a single HAP of at least 1 ton or total facility HAP emissions of at least 2.5

[11] Pechan also developed a separate percentage estimate that included all 1996 Form Rs that were Form A eligible based on the 500 pound ARA threshold criterion. When these records are added to the estimated ARA for Form A filers in 1996, Pechan estimates a maximum of 0.032 percent of the total State's 1996 RY ARA could have been reported via Form A.

[12] Despite the description in the comment letter, the ADEQ contact noted that he did not believe that ADEQ had conducted any comparisons of 2002 with 2003 TRI data (Burr, 2006).

tons. After modeling the effect of these facilities' emissions on air quality, Arizona compared the modeled air pollutant concentrations against both acute and chronic health based ambient air criteria. If the HAP emissions modeling for at least one facility in a given SIC code indicated that predicted ambient air concentrations are at least 20 percent greater than either of these criteria for one or more pollutants, then Arizona identified that SIC code for regulation.

On March 15, 2006, Arizona promulgated a rule creating a program to regulate HAP emissions for facilities categorized in 23 SIC codes (Arizona, 2006). Under the State's program, all newly constructed major sources, or new minor sources belonging to a designated category, are subject to the State's HAP program; modifications to existing sources that increase HAP emissions by more than a *de minimis* amount, are also subject to the program. According to the statute, the owner or operator of an affected source must obtain a new permit or a significant permit revision that includes either a proposal for Hazardous Air Pollutant Reasonably Available Control Technology (HAPRACT) for minor sources, or Arizona Maximum Achievable Control Technology (AZMACT) for major sources. Any affected source also has the option of conducting a scientifically sound risk management analysis as part of their permit application to show that the imposition of control technology, in their case, is unnecessary to avoid adverse effects to human health or the environment.

To evaluate the impact of EPA's proposal on Arizona's ability to target SIC codes for regulation, Pechan conducted an analysis to determine whether the proposed Form A eligibility thresholds would have resulted in loss of Form R information that was used to identify the SIC codes for regulation. The first step in this analysis was to compile 2002 reporting year (RY) Form R information for the facilities/chemicals that were modeled for the 23 SIC codes of interest. Pechan then determined if either the specific Form R that Arizona identified as having a potential health impact would become Form A eligible or else that the loss of Form R reporting for some of the chemicals at a given facility would result in facility-level emissions below the 2.5 ton per year threshold. In either case, EPA's proposal would result in the loss of TRI information that may have been used in Arizona's modeling. Based on the analysis, Pechan determined that EPA's proposal would not have affected the State's modeling for 22 of the 23 SIC codes that have been targeted for regulation. However, EPA's proposal would result in the loss of the Form R information for a single facility (Ashland Distribution Company) that was used to identify SIC code 5169 for potential regulation.

Additional analysis indicates that there are two major reasons why this SIC code could ultimately be excluded from the State's program. The first reflects the likelihood that implementation of the State's program will result in no SIC code 5169 facilities being required to prepare a permit revision. There are two reasons supporting this probability: (1) existing sources are not expected to have modifications that result in emission increases exceeding *de minimis* thresholds; and (2) any new SIC code 5169 facilities that come on-line are not anticipated to have emissions that exceed the thresholds required for preparing a minor source permit revision.

Pechan asserts that modifications to existing sources are likely to result in emission changes that are below HAP program *de minimis* thresholds. For methylene chloride, which is the only HAP that Arizona identifies in SIC code 5169 with a potential for health impacts, the *de minimis* emission threshold is defined as low as 20 pounds per hour (Weston, 2005). Based on EPA's

default temporal activity profile for organic chemical storage/transport, it is assumed that emissions activity for methylene chloride distribution occurs 24 hours a day, 365 days per year (Stella, 2002). The EPA default profile also indicates peak hourly activity that is 50 percent higher than average hourly activity.[13] Therefore, Pechan assumes that peak emissions of 20 pounds per hour equate to average annual hourly emissions of 13 pounds per hour. When multiplied by EPA's assumption of 8,760 hours per year, 57 tons is the annual equivalent to the facility's hourly *de minimis* emissions for this HAP (i.e., 13 pounds per hour x 8,760 hours = 113,880 pounds / 2,000 pounds per ton = 57 tons). Because this represents more than 50 times the emissions level for the highest methylene chloride emitting SIC code 5169 facility in Arizona, it is highly unlikely that a modification of an existing SIC code 5169 facility will result in an exceedance of the *de minimis* methylene chloride threshold.

In addition, Pechan believes that new SIC code 5169 facility HAP emissions are likely to be below Arizona's HAP program eligibility thresholds. This assertion is based on the fact that there are only two current SIC code 5169 facilities with 2002 HAP emissions that would be affected by HAP program requirements if they were new facilities.[14] Furthermore, each of these facilities have HAP emissions that barely exceed the new facility HAP program thresholds and 2002 TRI data for SIC code 5169 indicate that these facilities emit HAPs at levels that are within 10 percent of the highest emitting facilities nationwide. When coupled with the emission reduction potential of a recent EPA MACT standard that affects SIC code 5169 facilities,[15] Pechan concludes that any new Arizona SIC code 5169 facilities are unlikely to emit HAPs above new facility program eligibility thresholds.

The second major argument why SIC code 5169 may ultimately be excluded from the State's program is that there has been a long-standing debate over the TRI reporting requirement for this SIC code. The National Association of Chemical Distributors (NACD) has argued that EPA erred in 1996 when it added this SIC code to the TRI reporting universe. In particular, NACD refutes statements made in the 1996 proposed rule that explain EPA's rationale for including this SIC code. The 1996 rule states that the "activities of this industry—handling of chemicals—and its involvement with TRI chemicals are very similar to those of the manufacturing universe already subject to TRI reporting," and will "result in a significant amount of new toxic chemical release information to the public" (61 FR 33588, 1996 at pg 33613).

As indicated in Table 6, chemical manufacturing releases are consistently more than 500 times greater than chemical distribution releases. In addition, an NACD analysis of the historical data concluded that the majority of releases attributed to chemical distribution are actually from facilities that are more properly characterized in other SIC codes such as chemical

[13] The EPA temporal profiles also indicate an even distribution of activity for each day of the week and each month of the year.

[14] New facilities with emissions of one or more HAPs of at least 1 ton per year, and/or new facilities with total HAP emissions of at least 2.5 tons per year are subject to Arizona's new HAP program requirements. The two current facilities that emit at levels above these thresholds are not subject to program requirements.

[15] The Organic Liquid Distribution MACT requirements include: applying control devices to storage tanks and transfer racks to meet designated emission reduction standards; implementing a leak detection and repair program for pumps, valves and sampling connections; vapor tightness certification for cargo tanks and tank cars; and work practice standards (69 FR 5038, 2004).

manufacturing.[16] Therefore, NACD has advocated for removal of TRI reporting for SIC code 5169 facilities based on the assertion that EPA's rationale for such reporting is unfounded.

Table 6. Comparison of TRI Release Data for Chemical Manufacturers and Chemical Distributors

	1998	1999	2000	2001	2002	2003
Chemical Manufacturers	743.0	722.9	697.0	581.2	573.2	554.4
Chemical Distributors	1.5	2.0	1.5	1.5	1.3	1.3

Source: NACD, 2005; values are in millions of pounds.

3. Delaware Department of Natural Resources and Environmental Control (DNREC)

The State of Delaware's DNREC used TRI data to identify a dioxin disposal problem at a DuPont facility and to ultimately negotiate plant dioxin reductions of 90 percent by 2007 (Frank, 2006 at pg. 4). EPA's proposal would have no effect on this data use because dioxins are excluded from Form A reporting eligibility.

4. New York State Department of Environmental Conservation

Using 1990 TRI data, the State of New York identified 400 facilities that generate 95 percent of the State's toxic chemicals for the purpose of targeting inspection, enforcement, monitoring, and pollution prevention planning efforts (Frank, 2006 at pg. 4).[17] Pechan conducted research into New York's current approach for prioritizing facilities for pollution prevention planning. Current guidance indicates that the facility selection process has been expanded to include all of the following criteria:

- Multi-program regulatory activities;
- Quantities of toxics generated and/or released;
- Environmental and public health impacts;
- Compliance history/enforcement issues;
- Known/potential remediate problems;
- Likelihood of success/potential for reductions;
- Clean Air Act requirements;
- Mandates/internal concerns;
- External concerns;

[16] In particular, an NACD report states the following with respect to this issue: "EPA should establish a clearer definition of those facilities that are required to report under the chemical distribution industry code, SIC code 5169. NACD believes that EPA should include only those facilities where the storage, repackaging, and handling of chemicals for wholesale distribution are its primary functions. On-site or off-site reclamation is not a typical chemical wholesale distribution operation. EPA's own data show that the overwhelming majority of SIC Code 5169 facilities that report releases do not perform reclamation. The ones that do are typically very limited in number (between 2 and 3 facilities each year) and without exception report very high amounts of toxic releases. NACD therefore believes that their inclusion within SIC Code 5169 skews the data on the industry's collective performance, which offers decreased public benefit" (NACD, 2005 at pg. 14).

[17] New York later updated the facility list using 1996 TRI data.

- Corporate attitude/commitment;
- Department resources; and
- Commercial facility (Werner, 2001).

With respect to the quantities of toxics generated and/or released criterion, the State guidance states that "consideration must be given to the quantities of ... Toxics Release Inventory (TRI) chemicals released to all media." Because the results of an analysis that uses the 1990 list of facilities and TRI data may be unrepresentative of the impacts on the current State program, Pechan analyzed the effect of EPA's proposal by computing the percentage of New York 2003 reporting year releases that would no longer be reported to the TRI.[18]

Table 7 presents the results of the analysis, which indicate that less than 1 percent of total releases will become newly Form A eligible under EPA's proposal. Pechan notes that TRI releases are only 1 of the 12 criteria that New York uses to identify pollution prevention program facilities.

Table 7. New York Impacts of EPA's Proposed TRI Reform Regulations

2003 Reporting Year Release Quantities (pounds)			% Reduction from Current Form A Eligible	% Reduction from Newly Form A Eligible
Total Releases	Current Form A Eligible*	Newly Form A Eligible		
New York				
47,927,191	27,854	437,745	0.06%	0.91%

* Reporting year release quantities that are currently Form A eligible based on the 500 pound ARA threshold.

5. State of Maine Department of Environmental Protection

In comments submitted to the docket for EPA's proposed rulemaking, Maine's Department of Environmental Protection asserts that "the proposed changes would result in Maine losing almost 70% of our TRI inventory; in effect, we will lose the ability to track 70% of our Toxic Release data" (Littell, 2005 at pg. 1). Maine's comments also note that "because Maine has a Toxics Reduction Program centered on public accountability, this proposal would significantly curtail what the public can review" (Littell, 2005 at pg. 1). Pechan's research identified that Maine's Toxics Use and Hazardous Waste Reduction Law requires participation by all facilities that are required to report under EPCRA Section 313 if; (a) they have 10 or more full-time employees; (b) they are categorized in certain specified SIC codes; and (c) they manufacture, process, or otherwise use a toxic chemical in excess of EPCRA threshold quantities, which are 25,000 pounds per year for quantities of toxic chemicals "manufactured" or " processed" and 10,000 pounds per year for toxic chemicals "otherwise used" (Maine, 2006). The State's guidance goes on to clarify that "both Form R and Form A filers are subject to the State of Maine Toxics Law." Therefore, EPA's proposal would not appear to result in any direct effects on Maine's Toxics Reduction Program.

[18] This analysis assumes that all newly eligible facilities choose to use Form A.

Pechan also performed an analysis to determine the percentage of total toxic chemical releases that would no longer be reported on Form R under EPA's proposal. Table 8 displays the results of this analysis, which indicate that less than 0.7 percent of total releases would become newly eligible for Form A reporting.

Table 8. Maine Impacts of EPA's Proposed TRI Reform Regulations

2003 Reporting Year Release Quantities (pounds)			% Reduction from Current Form A Eligible	% Reduction from Newly Form A Eligible
Total Releases	Current Form A Eligible*	Newly Form A Eligible		
Maine				
9,341,698	2,736	63,111	0.03%	0.68%

* Reporting year release quantities that are currently Form A eligible based on the 500 pound ARA threshold.

6. New Jersey Firemen's Mutual Benevolent Association

The New Jersey Firemen's Mutual Benevolent Association has stated that firefighters use the TRI "to prepare for accidents or fires at chemical plants, refineries, and other sites" (Frank, 2006 at pg. 4). Although it does provide other chemical information, the focus of the TRI program (required by Section 313 of EPCRA) is on releases, hence the name, Toxics Release Inventory. The TRI reporting requirements are targeted at certain sectors and facilities that meet specific reporting thresholds. For the 2003 RY, 23,811 facilities reported to EPA's TRI Program (EPA, 2006b).

Section 311 of EPCRA requires facilities that have material safety data sheet (MSDSs) for chemicals held above certain quantities to submit either copies of their MSDSs or a list of MSDS chemicals to their designated State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and local fire department. Under EPCRA Section 312, these facilities must submit annual chemical inventory reports to these entities. These reports are required to contain the following information:

- the chemical name or the common name as indicated on the MSDS;
- an estimate (in ranges) of the maximum amount of the chemical present at any time during the preceding calendar year and the average daily amount;
- a brief description of the manner of storage of the chemical; and
- the location of the chemical at the facility.

EPA has estimated that about 550,000 facilities are covered by the EPCRA Section 311/312 requirements (EPA, 2000).

It is not clear why New Jersey firefighters would use TRI data for emergency planning when an entirely different program (EPCRA Section 311/312) was developed to provide firefighters and

others with data for this planning. This is especially true given the much smaller scope of the TRI program relative to the Section 311/312 emergency planning program (24,000 facilities reporting under TRI versus 550,000 facilities reporting under 311/312). Data providing the quantity and location of all hazardous substances is most directly relevant to emergency planning, as designed by Congress in 311/312. In contrast, knowledge about the release quantities of a small subset of the hazardous chemicals and no location information is much less useful. One possible explanation for the firefighter interest in TRI data is that EPA compiles TRI data in a searchable on-line national database (TRI Explorer), but does not provide a similar database for the 311/312 data. However, EPA has also developed the Computer-Aided Management of Emergency Operations (CAMEO*fm*) software to support access to emergency planning data. EPA has also developed Tier2 Submit 2005 to facilitate electronic data reporting under 311/312. Tier2 Submit provides annual chemical inventory data export capability into CAMEO*fm*. Twenty-five states are accepting Tier2 Submit information from facilities for the 2005 reporting year (New Jersey is not participating).

Given the fact that EPCRA 312 annual chemical inventory reporting was designed to support emergency planning for firefighters and that this reporting is of greater scope than the TRI reporting program, it is not reasonable to assert that reductions in TRI Form R reporting would impact New Jersey firefighters' ability to plan for emergency response to chemical incidents. In addition, as noted in the analyses of other TRI data use examples, the information that would no longer be reported on Form R under EPA's proposal represents a very small percentage of the total currently reported information.

7. Texas Natural Resource Conservation Commission (TNRCC)[19]

In 1992, TNRCC developed "Clean Industries 2000" under the Clean Texas program. The Clean Industries 2000 program was a voluntary pollution prevention program in which members pledged to reduce hazardous waste generation and/or TRI chemical releases by 50 percent by year 2000 (Davis, 2006 at pg. 5). The reduction target was measured relative to 1987 levels. Pechan was unable to analyze the effect of EPA's proposal on the Clean Industries 2000 program because it involved use of past TRI data. As described below, however, Pechan used 2003 TRI data to analyze how a hypothetical similar Texas program would be affected by EPA's proposal.

Based on Form R reports, Texas had TRI releases of more than 274 million pounds in 2003. Assuming a 50 percent reduction target for all TRI releases, 137 million pounds would represent the maximum potential reductions from 2003 levels. Pechan then computed the TRI releases associated with Form Rs that are already eligible for Form A reporting based on the 500 pound non-PBT ARA threshold (approximately 91,000 pounds), and computed a maximum reduction of about 45,500 pounds associated with these forms. Pechan also computed similar values for the Texas Form Rs that would be newly Form A eligible under EPA's proposal. As indicated by Table 9, the maximum potential reductions from these forms are approximately 700,000 pounds, or 0.5 percent of the total baseline target reduction of 137 million pounds.

[19] TNRCC was succeeded by the Texas Commission on Environmental Quality.

Table 9. Impacts of EPA's Proposed TRI Reform Regulations on Hypothetical Texas Clean Industries 2003 Program

Release Quantity Reduction Targets (pounds)			% Reduction from Current Form A Eligible	% Reduction from Newly Form A Eligible
Total Releases	Current Form A Eligible*	Newly Form A Eligible		
		Texas		
137,010,544	45,529	691,828	0.03%	0.50%

* Reductions associated with release quantities that are currently Form A eligible based on the 500 pound ARA threshold.

8. EPA Office of Health Research

The Attorneys General comments summarize a TRI data use example of an EPA study of differences in chemical releases by ethnicity and income (Frank, 2006 at pp. 5-6). The comments cite the EPA's 2003 TRI Data Use Report as their source for information on this data use (EPA, 2003). The 2003 EPA report states the following:

> *Researchers from EPA's Office of Health Research published a study of national and regional differences in county-level TRI chemical releases to air according to the ethnicity or race and household income of the populations. Using the "Population Emissions Index," a population-weighted average release for each county, the study found that all minority groups except Native Americans tend to live in counties where levels of TRI chemical releases to air are higher. The data also suggest that household incomes tend to be higher in counties with higher TRI chemical releases to air* (EPA, 2003 at pg. 13).

This report lists the reference to this study as the 1997 report titled "Economic Analysis of the Final Rule to Add Certain Industry Groups to EPCRA Section 313." Pechan's review of this study indicates that it determined that both existing and new reporters to the TRI (i.e., facilities required to report for the first time under EPA's 1997 rule) are located in areas with lower incomes and areas with significant minority populations. However, contrary to the description in the 2003 Data Use Report, this study did not analyze release data, but rather facility locations.

Pechan did not perform an evaluation of the impact of EPA's proposal on this example because the data use cited in the 1997 report (1) does not match the description in the 2003 EPA report; and (2) relies on a metric (TRI facility location) that is not expected to be an accurate predictor of health risk impacts relative to the metric described in the Attorneys General comments (i.e., air releases).

F. NATIONAL USE OF TRI DATA

Pechan analyzed the impact of EPA's proposal on three examples where TRI data have been used to support national environmental improvement and tax programs.

1. Internal Revenue Service (IRS)

The Attorneys General comments summarize a TRI data use example where the IRS has used TRI data to enforce a tax on chlorofluorocarbons (Frank, 2006 at pg. 6). According to the 1995 EPA TRI Data Use report cited in the Attorneys General comments, the IRS has used TRI data to enforce a tax on multiple ozone depleting substances (ODS), such as chlorofluorocarbons (EPA, 1995). The excise tax, which is designed to discourage use of these substances, applies to domestic sales and stocks of ODS, as well as imported products that contain ODS. Exemptions are made for recycled chemicals, exports, and chemicals used as feedstocks or in manufacturing rigid form insulation. The tax, which was first levied in 1990, increases each year.

As best as could be determined, the IRS reviews the TRI to identify users of taxed chemicals, and not to verify tax amounts (taxes are levied not on releases but on amounts used, imported, and held in inventory). The IRS' use of TRI data would not be affected by EPA's proposal because both Form R and Form A identify the name of the chemicals used by TRI reporters.

2. American Chemistry Council

The American Chemistry Council (ACC), the leading trade organization for the chemical manufacturing industry, provided the following information with respect to use of TRI data in its Responsible Care program: "One way to measure our achievements is to track emissions to the environment....Tracking TRI emissions over time provides an important look at performance trends. TRI data are widely recognized as a key measure of environmental performance. Since 1988, core Responsible Care companies have reduced emissions of core TRI chemicals by 75 percent" (Davis, 2006 at pg. 5). Pechan contacted ACC to obtain information to assess the impact of EPA's proposal on this data use. Although ACC was not willing to share the TRI facility IDs for Responsible Care program participants to facilitate a direct evaluation of new Form A eligibility, ACC asserts that the proposal would not materially affect program reporting (Walls, 2006).[20]

To provide some quantitative measure of potential impact, Pechan conducted an analysis of the reduction in total release quantities associated with increased Form A eligibility for Chemical Manufacturing sector records in the 2002 TRI.[21] Table 10 displays the results of this analysis, which indicate that EPA's proposal results in new Form A eligibility for 0.67 percent of total Chemical Manufacturing sector releases.

[20] ACC also stated their belief that Responsible Care program participants will continue to use Form R to report all required chemicals if EPA's proposal increases Form A eligibility for only a small percentage of their total reports (Walls, 2006).

[21] Chemical Manufacturing sector records defined as records with '28xx' as the primary Standard Industrial Classification (SIC) code; Pechan estimates that Responsible Care program facilities accounted for approximately 13 percent of total Chemical Manufacturing sector releases in reporting year 2002.

Table 10. Impacts of EPA's Proposed TRI Reform Regulations on Chemical Manufacturing Sector Form Rs

2002 Reporting Year Release Quantities (pounds)			% Reduction from Current Form A Eligible	% Reduction from Newly Form A Eligible
Total Releases	Current Form A Eligible*	Newly Form A Eligible		
SIC Code 28				
578,098,640	254,833	3,853,795	0.04%	0.67%

* Reporting year release quantities that are currently Form A eligible based on the 500 pound ARA threshold.

3. TRI HAP Data in Ambient Air Quality Modeling

Comments from the National Environmental Trust (NET) discuss the possibility that a reduction in HAP release data could have a significant impact on ambient air quality modeling. The NET asserts that 28 percent of nationwide HAP-related forms "would contain no data under the proposed certification statement changes" (Natan, 2006 at pg. 3). The NET's comments do not describe how this estimate was derived. To independently evaluate these claims, Pechan analyzed 2003 TRI data to evaluate the national percentage of HAP Form Rs and HAP releases that would no longer be reported under EPA's proposal. Pechan linked EPA's list of HAPs (Huntley, 2005) to the chemicals in the 2003 TRI to identify the existence of more 40,000 HAP Form Rs. Table 11 displays the results of the analysis of EPA's TRI reform proposal, which indicate that 23 percent of HAP-related Form Rs, but only 0.5 percent of HAP releases would become newly Form A eligible. This value does not represent a significant impact on the ability to perform air quality modeling and is certainly less than the uncertainty inherent in such modeling.

Table 11. Impacts of EPA's Proposed TRI Reform Regulations on National HAP Releases

2003 Reporting Year HAP Release Quantities (pounds)			% Reduction from Current Form A Eligible	% Reduction from Newly Form A Eligible
Total HAP Releases	Current Form A Eligible*	Newly Form A Eligible		
National				
1,184,342,210	565,678	5,958,332	0.05%	0.50%

* Reporting year release quantities that are currently Form A eligible based on the 500 pound ARA threshold.

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Senator BOXER. Thank you, Mr. Sullivan.

Mr. Sullivan, do you know that there already are exemptions for small business, several exemptions, from the Toxic Release Inventory program?

Mr. SULLIVAN. Yes. The Chairman refers to under 10 employees are exempt from reporting under TRI. That exemption was based on an analysis that any types of releases and emissions do not amount as significant enough to warrant their inclusion in TRI.

Senator BOXER. There are other exemptions. Are you aware of those?

Mr. SULLIVAN. I am aware only of this more broad small business exemption.

Senator BOXER. Well, let me list you the exemptions.

Mr. SULLIVAN. If the Chairman would allow, there are threshold amounts for use that do exempt all facilities that don't meet these thresholds. Many small businesses are certainly entitled to those thresholds, the same way as larger businesses are.

Senator BOXER. Well, let me read you the exemptions already allowed. Ten or fewer employees. TRI already has a reporting exemption for *de minimis* amounts of toxic chemicals. TRI already allowed facilities that release 500 pounds, 500 pounds of toxic chemicals, including substances known to cause cancer, they can use the Form A. TRI already has several reporting exemptions for different uses of chemicals, and it includes a whole bunch.

The point is here that I know the Administration is a strong supporter of small business, so are those of us in Congress. We are also supporters of the States, and you have 23 States who oppose your position, including some that might surprise you.

The bottom line is here, we are talking about the health of the people. It seems to me if there are specific issues and we could work more closely on that, that won't harm the people, I am willing to look at it. But I don't think any small business person wants their grandkid to get cancer, either. So I think we really need to put the health of the people, No. 1, and reduce the burden on small business. I am always for that.

But I think Mr. Stephenson has pointed out that, and I really appreciate your work on this, and I compliment you for your work on this. Because you are speaking out for the health of all our families, whether we are small business people, like my husband is, or big business people. So I wonder if you could elaborate on your testimony where you say perchlorate tracking or monitoring is important and should be increased. Could you tell us why you feel that way?

Mr. STEPHENSON. While GAO is of course not a science organization, we do have smart people that can look at research. As part of our 2005 study on perchlorate, we analyzed over 80 studies on perchlorate, 25 of which supported a health-based concern. The National Academy of Sciences came out with its study, and while it kind of gave perchlorate a clean bill of health for adults, it recommended more research for pregnant women and children.

We felt, as a way to better inform the public, the least that could be done was for EPA to create a tracking system of some type to better track and help inform the public of perchlorate releases. Citizens can petition to put chemicals into the TRI, and TRI is an

existing reporting mechanism that could be used for perchlorate, in our view, as well.

So we thought that including in TRI that kind of information on a contaminant as controversial as perchlorate wouldn't be labor-intensive for EPA and could easily be done. We had great difficulty identifying those 400 sites in the chart, and we found a lot of missing information between Department of Defense and EPA. That is why we suggested EPA work with DOD in establishing a tracking mechanism for perchlorate. Most of these perchlorate sites are defense industry sites.

So we just felt like there was a lot more that could be done while we are trying to decide if there should be a drinking water standard or not.

Senator BOXER. I have one more question, because I think the health of the American people here just takes a back seat to every other concern, every other concern. You estimate that 3,565 facilities, including 50 in Oklahoma, 101 in New Jersey and 302 in California, would no longer have to report any quantitative information to the Toxic Release Inventory.

Now, could you explain to us how that would happen? I know it is complicated.

Mr. STEPHENSON. We looked at the difference between the existing 500 pound threshold for reporting releases and the new 2,000 pound threshold, and we simply looked at companies that fell between those two thresholds. Companies reporting on the short form—those under 2,000 pounds of release—would have to list the name of the chemicals that they release, but there is no more quantitative information on the extent of that release. So we would simply suggest that requiring more information provides an incentive for companies to reduce their use of these chemicals, rather than providing less information.

Not only that, but we think that, this isn't a burden reduction, per se, and that there are cost savings that EPA is working on through electronic reporting, which the Senator so nicely articulated here, where they already have information available. It is sort of like TurboTax, once you file the first year, you answer a bunch of questions and your tax form comes out. The second year, it is much, much easier.

So a complete analysis, we don't think, was done by EPA. More importantly, when EPA did an expedited rulemaking, they didn't do an adequate, in our view, assessment of the impact on their own Agency on the regional offices, and on the States that use this information. You heard this from several Senators who were former Governors say their States relied on TRI information when they were Governors. So it doesn't appear that EPA did this kind of analysis in supporting this burden reduction rule.

Senator BOXER. So what has basically happened here is, there is this accumulation of these toxics, so that if you say you go from 500 to 2,000, you are just going to miss a whole lot of toxic releases.

Mr. STEPHENSON. Right.

Senator BOXER. You say it is going to result in 3,000 facilities no longer reporting. The problem is, if this was something about how does this make the sky blue, it is one thing. But it is, how does

it impact people's health and lives, especially pregnant women, children and so on. We have so many issues out there.

I want to thank both of you for your points of view. I clearly feel, with the small business community, that we could work together and do something a little bit more acceptable than this. I hope the EPA will, as I understand it, is this final, at this point? Yes. We may have to go and seek some legislation to reverse it.

Mr. Stephenson, your work I find to be really credible. You didn't really have any special interest involvement here, you just went in there and looked at it from an investigative standpoint, and I think your work is very helpful to me and to members of this committee.

Mr. STEPHENSON. We basically used EPA's own rulemaking guidance and just looked to see if they applied it.

Senator BOXER. Yes, well, the thing is when you put politics ahead of science, that is what happens, you get things like this. It is unfortunate, and I thank both of you.

We will ask our third panel to come forward.

I want to welcome our final panel. I want to thank you for your endurance. I know this has been long. But we had to set the stage for your testimony, all of yours.

So we are going to hear from, in this order, the American Lung Association and American Thoracic Society, that is Dr. Balmes first. We are going to move to Gina Solomon, Natural Resources Defense Council. We welcome you. Then Ms. Burger, of the American Library Association, welcome. Mr. Connery, Holland and Hart. Ms. Klinefelter, of the Baltimore Glassware Decorators. We welcome you.

So we will begin you, Dr. Balmes and we will move right down. We are going to give you each 5 minutes, and if we need a little bit of extra time later, we will try to grab it.

STATEMENT OF JOHN R. BALMES, M.D., ON BEHALF OF THE AMERICAN LUNG ASSOCIATION AND THE AMERICAN THORACIC SOCIETY

Dr. BALMES. Madam Chairman and other members of the committee that aren't here, my name is John Balmes. I am a professor of Medicine at the University of California San Francisco and a professor of Environmental Health Sciences at U.C. Berkeley.

I am here to discuss with you my deep concerns about how the scientific basis for air quality standards is being eroded by policymakers in this Administration. I am testifying on behalf of the American Lung Association and the American Thoracic Society. For those of you who do not know, the American Thoracic Society is the professional organization for pulmonary physicians and scientists in this Country.

I am testifying as one of many scientists in this Country who fear that misinformation is replacing scientific knowledge as a basis for policy. I am a pulmonary critical care medicine physician who takes care of patients at San Francisco General Hospital, a public safety net hospital. I know first-hand how debilitating lung diseases like asthma and emphysema can be. Breathing is a fundamental biological process, and a patient with asthma who can't breathe is a person filled with fear.

Air pollution not only causes people with asthma to have difficulty breathing, it can actually kill older people with heart and lung disease. Because air pollution can cause real people to become sick, seek medical care in emergency rooms and hospitals like mine, and even die, it is vital that we adopt air quality standards that are adequately protective of public health, including the health of vulnerable populations, like young children, the over 40 million Americans with asthma, and many older people with heart and lung disease.

In my own work, I have seen ozone cause decreased breathing capacity and inflamed airways in healthy young adults. People with asthma have even greater reactions to ozone.

The air pollution health effects research of the last three decades has transformed our scientific understanding of how real world levels of pollutants cause asthma attacks, acute heart problems and even death. Science comes from the Latin "to know." Based on sound scientific research, conducted in many laboratories and facilities around the world, we know that air pollution is a hazard to public health.

The Clean Air Act is acknowledged to be one of the most successful environmental health statutes enacted by Congress. The Act requires that air quality standards be established to protect public health with an adequate margin of safety. It also mandates that a scientific advisory committee, the Clean Air Scientific Advisory Committee, be established to review research findings to ensure that air quality standards are based on scientific knowledge. The approach enacted in the Clean Air Act has withstood the test of time. The air that many Americans breathe today contains lower levels of the regulated pollutants that were common before the Act was enacted. Much disease, disability and death has been prevented.

I am here to express my alarm that the careful review of research findings that EPA has used to set National Ambient Air Quality Standards is being altered in ways that will weaken the effectiveness of the Clean Air Act. Scientific data can easily be misinterpreted when taken out of context or made to seem so complex a to be virtually meaningless.

That is why the careful translation of scientific data into information that policymakers can use is so important. The EPA compiles the research data on a pollutant like ozone or particles, for which a new air quality standard is being considered in a huge report known as the criteria document.

The role of the Clean Air Scientific Advisory Committee is to review the research findings compiled in this criteria document and to express the certainty of scientific knowledge about what levels of the pollutant cause health effects. EPA staff scientists then prepare a staff paper, or did, that summarizes and integrates the knowledge contained in the criteria document and reviewed by the Clean Air Scientific Advisory Committee.

The primary purpose of the staff paper is to translate scientific knowledge into information that can be used by the Administrator to set an air quality standard. Staff typically recommend a range of values that are based on what is known to be protective of public health with an adequate margin of safety. In my view, the changes

adopted by the current Administration, under the guise of streamlining the National Ambient Air Quality Standard review process, will weaken both the health protection the standards were intended to provide and diminish the scientific basis on which the standards were intended to be based.

We believe that the staff paper is being eliminated because the science underlying protection of public health from air pollution is in conflict with how policymakers in this Administration want to implement the Clean Air Act. There is great peril in ignoring scientific knowledge or censuring scientists. The American people need and deserve accurate presentations and truthful discussions of what we have learned from the research they have supported with their tax dollars, whether it be for health effects of ozone or the causes and impacts of climate change. These are important issues that require difficult policy choices, and we need to start from a clear and unbiased understanding of the science.

We believe that changes made in the National Ambient Air Quality Standard review process diminish the use of scientific knowledge in this process. We believe restoring the staff paper and following science will help ensure that the public health will be protected from air pollution. Following the science is a central wisdom adopted into the Clean Air Act decades ago that has enormously benefited America's health.

Thank you.

[The prepared statement of Dr. Balmes follows:]

STATEMENT OF JOHN R. BALMES, M.D., ON BEHALF OF THE AMERICAN LUNG ASSOCIATION AND AMERICAN THORACIC SOCIETY

Madame Chairman, members of the Committee, I am Dr. John Balmes. I am very pleased to be able to discuss with you today the most recent actions by the Environmental Protection Agency regarding the establishment of National Ambient Air Quality Standards (NAAQS) under the Clean Air Act. I am testifying today on behalf of the American Lung Association and the American Thoracic Society.

I speak to you today from the perspective of both a physician who treats patients with lung ailments and a researcher who studies the effects of air pollution on lung health. I understand the profound impact that air pollution can have on the health and lives of people. I also understand the importance of the review of scientific knowledge required by the Clean Air Act as to what limits to air pollution are necessary in order to protect public health with an adequate margin of safety.

I am here to express my alarm that the careful process for establishing and reviewing National Ambient Air Quality Standards (NAAQS) that EPA has developed to implement the Clean Air is being altered by this Administration in ways that will weaken its effectiveness in the future. This process has proven to be enormously successful over the last three decades at achieving the goal of protecting the public health by improving our Nation's air quality. In my view, the changes adopted under the guise of "streamlining" the NAAQS review process will weaken both the health protection the standards were intended to provide and diminish the scientific basis on which the standards were intended to rely.

THE NAAQS MUST BE BASED ON HEALTH

It is beyond dispute that the "primary" NAAQS standards are to be established exclusively to protect public health with an adequate margin of safety. The primary standard is to be set and revised without taking cost or achievability into account.[1] Further, the standards are to be reviewed and revised, as appropriate, every 5 years based on the latest scientific research and information available that are assembled in a Criteria Document for each criteria pollutant.

Why is this approach so important? Because the authors of the Clean Air Act knew that as our scientific understanding of air pollution evolved, the levels of pro-

[1] *Whitman* v. *American Trucking Association*, 31 U.S. 457 (2001)

tection initially established would be shown to be inadequate.[2] The only reliable and legitimate basis for tightening them would be where science, not cost or politics, found people were being harmed. Because the authors knew that scientific research would be uncertain as to what levels of pollutants would threaten public health, especially for sensitive subgroups like children or people with heart and lung disease, they required the standard protect the Nation's populations with an adequate margin of safety. The concept was to err on the side of safety[3].

The approach enacted in the Clean Air Act has withstood the test of time. The Clean Air Act is considered by most people to be one of the most successful public health and environmental statutes enacted by Congress. Ambient levels of all criteria pollutants have been significantly reduced in spite of significant population and economic growth. Despite predictions, this progress has been achieved without unduly burdening the auto industry or any other sector of the economy. Further, it is estimated that billions of dollars in health and other costs have been avoided as a result of lower levels of ambient air pollution.

However, as predicted long ago, recent studies show that the health effects of particle pollution may be more far reaching than was previously understood. Particulate air pollution can affect the cardiovascular system as well as the lungs, triggering heart attacks and strokes. Lives are shortened not just by days or weeks, but by months or years. Air pollution targets not just the elderly, but also fetuses, infants, children and adolescents. People most at risk are not only those with asthma and other lung conditions, but also those with heart conditions and diabetes. Taken together, the people at risk represent a large fraction of the Nation's population. Effects of ozone and particulate pollution are occurring at even lower concentrations than were previously believed to be harmful—at levels below the current standards.

THE REVISED NAAQS REVIEW PROCESS DIMINISHES SCIENTIFIC INPUT

Prior to the recent changes, the NAAQS process involved: development of a work plan for the review, establishment of review protocols, preparation of a draft criteria document which is subjected to multiple reviews by CASAC and the public, finalization of the Criteria Document, preparation of a risk assessment, also reviewed by CASAC, and finally the preparation and finalization of a staff paper which is also subject to CASAC and public review. All of this is done before a proposed standard is published and ultimately finalized.

Many regard the preparation and finalization of the Staff Paper, which is done by EPA's scientific staff, as the most crucial step. In this step, EPA's scientific staff synthesizes the scientific information that has been reviewed in the Criteria Document in order to assess whether the existing standard meets the requirement of protecting public health with an adequate margin of safety, and, if not, to identify alternative standards that can. By tradition, if not by law, this step has been done by EPA scientific staff who are all civil servants, most with years of experience in interpreting the policy relevance of scientific studies of the health effects of air pollution. Traditionally, the Staff Paper is produced without the interference of politically appointed policy staff most of whom do not have extensive scientific backgrounds.

It is the elimination of the Staff Paper that we fear will lead to the diminishment of science in the standard setting process. The staff paper is to be replaced with a "Policy Assessment" which according to a memorandum by EPA's Deputy Administrator Peacock, "reflect the Agency's views, consistent with EPA's practice in other rulemakings."[4] However, the EPA does not set standards exclusively based on the protection of health using the latest scientific research in any other rulemaking. In sum, a unique standard demands a unique process, not EPA's "usual" practice. We believe the elimination of the Staff Paper is being done precisely because the science underlying protection of public health from air pollution is in conflict with what policy makers in EPA want to do in the implementation of the Clean Air Act. The elimination of the Staff Paper will make it easier for policy staff to fuzz the lines

[2] In 1969 Dr. John Middleton, Director of the National Air Pollution Control Administration testified," We know from the criteria published for sulfur oxides, that at certain levels definite adverse effects occur in the lung. We also know that at a little lower level there are more subtle effects on the action of the lung. . . . But as science progresses, it is very likely we are going to find still other body chemical systems that are being affected, so the no-effect level always corresponds, you might say, to the limitations of scientific knowledge in this area. . . ." Senate Committee on Public Works, Legislative History of the Clean Air Act Amendments of 1970, 93rd Cong., 2d Sess., 1974, p. 1185.

[3] The Senate Committee on Public Works Report states, "Margins of safety are essential to any health-related environmental standards if a reasonable degree of protection is to be provided against hazards which research has not identified.", ibid, p. 410.

[4] See www.epa.gov/ttn/naaqs/memo-process-for-reviewing-naaqs.pdf at p. 2.

in public health protection and present the basis for alternative standards and the alternatives themselves in a way that favors the outcomes they are seeking rather than what the science says is needed. Substituting an Advanced Notice of Proposed Rulemaking for the Staff Paper will put policy makes at EPA and the White House in the driver' seat by enabling them to review and edit before it is reviewed by CASAC and the public.

It is no surprise that the American Petroleum Institute was the only organization to substantially attack the current Staff Paper and recommend its elimination and replacement with an Advanced Notice of Proposed Rulemaking in a letter the to the EPA NAAQS process Work Group.[5] Just one week later, this recommendation was included in the Work Group recommendation and subsequently adopted by Deputy Administrator Peacock.

THE SCIENCE SHOWS THAT THE NAAQS FOR FINE PARTICLES AND OZONE MUST BE TIGHTER

The collision between the where the science is taking the NAAQS standards and where EPA's policy makers want to go could not be clearer when one considers the recently reviewed fine particle standard and the pending review of the ozone standard.

The EPA Administrator's decision regarding the fine particle NAAQS has been highly controversial because the ranges recommended by CASAC proposed tightening the annual NAAQS for $PM_{2.5}$ from 15 micrograms/cubic meter to a level no higher than 14. One alternative included in the Staff Paper included a 12 microgram annual standard.[6] CASAC was so concerned that a failure to tighten the annual standard was outside the "scientifically" justifiable range that it took the unprecedented step of writing the Administrator to ask him to reconsider his decision.[7] While the Administrator has justified his decision based on the "uncertainty" of the scientific studies he considered, the American Lung Association and several States are challenging the decision in court.[8] In our view, given the need for protection of public health with an adequate margin of safety, the failure to tighten the annual standard for $PM_{2.5}$ is not based on the science and is not legal. We believe that the $PM_{2.5}$ Staff Paper's presentation of a suite of alternatives all of which would tighten the fine particles standards was a major embarrassment to EPA policy staff and precipitated the review of the standard setting process culminating in the elimination of the Staff Paper.

The review of the NAAQS for ozone may, again, highlight a conflict between policy makers and the latest science. Recent research clearly shows that adverse effects are occurring at exposure levels below the current standard. This conclusion is clearly reflected in the closure letter issued by CASAC panel on which I serve. There was unanimous consensus that the original conclusion of the second draft Staff Paper that continuing the current standard could be considered a scientifically justifiable alternative was wrong. CASAC judged that there is scientific certainty that health effects of ozone at levels below the current standard occur and substantially impact public health. For example, thousands of people with asthma will have asthma attacks when ozone levels are at the current standard. These attacks can be prevented with a tighter standard. Therefore, I am pleased to see that the final Staff Paper on ozone, which was released last week, adopted most of the suggestions of CASAC and recommended that the ozone standard be tightened.[9] The dialogue between CASAC scientists and EPA scientists during the ozone review led to an improved Staff Paper that is based on scientific knowledge. We know, with certainty, that ozone harms public health at the current standard. We do not need to manufacture uncertainty. We await a final decision establishing an ozone NAAQS standard to see if, this time, sound science will prevail.

THE LEAD NAAQS REVIEW RAISES ADDITIONAL PUBLIC HEALTH PROTECTION CONCERNS

As you may know, the review of the lead NAAQS is the first to be conducted under the new process established by Deputy Administrator Peacock. Because the new process was established after the Staff Paper for lead was already underway, the draft Staff Paper has been publicly released, but will not be revised. A Policy

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[5] Letter from Kyle B. Isakower to Lydia Wegman and Kevin Teichman, March 27, 2006.
[6] See www.epa.gov/ttn/naaqs/standards/pm/data/staffpaper—20051221.pdf.
[7] See www.epa.gov/sab.pdf/casac-ltr-06–03.pdf.
[8] *American Lung Association* et al. v. *Environmental Protection Agency*, U.S. Court of Appeals, D.C. Circuit, Docket No. 06–1411, December 22, 2006.
[9] See www.epa.gov/ttn/naaqs/standards/ozone/data/2007—01—ozone—staff—paper.pdf at p. 6–86.

Assessment will be issued to replace it. However, a controversial proposal from the lead industry has already been inserted into the lead standard review. EPA has announced it is considering the alternative of eliminating lead as a criteria pollutant.[10] This action was first proposed by the lead battery industry to EPA during the review of the NAAQS setting process last summer.[11]

The lead Criteria Document found that lead is dangerous in much lower concentrations than was understood when EPA established the lead NAAQS in 1978. Indeed, the CD found that there is no lead level exposure that is considered safe.[12] Furthermore, the draft Staff Paper found that in 2002 over 13,000 stationary sources were emitting 1,114 tons of lead per year into the air.[13] This included 50 battery production facilities located in 23 States emitting collectively 25 tons per year of lead. Finally, and most alarmingly, the draft Staff Paper found there appears to be " . . . significant 'under-monitoring' near known Pb emissions point sources."[14]

While no one disputes that the reduction of lead air pollution is one of the most significant accomplishments of the Clean Air Act, we do not see the scientific basis for eliminating lead as a criteria pollutant. It would be impossible to assess the impact of lead air pollution on health if lead were eliminated as a criteria pollutant with the attendant reduction in the already inadequate ambient air lead monitoring and the elimination of the periodic review of the scientific research on the health effects of lead air pollution required by the Clean Air Act.

The battery industry argues that alternative provisions of the Act provide for the continued regulation of lead emissions. Such an argument would substitute an outcome preferred by the battery industry for the sound scientific review mandated by the Clean Air Act. We hope this is not the first of a succession of such efforts as EPA reviews other air quality standards in the future.

RESTORE THE ROLE OF SCIENCE TO THE NAAQS PROCESS

As I have explained above, we believe that changes made in the NAAQS process diminish the role of science in the NAAQS review process. We believe restoring the Staff Paper and following science will help ensure that the public health will be protected from air pollution. Following the science is a central wisdom adopted into the Clean Air Act decades ago that has enormously benefited America's health.

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[10] See www.epa.gov/ttn/naaqs/standards/pb/data/pb—sp—1stdraft—120406.pdf at pp. 1–1 through 1–2.

[11] Letter from the Battery Council International to Lydia Wegman, Office of Planning and Standards, July 12, 2006.

[12] See www.epa.gov/ttn/naaqs/standards/pb/s—pb-cr-cd.html at p. E–16.

[13] See draft Staff Paper, p. 2–6.

[14] See draft Staff Paper, p. 2–47.

Battery Council International

WASHINGTON OFFICE
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 719-7000
Facsimile: (202) 719-7207

July 12, 2006

Via Email

Ms. Lydia Wegman (C504-02)
U.S. EPA
Office of Air Quality Planning and Standards, Health
and Environmental Impacts Division
Research Triangle Park, NC 27711

Re: Review of the Process for Setting National Ambient Air Quality Standards

Dear Ms. Wegman:

We write in response to the request for comments on the referenced document published in the Federal Register on June 12, 2006 (71 Fed. Reg. 33747). The Battery Council International is a trade association whose members include virtually all of the United States lead battery manufacturers and most of its secondary smelters. Its members thus are likely to be directly affected by the NAAQS and the process for their re-evaluation, and especially by re-evaluation of the lead NAAQS.

BCI applauds the Agency for undertaking this review, which is long overdue. We also find sound many of the recommendations in the March report of the NAAQS Process Review Group. We thus urge the Agency to move forward with the proposed reform process.

A more fundamental way to allow a more efficient use of Agency resources, however, would be to delete lead from the list of criteria pollutants. As the current second draft lead Criteria Document properly recognizes, lead ambient air concentrations in the United States have been dramatically reduced since 1970. Continued inclusion of lead as a criteria pollutant is no longer consistent with Section 108 of The Clean Air Act.

This is not to say that air emissions of lead should be uncontrolled, or that no steps should be taken to address public health concerns arising from lead use. Such actions are appropriate. But many other regulatory vehicles exist for meeting these concerns. EPA has adopted NSPS for both lead acid battery manufacturers and secondary smelters, the primary industry users of lead in the U.S.; has adopted NESHAPS for secondary smelters under Section 112; and is in the process of adopting an area source rule under the urban air toxics program for lead acid battery plants. Programs also regulate other sources of lead emissions (e.g., water, waste treatment, land disposal). In addition, the Center for

Disease Control maintains a close watch of the implications of new scientific evidence on lead's health effects, so there is no need for EPA to repeat this activity.

As long as EPA is obliged to consider lead a criteria pollutant subject to NAAQS, it is important that the NAAQS regulatory process be improved. BCI finds the following recommendations of the March report especially important:

1. There is no good reason to prepare a criteria document, a staff report, and a regulatory proposal with preamble. These activities can readily be consolidated into a single background document and proposed rule, as the report recommends, especially if the Agency implements a better process for identifying and characterizing new scientific studies as they are published.

2. One option addressed in the report is the possible publication of yet another policy assessment document, such as an ANPR. (Report, p. 28). This seems counterproductive. Not only would development of such a paper require additional Agency resources, BCI sees little value in the routine publication of a policy assessment independent of the preamble for the proposed regulatory decision.

3. All steps taken to improve greater efficiency should also allow for more meaningful opportunities for public input on EPA drafts and other documents. The experience of the current lead NAAQS review, in which inadequate time has been allowed for review of the excruciatingly-detailed, 1000+ page drafts of the criteria document, must be avoided in the future. Private sector resources are just as constrained as those of government. Simplifying the burdens on Agency staff and CASAC by eliminating unnecessary publications (such as the staff report) should allow time for more efficient and comprehensive, and thus more meaningful, public review, even within the context of tight statutory deadlines for action.

4. BCI strongly endorses the suggestion that responses to public comments on draft documents be more clearly documented. Currently, it is often impossible for those outside the government to determine whether their views have been evaluated and rejected for some at least purportedly-rational reason, or whether they have been wholly ignored. Devoting staff resources to confirming how and why the Agency has responded to public comments is vital if the rulemaking process is not to be a sham. The potential delays referenced at page 29 of the Report as a result of improving the Agency's performance in this regard can be avoided by the elimination of other activities, as the report proposes.

In sum, BCI urges that the Agency proceed to implement an improved NAAQS process, and employ it in the current lead NAAQS proceeding. Doing so would significantly improve a process that to date has been quite unsatisfactory.

If you would like any further information on our views, please contact our Washington counsel, David B. Weinberg, at Dweinberg@WRF.com or (202) 719-7102.

Thank you.

Sincerely,

Timothy J. LaFond
Chair, Environmental Committee

RESPONSE BY JOHN R. BALMES, M.D., TO AN ADDITIONAL QUESTION FROM SENATORS INHOFE AND BOXER

Question. "Clearly the NAAQS process is broken—year after year the EPA has consistently failed to meet deadlines. For example, the SO_2 review that was completed in 1996 was actually due Dec. 31, 1980, almost 15½ years earlier. What problems might have been averted—and how much harm to Americans' health avoided—had a more efficient review process been in place?"

Response. I completely agree that the NAAQS review process takes entirely too long and must be made more efficient. I also agree that if a more timely review of the SO_2 standard had lead to a revised SO_2 standard with a short-term exposure component then a number of exacerbations of asthma might have been avoided. I actually testified before the Clean Air Scientific Advisory Committee (CASAC) in 1995 during the review of the SO_2 standard and argued for inclusion of a short-term exposure. Unfortunately, the Agency's final decision was that "revisions of the NAAQS for sulfur oxides were not appropriate at that time." Thus, no health problems were avoided in the ensuing years.

The American Lung Association (ALA) is extremely interested in a more efficient NAAQS review process. As you are undoubtedly aware, the ALA has sued the EPA repeatedly for failing to meet the 5-year interval requirement for review of NAAQS for criteria pollutants. The ALA welcomes the current Agency effort to streamline the review process.

What the ALA does not support is the elimination of the so-called Staff Paper from the NAAQS review process. This document provided an opportunity for EPA staff scientists and scientists on CASAC to engage in a dialogue about what air quality standard for the pollutant under review would best protect public health based on available scientific knowledge. The Staff Paper has been replaced by "a policy assessment reflecting Agency views" that "will be published in the Federal Register as an advance notice of proposed rulemaking (ANPR)." Such a document will not be an integrated summary of the scientific knowledge base that has been written by EPA staff scientists and vetted by CASAC scientists. In my view, the ANPR will provide an opportunity for politics to trump science in the NAAQS review process, thereby allowing potential harm to the health of Americans.

It is not readily apparent how replacement of the Staff Paper with an ANPR streamlines the NAAQS review process. The greatest delays were due to preparation of voluminous Criteria Documents. These have been replaced by Integrated Science Assessments (ISAs). If high-quality ISAs can be produced in a more expeditious manner by the Agency, then NAAQS reviews should be completed in a more timely manner. Elimination of the Staff Paper was not required to speed up the process.

I hope this answer helps inform your thinking about revisions to the NAAQS review process.

Senator BOXER. Thank you, Doctor.

Dr. Solomon, again, senior scientist at the National Resources Defense Council. Welcome.

STATEMENT OF GINA M. SOLOMON, M.D., M.P.H., SENIOR SCIENTIST, NATURAL RESOURCES DEFENSE COUNCIL

Dr. SOLOMON. Yes, Madam Chairman, Senator, thank you for the opportunity to testify today. I am a physician and a senior scientist at NRDC. I am also an associate clinical professor of medicine at UCSF, University of California at San Francisco.

In my clinic and in my office, I often talk with people directly affected by pollution in their communities. Last week I spoke with a woman named Leslie Warden. She and her husband live in Jefferson County, MO, which is still in non-attainment of EPA's 1978 National Ambient Air Quality Standard. Their son has attention deficit disorder and has struggled in school. Her niece and her nephew were diagnosed with lead poisoning.

According to the CDC, about 310,000 children age 1 to 5 in the United States today are at risk from harmful levels of lead in their blood. CDC also found that neurological effects can occur at even lower levels. Unfortunately, EPA's standard for lead was set some

30 years ago and doesn't account for the newest science. But instead of revising the air quality standard downward, EPA instead suggests eliminating the standard completely.

When Mrs. Warden heard what EPA is doing, she said, "Then why don't they just put it back in gasoline or in paint? They think it's OK to use our children as lead monitors. That would be the only air monitor we would have left in our community, is our children." She is right, because if EPA eliminates the air standard, they will dismantle the National Ambient Lead Air Quality Compliance monitoring system, and then we won't know which counties have lead problems and how high the lead levels are. The first hint of a problem will be when children in our communities get lead poisoning, and that is too late.

Recently EPA announced a new streamlined process, so-called streamlined process for reviewing air standards, and that lead would be the first up under this process. The timing may not be a coincidence. Battery Council International, whose members include virtually all U.S. battery manufacturers and most smelters, asked EPA to eliminate the air standard for lead and also asked for these process changes in July 2006. The lead industry apparently felt that shortcuts through the science would be to its advantage, and they appear to have gotten their wish.

Recently, EPA also changed the reporting thresholds under the Toxic Release Inventory. The changes will mean that more than 5.7 million pounds of chemical pollution, plus 10.5 million pounds of production waste will now go unreported each year. I spoke about this the other day with Linda Bardo. She lives with her family in the community of Curtis Bay in Baltimore, MD. In her zip code, there are seven facilities recently reporting a total of 12,400 pounds of benzene emissions. According to EPA, benzene is the "most significant air toxic contributing 25 percent of the cancer risk" in EPA's newly released National Air Toxics Assessment. Under the new TRI rule, six of those seven facilities in her community would no longer be required to report any benzene emissions. In fact, benzene emissions would drop by more than a third.

So these aren't small businesses. These are petroleum giants. These include companies like Hess, BP, Citgo, Sunoco and Motiva. So when Mrs. Bardo learned about the TRI reporting change, she asked me to tell you, "These companies may complain because they have to fill out some paperwork. But our community has high asthma rates, high cancer rates. For them to say they don't want to do the paperwork, that's disgusting to me, it makes me sick."

Under another EPA proposal, the petroleum bulk storage facilities in Mrs. Bardo's community could also evade more protective MACT standards and abandon Federal monitoring, record keeping, reporting and even permitting requirements. This proposal could increase releases of toxic chemicals into these communities by tens of thousands of pounds each year. The elimination of information doesn't stop with air pollutants. In December, EPA issued a rule saying there will be no more requirements to test drinking water for perchlorate.

That is in the face of a recent CDC study which showed that among women with low iodine intake, very low levels of perchlorate exposure, within the range that is measured in the general U.S.

population, are associated with a 30 percent drop in thyroid hormone levels. That is significant because slight decreases in thyroid hormones during pregnancy, even within the so-called normal range, are associated with decreased intellectual capacity in childhood.

Testing so far shows perchlorate is a huge drinking water threat. It was found in 402 water systems. These collective serve 41.2 million people. Yet only 3.4 percent of public water systems have even been tested. So we have seen only the tip of the iceberg for this contaminant.

Finally, over the past few months, EPA has closed five of its libraries, including the headquarters library which served Mrs. Bardo in Baltimore, and the Region 7 library that served Mrs. Warden in Missouri. The cost of these closures to local communities, it is hard to calculate, since information when you really need it is priceless.

So in closing, it is clear that concerns for the integrity of the science, for protection of public health and for public availability of information are shared by the Chairman and the other members of this committee. We rightly fear a future of communities breathing dirtier air, children exposed to more toxic lead, pregnant women unknowingly drinking thyroid disrupting rocket fuel, scientists sidelined and information vanishing.

Yet I am optimistic that this future can be averted, and I sincerely hope that EPA will heed our combined urging to refocus their efforts where they should be, which is on protecting public health.

Thank you.

[The prepared statement of Dr. Solomon follows:]

STATEMENT OF GINA M. SOLOMON, M.D., M.P.H., SENIOR SCIENTIST, NATURAL RESOURCES DEFENSE COUNCIL

INTRODUCTION

Thank you for the opportunity to submit written testimony to this Committee. I am Gina Solomon, a physician and Senior Scientist at the Natural Resources Defense Council (NRDC) and an Associate Clinical Professor of Medicine at the University of California at San Francisco (UCSF). NRDC is a national, nonprofit, public interest organization dedicated to protecting human health and the environment. We have over 1.2 million members and online activists in all 50 States. I have subspecialty training and expertise in environmental medicine, and have done research, education, and advocacy for over a decade to protect children from lead poisoning, from contaminants in their food, air and drinking water, and from hazardous pesticides.

Almost every day I speak with people—both patients and members of the public—about their health and about risks to their health from environmental pollution. One of the most frequent questions I hear is: "What can I do to protect myself and my family from contaminants in the air, water, food, and in my community?" It's often difficult to answer that question. Many hazards that can affect the health of children and families are not things that individuals can protect themselves from, even with advice from their physician. Contaminants in the air we breathe, or in the water used to make the coffee we drink are things that we have little control over as individuals. It is the responsibility of government agencies such as the Environmental Protection Agency (EPA) to assure that our air and water are safe for the most vulnerable among us, including pregnant women and children.

However, with a little information, people can sometimes take very effective action to protect their community. Physicians can also sometimes take action to warn vulnerable patients or monitor the community for health effects such as lead poisoning. The foundation for scientifically-based action is information. If there is information available about air pollution, local sources of toxic chemicals and contami-

nants in drinking water, people can learn about the problem and take action. If there are resources available in communities on the histories of individual facilities or on the health effects of various chemicals, people can learn and take action. If such data are available to agencies such as EPA, they also have what they need to take regulatory or enforcement action if needed.

Unfortunately, EPA is taking several major steps to eliminate information and decrease health protection from environmental hazards. Six recent draft or final EPA rules will each significantly limit critical information available to scientists, health care providers, communities, and ironically to EPA itself. As a result, children and communities will be left less protected and less able to protect themselves.

ELIMINATING THE AIR QUALITY STANDARD FOR LEAD WOULD PUT CHILDREN AT RISK

The draft EPA Staff Paper reexamining the outdated National Ambient Air Quality Standard (NAAQS) for lead proposes no revisions of the standard—which was set nearly 30 years ago—and instead states that EPA "will evaluate the status of lead as a criteria air pollutant in light of currently available information and assess whether revocation of the standard is an appropriate option for the Administrator to consider."[1]

The news that EPA is considering revocation of the air quality standard for lead was a shock to scientists, children's health advocates, and communities across the country. Lead is one of the best-studied poisons in the world today, and it has been clearly shown to impair children's health in thousands of major scientific studies. Lead affects the brain by impairing neurological development, blunting IQ, and shortening children's attention span.[2] It also affects the kidneys and the cardiovascular system. More recent studies have linked lead exposure to diseases as diverse as osteoporosis, cataracts, and cognitive decline in the elderly.[3] As a clinician who has treated lead poisoned children and adults, I can tell you that this toxic substance has devastating effects on people's lives.

EPA points out that lead levels in the air have dropped significantly since the 1970's when the current lead standard was issued. That is true, and shows the enormous health benefits that can occur with air quality regulations. Yet it is bizarre reasoning to suggest that because regulations have greatly reduced the lead threat, these regulations should therefore be eliminated.

In fact, lead remains very much a problem today. An estimated 310,000 children aged 1–5 in the United States remain at risk from harmful blood lead levels according to the Centers for Disease Control and Prevention (CDC).[4] Furthermore, in a recent review, CDC concluded that "no level of lead in a child's blood can be specified as safe", and that health effects have been demonstrated below the current blood lead threshold.[5] Therefore EPA should be revising the 1978 standard to bring it into line with the current science, which would mean a substantial reduction of the standard.[6]

EPA points out that there are currently only two nonattainment areas for the current NAAQS. The paucity of nonattainment areas is hardly a reason to remove the standard, especially since the 1978 standard is in serious need for revision. If the standard were reduced to one-third of its current level, to 0.5 micrograms per cubic meter (μg/m^3)—as proposed by EPA staff in 1990—and the averaging time were reduced to the first maximum monthly average—which would help control the intermittent high concentrations that contribute to soil deposition and local contamina-

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[1] EPA. Review of the National Ambient Air Quality Standards for Lead: Policy Assessment of Scientific and Technical Information. OAQPS Staff Paper—First Draft. December 2006. p. 1–2.

[2] Ibid p. 3–8 et seq.

[3] Schaumberg DA, et al. Accumulated lead exposure and risk of age-related cataract in men. JAMA. 2004 Dec 8;292(22):2750–4; Stewart WF, et al. Past adult lead exposure is linked to neurodegeneration measured by brain MRI. Neurology. 2006 May 23;66(10):1476–84; Nash D, Magder LS, Sherwin R, et al. Bone density-related predictors of blood lead level among peri- and postmenopausal women in the United States: The Third National Health and Nutrition Examination Survey, 1988–1994. Am J Epidemiol. 2004 Nov 1;160(9):901–11.

[4] Centers for Disease Control and Prevention. Blood Lead Levels—United States, 1999–2002. 54(20);513–516. May 27, 2005. http://www.cdc.gov/MMWR/preview/mmwrhtml/mm5420a5.htm [Visited February 1, 2007].

[5] The CDC blood lead threshold of concern is 10 micrograms per deciliter (μg/dL). Centers for Disease Control and Prevention. Preventing lead poisoning in young children: a statement by the Centers for Disease Control and Prevention. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service, August 2005.

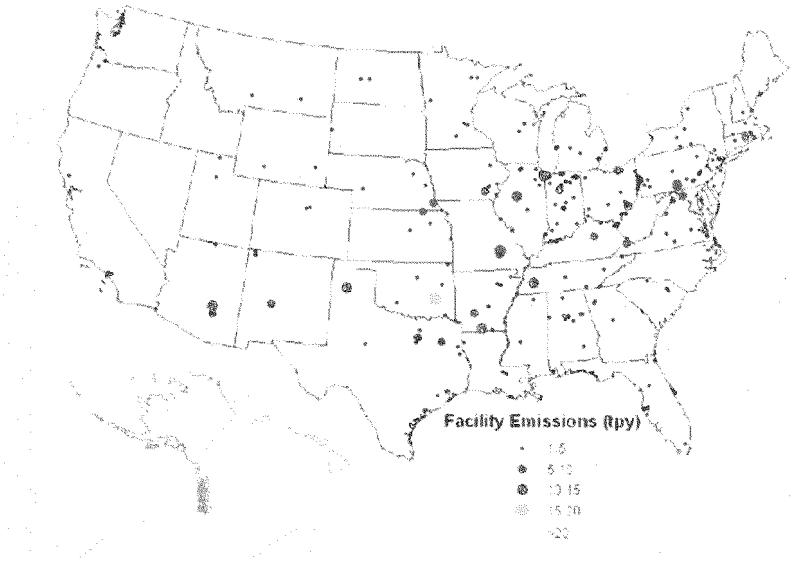
[6] The CDC blood lead level of concern was 30μg/dL in 1978 and the lead NAAQS was set at that time to maintain children's blood lead levels below 30. Today the CDC's level of concern is 10 μg/dL.

tion—there would be 32 nonattainment areas as calculated in EPA's staff paper.[7] This is hardly reassuring, and indicates that the air quality problem with lead is still very much with us today.

According to EPA there are about 13,000 facilities in the U.S. that emit lead to the atmosphere.[8] Facilities that emit more than one ton of lead per year are mapped in Figure 1. EPA also lists 36 different source categories ranging from battery manufacturing facilities to cement kilns each of which pollutes the air with more than five tons per year of lead.[9] The EPA Staff Paper mapped lead emissions by county nationwide and demonstrated that there are still substantial airborne lead concentrations in many parts of the country (Figure 2). Furthermore, EPA's review of the lead NAAQS Compliance Monitoring network revealed that "only 2 of 26 facilities (both lead smelters) identified as emitting greater than 5 [tons per year] have a [lead] NAAQS compliance monitor within 1 mile."[10]

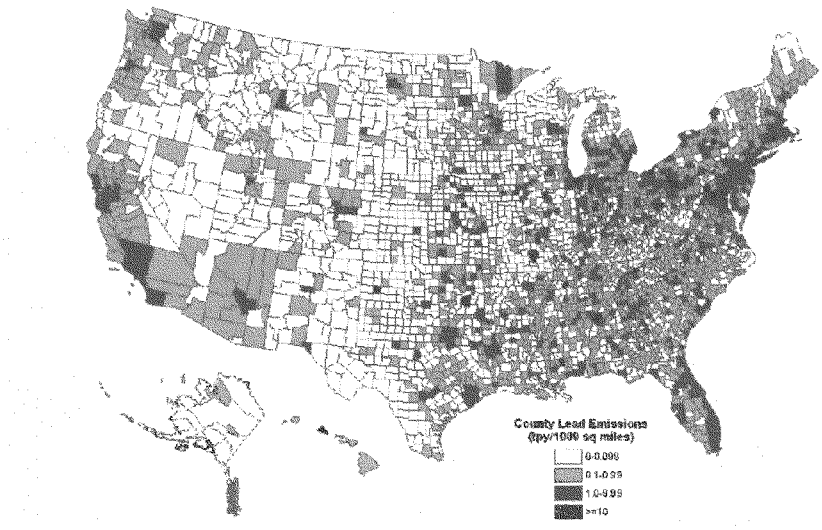
Figure 1: Industrial Sources Releasing More than One Ton per Year of Lead into Air, 2002

(Source: EPA Lead NAAQS Staff Paper, December 2006)



[7] EPA Lead NAAQS Staff Paper. p. 2–37.
[8] EPA Lead NAAQS Staff Paper. p. 2–6.
[9] Ibid. Table 2–3.
[10] EPA Lead NAAQS Staff Paper. p. 2–24.

Figure 2: County-Level Lead Emissions in the United States, 2002
(Source: EPA Lead NAAQS Staff Paper, December 2006)



Jefferson County, Missouri is currently designated as a nonattainment area for lead. The State Implementation Plan (SIP) for this county has been determined inadequate to attain the current NAAQS in 2006; therefore a revised SIP is under development for that area.[11] If the NAAQS standard for lead were eliminated, there would no longer be an incentive for reductions in airborne lead emissions in that county, and the estimated 37,562 people (including 2,164 children) who live within 5 miles of that facility would remain at significant health risk.[12]

Last week I spoke with a woman named Leslie Warden. She and her husband Jack raised their son in Jefferson County, Missouri. They lived for 25 years in the town of Herculaneum less than a mile from the Doe Run lead smelter. Their son Erik, now struggling to complete junior college, has Attention Deficit Disorder (ADD). Her niece and nephew, who lived just one block away, were both diagnosed with lead poisoning. For years Mrs. Warden said that she and all her neighbors assumed that everything was OK in their small town, since "that's what everyone from the government told us". In 1999, when they finally learned about the widespread air and soil pollution, and all the children with lead poisoning, they felt duped and betrayed. When she heard that EPA is now considering eliminating the air quality standard for lead, Mrs. Warden said: "Then why don't they just put it back in gasoline or in paint? They think it's OK to use our children as lead monitors; that would be the only air monitor we'd have left in this community is our children." She is right. If EPA eliminates the NAAQS for lead, they will also dismantle the national lead air quality Compliance Monitoring network. Then we will have no way of knowing which counties have lead problems, and how high the levels are in our air. The first hint of a problem will be when children in our communities get lead poisoning, and that's too late.

CHANGING THE NAAQS REVIEW PROCESS ERODES THE ROLE OF SCIENCE

In addition to the proposal to eliminate the air quality standard for lead, EPA is using the review of the lead NAAQS to debut a new process for reviewing criteria air pollutant standards. This so-called "efficient process" is actually a rough-shod short cut through the science. The new process will significantly reduce public comment, scientific review, and EPA scientific staff input. Instead, the new process is

[11] EPA Lead NAAQS Staff Paper. p. 4–9.
[12] Ibid.

tailor-made to allow political appointees at EPA to have maximum flexibility and discretion in the standard-setting process.

The NAAQS standard setting process has been a model of an EPA rulemaking process that includes careful incorporation of the latest science, and is largely driven by scientific review rather than politics. Due largely to insufficient funding and Agency focus, the process may not be as quick as many of us would like, but it is deliberate, thorough, and focuses on getting the best possible advice from independent scientists on the Clean Air Scientific Advisory Committee (CASAC) and from scientists within the Agency.

The launch of the new "expedited" EPA process in conjunction with the lead NAAQS review is no coincidence. The Battery Council International (BCI), a trade association whose members include virtually all of the United States' lead battery manufacturers and most of its secondary smelters, advocated for exactly these changes in a letter to EPA in July of 2006 (attached). In particular, the BCI letter states that "[t]here is no good reason to prepare a criteria document, a staff report, and a regulatory proposal with preamble." The lead battery industry obviously felt that short-cuts through the NAAQS standard-setting process would be to its advantage when their pollutant came up for review, and they got their wish. The lead industry wasn't the only polluter celebrating the recent changes in the NAAQS standard-setting process; the American Petroleum Institute was also apparently quite involved in recommending this process change.[13] As a scientist, I am deeply saddened when I see the polluters pulling the strings and science sidelined, since I know that the impacts will ultimately be on health at the community level.

The other subtext in the current proposal is that recently at EPA the politics haven't been squaring with the science. The CASAC has twice recently crossed swords with EPA—first over particulate matter, and then over ozone. In both cases, the scientists have urged EPA to recognize the overwhelming scientific evidence in favor of substantially lower standards for these pollutants. In the case of particulate matter, EPA management made the decision to select a standard that is less health protective than the EPA staff and the CASAC recommended. When CASAC protested the EPA decision,[14] EPA appears to have retaliated by decreasing CASAC's role in the standard setting process.

REDUCING TOXICS RELEASE INVENTORY REPORTING WILL LEAVE COMMUNITIES IN THE DARK

As I mentioned previously, one of the consequences of eliminating the NAAQS for lead would be the dismantling of the Compliance Monitoring network, thereby leaving communities in the dark about how much lead is in the air they're breathing. In the same vein, EPA recently promulgated a final rule changing reporting requirements for the Nation's Toxics Release Inventory (TRI). This new rule will allow polluters to release greater amounts of hazardous chemicals while substantially reducing information to communities.

In December EPA published a final rule modifying the monitoring requirements for the TRI with the alleged intent of reducing reporting burdens on regulated facilities. The new rule increases the reporting threshold for non-persistent, bioaccumulative and toxic (non-PBT) chemicals by four-fold, from 500 pounds to 2,000 pounds, with a total cap of 5,000 pounds. Facilities that fall under the threshold for a particular chemical will now be exempt from detailed reporting and allowed to file only a Form A Certification Statement giving the name of the chemical in question but no other data on waste management or releases. The rule also allows facilities that treat or manage up to 500 pounds of a persistent, bioaccumulative and toxic (PBT) chemical, but have zero releases of the PBT chemical to use the shorter Form A.[15]

According to EPA, approximately 9,500 non-PBT chemical reports would be eligible for Form A reporting under the final rule, at a modest savings to reporting facilities of $438 and 9.1 work hours per Form. Meanwhile 2,360 PBT chemical reports would be eligible at a savings of $748 and 15.5 work hours per Form. The 6,670 facilities that could benefit from this rule would save an average of only $885.

According to NRDC calculations, the changes to the TRI will mean that more than 5.7 million pounds of chemical pollution, plus 10.5 million pounds of production-related waste will now go unreported each year. Our analysis shows that a total of 16 chemicals will effectively "disappear" from the TRI as a result of this rule. I was interested to discover that one of the chemicals that will vanish from full TRI re-

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[13] Letter from Senators Boxer, Carper, Clinton, Obama, Lieberman, Lautenberg, and Baucus to Stephen L. Johnson. December 21, 2006.

[14] Letter from Rogene Henderson et al. to Stephen L. Johnson. September 29, 2006. http://www.epa.gov/sab/pdf/casac-ltr-06–003.pdf [visited January 31, 2007].

[15] Dioxin is exempt from this provision. 71 FR 76932.

porting is methyl isothiocyanate. When methyl isothiocyanate is exposed to sunlight it breaks down to methyl isocyanate (MIC).[16] Those who know their history will recall that the 1984 Union Carbide chemical disaster in Bhopal, India—a disaster that killed thousands of people and injured tens of thousands[17]—was the impetus for the passage of the Emergency Planning and Community Right to Know Act that originally created the TRI.[18] The chemical responsible for the disaster in Bhopal was MIC. It is hard to escape the irony that EPA's decision to limit the TRI causes the chemical that essentially created the TRI to disappear from the national reporting system.

One of the main arguments for the change in TRI reporting was to alleviate burdensome paperwork for small businesses. However, a recent independent analysis of the data discovered that the industries that will benefit most from this rule will be large corporations that can easily afford to do the paperwork.[19]

I spoke about this issue the other day with a woman named Linda Bardo, who raised her son in the small community of Curtis Bay, in Baltimore, MD. In her zip code there are currently seven large facilities reporting a total of 12,400 pounds of benzene emissions. Benzene is known to cause leukemia in humans and is an extremely dangerous chemical to breathe. Under EPA's new rule six of the seven facilities would no longer be required to report any of their benzene emissions. Almost one-third (3,500 pounds) of the benzene air emissions to this small community would "disappear". These companies aren't small businesses. They are petroleum giants such as Amerada Hess Corp., BP Products North America, Citgo Petroleum Corp., Sunoco, and Motiva. When Ms. Bardo learned about the TRI reporting change, her response was:

> I realize that these companies offer many employment opportunities to many people. That part is great. But I just do not feel it is too much to ask that they be required to complete paperwork relating to these emissions, especially since most people in Curtis Bay and Brooklyn live within 1–5 miles of these facilities. These companies may complain because they have to fill out some paperwork, but our community has extremely high asthma rates; high cancer rates. We have to do everything we can to improve the air that we breathe here in Curtis Bay. For them to say they don't want to do the paperwork—that's disgusting to me, it makes me sick!

TRI is one of the most important tools available to concerned citizens and community groups that advocate for a healthier environment. Since most of the TRI data are not easily accessible through other sources (and may in many cases be available nowhere else) EPA's changes to the TRI program infringe the public's right to know about chemical releases in their communities. While 5,000 pounds of waste management or 2,000 pounds of releases may not sound significant on a nationwide basis, the cumulative amounts can have health significance for communities located near industrial areas where multiple facilities may no longer be required to report releases of numerous TRI chemicals. Linda Bardo in Baltimore, MD pointed out: "It's not like we have one plant in our town to deal with. This one has a blip here and that one has a blip there, but when you put them together it's terrible. We still will have to deal with every type of emission that comes out of every one of those plants."[20]

The neighborhoods most affected will be poor and largely minority communities. In its analysis of the impacts of the proposed rule EPA estimated that minorities make up 31.8 percent of the general U.S. population, 41.8 percent of the population within one mile of facilities that filed at least one Form R in 2003, and 43.5 percent of the population within one mile of facilities that would have qualified for Form A reporting in 2003. EPA also estimated that individuals under the poverty level make up 12.9 percent of the U.S. population, 16.5 percent of the population within one mile of facilities that filed at least one Form R in 2003, and 17.0 percent of the population within one mile of facilities that would have qualified for Form A reporting in 2003 as a result of the proposed rule. It did not present a revised analysis

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[16] California Department of Pesticide Regulation. Evaluation of Methyl Isothiocyanate as a Toxic Air Contaminant. California Environmental Protection Agency, Sacramento, CA, August 2002. p. XV.

[17] http://www.bhopal.net/death-toll.html (visited February 1, 2007].)

[18] Emergency Planning and Community Right-To-Know Act of 1986, Pub. L. No. 99499, 100 Stat. 1728, codified at 42 U.S.C. sec.11001–11050 (1994)

[19] National Environmental Trust. EPA's Proposed TRI Rule Changes Benefit Large Companies and Provide No Burden Reduction for Small Businesses. Washington, DC. December 2006. http://www.net.org/proactive/newsroom/release.vtml?id=29162 [visited February 2, 2007].

[20] Personal communication, Linda Bardo, Baltimore, MD. February 1, 2007.

for the final rule.[21] It appears that the executives that operate these facilities do not live downwind from them.

Last Thursday I spent some time talking with Mr. Duncan McKee, a gentleman who lives in a community in Los Angeles just down the street from a number of polluting industries. He has lived in this community for 49 years, and has a daughter who spent a significant part of her childhood there. There are three facilities near Mr. McKee's home, Distinctive Appliances Inc., Hill Brothers Chemical Co., and Lansco Die Casting Inc. that would no longer report any emissions under the new TRI rules. Currently, these facilities release or dispose of diisocyanates, ammonia, and copper. In addition, there is a large battery manufacturing facility near his house. He told me: "The neighbors know that the facility burns plastic and rubber casings; when that's going on, just one whiff of the air and you get a splitting headache." When he heard about the proposal to change the TRI reporting threshold he said: "To eliminate this limit would open the door for companies to pump out even more than they do currently." He pointed out that there are families with children living within 500 feet of the battery manufacturing facility in his neighborhood, and there are 26 schools within 4 miles. Apparently the fine dust released from this facility is "stuff that you really can't get away from—it penetrates your house, kids are breathing it in, and kids get it on their hands and in their mouths." Twelve people within two square blocks are currently suffering from cancer. Children in the neighborhood have leukemia and Hodgkin's lymphoma. They don't know if the cancer is from the local polluters, but people in the community are worried and they say that the government does not have strong enough standards or strong enough enforcement of the standards that are already on the books.

Mr. McKee is not the only person who is angry about what EPA is doing. EPA received more than 122,000 comments on its proposal to cut back on TRI reporting. Of these, 99.97 percent (122,386 comments) opposed the proposal, and only 34 comments (of which 29 were from industry organizations) favored it. Opponents to the EPA changes included over 300 public interest organizations, 66 public health professionals and organizations, 46 labor organizations, 48 researchers, 8 religious leaders and organizations, and 21 financial investors.[22] Among those submitting public comment to EPA was D. Radfor Shanklin, a chemist, research biologist, and physician in Memphis, TN. He wrote to the EPA saying that "the extent and detail of reporting should be INCREASED not decreased. To do otherwise is to become complicit with the well documented historic tendency of much of big industry to falsify their science, mislead the public, and turn cold shoulders to the harm to environment and health." (emphasis in original).[23]

EPA PROPOSES TO WEAKEN HEALTH PROTECTIONS FOR TOXIC AIR POLLUTION

On December 21, 2006, the EPA Administrator signed a rulemaking proposal to weaken nearly 100 toxic air pollution standards by allowing industrial plants across the country to emit significantly greater amounts of 188 hazardous air pollutants, including numerous carcinogens.[24]

The rulemaking proposal violates Clean Air Act requirements that toxic air polluters achieve the most protective legal standard selected by Congress in the 1990 Clean Air Act amendments—Maximum Achievable Control Technology (MACT). The proposal even allows polluters in nearly 100 industrial source categories to throw off more protective toxic air pollution limits to which they are already subject, and abandon Federal monitoring, recordkeeping, reporting—and in some instances, permitting—requirements to which they are already subject.[25] By evading toxic air pol-

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[21] 71 FR 76940.

[22] OMB Watch. Against the Public's Will: Summary of Responses to the Environmental Protection Agency's Plans to Cut Toxic Reporting. Washington, DC. December 2006.

[23] Letter from D. Radford Shanklin, F.R.S.M. EPA–HQ–TRI–2005–0073–579, Toxic Release Inventory Burden Reduction Proposed Rule, Environmental Protection Agency, January 30, 2006.

[24] The rulemaking proposal was published in the Federal Register on January 3, 2007, and is open for public comment until March 5, 2007. See "National Emission Standards for Hazardous Air Pollutants: General Provisions," 72 Fed. Reg. 69.

[25] It is worth noting that EPA under this Administration proposed a rulemaking also aimed at this aspect of EPA's air toxics regulations, that was designed to incentivize additional reductions in toxic emissions through pollution prevention. See 68 Fed. Reg. 26,249 (May 15, 2003); see also 72 Fed. Reg. at 71. That earlier proposal would have allowed sources to qualify for alternative, less rigorous, monitoring, recordkeeping and reporting requirements by reducing toxic emissions below levels required by MACT. 72 Fed. Reg. at 71. Crucially, however, the earlier proposal would not have allowed sources to increase emissions above levels required by the MACT standards. In other words, it would not have allowed toxic backsliding. EPA's December

lution limits, industrial facilities would be permitted to substantially increase releases of toxic chemicals into surrounding communities by tens of thousands of pounds each year, including highly potent carcinogens, neurotoxicants, endocrine disruptors, and reproductive toxicants. EPA also structures the proposal in such a way that the Federal Government and citizens lose the ability to enforce violations by polluters. The MACT standard process under the Clean Air Act, by contrast, allows the Federal Government, citizens and State officials to enforce all violations.

When word of this harmful, deregulatory plan first circulated within EPA in late 2005, officials at seven out of the Agency's ten regional offices joined in a 9-page memo to protest the proposal, saying that, if implemented, it "would be detrimental to the environment and undermine the intent" of the Clean Air Act (see attached memo).[26] The scathing internal memo also said the rule changes would create a loophole that allows polluters to "virtually avoid regulation and greatly complicate any enforcement against them" and eliminate the ability of EPA and the public to effectively monitor and take action against toxic polluters.[27] Decrying the higher toxic pollution levels allowed by the proposal, the regional officials observed that "[t]he cost of the increased HAP emissions would be borne by the communities surrounding the sources."[28] The regional EPA officials also protested the preparation of the proposed rule without their input and the "reluctan[ce]" by headquarters to even share the draft policy with them, characterizing the slights as part of a "trend" with the current Administration that was "disturbing."[29]

In a second memo from the EPA regional offices to headquarters, dated March 10, 2006, the regions were forced to reiterate the vast majority of their prior objections, after headquarters re-circulated a draft rulemaking proposal that ignored most of the regional concerns (see attached memo).[30] This second memo says: "Most notably, we continue to have significant concerns about the increase in emissions of hazardous pollutants that will likely occur from the revisions to the [existing] policy, as currently drafted."[31] Comparison of the December 2006 published rulemaking proposal, and the December 2005 draft that the regional officials condemned, makes abundantly clear that their objections were ignored.

The Clean Air Act amendments of 1990 required EPA to impose standards for 188 different toxic substances emitted by industrial sources, ranging from benzene and asbestos to chlorine and formaldehyde. Adopting a technology-forcing approach, the law imposed MACT standards on plants that annually emitted 10 tons or more of a single toxic chemical, or 25 tons or more of a combination of toxic chemicals. MACT standards are based on the performance of the average of the top 12 percent of facilities in an industrial sector. Congress intended EPA to identify the emissions levels achieved by the best-performing plants in an industrial sector, and to require the remaining plants to achieve the same performance levels. To date, EPA has issued nearly 100 MACT standards covering some 174 industrial sectors. Prior to issuance of this proposal, EPA projected that the standards collectively would "reduce annual emissions of air toxics by about 1.7 million tons from 1990 levels when fully implemented."[32] These reductions will not be accomplished if EPA's proposal becomes law.

MACT standards typically force plants to slash their toxic air emissions by 95 percent or more. For example, an industrial facility that emitted 100 tons of a combination of toxins might be required to slash its toxic emissions to 5 tons per year. Under EPA's proposed rule, however, that facility can turn around and increase its toxic emissions from 5 tons per year to just below the 25-ton threshold (say, 24.9 tons per year) and still escape controls—while increasing its toxic emissions nearly five fold. Because the proposal weakens all of EPA's nearly 100 MACT standards, a slow-motion public health disaster could ensue in communities located in industrial areas all across the country.

It is crucial to understand the protective, technology-forcing structure of the MACT program to appreciate just how pernicious EPA's proposal is. Congress intended all facilities in an industry to replicate emissions reductions actually being achieved by the top-performers in that industry when EPA set the standards. Thus,

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2006 proposal abandons that more modest 2003 proposal without explaining why the Agency is abandoning its prohibition on increasing toxins above levels allowed by the MACT standards.

[26] "Regional Comments on Draft OIAI Policy Revisions" (Dec. 13, 2005) ("Dec. 2005 Regional Memo"), at 3. http://www.nrdc.org/media/docs/060403b.pdf.

[27] Id., at 4.

[28] 28 Id., at 3–4.

[29] Id.at 1.

[30] "Regional Comments on Revised Draft OIAI Policy Revisions" (March 10, 2006), at 2 (attached to this testimony).

[31] March 2006 Regional Memo at 2.

[32] http://www.epa.gov/ttn/atw/nata1999/natafinalfact.html [visited January 31, 2007].

take a hypothetical industrial category comprised of 100 facilities, each with 100 tons of toxic emissions prior to any pollution reduction strategies. The top 12 facilities in this hypothetical category are reducing air toxics levels on average by 95 percent, down to 5 tons per year. This leads EPA to establish a MACT standard requiring 95 percent cuts in toxic pollution. The remaining 88 facilities dutifully comply and reduce their air toxics by 95 percent, down to 5 tons per year at each facility. The 12 top performers are required to continue achieving 95 percent reductions. Thus, the MACT standard reduces total toxic emissions from this hypothetical industrial category by 8,360 tons each year (88 x 95 tons per facility).

Under EPA's proposal, however, these 100 facilities would no longer be required to maintain their air toxic levels at 5 tons per year. To the contrary, EPA is claiming that Congress in fact intended all 100 of these facilities to be able to increase their toxic air pollution from 5 tons per year to 24.9 tons per year. This would represent an increase of 1,990 tons of air toxic emissions each year from this entire industrial category. Moreover, these 100 facilities would no longer be subject to the monitoring, recordkeeping, reporting and other compliance obligations associated with the MACT standard. These facilities would escape Federal control of their toxic pollution altogether, and EPA and citizens would lose the ability to enforce violations by these facilities of permit limits adopted at or below 24.9 tons per year.

EPA's rulemaking proposal pretends that this toxic-increasing agenda is exactly what Congress intended when it adopted the 1990 Clean Air Act amendments. Yet EPA identifies no legislative history to support that pretense. Moreover the proposal ignores the statutory definition of MACT itself, with its mandate that toxic pollution standards reflect the performance of the average of the top 12 percent of facilities in an industrial sector. EPA's rulemaking proposal does not even discuss these statutory provisions in the purported legal authority section of its proposal.[33]

The December 2005 Regional Memo reminded EPA headquarters officials that "[i]n 1995, EPA believed that the [existing] policy follows 'most naturally' from the language and structure of the statute, and that allowing facilities to backslide would undermine the maximum achievable emissions reductions mandated by Congress." Observing that the draft proposal had reversed that position without any explanation, the Regional Memo urged EPA headquarters to "more clearly articulate why EPA no longer believes that the [existing] policy flows naturally from the statute." The December 2006 proposal ignores the regions' request and fails to explain how this change comports with the statute itself and with EPA's longstanding interpretation of the statute.

The EPA regional officials also urged headquarters officials to examine closely the issue of toxic pollution increases from industrial facilities currently subject to more protective MACT pollution limits, "to determine whether the [proposal's] likely benefits would be greater than the potential environmental costs." By EPA's own admission, the Agency failed to conduct any analysis to determine what the environmental, energy and economic impacts of the proposal would be.[34] Indeed, it is startling to read EPA's own laundry list of admissions concerning the proposal's impacts that they did not analyze and supposedly cannot quantify or even estimate:

- The Agency disavows any ability to quantify the "environmental, economic, and energy impacts" of the proposal "without knowing which sources will avail themselves" of the proposal;
- EPA admits that it is "unknown" how many sources, if any, would voluntarily reduce their emissions in response to the "incentive" provided by the proposal;[35]
- The Agency admits "it is not known how many sources may increase their emissions from the major source MACT level";[36] and
- EPA admits that it "cannot identify or quantify the universe of sources that would decrease their HAP emissions to below" those levels (10 tons of a single HAP, 25 tons of multiple HAPs) eligible for exemption from MACT under the proposal.

EPA's entire discussion of the "Impacts of the Proposed Amendments" takes up less than half of a column in a three-column Federal Register page—exactly 151 words—without a single factual citation, and without a single document in the administrative record analyzing the environmental, public health, energy or economic impacts of the proposal.

In his written response to questions submitted by Committee members after the April 5, 2006 confirmation hearings, EPA's Acting Assistant Administrator for Air and Radiation, William Wehrum, promised Senator Murkowski that the Agency would determine what the balance was between sources allowed to increase toxic

[33] See 72 Fed. Reg. at 72–73.
[34] See 72 Fed. Reg. at 77.
[35] id. at 72/1, 77/2.
[36] id. at 77/2.

emissions under the proposal, versus sources that EPA believed would have an "incentive" to reduce emissions. As the Agency admissions above reveal, however, EPA has broken that promise and failed to answer those questions. Indeed, the silent administrative record for the proposal confirms that EPA has failed even to research and analyze those questions, notwithstanding readily available factual information indicating (1) which air pollution sources nationwide are subject to MACT standards; and (2) which of those sources have facility-wide toxic air pollution levels below 10 tons for a single toxin or 25 tons for a combination of toxins—the universe of facilities allowed to pollute more by EPA's proposal.

In response to questions submitted by Senator Jeffords following this same hearing, Mr. Wehrum offered the top two factors that EPA believed would "tend to minimize" "in many cases" the pollution increases allowed by the proposal: (1) "some sources want to be a good corporate citizen and would choose not to change current emission levels;" and (2) "[o]ther companies would want to avoid the negative publicity associated with increases in toxic air pollutants."[37] It is noteworthy that the White House Office of Management and Budget deleted these two rationales when reviewing EPA's draft rulemaking, no doubt out of recognition that the rationales are unsubstantiated and absurd.[38] But it is highly telling that both Mr. Wehrum and EPA's original draft advanced these speculative, insupportable justifications so prominently, revealing that EPA's hollow assurances are rooted in faith more than facts or analysis or concern for the public's health.

PERCHLORATE: NOT TESTING WILL NOT MAKE THE PROBLEM GO AWAY

EPA's elimination of public information on important health threats does not stop with air pollutants. A major drinking water contaminant has also recently fallen into what could be called the "wishful thinking approach to environmental protection", where not looking for pollution is confused with actually controlling pollution. Controlling pollution is EPA's job, and in order to control it, they need to look for it.

In December 2006, EPA issued a final rule saying that there will be no further requirements to test drinking water for the endocrine disrupting chemical perchlorate. In 1999, EPA had issued an Unregulated Contaminant Monitoring Rule (UCMR) covering the period 2001–2005, and requiring that all public water systems serving a population greater than 10,000 people sample for perchlorate by December 31, 2002. The rule also required testing of 800 representative small public water systems serving 10,000 or fewer people. Results of the testing were required to be published in the 2003 Consumer Confidence Reports (CCR) provided by water systems to their customers. Despite detections of this chemical in 402 water systems serving approximately 41.2 million people nationwide, and after initially proposing to extend the requirement, EPA has now decided not to require any further testing, saying: "based on public comment and further consideration, EPA has removed the requirement for monitoring perchlorate."[39]

Perchlorates are used in rocket propellants, explosives, road flares, air bags, and other applications.[40] Perchlorates have also been introduced onto soil in fertilizer products imported from Chile.[41] As a consequence of widespread use and water solubility, huge amounts of perchlorate have leached into surface and groundwater used as drinking water sources.

Perchlorate is highly mobile in water and can persist for decades under typical ground and surface water conditions.[42] Research has also shown that perchlorate can concentrate in crops such as wheat, lettuce, alfalfa, and cucumbers, thereby resulting in much greater exposures than might be predicted by water or fertilizer concentrations.[43] Newer data have shown perchlorate contamination to be wide-

[37] The Dec. 2005 Regional Memo observed in admirably understated disbelief that these twin justifications were "unfounded and overly optimistic," and contrary to the experiences of EPA Regional officials. Dec. 2005 Regional Memo, at 4.

[38] EPA–HQ–OAR–2004–0094–0055 (Dec. 20, 2006).

[39] 72 Fed. Reg. at 370.

[40] U.S. EPA Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization Based on Emerging Information (External Review Draft). Office of Research and Development, Washington, D.C. NCEA–1–0503, 1998.

[41] PK Dasgupta, et al. Perchlorate in the United States. Analysis of Relative Source Contributions to the Food Chain. Environ Sci Tech. 40(21):6608–6614.

[42] U.S. EPA Perchlorate Environmental Contamination: Toxicological Review and Risk Characterization Based on Emerging Information (External Review Draft). Office of Research and Development, Washington, D.C. NCEA–1–0503, 1998.

[43] Jackson WA, et al. 2005. Perchlorate accumulation in forage and edible vegetation. J Agric Food Chem. 53(2):369–73.

spread in store-bought fruit, vegetables, cow's milk, beer and wine.[44] Perchlorate has been found in human breast milk, and was found in every one of 2,820 urine samples tested by the CDC.[45]

Perchlorate is a powerful inhibitor of the normal uptake of iodine into the thyroid gland, as well as normal transport of iodine across the placenta and into the lactating mammary gland. Inhibition of iodine uptake can cause decreased production of thyroid hormones. In the developing fetus and infant, adequate levels of thyroid hormones are necessary for normal brain development. Subtle alterations of thyroid hormones during pregnancy—even within the normal range—have been associated with decreased intellectual and learning capacity in childhood.[46]

A recent analysis by CDC scientists of a nationally representative sample of over 2,200 U.S. residents has documented that exposure to perchlorate poses potential health risks to women of child-bearing age and especially to their babies.[47] This study revealed that among women with low iodine intake (as defined by the World Health Organization),[48] very low levels of perchlorate exposure—well within the range found in the general U.S. population today—are associated with up to a 30 percent decrease in thyroid hormone levels; the CDC estimates that 36 percent of U.S. women have iodine intakes in this low range.

The unique physiology of pregnancy and interactions between the mother and fetus makes both especially susceptible to the harmful effects of perchlorate. Recent studies have shown that the cognitive development of the fetus is impaired in mothers with even mild disruptions in thyroid hormone levels, prompting many in the medical community to recommend thyroid hormone replacement therapy for pregnant women who are found to have even sub-clinical hypothyroidism.[49]

Perchlorate has emerged as an important threat to drinking water sources over vast areas of the United States. An NRDC analysis of available 2005 EPA data showed that public water systems in 27 States, the District of Columbia and two U.S. territories have detected perchlorate in treated water or in their water sources, with concentrations ranging from 0.2 to 1,300 parts per billion (ppb). Of 5,369 systems tested, 402 (7.5 percent) detected perchlorate in their water. California has the largest number of systems with perchlorate detections, 159, serving a total population of approximately 31.4 million. Texas and Massachusetts follow with 103 and 57 systems, respectively (Figure 3). These are also the States with the most perchlorate monitoring conducted to date.

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[44] El Aribi, H, et al. Analysis of perchlorate in foods and beverages by ion chromatography coupled with tandem mass spectrometry (IC–ESI–MS/MS). Analytica Chimica Acta. 567(1): 39–47; Food and Drug Administration. 2004. Exploratory Data on Perchlorate in Food. Available at http://www.cfsan.fda.gov/?dms/clo4data.html

[45] Kirk AB, et al. Perchlorate and iodide in dairy and breast milk. Environ Sci Technol. 39(7):2011–2017, 2005; Blount BC, et al. 2006. Perchlorate exposure of the US population, 2001–2002. J Expo Sci Environ Epidemiol. Oct 18, 2006 [Epub ahead of print].

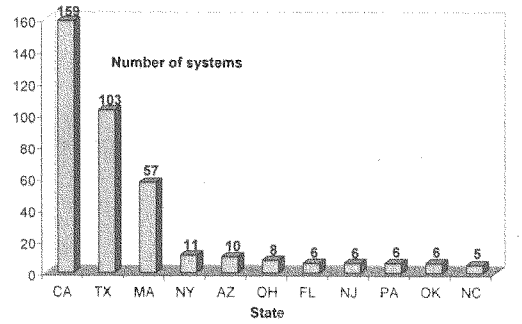
[46] Haddow JE, et al. Maternal thyroid deficiency during pregnancy and subsequent neuropsychological development of the child. New Eng J Med 341:549–555, 1999; Pop VJ, et al. Low maternal free thyroxine concentrations during early pregnancy are associated with impaired psychomotor development in early infancy. Clin Endocrinol. 50:149–155, 1999.

[47] Blount BC, et al. 2006. Urinary perchlorate and thyroid hormone levels in adolescent and adult men and women living in the United States. Environ Health Perspect, Online 5 October, 2006.

[48] World Health Organization (WHO). 1994. Indicators for assessing iodine deficiency disorders and their control through salt iodization. WHO/NUT/94.7. Geneva: WHO/International Council for the Control of Iodine Deficiency Disorders.

[49] Cooper, D. Sub–clinical thyroid disease: consensus or conundrum. Clinical Endocrinology 60:410–412, 2004; Haddow JE, et al. Maternal thyroid deficiency during pregnancy and subsequent neuropsychological development of the child. New Eng J Med 341:549–555, 1999; Pop VJ, et al. Low maternal free thyroxine concentrations during early pregnancy are associated with impaired psychomotor development in infancy. Clinical Endocrinology 50 (149) 1999; Surks M, et al. Subclinical Thyroid Disease. J Am Med Assoc: 228–238, 2004.

Figure 3: States with the Largest Number of Systems with Perchlorate Detections
(Source: NRDC analysis of 2005 EPA data)



Nationwide, 402 water systems have reported finding perchlorate contamination (Figure 4). These systems serve 41.2 million people, or approximately 15 percent of the population served around the country. This is likely to be a low estimate, since less than five percent of community water systems have analyzed their water for perchlorate. Another reason this may be a low estimate is that most of the systems tested their water only a few times. Under EPA rules, public water systems serving more than 10,000 people had to sample once per quarter during a 1-year period if they used surface water sources. Groundwater systems had to test only twice in a 1-year period. Less than one percent of smaller systems were required to test at all. Most States outside of California do not require any testing for perchlorate. Such limited testing is likely to miss pollution that may put vulnerable populations at risk.

EPA's decision to stop testing at a national level for perchlorate means that there will be no current data on tap water contamination with this hazardous chemical. To date, monitoring for perchlorate has been conducted in only 5,369 out of the approximately 158,000 public water systems in the United States—only 3.4 percent of all water systems.[50] Small public water systems serve a total of about 69 million people in the United States, and only 600 such systems (0.4 percent) were required to be tested under the UCMR so far.[51] We have seen only the tip of the iceberg for this contaminant. Testing needs to continue in order to ensure water quality and to inform consumers—especially pregnant women and families with babies. In addition, the new data will be needed in order to inform a drinking water standard that will adequately protect public health.

[50] U.S. EPA (2006) FACTOIDS: Drinking Water and Ground Water Statistics for 2005. http://www.epa.gov/safewater/data/pdfs/statistics—data—factoids—2005.pdf [visited February 2, 2007].
[51] Id. Calculation based on System size table, p. 2.

Figure 4: Locations of Perchlorate Detections in Public Water Systems, and Perchlorate-Contaminated Sites

(Source: NRDC analysis of 2005 EPA data)

CLOSING EPA LIBRARIES SLASHES SCIENCE AND LOSES MONEY

For decades, EPA's network of 26 scientific libraries has served as a gold mine of resources for scientists, community members, and EPA's own staff. Expert librarians made themselves available to locate information, and the library collections themselves contained unique materials, not available elsewhere. I have used EPA libraries in Region 1 and Region 9 on many occasions and consider them indispensable. As a result I was distressed to learn that over the past 4 months EPA has closed five libraries and reduced access at four others, including my local EPA library.[52]

According to press reports, the EPA libraries fielded about 134,000 information requests in fiscal year 2005.[53] Of these, the now-closed EPA regional libraries in Chicago, Kansas City, and Dallas handled more than 32,000 requests for information.[54] Representatives of 10,000 EPA scientists, engineers, environmental protection specialists and support staff protested the closure of the technical libraries in a letter to the chair and Ranking Member of the Senate Appropriations Committee, Interior and Related Agencies Subcommittee in June of 2006.[55]

The library closures have been done under the guise of budgetary restraint, but that argument holds absolutely no merit. The library closures represent a budget cut of about $2 million. However, an EPA cost-benefit assessment in 2004 concluded that the libraries provide "substantial value" to the Agency and the public, and represent a benefit-to-cost ratio of somewhere between 2:1 and 5.7:1.[56]

Unfortunately, much of the information from the closed EPA libraries has apparently vanished or become very difficult to find. These libraries contained scientific journals, EPA documents, and documents from other entities including reports from EPA contractors. Documentation exists that scientific journals were thrown into

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[52] Congressional Research Service. Restructuring EPA's Libraries: Background and Issues for Congress. RS22533. January 3, 2007.

[53] Joal A. Mintz and Rebecca Bratspies. Closing Agency Libraries Deals Serious Blow. South Florida Sun-Sentinel. December 11, 2006.

[54] Robert McClure. EPA gets an earful on library closures. Seattle Post-Intelligencer. January 22, 2007.

[55] Letter from Dwight A. Welch et al. Presidents of 16 Local Unions to Conrad Burns and Byron Dorgan, United States Senate. June 29, 2006.

[56] EPA Office of Environmental Information. Business Case for Information Services: EPA's Regional Libraries and Centers. EPA 260–R–04–001. January 2004.

dumpsters and recycling bins when the libraries were closed.[57] Linda Travers, acting Assistant Administrator for the EPA Office of Environmental Information was quoted in December 2006 assuring that all EPA-generated documents from the closed libraries would be online by January and the rest of the Agency's 51,000 reports would be digitized within two years."[58] That's an ambitious task and I am curious to learn whether the January deadline has been met.

As of June 2006, the National Environmental Publications Internet Site (NEPIS) contained about 13,000 documents, and EPA librarians estimated that there were about 80,000 more documents that needed to be retained but had not yet been digitized.[59] More recent communications from EPA librarians are not encouraging. Librarians indicate that the NEPIS—now integrated into the National Service Center for Environmental Publications (NSCEP) system—is not working effectively for information retrieval.[60] Apparently documents are not appearing even if the search is done by EPA publication number. Furthermore, digitizing between 50,000 and 80,000 reports is a monumental task and there does not appear to be any budget for carrying this out. Rather than saving the Agency money, these closures will cost the Agency in staff productivity, and in money and time for digitization. The cost to local communities is hard to calculate, since information—when you really need it—is priceless.

CONCLUSION

It is abundantly clear that the concerns I have raised for the integrity of the science, for the protection of public health, and for the public availability of information are shared by the Chairwoman and the other members of the Senate Committee on Environment and Public Works. Each of the issues addressed in today's hearing has been raised already in letters and press releases issued by Senators on the Committee. We all are suffering from the pain of foresight. When we look into the future with these EPA rollbacks in place, we see communities breathing dirtier air, children exposed to more toxic lead, pregnant women unknowingly drinking thyroid-disrupting rocket fuel, scientists sidelined, and information vanishing. It's not a pretty future. Yet I am optimistic that many of these bad outcomes can be averted. EPA has not finalized several of these proposals, and some of the actions can be reversed. I am hopeful that after today's hearing EPA will heed our combined urging to re-focus their efforts where they should be—on protecting public health.

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[57] Email from Vicki Simons to Brion Cook, Todd Holderman, Randall Brinkhuis, John Dady. Update on library move. November 17, 2006. http://www.peer.org/docs/epa/06—20—11—EPA—order—recycle—OPPTS—library—materials.pdf [Visited on February 1, 2007].

[58] Tim Reiterman. Closure of 6 Federal libraries angers scientists: Cost-cutting moves at the EPA and elsewhere deny researchers and the public access to vital data, critics say. Los Angeles Times, December 8, 2006.

[59] Letter from Dwight A. Welch et al. Presidents of 16 Local Unions to Conrad Burns and Byron Dorgan, United States Senate. June 29, 2006.

[60] Jeff Ruch. Anonymous reports from EPA librarians. Public Employees for Environmental Responsibility. http://www.peer.org/news/news—id.php?row—id=815 [viewed February 2, 2006].

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

December 13, 2005

MEMORANDUM

SUBJECT: Regional Comments on Draft OIAI Policy Revisions

FROM: Michael S. Bandrowski, Chief
Air Toxics, Radiation and Indoor Air Office
Region IX

TO: David Cozzie, Group Leader
Minerals and Inorganic Chemicals Group
Office of Air Quality Planning and Standards

Thank you for allowing the Regional Offices the opportunity to comment on the draft proposed changes to the General Provisions of 40 CFR Part 63, intended to replace EPA's Once-in-Always-In (OIAI) policy established in a May 16, 1995, memorandum entitled, "Potential to Emit for MACT standards – Guidance on Timing Issues," from John S. Seitz to the Regional Air Directors. A draft copy of the proposed changes, dated November 16, 2005, was received by Region IX on November 30, 2005, and we shared this copy with the Regional Offices. As sub-lead Region for air toxics, we have summarized and consolidated the feedback received from the Regional Offices, and are forwarding these Regional comments and concerns through this memo. Eight Regions provided comments. For your convenience, the original comments from each Regional Office are included as attachments to this memo.

Over the years, many questions and implementation issues have arisen that have initiated the reconsideration of the OIAI policy. The new revisions being planned by OAQPS would essentially negate the original policy, and this change would be codified in the 40 CFR Part 63 General Provisions. This change in policy would have major implications for implementation and enforcement of the maximum achievable control technology (MACT) standards. The Regional Offices, therefore, appreciate the opportunity to review and comment on HQ drafts before the revisions are proposed in the Federal Register for public comment. However, we are disappointed that OAQPS formulated revisions to the OIAI policy without seeking Regional input and was reluctant to share the draft policy with the Regional Offices. This trend of excluding the Regional Offices from involvement in rule and policy development efforts is disturbing. We are

requesting that OAQPS establish a means for Regional input during the development of future policies and rules.

With regard to the OIAI policy, all the Regional Offices that submitted comments acknowledged the need for a change from the 1995 guidance in limited circumstances. For example, if EPA finalizes the delisting of methyl ethyl ketone as a hazardous air pollutant (HAP), it would be logical for EPA to allow existing major sources of HAPs to reevaluate their PTE, excluding emissions of methyl ethyl ketone. Likewise, if a source eliminates, or significantly reduces their use of HAPs, then it would be reasonable for EPA to allow such a source to reevaluate MACT standard applicability. In addition, certain pollution prevention benefits may follow in circumstances where a source has an incentive to obtain actual reductions in emissions of HAPs equivalent to or greater than the level required by the MACT standard with less burden and cost. Overall, the Regions support the intent behind the draft proposed amendments to provide incentive to companies for engaging in emission-reducing activities. Several Regions also explicitly stated their support of revising the policy through a public rulemaking process and encouraging sources to explore different control technologies and pollution prevention options to reduce emissions and potential to emit (PTE). One Region was supportive of the change in policy as drafted. However, all other Regional Offices expressed varying degrees of concern about allowing any source to take synthetic minor limits at any time, for any reason. The concerns are described below, followed by suggestions for addressing these concerns while still encouraging existing MACT sources to take actions towards pollution prevention. Our comments are organized as follows:

CONCERNS
- Health and Emission Concerns
- Permitting and Compliance Concerns

ALTERNATIVE APPROACHES
GENERAL EDITS AND COMMENTS

CONCERNS

Health and Emissions Concerns

1. *Reversal of Position with Inadequate Justification*

The May 16, 1995, Seitz memo regarding potential to emit for MACT standards states:

> EPA believes that this once in, always in policy follows most naturally from the language and structure of the statute. In many cases, application of MACT will reduce a major emitter's emissions to levels substantially below the major thresholds. Without a once in, always in policy, these facilities could "backslide" from MACT control levels by obtaining potential-to-emit limits, escaping applicability of the MACT standard, and increasing emissions to the major-source threshold (10/25 tons per year).

> Thus, the maximum achievable emissions reductions that Congress mandated for major sources would not be achieved. A once in, always in policy ensures that MACT emissions reductions are permanent, and that the health and environmental protection provided by MACT standards is not undermined. (See page 9)

Elsewhere, the Seitz memo states:

> In the absence of a rulemaking record supporting a different result, EPA believes that once a source is required to install controls or take other measures to comply with a MACT standard, it should not be able to substitute different controls of measures that happen to bring the source below major source levels. (See page 5)

While it is true that policy is not set in stone, and that policy decisions may be reversed, the preamble, as currently drafted, does not set forth an adequate rulemaking record to justify this drastic change in interpretation. In 1995, EPA believed that the OIAI policy follows "most naturally" from the language and structure of the statute, and that allowing facilities to backslide would undermine the maximum achievable emissions reductions mandated by Congress. Now, in 2005, EPA is claiming that "there is nothing in the statute which compels the conclusion that a source cannot attain area source status after the first compliance date of a MACT standard" (see page 15 of the draft proposed changes). In order to provide an adequate rulemaking record, the preamble should more clearly articulate why EPA no longer believes that the OIAI policy flows naturally from the statute.

2. *Increased HAP Emissions Resulting from Abandoning MACT Control Levels*

The Clean Air Act requires the maximum degree of reduction in emissions of HAPs from sources subject to the MACT standards. The reductions anticipated through the MACT program will not be achieved through the strategy described in the draft rule proposal. A key concern is that the draft proposal allows facilities to obtain synthetic minor permits after the MACT standard compliance date by taking potentially less protective requirements than the MACT standard would otherwise require them to install. The proposal, as written, would be detrimental to the environment and undermine the intent of the MACT program.

Many MACT standards require affected facilities to reduce their HAP levels at a control efficiency of 95% and higher. In many instances, the MACT requirements could lead to greater reductions when compared to sources accepting synthetic minor limits of 24 tons per year (tpy) for a combination of HAPs and 9 tpy for a single HAP. Clearly, the intent in promulgating MACT standards was to reduce emissions to the extent feasible, not just to the minor source level. However, under the current draft proposal, the reductions that were intended to be achieved through the MACT standards would be offset by synthetic minor limits that allow sources to emit HAPs at levels higher than those allowed by the MACT standard. The cost of the increased HAP emissions would be borne by the

communities surrounding the sources. On pages 15 and 16 of the draft preamble, EPA states:

> A concern has been raised that sources that are currently well below the major source threshold will increase emissions to a point just below the threshold. We believe these concerns are unfounded. While this may occur in some instances, it is more likely that sources will adopt PTE limitations at or near their current levels to avoid negative publicity and to maintain their appearance as responsible businesses.

This statement is unfounded and overly optimistic. Regional experience indicates that sources requesting synthetic minor limits to avoid a MACT standard typically request, and are frequently given, limits of at least 24 tpy for a combination of HAPs and 9 tpy for a single HAP. The Regional Offices anticipate that many sources would take limits less stringent than MACT requirements, if allowed. Thus, the cumulative impact of many "area" sources whose status is derived *after* the MACT compliance date could be significant. This change in policy would offset the intended environmental benefits of the MACT standards. Although the draft changes could serve to alleviate some possible inequity under the current OIAI policy, or encourage some sources to further reduce emissions to achieve area source status, EPA should look closely at this issue to determine whether the likely benefits would be greater than the potential environmental costs. This analysis should occur before the proposal is put forth for public comment. One Region suggested that EPA should not enact a policy allowing facilities to qualify out of the MACT standards until a strong area source toxics program is in place, or until state, local and tribal air quality agencies have programs that can provide an equivalent level of protection.

A related concern with regard to the draft changes as written is that a facility, by changing from a major source to an area source, and back again, could virtually avoid regulation and greatly complicate any enforcement against them. Take, for example, a facility that is covered by a MACT standard, and has three years from the date that the rule is promulgated to come into compliance. Three years go by, and just before the end of that time period, the facility announces its area source status. If an area source regulation exists, there may also be some equivalent waiting period before the facility is required to comply with the area source requirements. If the facility later announces that it is, after all, a major source, then it may again enter a grace period, possibly up to another 3 years, before it is subject to the MACT standard requirements. Thus, by continually going back and forth between major and area source status, a facility could be a major source for most of its operating life and never have to comply with the MACT standard requirements. The 1995 OIAI policy recognizes this and states, "The EPA believes the structure of section 112 strongly suggests certain outer limits for when a source may avoid a standard through a limit on its potential to emit." This type of problem must be addressed if the OIAI policy is changed.

3. *Residual Risk*

Section 112(f) of the Clean Air Act requires that EPA examine risks remaining after implementation of the MACT standards. It is unclear from the preamble of this draft rulemaking how EPA envisions this draft rulemaking will affect or interact with the residual risk efforts currently underway at EPA. If there is a likelihood that this proposal will increase residual risks, EPA should examine whether sources that will be obtaining synthetic minor limits under this rulemaking may later need to take additional measures under the residual risk rules. This interface should be discussed in the preamble.

Permitting and Compliance Concerns

1. *Delayed Compliance*

The draft rule proposal does not address how to treat a facility seeking synthetic minor status after failing to comply with the MACT standard requirements by the initial compliance date. Any violations should be resolved before allowing a permit revision to facilitate area source status. If this issue is not addressed in the rule, then facilities may choose to delay compliance if they believe they can achieve area source status after the compliance date without any consequences.

2. *Violation of a Synthetic Minor Limit*

The draft rule proposal does not address how a source should be treated if it accepts synthetic minor limits to get out of a MACT standard and later violates those limits. Under the current General Provisions and most, if not all, MACT standards, an area source that subsequently increases its actual or potential emissions of HAPs to at or above the major source threshold would thereafter be subject to the MACT standard. EPA should clarify whether a source that violates its synthetic minor limits would be expected to comply with the MACT thereafter, by when compliance must be achieved, and how the source should be treated during such situations.

3. *Process for Removing MACT Requirements from Existing Title V Permits*

The Clean Air Act requires all major sources to obtain a Part 70 operating permit. Section 501(2) provides that any source that is major under section 112 will also be major under title V. Therefore, sources that are currently considered major for the purposes of a MACT standard are required to have a title V permit that contains applicable MACT requirements. The draft rule does not address the permitting process that a source must go through in order to have MACT requirements removed from its title V permit once it takes synthetic minor limits. EPA should clarify minimum requirements that are expected to be met by sources, including the type of permitting action required (i.e. Administrative, Minor, or Significant). Also, if a source is still subject to title V after taking synthetic minor limits (i.e. the source is required to obtain a title V permit for reasons other than MACT applicability), the preamble should recommend or require that the source have its synthetic minor limits added to the permit at the same time. The

preamble should address the mechanism for adding synthetic minor limits to title V permits, as well, where appropriate.

4. *Mechanism for Obtaining Synthetic Minor Limits*

It is unclear what mechanism is envisioned and viable for sources to obtain the synthetic minor limits. The draft preamble, on page 18, states:

> Most, if not all, permitting authorities have created and instituted enforceable permitting mechanisms such as federally enforceable state operating permits or conditional major operating permits, in lieu of title V permits, that allow sources to limit their potential to emit HAP emissions so as to avoid having to comply with major source requirements of one type or another.

In reality, few states have federally enforceable state operating permits programs, and we are not aware of many other mechanisms for adding such synthetic minor limits. The preamble should provide more detail regarding the mechanisms available for implementing such limits, and should also discuss whether title V permits (particularly for sources on tribal lands) may be used as the sole mechanism to limit PTE.

5. *Enforceability of Synthetic Minor Limits*

There are several concerns regarding the enforceability of these synthetic minor limits. First, EPA should not endorse the use of PTE limits enforceable by states only to avoid applicability of federal rules, such as the MACT standards. Second, there are concerns about the lack of clear-cut requirements regarding practicable enforceability and fear that significant time and energy will be spent debating the enforceability of synthetic minor limits with permitting authorities. Third, significant resources will need to be expended defending the enforceability of these limits in responding to title V public petitions in instances where a source is required to obtain a title V permit revision to incorporate the synthetic minor limits. Finally, the draft proposed rule does not provide clear guidelines regarding appropriate monitoring for these synthetic minor limits. Many of the environmental benefits that are achieved by the comprehensive monitoring and reporting requirements of the MACT standards will be lost in the process. The preamble should state what type of monitoring is acceptable for demonstrating compliance with synthetic minor limits, for instance, by requiring the same level of compliance assurance as is required by title V. One Region suggested adding a clear definition in the regulatory text for "practicably enforceable permit limits" that specifies sufficient monitoring, recordkeeping, reporting, and actual PTE limits.

6. *Notification of Area Source Status*

The new section 63.1(c)(6) should require notification to EPA when a major source becomes an area source.

ALTERNATIVE APPROACHES

Based on the concerns outlined above coupled with the desire to provide incentives for sources to engage in pollution prevention activities, the Regions are offering the following suggestions for potential alternative approaches for this rulemaking. We believe it is important to consider these alternatives, and other viable approaches, in order to continue achieving the intended maximum emissions reductions of HAPs, while still providing incentive for sources to implement pollution prevention practices. We recommend that EPA request public comment on these alternative approaches.

1. Finalize Pollution Prevention Rulemaking

The preamble of the draft rule mentions the proposed pollution prevention rule amendments (68 FR 26249, May 15, 2003), which were intended to provide regulatory relief to facilities that use pollution prevention to achieve and maintain HAP emission reductions equivalent to, or better than, the MACT level of control required under the NESHAP. EPA proposed two options in the proposed pollution prevention rule amendments. First, if a facility completely eliminates all HAP emissions from all of its emissions sources regulated by the MACT standard, then it could request to be no longer subject to that MACT standard. Second, if a facility that is subject to a MACT standard uses pollution prevention to reduce its HAP levels to less than the emission levels required by the MACT standard, then that facility could request alternative compliance requirements that would amount to some regulatory relief. To provide the desired regulatory relief sought by the current draft proposal, EPA should consider finalizing the proposed pollution prevention rule amendments in lieu of, or in addition to, the strategy described in the draft proposed amendments to the General Provisions of 40 CFR Part 63.

2. *Examine Appropriateness of Synthetic Minor Limits Standard-by-Standard*

There may be certain MACT standards where it would be appropriate and beneficial to allow a source to take synthetic minor limits and to thus comply with MACT requirements via pollution prevention activities rather than by employing prescriptive control technologies -- for instance, source categories that lend themselves to replacing HAP-containing materials with non-HAP materials. However, there are many source categories for which this approach does not provide environmental benefits, such as those categories for which the MACT standard requires the installation of controls to minimize emissions of HAP byproducts. A more justifiable and environmentally protective approach would be to examine and modify MACT standards on a case-by-case basis.

3. *Restrict Instances in which a Source May Take a Synthetic Minor Limit*

Another alternate approach would be to proceed with a general rule, such as the one proposed, but to limit instances in which a source could take synthetic minor limits after the compliance deadline of the MACT standard. Suggested allowable instances include sources that eliminate or reduce the use of HAP materials, maintain a level of control

equivalent to the MACT level of control, or are subject to categories where area source MACT requirements have been promulgated.

4. *Case-by-Case Determinations by the Administrator*

Another alternate approach could be to revise the 1995 guidance or the General Provisions of 40 CFR Part 63 to allow sources the opportunity to petition the Administrator to request synthetic minor limits after the compliance deadline of the MACT.

5. *Alternative Compliance Options under the MACT*

Another recommendation is to consider revising the MACT standards to allow sources to take synthetic minor limits after the compliance deadline, but to continue to require some monitoring and recordkeeping pursuant to the MACT standard. In other words, allow sources to take a synthetic minor limit as an alternate compliance option while maintaining compliance assurance.

GENERAL EDITS AND COMMENTS

New area sources

Unlike the OIAI policy, the draft proposal does not distinguish between new and existing sources. The preamble should clarify that 40 CFR 63.6(b)(7) requires a new or reconstructed area source that becomes major to comply with the relevant standard upon startup.

Specific MACT standards

1. *Degreasers*

One Region mentioned that sources subject to the Halogenated Solvent MACT standard (Subpart T) have previously requested to take limits on PTE after the compliance date to be deferred from title V permit requirements. On March 23, 2000, William Harnett issued a clarifying memo to the OIAI policy that explains that these degreasers may not take restrictions on PTE after the compliance date to be deferred from title V. Language should be added to the preamble about the halogenated solvent rule to make it clear that these sources may now take PTE limits to avoid title V.

2. *Dry Cleaners*

One Region mentioned that the Dry Cleaning MACT standard (Subpart M) specifies two categories of area sources: large area sources and small area sources. Did the OIAI policy apply to large area sources? Will these sources be affected by the draft proposed changes? If so, how?

Inconsistency with other programs

On November 29, 2005, EPA published in the Federal Register the final phase 2 rule to implement the 8-hour ozone National Ambient Air Quality Standard. See 70 FR 71611. In this notice, EPA indicates that sources that were required to obtain title V permits because they were major under the now-revoked 1-hour ozone standard are still required to have a title V permit, even though they are no longer major under the 8-hour ozone standard. The policy indicated in the draft revisions to the General Provisions of 40 CFR Part 63 may be seen as inconsistent with the phase 2 implementation rule for the 8-hour ozone standard. EPA may want to address the two approaches in the preamble to this proposed rule change.

Page 1

1. *MACT Acronym*

The 1995 guidance is referred to as a memorandum entitled "Potential to Emit for Maximum Achievable Control Technology (MACT) Standards..." The term "Maximum Achievable Control Technology" is not actually spelled out in the subject of the guidance (it is only abbreviated). Since this is a title, in quotes, "Maximum Achievable Control Technology" should not be spelled out here.

2. *Confusing Sentences*

The last two sentences on page 1 are confusing and should be revised to read: "These amendments would replace a policy described in a May 16, 1995, EPA memorandum ('Potential to Emit...,' May 16, 1995, from John Seitz...to EPA Regional Air Division Directors). This memorandum ~~and~~ specifyies how a major source may become an area source by limiting its potential to emit...HAP...to below the major source thresholds of 10..tpy...or 25 tpy...before the first major compliance deadline. If today's proposed action is finalized, a ~~A~~ source attaining..."

Page 5

Regulated Entities

The second to last sentence on page 5 reads "Categories and entities potentially regulated by this action include all major sources..." Given that some sources currently complying with MACT standards may actually be minor sources (i.e. they've reduced emissions to below the major source threshold at some point after becoming subject to the MACT), this sentence should be revised to read "...include all sources subject to MACT requirements for major sources."

Page 13

Confusing Example

The preamble gives an example at the bottom of page 13 of a source with post-MACT emissions above major source levels. According to the preamble, this source will not reduce emissions of one HAP that is not regulated by the MACT unless it is allowed to obtain synthetic minor limits to avoid MACT. This example is confusing. It is also unlikely that this is a common situation, and therefore should not be used as an example in the preamble to justify the rulemaking. Finally, the example raises the question of why the MACT standard is not being revised to require control of this one HAP or whether this HAP will be required to be controlled by another MACT standard with a future effective date.

Page 14

1. *Confusing Example*

The example given at the top of page 14 is fairly confusing on first read and should be clarified if possible.

2. *Clarification*

The second to last sentence on page 14 states: "A major source, therefore, could initially be subject to a MACT standard, apply MACT, and in doing so become an area source." The preamble is unclear as to whether it is addressing PTE or actual emissions. The sentence suggests that a source's actual emissions are enough to make it an area source; the preamble should make it clear that complying with a MACT standard alone is probably not sufficient to limit PTE, and that a source would most likely also need to take limits on production or hours of operation.

Page 18

Practicable Enforceability

On page 18, the preamble states, "These permitting mechanisms are practicably enforceable in that they provide for sufficient monitoring, recordkeeping, and reporting..." However, because we are not being prescriptive in exactly what mechanisms or permitting programs are to be used in limiting PTE, we should not make presumptions about the adequacy of monitoring, recordkeeping, and reporting. Instead we should state that "These permitting mechanisms may be practicably enforceable if they provide for sufficient monitoring..."

Attachments

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

March 10, 2006

MEMORANDUM

SUBJECT: Regional Comments on Revised Draft OIAI Policy Revisions

FROM: Michael S. Bandrowski, Chief
Air Toxics, Radiation and Indoor Air Office

TO: David Cozzie, Group Leader
Minerals and Inorganic Chemicals Group
Office of Air Quality Planning and Standards

Thank you for providing the Regional offices with the opportunity to comment on the revised version of the draft proposed changes to the General Provisions of 40 CFR Part 63, intended to replace EPA's Once-in-Always-In (OIAI) policy established in a May 16, 1995, memorandum entitled, "Potential to Emit for MACT standards – Guidance on Timing Issues," from John S. Seitz to the Regional Air Directors. A draft copy of the revised proposed changes was received by Region 9 on February 24, 2006, and we shared this copy with the Regional Offices on February 27, 2006.

As you are aware, in our role as sub-lead for air toxics, Region 9 transmitted regional comments on the previous draft proposed changes on December 13, 2005. At this time, the Regions articulated several concerns regarding the proposed changes, ranging from concerns of increased emissions of hazardous air pollutants to concerns regarding permitting and enforcement. The Regions also proposed several alternative approaches to address the need for a change in EPA's Once-in-Always-In policy to encourage pollution prevention measures, while still maintaining the integrity and intent of the MACT program.

We appreciate that changes were made to the proposed revisions to address the Regions' concerns regarding enforcement and compliance issues in the revised draft. Regions 1, 2, 4, 6, 8, 9, and 10 have provided comments on the revised draft changes to the OIAI policy. Attached, please find these latest comments. The Regions would like an opportunity to discuss these comments with you or your staff before the rule is published in the Federal Register. As sub-lead, Region 9 would be happy to assist in setting up such a dialogue.

Regarding the remaining regional comments provided on December 13, 2005, given the absence of changes to the proposed language to address the majority of our concerns, the Regions are hereby reiterating our previous comments. Most notably, we continue to have significant concerns about the increase in emissions of hazardous air pollutants that will likely occur from the revisions to the OIAI policy, as currently drafted. Additionally, we still feel that some of the alternatives provided in the Regional comments of December 13, 2005 would be viable. The Regions would like to continue discussions to resolve some of these lingering concerns.

Attached you will find the Regions' comments on the latest revisions. Do not hesitate to contact me at (415) 947-4194, or any of the Regional Air Toxics Coordinators, should you have any questions regarding this memo or the comments enclosed within.

Attachments

cc: Air Toxics Program Managers
Regional Air Toxics Coordinators

Battery Council International

WASHINGTON OFFICE
Wiley Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 719-7000
Facsimile: (202) 719-7207

July 12, 2006

Via Email

Ms. Lydia Wegman (C504-02)
U.S. EPA
Office of Air Quality Planning and Standards, Health
and Environmental Impacts Division
Research Triangle Park, NC 27711

Re: Review of the Process for Setting National Ambient Air Quality Standards

Dear Ms. Wegman:

We write in response to the request for comments on the referenced document published in the Federal Register on June 12, 2006 (71 Fed. Reg. 33747). The Battery Council International is a trade association whose members include virtually all of the United States lead battery manufacturers and most of its secondary smelters. Its members thus are likely to be directly affected by the NAAQS and the process for their re-evaluation, and especially by re-evaluation of the lead NAAQS.

BCI applauds the Agency for undertaking this review, which is long overdue. We also find sound many of the recommendations in the March report of the NAAQS Process Review Group. We thus urge the Agency to move forward with the proposed reform process.

A more fundamental way to allow a more efficient use of Agency resources, however, would be to delete lead from the list of criteria pollutants. As the current second draft lead Criteria Document properly recognizes, lead ambient air concentrations in the United States have been dramatically reduced since 1970. Continued inclusion of lead as a criteria pollutant is no longer consistent with Section 108 of The Clean Air Act.

This is not to say that air emissions of lead should be uncontrolled, or that no steps should be taken to address public health concerns arising from lead use. Such actions are appropriate. But many other regulatory vehicles exist for meeting these concerns. EPA has adopted NSPS for both lead acid battery manufacturers and secondary smelters, the primary industry users of lead in the U.S.; has adopted NESHAPS for secondary smelters under Section 112; and is in the process of adopting an area source rule under the urban air toxics program for lead acid battery plants. Programs also regulate other sources of lead emissions (e.g., water, waste treatment, land disposal). In addition, the Center for

Disease Control maintains a close watch of the implications of new scientific evidence on lead's health effects, so there is no need for EPA to repeat this activity.

As long as EPA is obliged to consider lead a criteria pollutant subject to NAAQS, it is important that the NAAQS regulatory process be improved. BCI finds the following recommendations of the March report especially important:

1. There is no good reason to prepare a criteria document, a staff report, and a regulatory proposal with preamble. These activities can readily be consolidated into a single background document and proposed rule, as the report recommends, especially if the Agency implements a better process for identifying and characterizing new scientific studies as they are published.

2. One option addressed in the report is the possible publication of yet another policy assessment document, such as an ANPR. (Report, p. 28). This seems counterproductive. Not only would development of such a paper require additional Agency resources, BCI sees little value in the routine publication of a policy assessment independent of the preamble for the proposed regulatory decision.

3. All steps taken to improve greater efficiency should also allow for more meaningful opportunities for public input on EPA drafts and other documents. The experience of the current lead NAAQS review, in which inadequate time has been allowed for review of the excruciatingly-detailed, 1000+ page drafts of the criteria document, must be avoided in the future. Private sector resources are just as constrained as those of government. Simplifying the burdens on Agency staff and CASAC by eliminating unnecessary publications (such as the staff report) should allow time for more efficient and comprehensive, and thus more meaningful, public review, even within the context of tight statutory deadlines for action.

4. BCI strongly endorses the suggestion that responses to public comments on draft documents be more clearly documented. Currently, it is often impossible for those outside the government to determine whether their views have been evaluated and rejected for some at least purportedly-rational reason, or whether they have been wholly ignored. Devoting staff resources to confirming how and why the Agency has responded to public comments is vital if the rulemaking process is not to be a sham. The potential delays referenced at page 29 of the Report as a result of improving the Agency's performance in this regard can be avoided by the elimination of other activities, as the report proposes.

In sum, BCI urges that the Agency proceed to implement an improved NAAQS process, and employ it in the current lead NAAQS proceeding. Doing so would significantly improve a process that to date has been quite unsatisfactory.

If you would like any further information on our views, please contact our Washington counsel, David B. Weinberg, at Dweinberg@WRF.com or (202) 719-7102.

Thank you.

Sincerely,

Timothy J. LaFond
Chair, Environmental Committee

Vicki Simons/DC/USEPA/US
11/17/2006 01:09 PM

To: Brian Cook/DC/USEPA/US@EPA, Todd Holderman/DC/USEPA/US@EPA, Randall Brinkhuis/DC/USEPA/US@EPA, John Dady/DC/USEPA/US@EPA

cc:

Subject: Update on Library Move

Just got off the phone with Susan Westenberger here's where we are:

- She has assured us that she and her staff will complete the move by Tuesday, Nov 21 COB with minimal overtime. Randy will also need to participate in the packing process.
- She will attend the meeting on Monday at 8am.
- We need three things from John Dady's group:
1) Recycling bins to dispose of journals-- as many as possible, and
2) staff on hand to move the unique collection to the IMD conference room in 6122 ICC East and the Warehouse
3) Assistance with getting tables/chairs removed from 6122 if necessary.

Here are some other items of interest to IMD regarding the collection:

Journals-- the culling of the journal collection is complete. The EPA repository already has what it wants. Action : Discard remaining journals.

Princeton files and bookends (are used to hold the books in place on the shelves) should be retained and offered to the EPA repository (Susan noted that they are expensive). Action: Move to conference room or warehouse

Documents (EPA and other governmental conference reports)- should be moved to other repositories, but we don't have time so they should be boxed up and placed somewhere that the library staff can have access to later. Action: Library staff will pull what they can to be sent to the conference room. If space is an issue in the conference room then we'll have to warehouse them.

Reference- Some of these items are unique and Susan wants to search all holdings to see if others own them. Action: Move them to the conference room. Non-unique items will be discarded.

Books (textbooks, encyclopedia, non EPA books)- some unique. Action: Move unique collection to the conference room. Others get warehoused or discarded.

Susan is confident that the "pulling" of unique documents can take place concurrently with the other items explained above. It will be good to get all of this coordinated on Monday morning. I forgot to ask her to define "minimal" overtime, so I'll get back to you on that.

Vicki Simons
Chief, Information Access Branch
Information Management Division
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
EPA East, Room 6120F, Mailcode 7407M
Office- 202-564-8626
Fax- 202-564-7470
simons.vicki@epa.gov

Here is what is being said on the EPA Region 4 Intranet:
http://r4intranet.epa.gov/r4library/index.htm

Effective October 2006, some core services as interlibrary loans, cataloging, online literature searches, quick and extensive reference/research requests (including business research, journal articles, etc.) were transferred for handling by the Andrew W. Briedenbach Environmental Research Center (AWBERC) located in Cincinnati, OH (a/k/a CINN Library). These services will no longer be handled by the Region 4 Library staff, but rather the CINN Library. All requests for interlibrary loans, cataloging, online literature searches, quick and extensive reference/research should be submitted directly to the Cincinnati Library via phone, facsimile, e-mail (preferred), or through their intranet page:

Phone: (513) 569-7703
Facsimile: (513) 569-7709
E-mail: CI_Awberc_Library@epamail.epa.gov
Intranet: http://cincinnati.epa.gov/library/services/forms_region.asp

FYI.

---- Forwarded by Steve Shapiro/DC/USEPA/US on 11/20/2006 07:23 AM ----

Steve Shapiro/DC/USEPA/US
11/20/2006 07:18 AM

To: Wesley Carpenter/DC/USEPA/US, Bridget Shea/DC/USEPA/US, Bill Roderick/OIG/USEPA/US, Mark Bialek/OIG/USEPA/US, Helen Mollick/OIG/USEPA/US@EPA

cc: Randall Brinkhuis/DC/USEPA/US@EPA, Vicki Simons/DC/USEPA/US@EPA

Subject: URGENT: IS THERE A CRIME IN PROGRESS AT EPA THAT MUST BE STOPPED?

Destruction of Federal Property, per below.

Steve Shapiro, President
AFGE Local 3331
566-1508

---- Forwarded by Steve Shapiro/DC/USEPA/US on 11/20/2006 07:13 AM ----

Randall Brinkhuis/DC/USEPA/US
11/19/2006 03:47 PM

To: Steve Shapiro/DC/USEPA/US@EPA

cc: Steve Roy/R10/USEPA/US@EPA, JohnJ OGrady/R5/USEPA/US@EPA, JamesJ Murphy/DC/USEPA/US@EPA

Subject: UNION BUSINESS

Steve et al.,

Friday afternoon I was told that all of the remaining journals in the Chemical Library collection, probably 600 to 700 linear fee: worth, would be discarded. (I will forward that e-mail.) The National Enforcement Investigations Center Library in Denver had requested a last shot at the journals, so I left a message for Barbara Wagner, the NEIC Library's Head Librarian, and sent Barbara and Phoebe Macleish, the TOPO, an e-mail message asking whether there were any titles that they wanted because otherwise the journals would be discarded and recycled. Nancy Greer, Barbara's assistant, and Barbara sent me the messages attached below.

I reported this to my Acting Branch Chief, Vicki Simons, (202) 564-8626, a short time later. She said that it was too late, that we were out of time, that I had planned poorly, and that the journals were to be disposed of. She said that she was explicitly ordering me not to remove any journals from the recycling bins and to dispose of all the journals. The list contains about 30 titles, 5 of which I had previously had the contractors move over to the Headquarters Library. The other 25 or so titles would be irreplaceable. I told Vicki that this would be a waste. She said that she didn't care. So I told her that I'd have to report this to the IG.

When I got back to my cubicle I thought for a moment as to how to proceed. Then it occurred to me that I didn't have to wait until after the fact to call the IG. So I called the IG's office at (202) 566-2476.

The woman who answered asked what I wanted to report. I told her that I had been ordered to dispose of several hundred thousand dollars' worth of journals. I asked her whether it would be considered insubordination to not go along with an order to waste resources. She said that the last person from the IG Hotline had left, but that she would check to see whether someone else could answer my question. After a couple of minutes she returned to the phone and asked whether this was a dispute between my supervisor and myself. I said, No, it's about the waste of several hundred thousand dollars' worth of journals. So she asked for my BC's name and phone number and said or implied that someone would call her. She asked whether or not I wanted to leave my name. Since it would be rather obvious who had called I said, "Sure" and gave her my name.

I then called the NEIC Library and told them what was going on and told them that it might help if someone from the NEIC or OECA would contact OPPTS or OPPT.

My BC has scheduled a meeting for 8 a.m. in the former cafeteria to discuss how to proceed. I have this feeling that she will not be real pleased with me. What are my options?

Thanks,
Randy Brinkhuis
TOPO of the former OPPTS Chemical Library

----- Forwarded by Randall Brinkhuis/DC/USEPA/US on 11/19/2006 03:26 PM -----

Nancy Greer/NEIC/USEPA/US To Randall Brinkhuis/DC/USEPA/US@EPA

FW: URGENT: IS THERE A CRIME IN PROGRESS AT EPA THAT MUST BE STOP... Page 1 of 1

11/17/2006 02:42 PM

cc

Subject

Journals

Hi Randy,

If you still have Journal of Occupational and Environmental Medicine, send us all of them. Barbara is looking at the list now to see if there is anything else that we can use.

Thanks,
Nancy

****

Nancy Greer
Contractor, ASRC Management Services
U.S. Environmental Protection Agency
National Enforcement Investigations Center
Library
P.O. Box 25227
Building 25, Denver Federal Center
Denver, CO 80225-0227

303-462-9350
303-462-9354 fax

greer.nancy@epa.gov

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----- Forwarded by Randall Brinkhuis/DC/USEPA/US on 11/19/2006 03:26 PM -----

Barbara Wagner/NEIC/USEPA/US

11/17/2006 03:26 PM

To

Randall Brinkhuis/DC/USEPA/US@EPA

cc

Subject

SEND THESE JOURNAL TITLES do not toss

ALL CHEMICAL ABSTRACTS

Annals of occupational hygiene
Applied occupational and environmental hygiene
British journal of cancer
Cancer letters
Cancer research the official organ ... mg and paper
Chemical abstracts collective index
Chemical abstracts index guide
Chemical abstracts service registry handbook...
Chemical abstracts v. 1 – v. 109
Chemosphere global change science
Clinical cancer research an official journal of
CRC critical reviews in environmental control
CRC critical reviews in toxicology
Decennial index to chemical abstracts
Endocrine reviews
Journal of environmental pathology and toxicology
Journal of environmental science.... ALL titles
Journal of occupationald and environmental medicine
Environmental manager
Environmental mutagenesis
Epidemiology
European journal of cancer and clinical oncology
European journal of cancer — ALL titles
Pesticides monitoring journal – ALL titles
Regulatory toxicology and pharmacolory
Water resources research – ALL titles

Barbara L. Wagner, Library Manager

303/462-9352 FAX 303/462-9354
wagner.barbara@epa.gov
Environmental Forensic Library
USEPA/OECA/OCEFT/NEIC/IB
Integrated Information Services
National Enforcement Investigations Center
U.S. Environmental Protection Agency
Building 25, E2, Denver Federal Center
P.O. Box 25227, Denver, CO 80225-0227

(ASRC MS contractor / Barbara.Wagner@asrcms.com)

RESPONSES BY GINA M. SOLOMON, M.D., M.P.H., TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. If one assumes that the Centers for Disease Control and Prevention report referenced in your testimony is correct, then perchlorate has been found at very small levels in virtually all of us. However, according to the UCMR1 data, it is only in 4 percent of the Nation's drinking water systems. Is it not premature to cast the blame and all of the burden on the Nation's drinking water systems when based on CDC and EPA data, most of the perchlorate exposure is coming from other sources?

Response. Perchlorate has been reported in 402 out of the 5,369 public water systems tested (7.5 percent).[1] These systems serve 41.2 million people, or approximately 15 percent of the population served around the country. This is likely to be a low estimate, since less than 5 percent of community water systems have analyzed their water for perchlorate. To date, monitoring for perchlorate has been conducted in only 5,369 out of the approximately 158,000 public water systems in the United States—only 3.4 percent of all water systems.[2] Small public water systems serve a total of about 69 million people in the United States, and only 600 such systems (0.4 percent) were required to be tested under the UCMR so far.[3] Therefore the data from UCMR1 likely significantly underestimates the full extent of the perchlorate problem in drinking water. Under the December 2006 EPA UCMR, water systems will no longer be required to test for perchlorate at all, therefore the data gaps on perchlorate contamination in drinking water will not be filled, and will instead increase with time.

It is true that perchlorate exposure is also coming from sources other than drinking water. Perchlorate-tainted water also affects the safety of our food supply. Perchlorate can concentrate in irrigated crops such as wheat, lettuce, alfalfa, and cucumbers, thereby resulting in much greater exposures than might be predicted just by water concentrations.[4] Newer data have shown perchlorate contamination to be widespread in store-bought fruit, vegetables, cow's milk, beer and wine.[5] Unfortunately, the EPA's new perchlorate reference dose (RfD) has been interpreted by the Agency as translating to a Drinking Water Equivalent Level (DWEL) of 24.5 ppb. This DWEL fails to account for several important issues, including the fact that infants are the most susceptible population (the DWEL used an adult male body weight), and the fact that people are exposed to perchlorate through both water and food. EPA should begin work on an enforceable drinking water standard that will protect vulnerable populations with an adequate margin of safety and will also account for aggregate exposures to perchlorate from multiple environmental sources.

Question 2. The American Thyroid Association has provided excellent leadership in treatment, education and research on thyroid gland and its related disorders. The ATA pointed to the several concerns with the CDC study. It is my understanding that the CDC, consistent with good scientific practices, will reexamine the study to verify its results. Do you agree that CDC should reexamine its study with particular attention to the concerns raised by the ATA?

Response. The CDC has already reexamined the study in partnership with outside scientists from State agencies. It is my understanding that the results of the reanalysis have confirmed the original findings of the CDC study and have undergone

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[1] Arizona Department of Environmental Quality (ADEQ), Perchlorate in Arizona: Occurrence Study of 2004, Revised (December 2004); California Department of Health Services, California Drinking Water Data (April 2005); Massachusetts DEP, Perchlorate monitoring results [data provided by Drinking Water Program] (March 2005); U.S. Army Corps of Engineers (USACOE), Washington Aqueduct Perchlorate Data (2004); U.S. Environmental Protection Agency (U.S. EPA) Unregulated Contaminant Monitoring Data (January 2005); U.S. Government Accountability Office (GAO), Perchlorate: A System to Track Sampling and Cleanup Results Is Needed, (2005); Jackson, W.A. et al., Distribution and Potential Sources of Perchlorate in the High Plains Region of Texas: Final Report, 2004, Texas Tech University Water Resources Center, prepared for Texas Commission on Environmental Quality, http://www.waterresources.ttu.edu/research.htm; Water Quality Reports (or Consumer Confidence Reports) and news articles for the City of Edmond, OK; City of Georgetown, TX; Las Vegas Valley Water District; New Mexico American Water Company; and Shreveport [Louisiana] Department of Operational Services.

[2] U.S. EPA (2006) FACTOIDS: Drinking Water and Ground Water Statistics for 2005. http://www.epa.gov/safewater/data/pdfs/statistics—data—factoids—2005.pdf [visited February 2, 2007].

[3] Id. Calculation based on System size table, p. 2.

[4] Jackson WA, P Joseph, P Laxman, K Tan, PN Smith, L Yu, and TA Anderson. 2005. Perchlorate accumulation in forage and edible vegetation. *J Agric Food Chem.* 53(2):369–73.

[5] El Aribi, H, YJC Le Blanc, S Antonsen, and T Sakuma. 2006. Analysis of perchlorate in foods and beverages by ion chromatography coupled with tandem mass spectrometry (IC–ESI–MS/MS). *Analytica Chimica Acta.* 567(1): 39–47; Food and Drug Administration. 2004. Exploratory Data on Perchlorate in Food. Available at http://www.cfsan.fda.gov/~dms/clo4data.html.

the additional scrutiny of peer review. I expect that the results of the reexamination will be published in the near future.

Question 3. The NAS held 3 separate public hearings. The NRDC availed itself of the opportunity to testify at the very first hearing of the NAS committee hearings and your colleague, Ms. Sass, provided a formal presentation. Are you asking Congress or EPA to substitute NRDC's scientific judgment for that of the National Academy?

Response. The NRDC has fairly extensive evidence that the integrity and independence of the National Academy of Sciences (NAS) perchlorate panel may have been compromised. Documents obtained by NRDC from a series of Freedom of Information Act requests and lawsuits against the White House, Department of Defense and the Environmental Protection Agency indicate that the NAS panel was subjected to significant pressure to downplay the hazards of perchlorate.[6] For example, senior White House and DOD political officials participated in reviewing the scientific charge sent to the NAS on perchlorate. In addition, the Pentagon actively worked to manipulate the membership of the NAS perchlorate panel. The panel ultimately contained at least four members (one of whom eventually resigned when the NAS report was partly completed) with evidence of financial conflicts of interest.

The final NAS report on perchlorate was released more than 2½ years ago. The wealth of scientific data on the health effects of perchlorate, and on human exposures to perchlorate, has grown significantly since the NAS report was finalized. Several very important peer-reviewed scientific studies and analyses, including the above-mentioned studies by the CDC, have been completed. These studies have raised significant questions about the validity of the NAS findings. It is consistent with good scientific practice to update and reevaluate scientific findings in light of new evidence. At this time, it is appropriate for the EPA to revisit the reference dose for perchlorate, and to set an enforceable drinking water standard that will adequately protect vulnerable populations such as pregnant women and infants.

Question 4a. In your testimony, you mentioned that methyl isocyanate (MIC) reporting would "disappear" from TRI Form R's. Does NRDC want communities to rely on TRI reporting for accideptal releases of highly toxic chemicals like MIC?

Response. Both accidental releases as well non-accidental releases should be counted towards a facility's TRI reporting threshold for all TRI chemicals. Furthermore, the former 500-pound Form R reporting threshold for non-persistent bioaccumulative and toxic chemicals (non-PBTs) should have been maintained. PBTs should be reported on Form R; Form A reporting for PBT chemicals should not be allowed. This was the essence of my testimony at the February 6 hearing. Accidental releases should continue to be immediately reported to local authorities as required under existing law. Specifically in response to the itemized questions above:

Response. TRI reporting does not (and should not) replace immediate notification of accidental releases to the local authorities; both are required by law.

Question 4b. Would it not be more useful to rely on the reporting under existing environmental statutes that requrie immediate reporting to the local authorities of releases of greater than 10 pounds?

Response. TRI reporting does not relieve facilities from legal requirements to immediately notify local authorities of accidental releases. Facilities should no more be exempted from such requirements than from requirements to notify communities using Form R.

Question 4c. Why should communities have to wait an additional year, under existing TRI reporting, to learn about a release of MIC?

Response. Communities would not have to wait a year to learn about an accidental release of MIC. As mentioned above, TRI reporting requirements do not relieve facilities from emergency or accidental release notification requirements.

Information on chemicals such as MIC is important to first responders even when there is no spill of those chemicals. For example, emergency personnel responding to a fire at an industrial plant want to know what chemicals are at that plant. One way they can (and do) find out quickly is to look at TRI data. If MIC was not spilled in a particular incident, then under the current changes to the TRI, no alternative source of information would be available to the first responders. Even if MIC were spilled, the plant might not yet know it. Therefore the EPA changes to the TRI could put first responders at risk.

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[6] NRDC. White House and Pentagon Bias National Academy Perchlorate Report. January 10, 2005. http://www.nrdc.org/media/pressreleases/050110.asp.

Question 5. Clearly the NAAQS process is broken—year after year the EPA has consistently failed to meet deadlines. For example, the SO_2 review that was completed in 1996 was actually due December 31, 1980, almost 15½ years earlier. What problems might have been averted—and how much harm to Americans' health avoided—had a more efficient review process been in place?

Response. From a scientific perspective, the NAAQS standard setting process has been a model EPA rulemaking process that is driven by careful review and incorporation of the science. Due largely to insufficient funding and Agency focus, the process may not be as quick as many of us would like, but it is deliberate, thorough, and focuses on getting the best possible advice from independent scientists on the Clean Air Scientific Advisory Committee (CASAC) and from scientists within the Agency. In considering various alternatives for creating a more efficient review process, it is important not to neglect the integrity and centrality of independent scientific review. A central point of my testimony was that the changes EPA has made to the NAAQS review process, although ostensibly done in the name of efficiency, will in fact largely work to decrease the role of independent scientific review in setting air quality standards. It remains to be seen whether the changes that EPA has made will in fact help the Agency to meet its statutory deadlines. Those changes threaten to allow greater hazards and risks to Americans' health by relegating independent scientific review to a lesser role and elevating political influence that will weigh industry costs and political pressures more heavily.

Regarding previous missed statutory deadlines, there is no evidence of which I am aware that such deadlines were violated as a result of steps in the NAAQS review process that EPA acted to "streamline" through their recent overhauls of that process. Rather, in my opinion, EPA's previous violations of statutory deadlines resulted primarily from failures to devote sufficient resources and priority to meeting these legal obligations. The EPA under this Administration has recently been rebuked by a Federal court for devoting its limited resources to non-mandatory, deregulatory activities—some of which were subsequently struck down in court—rather than focusing resources appropriately on meeting statutory deadlines.[7]

Question 6. According to the January 30 San Francisco Chronicle, the executive director of the San Joaquin VAlley Air Pollution Control District, said that the eight-county area could lose more than $2 billion in Federal highway funds because the area cannot comply with EPA's deadline for the current ozone standard. In your opinion, does it make sense to keep lowering the ambient air quality standards when we can't even comply with the existing standards?

Response. As a scientist and a health professional, my focus is on applying the best available science to appropriately protect human health. I have talked with my colleagues in medicine who are working in clinics and emergency rooms in the San Joaquin Valley. They are facing a massive epidemic of asthma and respiratory disease, and struggling to keep their patients alive. I have also spoken with parents of asthmatic children living in the San Joaquin Valley. These parents tell heartwrenching stories of watching their children suffer on "bad air days". At the same time, the science has clearly shown that the current EPA ozone standard is not sufficient to protect these children. The evidence is clear that the standard must be lowered in order to protect human health. Lowering the standard will require counties in the San Joaquin Valley to redouble their efforts to improve air quality. More importantly, other counties that currently do not realize that they have unhealthy air will need to take action to improve their air quality as well.

The San Joaquin Valley has the dubious distinction of having among the worst ozone problems in the Nation. Attaining Federal air quality standards in that region is a challenge due to topographic issues and the large number of sources within the region. Unfortunately, the San Joaquin Valley Air Pollution Control District (SJVAPCD) and the California Air Resources Board (CARB) have not committed to do everything feasible to attain the Federal 8-hour ozone standard by 2013.[8] For example, the SJVAPCD has failed to commit to adopting numerous controls for emissions from stationary and areas sources, many of which have been adopted in other regions in the Nation. In addition, given that much of the pollution is generated

[7] See *Sierra Club* v. *EPA*, Civ. Action No. 01–1537 (D.C. Dist. Ct.) (Aug. 2, 2006) (noting that "it is inappropriate for an Agency to divert to purely discretionary rulemaking resources that conceivably could go towards fulfilling obligations clearly mandated by Congress," and that EPA's air office "currently devotes substantial resources to discretionary rulemakings, many of which make existing regulations more congenial to industry, and several of which since have been found unlawful.")

[8] International Sustainable Systems Research Center. Clearing the Air: How Clean Air is Possible and Affordable by 2013. February 2007. http://www.kirschfoundation.com/care/documents/Clearing%20the%20Air—Full%20Report.pdf.

from sources under CARB's jurisdiction, California must commit to stronger regulations, such as increasing the stringency of its upcoming regulations of heavy duty trucks and off-road equipment. A recent study by researchers at California State University Fullerton demonstrated that "valley-wide the economic benefits of attaining the $PM_{2.5}$ and ozone standards average nearly $1,000 per person per year, or a total of more than $3 billion."[9]

Congress clearly stated in the Clean Air Act that the primary NAAQS for a Section 108 pollutant must be set at a level at which, "allowing an adequate margin of safety, [is] requisite to protect the public health."[10] As long as a criteria pollutant still "adversely affects the health of" of even a single sensitive sub-population, such as children or asthmatic adults, "EPA must strengthen" the NAAQS to eliminate those adverse effects.[11] Congress did not allow EPA to avoid lowering ambient air quality standards simply because individual counties are unable to comply with current standards. On this issue, I am hardly in a position to substitute my personal opinion for that of Congress.

I hope that this additional information is useful to the Committee as it continues its deliberations on these important public health issues.

Senator BOXER. Thank you, Doctor, so much.

Now Leslie Burger, president of the American Library Association.

STATEMENT OF LESLIE BURGER, PRESIDENT, AMERICAN LIBRARY ASSOCIATION; DIRECTOR, PRINCETON PUBLIC LIBRARY

Ms. BURGER. Thank you, Chairman Boxer and Senator Whitehouse, thank you for inviting me today to speak on behalf of the American Library Association.

I appreciate the opportunity to comment on the closure of libraries in the EPA network during this oversight hearing. My name is Leslie Burger, I am director of the Princeton, NJ public library and president of the American Library Association. I am also testifying today on behalf of the Association of Research Libraries and the American Association of Law Libraries.

I want to talk about two things today. First, the importance of access to vital information about the environment for EPA employees and the American public. Second, how the recent closures of five EPA libraries and reduced access in others is restricting access to important information about the environment. Given the library community's mission to promote and foster the public's access to information, it should come as no surprise that we find these closures troublesome.

Is EPA's digital library plan based on the end user's needs? Apparently not. Our sources tell us that there has been no outreach to the EPA library user community, that thousands of scientists, researchers and attorneys that use these resources on a daily basis, nor to members of the public who have benefited greatly from access to these unique collections. Originally presented as a cost saving measure in anticipation of a 30 percent cut in the EPA library

[9] Hall J.V., V. Brajer, and F. W. Lurmann, Institute for Economic and Environmental Studies at California State University Fullerton, "The Health and Related Economic Benefits of Attaining Healthful Air in the San Joaquin Valley," March 2006. http://business.fullerton.edu/Centers/iees/reports/SJVFinalReport.pdf. The study concluded that the benefits of achieving the standards included "460 fewer premature deaths among those age 30 and older", "325 fewer new cases of chronic bronchitis", "188,400 fewer days of reduced activities in adults", "260 fewer hospital admissions", "23,300 fewer asthma attacks", "188,000 fewer days of school absences", "3,230 fewer cases of acute bronchitis in children", "3,000 fewer work loss days", and "[m]ore than 17,000 fewer days of respiratory symptoms in children."

[10] 42 U.S.C. § 7409(b)(1).

[11] American Lung Assoc. v. EPA, 134 F.3d 388, 389 (D.C. Cir. 1999).

budget in the 2007 budget, EPA began closing libraries and restricting access to many other of its libraries before the budget was passed.

Regional libraries in Chicago, Dallas and Kansas City and the Pesticide and Headquarters libraries in Washington, DC. have been closed. The Region 4 library in Atlanta is open with only one staff member left, and we just learned today that a center at Fort Meade has also been closed, a fact that EPA had previously not disclosed. The New York regional library was scheduled for closing to the public and reduction in hours for EPA staff on January 2d, but in light of congressional and public pressure, EPA only recently decided to temporarily halt further closures.

We have two primary concerns about this. In the course of shutting down libraries, valuable, unique environmental information may be lost or discarded. Because there are fewer libraries and professional library staff associated with them, scientists and the public will have restricted access to this information. We are deeply concerned that this will restrict the public's right to know about information relating to the environment. In an age of global warming and heightened public awareness and concern about the environment, it seems ironic that the Administration would choose this time to limit access to years of research about the environment.

Let me talk about the loss of valuable environmental information. In a plan that can best be described as convoluted and complicated, selected materials from EPA closed libraries is being boxed and sent to other locations, where it is slowly being inventoried, re-catalogued and then sent back to several EPA locations for storage. Other materials being sent to the National Environmental Publications Internet site in Cincinnati, where it is slowly being digitized.

There continues to be a lot we don't know. What materials are being shipped around the Country? Are duplicate materials available in other EPA libraries? Which items have been or will be digitized? Is there a record of what has been discarded or destroyed? We are concerned that years of research and studies about the environment may be lost forever. Without detailed information about the digitization project plan, we can't determine if they are digitizing the most appropriate materials, if there is appropriate meta data to ensure that people can actually find this material, and if the technology that will be used to host the digital content and finding software meets today's standards.

In an age of digital media, it has become easier and easier for information to simply get lost in the shuffle. There is no way of knowing if that is the case here. EPA claims to have been following ALA guidelines in its reorganization of the libraries. As far as we can tell, that meant visiting our Web site. While they did meet with our staff on at least two occasions in 2006 to discuss this issue, they failed to act upon any of the advice that came as a result of those meetings.

To their credit, they did send six staff members to our midwinter meeting in Seattle just a few weeks ago to answer questions, but there still remains a lack of clarity as to what their plans are for the network.

We are also deeply concerned about the impact of these library closings on the public's right to know. The EPA libraries have been functioning as a virtual single national library on the environment, a cost effective library structure that provides for wide public access to information. Now with several of these libraries closed and others with restricted access, key links have been removed from the chain, weakening the entire system.

Where will people look for information about their drinking water or determine what pesticides are in their grass or how much pollution is in the air of their hometown? These issues are the most important for our national health and safety.

ALA understands that providing access to digital content is important in today's world. In our digital world, the role of librarians becomes even more important, and we know from other colleagues that the move to digital collections requires the expertise of librarians. Recent searches of the EPA library Web site indicate that it falls short in making this information easily accessible to library users.

In closing, the American Library Association and its partners asks that this committee request EPA to immediately halt all library closures and cease dispersing and dumping library material, meet with EPA library stakeholders to determine their current and future needs, determine a plan that incorporates best practices for meeting user needs both now and into the future, stabilize and inventory the collections that have been put in storage, call upon library digitization experts to assist in developing a process to ensure that EPA is using best practices.

We appreciate your responsiveness and look forward to determining how we can save these collections, stabilize EPA library services for users, maximize access for staff, scientists and the public at large to important environmental information.

[The prepared statement of Ms. Burger follows:]

STATEMENT OF LESLIE BURGER, PRESIDENT, AMERICAN LIBRARY ASSOCIATION AND DIRECTOR, PRINCETON PUBLIC LIBRARY

Chairman Boxer, Senator Inhofe, and Members of the Committee, thank you for inviting me today to speak on behalf of the American Library Association (ALA). I sincerely appreciate the opportunity to comment on the closure of libraries in the EPA network during this oversight hearing.

My name is Leslie Burger, and I am director of the Princeton (N.J.) Public Library. I am also the President of the American Library Association, the oldest and largest library association in the world with some 66,000 members, primarily school, public, academic, and some special librarians, but also trustees, publishers, and friends of libraries. The Association provides leadership for the development, promotion, and improvement of library and information services and the profession of librarianship to enhance learning and ensure access to information for all.

I am also testifying on behalf of the Association of Research Libraries (ARL) and the American Association of Law Libraries (AALL). ARL is a North American association representing 123 research libraries at comprehensive, research-extensive institutions that share similar research missions, aspirations, and achievements. AALL is a nonprofit educational organization with over 5,000 members nationwide.

I would like to talk today about two things:

• First, the vital importance of access to scientific, environmental, legal, and other government information for EPA employees and the American public;

• Second, how the recent closures of several regional libraries, the Prevention, Pesticides & Toxic Substances (OPPTS) and headquarters libraries in Washington, DC, as well as reduced access in other EPA library locations, is restricting access to important information about the environment in at least 31 States.

Given the library community's mission to promote and foster the public's access to information, it should come as no surprise that ALA—along with ARL and AALL—finds these closures troublesome.

The closing of these libraries initially took place under the guise of a proposed $2 million budget cut—suggested by the EPA and included in President Bush's budget proposal for Fiscal Year (FY) 2007. Though recently, the EPA has backed away from the financial contention, instead casting the closures as a plan to digitize library collections (or convert library collections to digital formats) to reach a "broader audience" in providing access to these materials, as EPA spokespeople mentioned in a teleconference last December, but many scientists, EPA staff, and librarians continue to dispute this contention.

Is EPA's library plan based on the end users' needs? Apparently not. Our sources tell us that there has been no outreach to the EPA Library User community—the thousands of scientists, researchers, and attorneys that use these resources on a daily basis as well as members of the public who have benefited greatly from access to these unique collections. There has been a lot of talk about getting information to a "broader audience," but how do the steps being taken by EPA speak to that effort? ALA doesn't see what's being done as connected to users' needs in any way.

Despite the fact that Congress hasn't passed a FY 2007 budget, EPA has already begun closing libraries and restricting public access to the many of the libraries that are still open. Thus far, we have seen the closure of three regional libraries—in Chicago, Dallas, and Kansas City—OPPTS and headquarters libraries in Washington, DC. Also, we have just learned that in the Region 4 library in Atlanta, the interlibrary loan technician is the only staff member left, a fact EPA previously had not disclosed. The regional library in New York City was scheduled to be closed to the public with reduced hours for EPA staff on January 2, but, in light of Congressional and public pressure, EPA only recently decided to halt further closures of its libraries for the time being.

Thus, we have two primary concerns about these closures:

1. In the course of shutting down these libraries, valuable, unique environmental information will be lost or discarded, and;

2. Because there are fewer libraries and professional library staff, scientists and the public will have limited access to this information. We have a deep concern with limitations these closings would place on the public's access to EPA library holdings and the public's "right to know." In an age of global warming and heightened public awareness about the environment, it seems ironic that the Administration would choose this time to limit access to years of research about the environment.

Let me first address the loss of valuable environmental information. Libraries and other cultural heritage institutions (archives, museums, and historical societies) have been digitizing collections for nearly 20 years. The digital resources provide access 365 days a year, 24 hours a day, regardless of where the person lives or works. Geographic and political boundaries disappear. These digital resources are subject to international and national standards, created by librarians, archivists, museum professionals, and representatives from the photographic and audio industry, public broadcasting, and computer industry.

Before we begin the costly digitization process, we always consider the needs of the current and future user communities. Digital content must be created in a fashion assuring that it will be usable 25 and 50 years from now. We need to capture cataloging information, or what we call metadata, about the digital resource so that we can find the digital object now and in the future, and so that if we have to recreate it we know how we created it the first time. Therefore, we need to know what camera we used to take the picture or which scanner we used. We also need to know copyright information and the rights associated with the object. All that information goes into the metadata, along with the title and keywords.

In a plan that is best described as "convoluted and complicated," materials from closed EPA libraries are being boxed and sent to other locations where they are slowly being re-cataloged and then sent back to the Headquarters Library in D.C. (now closed), where there is no room to house these resources. Other resources have been sent to Research Triangle Park or the National Environmental Publications Internet Site (NEPIS) in Cincinnati where they are slowly being digitized.

Further, the library community is troubled by the "dispersing" of materials from the closed regional libraries and the OPPTS library here in Washington, D.C. What this "dispersement" entails isn't exactly clear at this point and what concerns us is how this information will be handled, and therefore what type of long-term damage has been done to the effectiveness of EPA and the ability of the American public to find important environmental and government information.

Unfortunately, there continues to be a lot that we don't know: exactly what materials are being shipped around the country, whether there are duplicate materials

in other EPA libraries, whether these items have been or will be digitized, and whether a record is being kept of what is being dispersed and what is being discarded. We remain concerned that years of research and studies about the environment may be lost forever.

Will digital documents be listed in the Online Computer Library Center (OCLC), a national database of the library holdings of more than 41,555 libraries in 112 countries, making them available to other research institutions? Is there metadata or cataloguing being created to ensure that digital documents can be easily located on the web? What will happen to the OCLC holdings of the closed libraries? How are "help desks" and other "library" functions being organized so that trained professionals are available to help the users of the EPA library and information services?

While we thank EPA for sending six staff members to our January conference in Seattle to address question on the status of the EPA library network, none of the concerns I have mentioned were adequately addressed.

The EPA representatives that attended the ALA conference in Seattle talked about creating a premier digital library for the 21st century and making content from the EPA libraries available to the general public as well as to EPA scientists. To do that, the EPA will need a web-enabled Digital Asset Management system, which can not only display the full range of digital resources that are being converted but also the digital resources of the future: audio, video, simulations, etc. Digital Asset Management systems, or DAMs, provide the public with tools to locate and display digital resources, but these systems can also allow the EPA to provide access to authorized users. For example, if there is a publication that contractually can only be viewed by the EPA scientists, the EPA could digitize it, put it in the database, make the metadata searchable, but only allow it to be viewed by those authorized to view it. The DAM controls all of that through its authentication system.

Preservation of the digital assets is also very important. There are already many stories of digitized collections that have been saved on CDs, and when organizations have tried to access them the content is not viewable. CDs and DVDs are fine transport media, but no longer are they considered the best practice for preservation. Networked storage, both onsite and off site, is the current best practice. Best practice also calls for keeping two to three physical copies, along with the digital copy.

This recent experience with EPA underscores the need for the Executive Branch to develop and implement effective and consistent approaches for how government agencies undertake digitization of and access to government records and publications. The process needs to be coherent and user-focused. The Government is the largest producer of information, and the information it produces is vital to public health and safety. As a consequence, it is critically important that instead of a growing patchwork of Agency programs emerging—which may fail to satisfy user information needs—that we put in place, effective and efficient public access programs to reap the benefits of the digital environment.

Without more detailed information about the EPA's digitization project, we cannot assess whether they are digitizing the most appropriate materials, whether there is appropriate metadata or cataloging to make sure that people can access the digitized materials, and that the technology that will be used to host the digital content and the finding software meets today's standards. In the age of digital media it has become easier and easier for information to simply get lost in the shuffle, and there is no way of knowing if that's the case here.

The details mean a lot. Certainly, not all parts of each EPA library collection can be digitized; they probably have some materials that are copyrighted, for example. But there is so much specialized and unique material—including reports already paid for by taxpayers—and we do not know if these are part of the digitization projects. Further, we do not know about how their maps or other specialized formats have faired, formats that are very difficult and time-consuming to digitize.

In their haste to close down libraries and meet a fiscal deadline without a clear plan, EPA has created arbitrarily established deadlines. We continue to hear allegations from former and current EPA staff, that do not wish to be identified, that hundreds of valuable journals and books may have been destroyed. These staff members are concerned that materials that are unique to EPA (and in some cases exist nowhere else in the world) are no longer available.

EPA also claims to have been following ALA guidelines in its reorganization of holdings. In fact, as far as we can tell, that meant visiting the ALA Web site and using our very general guidelines about "weeding" library collections. Weeding is the process of periodically removing materials from a library's collection. Materials that are "deselected" are out of date, in poor condition or if there are multiple copies

available. The weeding standards were never intended for application in a digital environment.

While EPA did in fact meet with ALA staff in April and December of 2006 to discuss this issue, it failed to act upon the advice that came as a result of these meetings. As previously mentioned, to its credit, EPA also sent six staff members to ALA's Midwinter meeting in Seattle a few weeks ago to answer questions from ALA members. Even still, there remains a lack of clarity as to what EPA's plans are for its library network. But of course, we would be pleased to provide advice on the digitization plans for the EPA network of libraries.

We have a deep concern with limitations these closings would place on the public's access to EPA library holdings and the public's "right to know."

As one recently retired EPA librarian described it, the EPA libraries have been functioning like a virtual National Library on the Environment. (Indeed, the EPA was at one time a leader in providing public access to critical information in their collections.) The "virtual" national EPA library system functioned as a type of single national system. Because of its networking (both technical and human) and interlibrary loan and mutual reference services, users in any EPA library had access to the collections at all other sites. This type of structure is generally very cost-effective and provides wide public access for staff and for the public.

Now that some of these regional libraries and the pesticide library are closed, key links have been removed from the chain, thus weakening the whole system, not just for those users closest to the closed facilities. Where will people look for information about their drinking water? Or which pesticides are safe for their grass? Or how much pollution is in the air of their hometown? These issues are of the utmost importance; our national health and safety depend on them!

ALA understands that we are living in the 21st century, an age when users can access much of what they need from their own desk. In the digital environment the librarian's role is changing. We also understand how complicated and costly the move to digitization can be. But the bottom line is that libraries still need skilled professionals to (a) assist users, (b) organize Internet access, and (c) determine the best way to make the information available to those users. When searching the EPA site, one retrieves thousands of hits for a topic such as "water." When qualifying the search by a date range the results include items outside that date range. The user will wonder about the veracity of the data and will need the assistance of the librarian.

Additionally, the librarians are needed to design the interfaces; with the web you can design interfaces for the scientists, interfaces for teachers and students, and interfaces for the general public. Librarians are also needed to manage the digital objects, understand how new media must be managed; for example, when audio collections need to be converted what are the user needs, what standards are to be used, and how should they be preserved. The same goes for video and emerging formats.

Further, there are still traditional library users out there. Not everyone does their searching via web-based search engines. Many would still rather put their trust in the hands of a knowledgeable library professional, someone who knows the materials inside and out. It has been argued that the time of librarians is vanishing with the rise of the Internet, but this is a case in point where that is just not so. The EPA's environmental holdings are vast and dense, and a simple search engine just isn't enough. With the loss of the brick-and-mortar facilities comes the loss of the most important asset in the library: the librarian. After all, what good is information if you can't find it?

The future, it seems, calls for a hybrid, where not every single item or service is online, nor is everything confined to a physical structure. The backbone of it all is a profession of skilled, knowledgeable, and, most importantly, helpful information specialists: librarians.

In closing:

ALA asks that this Committee request EPA: (a) Halt all library closures; (b) Discuss a plan with stakeholders on how best to meet user needs and plan for the future; (c) Base any actions upon these users' needs; (d) Stop dispersing and dumping of any of their library materials immediately; (e) Stabilize and inventory the collections that have been put in storage; (f) Develop and implement a government-wide process to assist agencies designing effective digitization programs; and (g) Reestablish library professionals—inherently governmental library professionals.

Further, we would ask for library specialists to assist in any investigations, such as that conducted by the Government Accountability Office (GAO) study, or other inquiries, as to what is happening to these materials. Those EPA staff who are willing to talk (or retired and not at risk) tell us that these materials are being at best dispersed and, at worst, discarded. Also, and just as importantly, without trained

librarians, users are having a very difficult time accessing what does remain of the EPA library system.

We appreciate your responsiveness and look forward to determining how we can save these collections, stabilize the library services for users and understand how best to maximize access for staff, scientists, and the public at large to important environmental information.

Thank you again for this opportunity to speak on behalf of the American Library Association, and I am happy to take any questions from the Committee.

RESPONSES BY LESLIE BURGER TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Question 1. You testified on behalf of the American Library Association, the Association of Research Libraries and the American Association of Law Libraries. A number of other statements from library associations were also submitted into the hearing record, including from the U.S. National Commission on Libraries and Information Science, Special Libraries Association, Society of Environmental Toxicology and Chemistry, and the Medical Library Association and Association of Academic Health Sciences Libraries. Are there other groups or associations that you know of who have objected to the Agency's closure and reduction of service at its libraries? Please provide evidence that such groups object to EPA's actions.

Response. We are aware of the following additional groups that have raised concerns or objections to the dismantling of the EPA Library Network and have attached their respective resolutions, letters, or statements concerning EPA: the American Society of Environmental History (an organization of 1,500 environmental scholars and educators); the EPA's Office of Enforcement and Compliance Assurance; Public Employees for Environmental Responsibility (representing 16 local unions including approximately 10,000 EPA scientists, engineers, environmental protection specialists and support staff); the Society of Environmental Journalists; and the Union of Concerned Scientists (an alliance of more than 200,000 citizens and scientists).

Question 2. Please describe the steps that your organization recommends to take prior to closing down a library or digitizing a library's holding.

Response. Before undertaking these actions, an organization should develop a thoughtful and comprehensive plan to ensure information is not lost and stakeholder access is retained. If the goal is to digitize, that should occur within a framework that ensures continuity of access and service which generally means that digitization take place prior to removing physical access to materials. Most libraries use digitization as a means to increase and enhance access, not to replace physical access. If physical access to a collection will be closed or removed, stakeholder input must be sought to determine if and how their needs can be met in the digital environment, as well as the most appropriate method of online reference to facilitate access in the new environment.

The ALA promotes library best practices and standards that have been developed, employed, and improved by its membership since the organization's founding in 1876. While there is not one standard for digitizing collections, there are several that have been accepted by the library community to promote access to information among all types of libraries, information-related organizations, and government agencies. The standards used by libraries to create these digital resources are international and national standards, created by librarians, archivists, museum professionals, and representatives from the photographic and audio industry, public broadcasting, and computer industry.

Preliminary stages of a digitization plan involve consideration of current and future stakeholder needs. Digital content must be created in a fashion such that it will be usable 25 and 50 years from now. This involves capturing catalog information, or what libraries call metadata, about the digital resource so that the digital object can be found now and in the future, and information on how it was originally created is available if the object must be recreated. Therefore, the type of camera or scanner that was used to create the image must be captured. Copyright information and who has the right to use the object, as well as title, author, keywords, subject classifications, and other identifying factors are included in the metadata.

Scanning materials is only one aspect of digitizing collections; there must also be an appropriate system to manage the digital assets such as a web-enabled digital asset management system or DAM, that provides the public with a way to locate the digital resources, display the resource, and can also allow control over what users access. For example, if there is a publication that contractually can only be viewed by the EPA scientists, the EPA could digitize it, store it in the database, make the metadata searchable, but allow it to be viewed only by those authorized.

In the digital environment, the importance of a quality system for access and management of these digital resources is critical.

Another significant consideration in a digitization project is preservation of the digital asset. There are already many cases of digitized collections that have been saved on CDs, and when organizations have tried to view them the content was not viewable. CDs and DVDs are fine transport media, but no longer are they considered the best practice for preservation. Networked storage, both on-site copies and off-site copies, is the current best practice. Best practice also calls for keeping two to three physical copies, along with the digital copy.

RESPONSES BY LESLIE BURGER TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1a. EPA has reported and your testimony has confirmed that EPA has met with representatives of the American Library Association on three separate occasions to discuss its library modernization plans. In April 2006, EPA reported that ALA requested a meeting to initially discuss EPA's proposed plans. EPA requested a subsequent meeting with ALA in December 2006 in order to be responsive to ALA's initial concerns. Six EPA staff members from the Office of Environmental Information and the EPA Research Triangle Park Center in North Carolina made presentations and answered questions from at least six separate committee meetings over three days at the ALA conference held in Seattle, Washington in January 2007. Please explain how this ongoing dialog with EPA officials and accessibility to officials conducting the modernization process has been insufficient.

Response. That a "dialog" occurred between the EPA and the ALA is a mischaracterization, implying a two-way conversation or exchange. The meetings referenced above mostly involved the EPA updating the library community on what they plan to do and/or had already begun to do after an outcry from our community and EPA stakeholders. While we were given an opportunity to voice our concerns, there has been no indication that the EPA considered them or planned to address them. The questions and concerns we have had from the beginning still remain even after all of the meetings referenced above.

Our concern from the beginning remains that the EPA began closing libraries without a thoughtful, comprehensive plan, resulting in the loss of access to critical environmental information by the EPA staff and the public. They dismantled a valuable and unique Federal network of libraries built over decades by taxpayers in an inefficient and ineffective way that may result in permanent loss of information and taxpayer resources. Originally, the EPA claimed the closings were due to budget cuts. However, once it was brought to their attention that in most cases digitization is very complex and expensive process (which reflects their gross lack of planning and direction), the EPA changed their story and instead stated they were "modernizing" to reach a broader audience. Yet, they were unable to produce any budget or source from where the money would come for this "modernization" or an adequate plan. Decisions were made with what appeared to be little consultation with stakeholders or understanding of how the libraries contribute to the EPA's overall mission.

Question 1b. What specific concerns remain after these series of meetings?

Response. Specific concerns, from what little plans we have seen, are that even the most basic items such as the number of documents to be digitized, timeframes, or the amount and source of funding in order to carry this modernization plan out remain missing. How are "help desks" and other "library" functions being organized so that trained professionals are available to help the end users of the EPA library and information services? Is there a record that reflects all of the materials being shipped across the country to be digitized, dispersed, and discarded? We remain concerned that years of research and studies about the environment may be lost forever. The EPA must have a plan that specifically addresses all of the requirements/standards that libraries, museums, and other Federal Agencies address prior to digitizing (even small-scale projects) and removing physical access. These requirements (including metadata, digital asset management, and preservation) are addressed in the response to Senator Boxer's second question and Senator Inhofe's second question.

To the best of our knowledge, the EPA has never reached out to the enormous amount of Federal resources that could have provided guidance on library processes/standards concerning digitization including the Government Printing Office, the U.S. National Commission on Libraries and Information Science, and the Federal Library Information Network (FEDLINK).

Question 2. Please provide copies of guidelines that ALA has produced to assist its member libraries including guidelines for weeding collections, modernizing library services, and digitizing information for enhanced public accessibility.

Response. The ALA promotes library best practices and standards that have been developed, employed, and improved by its membership since the organization's founding in 1876.

Concerning weeding collections, the ALA has various articles and bibliographies on this topic produced by members at libraries throughout the country. In the EPA's current situation, the use of "weeding" to describe the massive library transition is misleading at the very least. Weeding is the process of periodically removing materials from a library's collection that are out of date, in poor condition, or in multiple copies. In December 2006, the EPA stated they were adhering to the ALA's guidelines for weeding. No such item exists, but rather the EPA appears to have accessed (from our Web site) the ALA's "Fact Sheet Number 15: Weeding Library Collections: A Selected Annotated Bibliography for Library Collection Evaluation." As the title states, this fact sheet is a bibliography of documents concerning the practice of weeding. [After several requests, the EPA finally removed from their Web site the incorrect reference to "the EPA adhering to ALA's guidelines and criteria for reviewing a library collection."]

Regarding modernization, which generally refers to digitization to enhance access to materials, not replace access, there is not one standard for digitizing collections, but several that have been accepted by the library community to promote access to information among all types of libraries, information-related organizations, and government agencies. The standards used by libraries to create these digital resources are international and national standards, created by librarians, archivists, museum professionals, and representatives from the photographic and audio industry, public broadcasting, and computer industry.

Preliminary stages of a digitization plan involve consideration of current and future stakeholder needs. Digital content must be created in a fashion such that it will be usable 25 and 50 years from now. This involves capturing catalog information, or what libraries call metadata, about the digital resource so that the digital object can be found now and in the future, and information on how it was originally created is available if the object must be recreated. Therefore, the type of camera or scanner that was used to create the image must be captured. Copyright information and who has the right to use the object, as well as title, author, keywords, subject classifications, and other identifying factors are included in the metadata.

Scanning materials is only one aspect of digitizing collections; there must also be an appropriate system to manage the digital assets such as a web-enabled digital asset management system or DAM, that provides the public with a way to locate the digital resources, display the resource, and can also allow control over what users access. For example, if there is a publication that contractually can only be viewed by the EPA scientists, the EPA could digitize it, store it in the database, make the metadata searchable, but allow it to be viewed only by those authorized. In the digital environment, the importance of a quality system for access and management of these digital resources is critical.

Another significant consideration in a digitization project is preservation of the digital asset. There are already many cases of digitized collections that have been saved on CDs and when organizations have tried to view them, the content was not viewable. CDs and DVDs are fine transport media, but no longer are they considered the best practice for preservation. Networked storage, both on-site copies and off-site copies is the current best practice. Best practice also calls for keeping two to three physical copies, along with the digital copy.

Question 3. In 1999, when Secretary of Commerce William Daley proposed closing the National Technical Information Service (NTIS) library, he stated that sound management dictates we recognized the technologically advanced environment we live in. Did the ALA oppose this closure and suggest that the Clinton administration did not have a commitment to access of information for taking this action?

Response. In 1999, Congress held hearings on the proposed closing during which a witness testified on behalf of the American Library Association, along with the American Association of Law Libraries, the Association of Research Libraries, the Medical Library Association, and the Special Libraries Association, in opposition to the closing. As the issue evolved, the ALA did not make any accusations, but instead recommended, similar to the EPA libraries closings, that there should be a thoughtful and systematic approach to the closing and a determination of how NTIS will retain its important functions and permanent public access. Eventually, the ALA recommended that if NTIS was going to be transferred to another Agency that the GPO would provide the best possible home.

Question 4. In 1998, when EPA Administrator Carol Browner closed EPA's Public Information Center in Washington, D.C. and consolidated those functions into the EPA Headquarters Library, did the ALA oppose that Clinton administration action?

Response. It has historically been ALA's position that when there is a proposal to close, transfer, or down-size a Federal library, information service, or component, that a proper assessment be conducted to ensure the proposed change is a responsible use of taxpayers resources and that a systematic approach and an appropriate plan be in place that will ensure stakeholders needs are met and the mission of the institution will not be endangered.

Question 5a. The "Washington Post" featured an article on January 2, 2007 entitled, "Hello, Grisham—So Long, Hemingway?" It described the modernization process the Fairfax County Public Library has recently taken. The article stated, "In Fairfax, thousands of titles have been pulled from the shelves and become eligible for book sales." The article also featured a quote from you saying, "I think the days of libraries saying, 'We must have that, because it's good for people,' are beyond us."

How do you reconcile your quote defending the weeding of thousands of books at the Fairfax Public Library and your criticism of EPA's for wedding its collection and dispersing its material among its library system, universities, and other environmental libraries throughout the country?

Response. What my quote is referring to in the above-referenced article is that with newer technologies, careful evaluation and planning, and stakeholder input, libraries are better able to track and understand what users want and can be more strategic and efficient in meeting these needs through a combination of physical and digital access. The EPA's actions have not reflected stakeholder input, careful evaluation and planning, or investment in proper technologies.

Significant differences exist between the Fairfax County Public Library System and the EPA Library Network that make them difficult to compare. First, the Fairfax County Public Library System is not a Federal system. If items are removed from one library within the system, copies are most likely available at one of the nearby 21 branch locations, and services such as reference and inter-library loan are well established. Also, because it is one region, librarians in the various branches will not have collections that vary greatly and require extensive knowledge of that particular collection. The EPA library system operated like a National Library on the Environment and each regional library had its particular collection strengths, as well as information professionals that were familiar with their respective regional collections and their constituents and information needs. Now that several of the regionals and the pesticide library are closed, key links have been removed from the chain, thus weakening the whole system.

Second, in a public library, stakeholder needs involve popular materials—the EPA Library Network includes specialized and complex current and historical resources that are not subject to popularity necessarily and continuous access to them affects public safety and our natural resources. Waiting a week or so for a Eugene O'Neill play that has been removed from the shelves will have less consequences than not being able to access historical reports on soil toxin levels in a rural Kansas county. Also, Fairfax County conducted a significant stakeholder study to track and understand what their stakeholders were using prior to removal of materials, some of which have been put in storage, not discarded. Third, the Fairfax County Public System has one of the most sophisticated tracking systems in the country. As ALA has pointed out, the EPA access system (NEPIS) is very outdated. With fewer information professionals and libraries, the quality technology systems are critical. Finally, the Fairfax County Public Library system had a well-planned process for digitizing, in which library best practices and standards were followed ensuring continuity of access, and proper digital preservation and access methods. For all of these critical areas, EPA did not have a proper plan in place prior to closing libraries.

Question 5b. In a letter to the editor appearing in the Washington Post January 10, 2007, in a response to the article appearing January 2, the director of the Fairfax County Public Library wrote, "we use industry standards, computer date, and the expertise of experienced librarians to offer a comprehensive collection." What specific deficiencies exist in EPA's system that hinder users' access to its collection?

Response. From the limited information we have received from the EPA regarding their plans, we have identified some deficiencies that will hinder users' access:

EPA's National Environmental Publications Internet Site (NEPIS) system is outdated and inadequate. As previously mentioned, removing physical access and creating a digital library requires investment in proper technology and systems as well as qualified information professionals. When searching the EPA site, one retrieves thousands of hits for a topic such as 'water.' When qualifying the search by a date

range, the results include items outside that date range. The user will wonder about the veracity of the data and will need the assistance of the librarian. NEPIS will not provide a usable front end for a virtual library, nor is it a good digital repository. ALA has tried to dissuade EPA from building on the antiquated NEPIS system. We have recommended EPA move to a true digital asset management system that provides proper access to, as well as, preservation of, these objects. Also, the EPA database is broken into 5-year chunks that have to be searched separately—if EPA intends to develop a usable virtual library, they will need to address these outdated search methods.

The ALA has repeatedly brought to the EPA's attention the need for digitization standards, which remain missing. There is no indication of what standards are used for the capture of the digital image, except that it will be a TIFF and XML. If you are scanning text and photographs, different scanning requirements are necessary for each format.

The EPA plans to scan materials for Optical Character Recognition (OCR), which presents many challenges for text searching because of low accuracy rates.

The EPA has not appropriately addressed the application of metadata, which the ALA has also brought to the EPA's attention on numerous occasions. The current plan lists only capturing the title, publication date, and content creation date. There is no mention of capturing authors or whether the item is part of a series. According to the plan, EPA is not capturing technical metadata, information on the creation of the digital object, including at what resolution it was captured, what machine it was created on, or software that is used. Administrative metadata, such as copyright management or use information, is not being captured as well. Technical metadata will be necessary for the preservation of the digital object. All of this is needed for access now and into the future as technology evolves.

Finally, there is little discussion of preservation in the plan that will affect future users' needs as well as current, in case of a disaster for example. What happens with the CD/DVD versions of the documents—either the original TIFFs or the OCR version? Both require a strategy for preservation after they have been loaded into the online system NEPIS.

Question 6. As director of the Princeton Public Library, I understand that you recently renovated that library. Were any books, copies of books, or other publications removed, recycled, or destroyed? If so, will you provide the Committee with a list of those removed or destroyed publications?

Response. Yes, we did remove, recycle and discard material when we moved our library, but only after careful analysis pertaining to how our collection was being used and what our community was asking us for as well as what type of collection we wanted to have in place for our new library.

Using our online library system, we were able to determine for each title in our collection how often it had been checked out since it had been added to the library and the last time it had been checked out. We took that list and qualified librarians then went to the shelves to look at each title and make a determination about whether the book needed to be retained because it contained useful information, replaced if it was in poor condition, or discarded because the information was outdated. Once a determination on each book was made, we took appropriate action to either add a new title with updated information, replace the title, or discard it. In some cases, where we had multiple copies of a title, we sent the duplicate to an organization that recycled the books to libraries in developing nations. We discarded approximately 25,000 titles during our two moves. Each of our actions was deliberate and thorough. It is worth noting that the Princeton Public Library collection is more akin to that of the Fairfax County Library System, in that our collection is general in nature and not a research or historical archive like the EPA network of libraries.

Question 7a. Please provide a description of the weeding process used at the Princeton Public Library. How often does the Princeton Public Library weed its collection?

Response. We continuously weed our collection. Each of our librarians is assigned a subject area in the Dewey Decimal Classification which they are responsible for keeping up to date. We "weed" about 4,000 items per year and add about 9,000 items per year.

Question 7b. Are publications removed, recycled, or destroyed during the weeding process?

Response. The people who use public libraries are seeking continuously refreshed collections that reflect popular culture and preserve the "best" of literature and nonfiction over a period of time. As a small community library, we do not have the space or the mission to warehouse collections.

Question 7c. How does Princeton Public Library's weeding process conform with ALA guidelines? Are ALA guidelines strictly followed or does the Princeton Public Library have procedures specifically tailed for its library?

Response. We use the ALA weeding bibliographies as well as our own local guidelines to make decisions on weeding.

Question 7d. What steps has the Princeton Public Library taken to make more information available on-line concerning its collection or services?

Response. We are not engaged in a mass digitization project because we have few unique resources. Our Web site, www.princetonlibrary.org, promotes and leads people to our collections, both print and online subscriptions, based on their interest areas.

Question 8a. Libraries all over the country are reducing their physical services. For example, the New York Public Library used to be open 7 days a week and now it is closed on Sundays and Mondays. The Library of Congress has reduced its hours. Over 100 physical libraries are set to close in Great Britain this year because people are able to do their research on the Internet. As you testified, libraries have been digitizing information for the past 20 years. However, in a December opinion editorial for the New York Times and in your testimony you stated that by closing brick and mortar facilities the most important issue is the possible loss of librarians. Would it be accurate to characterize your criticism is not a loss of information but the possible loss or reassignment of a librarians' jobs?

Response. In the EPA Library Network, as in many libraries, the librarians are a key component to the stakeholders accessing information. In the way the EPA network was established, each regional library provided specialized information, and the librarians, who are familiar with the labyrinth of resources, can navigate the systems to identify and access items in an efficient and accurate manner. Stakeholders, including scientists, businesses, lawyers, and the general public need specific information quickly and have stated that the librarians are integral to their work at the EPA. Librarians are familiar with regional library constituents and their information needs and help provide solutions, provide alternative resources, and identify others who have similar situations. In addition, the librarians are familiar with the EPA Agency—its organization, operations, major initiatives, and how staff produces and seeks information.

It is an unfortunate misperception that because information is available online that everyone can locate and interpret it. Librarians as information professionals have actually become more valuable as humans are creating more information, seeking more information, and storing more information in massive and complex systems that require knowledge of specific taxonomies, subject classifications, human information-seeking behavior, and evolving technologies.

While libraries are reducing physical services, they are also increasing digital services including online reference services managed by libraries. These modernizing and digitization projects are planned, developed, and conducted by librarians who manage the digital objects and understand how new media must be managed. For example, how and when current collections in audio or video need to be converted. In an era in which we are producing larger and larger amounts of data each year and enhancing library collections by digitization, information professionals are needed more than ever.

Therefore, it would be accurate to characterize my criticism as having to do with the great loss of expertise, knowledge, and proper management of resources at the regional libraries and how removing librarians and closing libraries has weakened the overall EPA library network, reduced access to resources by EPA staff, scientists, and the general public, and will negatively impact the EPA's ability to fulfill of their mission to protect human health and the environment.

Question 8b. Are you aware of any Federal employees who lost their jobs as a result of EPA's library modernization process?

Response. Since the EPA has contracted out library services since the mid 1980s, there have been very few Federal staff hired to work specifically on library services; therefore, we are not aware of any Federal employees who lost their jobs as a result of the EPA's library modernization process. This makes one wonder had the staff been Federal employees rather than contractors would the library closures have been handled differently? Qualified librarians would have helped to ensure the library modernization process accomplish its goals. EPA has classified jobs so that staff is not required to have a professional/graduate degree in library or information science which is a requirement for librarians in school, public, academic, and corporate libraries.

Question 9. Please provide examples of any information held in EPA libraries that you know does not continue to be available to the public online, through interlibrary loan, or otherwise upon the request of EPA employees or the public.

Response. To the best of our knowledge, materials that were held in the four closed EPA Libraries (Chicago, Kansas City, Dallas, and the Chemical Library in Washington, DC) have not all been transferred and made available through an EPA repository collection. These materials include commercially published documents that were collected for specific purposed by those libraries over the last 37 years. Materials may have had specifically local interest (e.g. Environmental Impact Statements for particular sites) or may have been used to support specific policy decisions in that Region or Program. While these materials are not "Unique EPA documents," and while most of the materials may generally be available through Interlibrary Loan from other institutions, their removal from access by the public and EPA staff is still significant. The purchase and maintenance of these collections represents a significant investment by the Agency over the last four decades, and the wholesale removal of these collections reflects a general disregard for the value of libraries and collections to the work of the Agency.

The EPA Headquarters Library collection of both unique and non-unique documents remains available as a repository collection. However, we believe, that there are significant materials that while stored in that collection, are not listed in the Online Library System and are therefore impossible for the public or EPA staff to access or request. Specifically, the entire EPA History Office collection was transferred to the Headquarters Library in 2006, but no effort to catalog or list those materials was undertaken and finding aids were removed from the History Office Web site. Likewise, significant international collections from the closed INFOTERRA collection remain available in the EPA Headquarters Library, but are not cataloged or listed for either the public or EPA staff to identify or request.

Library materials held in the closed EPA OPPTS Chemical Library that were not sent to other EPA libraries nor lost through the recycling dumpsters are boxed up and are not readily available to the public or to EPA staff.

Anything that is boxed up anywhere in the Library Network is subject to the moratorium and again, to the best of our knowledge, is not being shown in OLS as being in a different location. In other words, those items are not being re-cataloged to show their new locations. How accessible are these materials stored in boxes off-site without an accurate record locator map?

Items held by the libraries that are not cataloged (and thus not shown in OLS or OCLC) are not really accessible to the public unless library staff physically check the shelves to see if it can be found. The public has no way of knowing about the uncataloged materials unless they call and specifically ask about a title (and usually they need complete citations with EPA publication numbers).

OECA Position Paper on the 2007 EPA Library Plan

The Office of Enforcement and Compliance Assurance (OECA) is committed to maintaining information resources to support our enforcement programs and projects. We want to continue to support our enforcement partners and stakeholders by providing information services and materials, but are concerned how this will be accomplished as library support is cut across the Agency.

The plan for library reductions addresses many complex and complicated issues. We have attempted to take the details from the plan and categorize them into over-arching themes or issues and provide examples which illustrate how that issue may impact OECA in "real terms". We have also stated OECA's position on specific topics. Additionally, there was a library network conference call on August 8, 2006 where some of the specifics questions posed by the draft plan were addressed. This paper makes reference to details addressed during that call that are of importance to the OECA position.

The over-arching issues that OECA is concerned with are:

1. Costs and Funding
2. Accessibility of information – Access to Information
3. Timeliness of services

ISSUE 1 - COSTS AND FUNDING

Many of the points put forth in the plan have associated costs which have not been adequately addressed in the plan. These costs are both actual costs, such as paying a vendor for a product or service and costs or increased use/demands on a library, resulting in increased labor costs, both contract and EPA employee hours. Some specific examples of concerns with undefined costs are put forth in the following examples:

A. **Cost of digitizing of documents** - as put forth on page 5 of the plan, "Agency documents not currently in the EPA National Environmental Publications Information System (NEPIS) database will be sent to Cincinnati for digitization into NEPIS". While OECA supports the concept of digitizing documents, we have many questions that are not answered in the plan. OECA's questions regarding this issue are:

   - Digitizing is a very expensive process, how is this process going to be funded?
   - Will these costs be passed on to OECA?
   - How will these costs be paid by OECA?

   OECA's position on digitizing documents - We support the concept of digitizing many of the Agencies documents, however, we firmly believe that a systematic approach be "mapped-out' and procedures defined, including cost management, prior to implementation of the process.

B. **Interlibrary Loan Services (ILL)** - An interlibrary loan is a reciprocal system of sharing between libraries, usually at low or no cost to the libraries involved. The draft plan addressed substantial changes in these services, many of which imposed fees or had added costs. Currently, the NEIC library participates in ILL services with other libraries at low or no cost to the NEIC library. Initially, the draft plan was very vague on how the ILL fee process would be implemented and OECA had concerns about the impacts and costs of the proposed re-structuring. As of the August 8, 2006 library network conference call, NEIC was verbally assured that the reciprocal ILL arrangement that is currently employed will continue to be available to the NEIC library at no cost from the other Agency libraries that remain open. However, for other OECA employees outside of the NEIC library area, there may be costs associated with getting needed materials where the regional library has closed and therefore is not participating in a reciprocal ILL arrangement. For example, when an OECA employee located within a regional office requests material through an interlibrary loan at the regional library, since that library is closing and can't reciprocate by lending out material, that library or individual will incur a fee for getting the requested information through the ILL system. OECA's questions concerning ILL are:

- How will OECA/OECA employees not at NEIC pay for the additional fees for ILL materials?
- How will this system be managed? And by whom?
- How much will these additional fees be?

OECA's Position on ILL - This plan does not address the specifics of how this "fee system/liaison system" will be managed or how it will be applied to non-reciprocating libraries. OECA has concerns on how the fee system will be structured and implemented. While OECA can appreciate that a true interlibrary loan system is based on reciprocity and understands that if a library is not in the position to lend, then a payment of sorts would be justified. However, we have concerns on the implementation.

C. **Desk-top Subscription funding reduction** - Although the plan says that staff "will continue to have access to the full EPA Desktop Library", the Agency's license for ScienceDirect for the Desktop Library involves both paper subscriptions and electronic access. Of the hundreds of journals included in the ScienceDirect service, EPA only has full-text electronic access to those journals for which we have also have a paper subscription. As physical libraries close or stop their subscriptions, the impact on electronic licenses (full-text) *may* be devastating. Without the substantiating scientific information available in current literature, OECA's mission, including supporting civil and criminal litigations and the development of regulations, will be compromised. OECA's questions regarding the Desktop library are:

- What will the "full EPA Desk-top Library" contain?
- What is the FY07 Working Capital Fund rate for this service?

- o Who will fund this service for offices within OECA?
- o How will OECA be assured of continued access to the vital resources needed by OECA employees?

OECA's Position on the Desktop Library - OECA needs assurance of continued access to many of these subscriptions even if the subscription via the Desktop library is gone. We need clarification on the WCF rates.

D. **The Online Library System (OLS)** is the backbone of the Agency's Library system. OLS is the system which tracks the status of all the libraries' holdings and is the electronic form of a card catalog. This is a crucial service and we need the functionality of OLS to be continued in order to locate materials needed for enforcement. The plan states "Future funding mechanisms....are being explored" At the library network call on August 8, 2006, NEIC was assured that this system will be funded in 2007 by OEI.

OECA's Position on OLS - While OECA is in support of OEI funding OLS in 2007, funding source(s) beyond 2007 need to be identified as soon as possible.

E. **OECA's (NEIC) library capacity** The NEIC Library is the only specialized environmental forensic library in the Agency. The NEIC library supports enforcement in the regions when there is a need for NEIC's expertise or unique materials, such as standards and industrial process information. Loss of support for enforcement within the regions may cause an overwhelming demand on the small NEIC library by requiring the NEIC library to provide not only unique materials, but also items that the regional libraries currently provide.

OECA's Position on NEIC's Library Capacity - There is no budget available to expand NEIC's library capacity should this increased demand for NEIC library services occur. NEIC is already seeing a slight increase in requests from other regional libraries whose staff/hours are being cut.

ISSUE 2 - ACCESSIBILITY OF INFORMATION / ACCESS TO INFORMATION

Many of the points in the library plan address various aspects of what will happen to collections and documents as regional libraries close. While the plan addresses a phased approach to closing physical libraries, OECA is concerned about the potential loss of valuable information. Additionally, OECA is concerned that the loss of institutional memory as well as the loss of expertise from professional librarians in the regions will hamper OECA's enforcement program. The following examples outline OECA's concerns:

A. **Dispersal of Collections** – The plan outlines a hierarchy of locations where collections will be sent but does not adequately address the planning process used to determine how a dispersal location will be determined. OECA is also very concerned about the accessibility of third-party data or documentation which OECA may have used or relied upon to form guidance or determinations. For example, Region 5 has already begun dispersal of their collections without these protocols in place. Information from the collections regarding the Great Lakes Initiative or data surrounding human health studies may have been dispersed and OECA and the Agency may not be able to locate this essential information. We must have continued access to supporting information to be able to substantiate and support our findings, determinations, and guidance.

OECA's Position on Dispersal of Collections - OECA needs the information, collections, and data from closing regional libraries that is necessary for enforcement work; particularly industrial process documents, analytical methods, and background documents used to develop OECA guidance and rules to be kept within an Agency collection or library. OECA is seriously concerned that these documents may be distributed without adequate documentation and cataloging and may become virtually lost within the system. OECA needs assurances that this type of information will be maintained within an Agency collection and that these collections will remain cataloged, inventoried, and accessible. Having this data or information offered out to other federal, state, or local libraries, or universities is not an acceptable option for OECA. Prior to a regional collection being dispersed, OECA believes that dispersal protocols must include review by regional enforcement personnel.

B. **Accessibility of Digitized Information** - The plan currently calls for the digitization of many of the documents from the collections within the libraries that are closing. While OECA supports the concept of digitization, we also have concerns about continued accessibility to original documents after they are digitized and on-line access after a document is digitized. OECA supports the earlier library network position that two copies of the documents being digitized be retained, in separate locations, for disaster recovery purposes.

OECA's Position on Access to Digitized Information - OECA believes that the cataloging of the digitized image needs to be subject to rigorous review and QC to ensure that the image is cataloged and correctly referenced. One small mistake could result in a valuable document being lost for all time.

Issue 3 - TIMELINESS OF SERVICES

The plan stresses that it is committed to providing EPA "employees the library services they need to do their jobs", but does not adequately explain how this will be accomplished if libraries are closed and others have reductions in available services. The plan calls for the cutting of services and reduction of available resources and the overall availability of information to many employees. The following are examples used to highlight the nature of the timeliness issue:

A. **Timeliness of Service** - If OECA is involved in a civil or criminal litigation and the judge asks for documentation, we can currently rely upon a library to locate the information and have it produced to a court house in a timely manner. Under the cuts called for in the plan, timeliness for such services is not addressed.

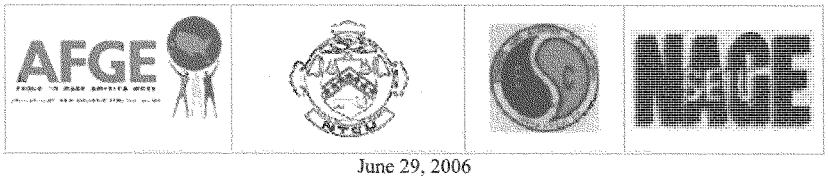
    - How will situations such as this be handled if a regional library is closed?

B. **Timeliness and ILL within Closed Libraries** - The ILL process for regional and HQ offices with closed libraries as put forward in the current plan presents a real problem in terms of timeliness, especially for enforcement. Many times OECA employees are faced with tight deadlines. If they must use an ill-defined and costly process to obtain the information they need to make their case within tight timeframes, the Agency may be faced with serious ramifications.

OECA's Position on Timeliness - OECA would like the issue of timeliness for accessing information to be addressed and a plan developed for contingency measures to provide emergency access in time-sensitive, critical situations.

Summary

In summary, OECA is concerned that the plan does not adequately address the issues of cost, accessibility, and timeliness. In order to continue to support OECA's mission, our employees need information which is current, timely, correct, and accessible. While we are fully aware of the budget cuts impacting the Agency, OECA needs to ensure that its employees continue to have access to the information that is critical for them to do their jobs and fulfill the Agency mission and protect the American public.



June 29, 2006

The Honorable Conrad Burns, Chair
Appropriations Committee, Interior and Related Agencies Subcommittee
United States Senate

The Honorable Byron Dorgan, Ranking Member
Appropriations Committee, Interior and Related Agencies Subcommittee
United States Senate

Honorable Members of Congress:

We, the undersigned, are Presidents of 16 Local Unions representing at least 10,000 EPA scientists, engineers, environmental protection specialists and support staff. We are writing to protest the proposed $2 million budget reduction to the EPA operations and administration budget, which EPA management intends to use to close as many of our technical libraries as possible.

Many of us rely heavily on our technical libraries to perform our jobs in an effective manner. Our library staff provides us with the latest research on cutting-edge homeland security and public health issues. The ability of EPA to respond to emergencies will be reduced because important reference materials may be unavailable or take significant time to receive from storage or another library. In addition, the libraries conduct business searches for enforcement officers and provide EPA with a host of other resources that cannot be found with a standard internet search.

In short, our technical library staff provide vital support services that allow EPA scientists to spend more time conducting inspections, writing public health and environmental policies, and implementing the Agency's regulations. **For these reasons, we urge Congress to re-instate the $2 million budget reduction, and mandate that EPA management use these funds to keep open our existing technical libraries.**

In addition to vital library services for EPA employees, we are very concerned that the public will no longer have access to many of our Agency's past reports and technical documents. Already, EPA library services have been significantly reduced, or are no longer available to the public in EPA Regions 1, 2, 5, and 6, which service 19 states.

Senior EPA managers are touting the message that the $2 million budget reduction, and subsequent library closures, will promote increased "efficiencies," with virtually all EPA reports

being available in an electronic format. These "savings" are illusory. In fact, nothing could be further from the truth. Here are some sobering facts regarding our impending library closures:

- The National Environmental Publications Information System, EPA's repository of electronic documents, currently holds about 13,000 documents. But the Agency has a total of about 80,000 documents that should be retained; most of these are not yet available in any electronic format. Our management has not addressed the issue of how much it will cost to digitize these thousands of reports, where the money will come from, or how long it will take to complete the task.
- Some of EPA's library collections are being dispersed without establishing any standard procedures or criteria to ensure that important documents are not lost. For instance, the EPA Region 5 library in Chicago will close on 9/30/06, and is already offering its collections to other libraries.
- EPA's Office of Environmental Information (OEI), in a cost-benefit analysis completed in 2004 ("Business Case for Information Services: EPA's Regional Libraries and Centers," EPA-260-R-04-001, January 2004), estimated that EPA's library network saved Agency professional staff time of more than 214,000 hours – a cost savings of approximately $7.5 million. The benefit to cost ratio was conservatively estimated at 4.4-to-1.
- Based on our assessment of EPA's long-range library plan, we have concluded that our Agency intends to stop providing any EPA library services to the public. Our management has indicated that the inquiring public will get their information either from EPA hotlines or program staff, or from our website. They also assert that all EPA documents will be available "on-line," for easy retrieval. But this proposed approach does not consider, for instance, how university, school, and municipal libraries will borrow paper copies of EPA's documents through the inter-library loan process. The approach would also deprive working-class people of a user-friendly, well-staffed EPA library system that can provide them with environmental and public health information; and we consider this to be an "environmental justice" issue.

We tried to resolve this issue internally by sending a Union "Demand to Bargain" to EPA management. Senior Agency management rebuffed us, saying that the topic was "premature" to negotiate because no formal FY 2007 library plan has yet been adopted. But the dismantling of EPA libraries is already underway, without a coherent plan in place.

The proposed $2 million budget cut for EPA libraries was initiated by EPA management, and approved by the Office of Management and Budget and the President, before being sent to Congress. We believe that this budget cut is just one of many Bush Administration initiatives to reduce the effectiveness of the U.S. Environmental Protection Agency, and to continue to demoralize its employees.

We also believe that the sudden, draconian manner in which the EPA libraries are being closed, with little regard to protection of its unique collection of past technical reports and documents, is one more example of the Bush Administration's efforts to suppress information on environmental and public health-related topics while cloaking these actions under the guise of "fiscal responsibility."

In summary, both EPA scientists and technical staff, and the citizens of the United States will experience a loss if this $2 million reduction is included in the final FY 2007 budget. We urge you to restore this funding to EPA's FY 2007 operational and administrative budget, and to include explicit instructions that the funding be used to continue to support EPA's existing Regional libraries.

Very sincerely yours,

/s/
Dwight A. Welch, President,
NTEU Chapter 280, Washington, DC

/s/
Steven Roy, President,
AFGE Local 1110, Seattle

/s/
Steve Shapiro, President
AFGE Local 3331, Washington, DC

/s/
Silvia Saracco, President
AFGE Local 3347, Research Triangle Park

/s/
Dave Christenson, President
AFGE Local 3607, Denver

/s/
Nancy Barron, President
NAGE Local R5-55, Atlanta

/s/
Larry Penley, President
NTEU Chapter 279, Cincinnati

/s/
Tammy Jones-Lepp, President
NAGE Local R12-135, Las Vegas

/s/
Patrick Chan, President
NTEU Chapter 295, San Francisco

/s/
Steve Kinser, President
NTEU Chapter 294, Kansas City

/s/
Paul Scoggins, President
AFGE Local 1003, Dallas

/s/
Henry G. Burrell, President
AFGE Local 3428, Boston

/s/
Mark Coryell, President
AFGE Local 3907, Ann Arbor

/s/
Paul Sacker, President
AFGE Local 3911, New York City

/s/
Wendell Smith, President
ESC EPA – Unit San Francisco

/s/
Charles Orzehoskie, President
AFGE Council 238

/s/
John J. O'Grady, President
AFGE Local 704, Chicago

CC:

Senator Ted Stevens

Senator Thad Cochran

Senator Pete Domenici

Senator Robert Bennett

Senator Judd Gregg

Senator Larry Craig

Senator Wayne Allard

Senator Robert Byrd

Senator Patrick Leahy

Senator Harry Reid

Senator Dianne Feinstein

Senator Barbara Mikulski

Senator Herb Kohl

ASEH Resolution to Oppose EPA Library Closures

12/12/06

Ad-hoc Committee on the EPA Libraries:

Chair, Nancy Langston

Members: William Cronon, Mary Elizabeth Braun, and Kathy Brosnan

BACKGROUND

The Environmental Protection Agency has begun closing substantial portions of its network of technical libraries—the largest collection of environmental materials in the world. In October, without notice to either the public or affected scientists, the EPA closed the Office of Prevention, Pollution and Toxic Substances Library, its only specialized library for research on the health effects of toxic chemicals. Major regional libraries, including those in Chicago, Dallas, and Kansas City, have also been closed this fall, with more closures expected.

The EPA libraries contain a combined collection of 504,000 books and reports, 3,500 journals, 25,000 maps and 3.5 million information objects on microfilm. These libraries receive more than 134,000 research requests a year from EPA staff, in addition to requests from the public. Losing access to these records will impair the research of environmental historians as well as the work of EPA scientists and enforcement specialists. EPA Administrator Stephen Johnson states that many library materials will be made available electronically, but this is no substitute for public access to the current collections.

Virtually none of the EPA records that exist prior to 1990 have been digitized. These historic records are critical for understanding environmental conditions. Trying to piece together responsibility for PCB contamination at a Superfund site, for example, would be impossible without such records. For communities of color struggling to understand asthma and air contamination, for epidemiologists searching for patterns of mercury deposition and disease incidence, for historians seeking to learn about restoration of streams after the

Clean Water Act—the holdings of the EPA libraries are quite simply irreplaceable.

Under current EPA library plans, thousands of unique holdings will be inaccessible for an undisclosed period. While EPA staff have stated that "unique, EPA-generated" documents will be digitized within the next two years and made available online, these account for less than 1% of the holdings of the EPA libraries. No plans currently exist for digitizing records from before 1990. No plans appear to exist for cataloging materials before storage, or for sending dispersed documents to Federal Records Centers where public access can be assured. The EPA library plan does not allow for continued public access to EPA libraries; the only public access to EPA documents appears to be to the small fraction of the collection that will be digitized. These factors make us concerned that many important records will be inaccessible, perhaps indefinately.

EPA staff have argued that these closures are justified because visits to the libraries have declined. While this may be the case, many government services are not used daily, but that doesn't make them any less valuable when it is time to use them. When the funds and competence associated with any such government services are cut, we have seen the dire consequences that can follow. The retention of historical memory--the archiving of knowledge and documents that would otherwise be lost forever--is among the defining attributes of civilized community. Not everything should have to pass a cost-benefit test to be protected.

PROPOSED ACTION

In the memorandum outlining potential guidelines for developing ASEH advocacy positions, it was recommended that ASEH take policy positions on matters directly relevant to the profession of history. Access to documents and archival materials could not be more relevant by the criteria outlined in that memo, and ASEH surely has a critical stake in assuring scholarly and public access to EPA documents.

The American Library Association and the Society of Environmental

Journalists have opposed these closures, and our committee recommends that ASEH do the same. After extensive conversations with EPA staff and staff from the Society of Environmental Journalists, the American Library Association, and the Union of Concerned Scientists, we have drafted a resolution which we would like to submit to the Executive Committee for discussion and a vote.

PROPOSED ASEH RESOLUTION ON EPA LIBRARIES

WHEREAS the United States Environmental Protection Agency (EPA) and its network of libraries have provided access to vital information for historians investigating environmental issues and environmental conditions; and

WHEREAS the EPA Libraries house and catalog unique collections, including approximately 50,000 primary source documents not available elsewhere in any format, on vital environmental issues; and

WHEREAS the EPA Libraries serve as institutional repositories for internal documentation as well as commercially published literature about the topics agencies regulate, investigate, and research; and

WHEREAS the EPA Libraries operate public reading rooms, providing vital access to collections; and

WHEREAS the *Draft EPA FY 2007 Library Plan: National Framework* (June 1, 2006), including the current proposal to move materials to the web, does not ensure that the public, researchers, scientists and policymakers will have continued access to the staff, services, and high quality, accurate information found in the EPA Libraries; and

WHEREAS based on our assessment of EPA's long-range library plan, it appears that the EPA intends to stop providing most EPA library services to the public; and

WHEREAS some of EPA's library collections are already being dispersed without establishing any standard procedures or criteria to ensure that important documents are not lost; and

WHEREAS EPA plans for digitization do not clearly include a schedule for timely completion, coverage for records from before 1990, or an adequate budget, leaving historians, other researchers, and the general public without access to information for unreasonable lengths of time; and

WHEREAS the proposed FY 2007 budget for EPA Libraries contains a $2.5 Million cut which has already resulted in the closure and imminent closure of some headquarters, regional and laboratory libraries and the reduction of staff at other EPA Libraries; will put the collections and services of the EPA Libraries at risk, causing essential information about the environment to be lost; Therefore, be it

RESOLVED, that the American Society for Environmental History (ASEH) urge Congress to devise a method to make all EPA library holdings available to the public; and be it further

RESOLVED, that ASEH urge the EPA to restore funding to the EPA regional and laboratory libraries; and be it further

RESOLVED, that ASEH urge the EPA to stop library closures and dispersal of library materials until the GAO has completed its report, and until Congressional review is completed; and be it further

RESOLVED, that the ASEH urge the EPA to develop a responsible information and collections management strategy, including ensuring access to pre-1990s documents, and make it available for public comment, to ensure continued access for the public and other stakeholders to the collections and services of the EPA Libraries.

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Society of Environmental Journalists

P. O. Box 2492, Jenkintown, PA 19046
Phone: (215) 884-8174 Fax: (215) 884-8175
Internet: sej@sej.org World Wide Web: http://www.sej.org
Shipping address: 321 Old York Road, Suite 200, Jenkintown, PA 19046

August 8, 2006

TO: House Appropriations Committee
Republican Interior and Environment Subcommittee Chairman
Rep. Charles Taylor (N.C.)

TO: House Appropriations Committee
Democratic Interior and Environment Subcommittee Ranking Member
Rep. Norm Dicks (Wash.)

TO: Senate Appropriations Committee
Republican Interior and Related Agencies Subcommittee Chairman
Sen. Conrad Burns (Mont.)

TO: Senate Appropriations Committee
Democratic Interior and Related Agencies Subcommittee Ranking Member
Sen. Byron Dorgan (N.D.)

The Society of Environmental Journalists is writing to urge the full Senate to modify President Bush's proposed budget to reinstate funding that would maintain and improve the U.S. Environmental Protection Agency's libraries.

The Society of Environmental Journalists (SEJ), with more than 1,450 members, is the world's largest and oldest organization of individual working journalists covering environmental issues. Among other things, SEJ keeps an eye on issues concerning freedom of information and the right-to-know, through its First Amendment Task Force and WatchDog Program.

Reducing funding for EPA's cultivated libraries is a step that closes the intellectual commons in this country. At a time when our political leaders are crying for improved scores in math and science from our students, and more advancements from our scientists, the proposed budget would eliminate $2 million in funding for libraries relied on by ecologists, horticulturalists, conservation biologists, aqua culture specialists, environmental contractors cleaning up Superfund and brownfield sites, and a host of other scientists and researchers all who are using these libraries in part to find the most economical way to do their jobs. Taxpayers themselves want the biggest bang for their tax dollar.

Open access to information is a foundation of this country, and one the Society of Environmental Journalists strongly supports. Former Illinois Attorney General Neil Hartigan put it well when he said, "An open government is the only

government that truly serves the public interest." We in SEJ support that notion.

From a financial perspective, cutting the EPA's library budget is not cost effective. A November 2005 cost-benefit analysis conducted by the agency concludes that shutting EPA's libraries actually will lead to a much larger financial burden for EPA than it already bears. Such an act is misguided, because it digs into the pockets and minds of everyone - those who use the libraries and those who don't. In "Business Case for Information Services: EPA Regional Libraries and Centers," agency researchers found that EPA's library network saved more than 214,000 hours of EPA staff time, at a cost savings of approximately $7.5 million.

Proponents of the $2 million budget cut - which would drop the EPA's library budget to $500,000 from the current $2.5 million - claim doing so will promote efficiency. We would like to see justification for that claim.

Proponents also have promised that electronic access to all of the information currently provided by the libraries will be made available and maintained online. We would like to see the plan and funding proposal backing up that promise.

To date, no line items have been written into the budget proposal that would pay for converting the nearly 67,000 paper-only documents of the agency's 80,000-document collection into electronic form. Further, no provisions for safeguarding the electronic form to assure it matches the original have been articulated.

We in SEJ cannot support reducing EPA's library budget because no provisions have been offered to account for what would become of all the books, reports, and photographs in the agency's libraries. Closing and dismantling the agency's network of technical research libraries, which would put thousands of scientific studies out of reach, has the potential to hinder emergency preparedness and anti-pollution enforcement and long-term research. Particularly at a time when the agency is beginning to discover the environmental impacts of pollution on public health, it is in the country's economic interest to fully fund EPA's libraries, and keep them open and prospering.

Sincerely,

Perry Beeman

Perry Beeman
SEJ President

PB:llk

Senator BOXER. Thank you, Ms. Burger.

Mr. Connery, as I understand it, you are a lawyer in private practice, Holland and Hart in Denver, is that correct?

Mr. CONNERY. I am actually retired.

Senator BOXER. A retired attorney.

Mr. CONNERY. Retired from Holland and Hart, and I am not here representing anybody other than myself.

Senator BOXER. You are here representing yourself as a citizen of the United States of America.

Mr. CONNERY. Yes.

Senator BOXER. Your experience in this is that you were a lawyer that handled——

Mr. CONNERY. I actually started my career by drafting the first law in the Country that instituted ambient standards in Colorado, put them into effect and required companies and everybody else, governments, to reduce their emissions to meet those standards.

Senator BOXER. At that time you were in government?

Mr. CONNERY. At that time, I was in private practice. Governor Love, a Republican, had appointed my law firm as counsel to a legislative study committee that included Republicans and Democrats.

Senator BOXER. Very good. Thank you for giving us a little bit of that background. Please proceed.

STATEMENT OF ROBERT T. CONNERY, HOLLAND AND HART, DENVER, CO

Mr. CONNERY. Let me just tell you that I am indeed deeply dedicated to the integrity of that process, and those standards. I think that they are the fulcrum, the central tenet, the reason for the success of the Clean Air Act.

As you can tell from my written testimony, my viewpoint is a little bit different than everyone else's here. I have set forth in that testimony an example of why I think the NAAQS review process is not working well, at least in the instances that I have had direct personal experience with it. I will spell one of those out. I don't think it is serving the purpose it was intended to serve and has to serve. It has to serve as something that the public can trust, it has to reflect real health effects.

In the case of the coarse particulate matter standard, the one I have been involved in, I do live in Denver, Colorado, I do live in the arid west. Senator Craig mentioned coarse particulate matter is a little bit different animal, it is dust, it is fugitive dust. That subject has been around for a long, long time. Fugitive dust has been excluded, starting with the Administrations of Presidents Nixon, Carter, Clinton, Ford, the first Bush, all of those have excluded rural fugitive dust. If you look at my testimony, I have quoted several of the scientists and the reasoning behind that.

The first has been Ferris. Ben Ferris, and there is a board here that you can't see that basically, he was with the Harvard School of Public Health and in charge of the largest and best study that has ever been done on coarse and fine particulate matter, 190,000 data points, there is no other study that actually measured coarse particulate matter, and determined whether or not there were health effects at ambient levels. I should mention that we are not talking about control of this dust, we are talking about the inability

to control it to the same level as fine particulate matter that the standard was based on.

He said that fugitive dust at levels measured in the ambient air in western and other parts of the United States over the years has never been documented to have adverse effects on human health. Most people know that who live around it. It is a darned nuisance, but it is not a health problem.

When it got in front of CASAC, what did CASAC say about it? Well, I have quoted the past four chairmen under all these different Administrations. One of them said in this case, the science does not exist. The chairman under President Clinton, Phil Hopke, basically said that the Administration would have to decide based on considerations other than science. Mort Lippman said the same thing, that they were going to have to decide this not based on science, but based on practical considerations.

I respect those views, and what happened in this case was that EPA, this Clean Air Science Advisory Committee, first recommended that there not be a coarse PM standard. That was the result of 7 years of hearings, criteria documents, staff papers. They came out and said we shouldn't have a coarse PM standard, we should move to a fine standard.

Well, in less than 2 weeks, that draft letter was reversed. They said regardless, and I have quoted their second letter, basically said regardless of that first conclusion, if we don't have a standard, we won't get data and we won't have more studies. CASAC changed around and recommended a standard that would not apply in rural areas. EPA proposed that and the staff proposed that.

In any case, the process, if you will, didn't work. CASAC went underground. CASAC stopped keeping transcripts, even though the staff paper and the science it said it relied on said that there was no justification for a standard in rural areas or for this kind of dust, crustal material. They nevertheless adopted one.

All I can tell you is the process for some reason is not working. I have several suggestions for you in the testimony. Essentially what EPA and the people who advocate this standard have said is that even though there is weak, limited and uncertain evidence, maybe not against the weight of the evidence, but that that evidence that may apply in some urban areas, there is no evidence that it doesn't apply in rural areas.

Thank you.

[The prepared statement of Mr. Connery follows:]

STATEMENT OF ROBERT T. CONNERY, HOLLAND AND HART, DENVER, CO

My qualifications for being invited to talk with you today about reform of the process for adoption of the National Ambient Air Quality Standards ("NAAQS") under the Clean Air Act have to do with my involvement in the birth of the concept and use of ambient air quality standards for air pollution control purposes in the Colorado Air Pollution Control Act of 1966, 1966 Colo. Sess. Laws at pp. 210, 212–213. My law firm was counsel to the Colorado General Assembly's Legislative Study Committee that formulated that law. Senator Edmund S. Muskie held hearings on Colorado's ambient standards approach in the late 1960s in Denver, and Congress adopted it in the Clean Air Act of 1970.

I also served as Chair of the Air Quality Committee of the American Bar Association's Section on Environment, Energy and Resources for several years. I have authored the Air Quality Chapter of one of the few peer-reviewed legal treatises on the subject, have taught at United States Forest Service environmental impact

courses, and most recently taught Advanced Environmental Policy at the University of Colorado Law School at Boulder.

I have also participated in the NAAQS process at the Federal level for more than 35 years, representing individual companies and national trade associations, such as the National Cattlemen's Beef Association and the National Mining Association, and have represented a host of private companies, public entities, including the Denver Regional Council of Governments, and environmental groups on air quality and other environmental compliance, planning and enforcement issues. I am now retired, and emphasize that I am not here on behalf of any client or interest.

History and Purpose of the Ambient Standards.—The genesis of the ambient standards was the need to delineate areas in which air pollution was a problem, and areas where it was not. There was a severe air pollution problem in Denver and a few other locales within the State, but not in most of the rural areas of the State. The inability to distinguish the areas where action was needed from those where it was not led to division between urban and rural areas, and repeated defeat of air pollution legislation year after year.

The ambient air quality standards were developed to set threshold levels to protect public health and welfare. The generally urban areas where they were exceeded were monitored and designated. In areas where the standards were exceeded, controls to meet them went into effect. They established a boundary between significant adverse effects to health and welfare, and insignificant effects.

Need for Reform of the NAAQS Process.— The NAAQS are the cornerstone of the Clean Air Act, and the reason for the success it has had to date. For more than 25 years, the NAAQS Review Process functioned well, but in recent years it has, in the case of NAAQS I am most familiar with—that for Coarse Particulate Matter—lost its direction and wandered in a wilderness of scientific "uncertainty," "weakness," "limitation" and inability to make judgments and to delineate the science in the useful terms the Clean Air Act requires, namely what is necessary to protect public health, with an adequate margin of safety, and welfare, neither more nor less.

I submit to you that the NAAQS Review Process is, in my experience, broken—seriously broken. It is no longer serving the purpose for which it was intended. As I think almost any reasonable observer would agree, the EPA and its science advisers have clearly run amok in this process. The example of EPA's review of the coarse PM NAAQS speaks, I think, for itself, and points the way to what needs to be done.

AN EXAMPLE OF NAAQS REVIEW: REVIEW OF THE NAAQS FOR COARSE PM

The review of the NAAQS for coarse PM began shortly after the Court of Appeals for the District of Columbia vacated the coarse PM standard EPA had adopted in 1997. The 24-hour coarse PM standard vacated by the Court was 150 μg/m3 of PM_{10}, a measure the Court found fundamentally flawed because it did not treat separately fine (combustion-derived) PM and coarse (mechanically-divided earthen and other materials) PM, but lumped them together in a fashion that contained indeterminate amounts of these two separate, independently varying components of PM.

On October 17, 2006, after several years and several drafts of thousands of pages of Criteria Documents and Staff Papers, and tens of meetings and a rulemaking, EPA has rushed back to the future and adopted the 1987 PM_{10} standard of 150 μg/m3, virtually the same as the 1997 coarse PM_{10} standard the Court of Appeals vacated and remanded, but this time not as a fine and coarse standard but solely as a coarse standard. It did so based on a new rationale not considered or discussed in any of the thousands of pages of the draft Air Quality Criteria Documents, and years of hearings before CASAC on them, nor on the several drafts of the Staff paper, and years of hearings before CASAC on them, nor even in the proposed rule. It simply said it wasn't changing anything, but had merely gone back to the 1987 PM_{10} standard.

What was the "science" on the 1987 PM_{10} standard? Did it relate to coarse PM, or as it is often called, "fugitive dust?" Here's what the most eminent and qualified health scientist to address that subject had to say, in a letter he wrote on his own to the then Administrator of EPA:

> "[F]ugitive dust at the levels measured in ambient air in the western and other parts of the United States over the years has never been documented to have had adverse effects on human health."

Benjamin G. Ferris, Jr., M.D., former member of CASAC, principal investigator in the Harvard Six-Cities Study, Professor at the Harvard School of Public Health, and nationally known expert in research on health effects of PM and other criteria pollutants (1984). Dr. Ferris was responding to health claims made in California

with respect to dust from deserts, and their potential health effects as carriers of "biogens," "pathogens" and "endotoxins," as well as allegations of Valley Fever and assorted other respiratory ailments. Dr. Ferris had unique qualifications and experience for several decades, as a clinician, toxicologist, epidemiologist, clinician and nationally-respected researcher, whose Harvard Six Cities Study was one of the largest yet performed.

And what did EPA's CASAC's PM Review Panel scientists have to say about the just-completed coarse PM NAAQS review? Here's a sampling:

1. "In this case, the apparent attempt is to provide the basis for a $PM_{10-2.5}$ standard based on alleged associations with mortality and morbidity. In this case, the science does not exist." CASAC letter to EPA Administrator Leavitt, August 16, 2004 at B–28 to B–29, Individual Views of Dr. Roger O. McClellan, former Chair of CASAC. (Emphasis added.) And with respect to the $PM_{10-2.5}$ indicator EPA proposed, Dr. McClellan stated: "I have concluded that in the absence of a scientific basis specifically for a $PM_{10-2.5}$ indication, the choice of such an indicator would be arbitrary and capricious."

2. Dr. Petros Koutrakis of the Harvard School of Public Health: "The chapter [9 of EPA's summary of the science on coarse PM] tried to make a case for a coarse . . . standard, and the case was not there. . . . FORMER CHAIR OF CASAC, Dr. Philip K. Hopke: "Okay, but that comes across, and that's a fair representation of the current state of the science . . . it's going to be very difficult to build the case on the science alone for any particular coarse particle standard, . . ." Transcript of July 21, 2004 CASAC and PM Review Panel Meeting at 45–46. (Emphasis added.)

3. Dr. Koutrakis: "I just am not satisfied that the information put forward here is really supportive of [a coarse particle standard]." DR. HOPKE: "But, I think it's a fair reflection of the literature . . . . Now its up to [EPA] OAQPS then to decide, based on other considerations besides the science, as to the need for and the nature of the standard." Id. (Emphasis added.)

4. "It is my opinion that proposing a coarse PM standard is premature at this time."

Dr. Sverre Vedal, CASAC Member, Written critique of EPA Staff Paper presented at CASAC Nov. 2003 meeting.

These candid statements by CASAC's PM Review Panel may surprise some of you. When they became public, CASAC determined not to keep transcripts of its deliberations, and indeed resorted to non-public discussions of its reasoning and decisions.

EPA Staff itself concluded that the science was too weak to do a risk assessment that would support any particular level or concentration of particulate matter:

• "[EPA] staff has . . . considered the extent to which the $PM_{10-2.5}$ risk assessment results . . . can help inform consideration of alternative 24-hour $PM_{10-2.5}$ standards. . . . Staff has concluded that the nature and magnitude of the uncertainties and concerns associated with this portion of the risk assessment weigh against use of these risk estimates as a basis for recommending specific standard levels." (Emphasis added.)

• EPA Staff Paper at p. 5–69

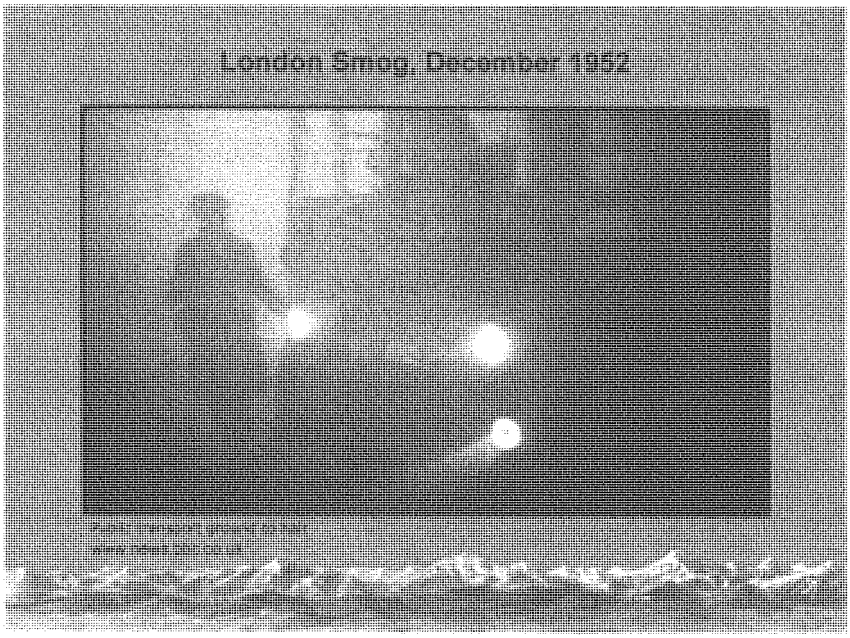
EPA Staff and CASAC likewise acknowledged that there was not adequate science to support a coarse PM standard in rural areas, and recommended that the coarse PM standard should not be applicable to such areas, but should instead be an Urban Particulate Matter $PM_{10-2.5}$ standard ("$UPM_{10-2.5}$").

Where, then, did the 150 μg/m3 24-hour concentration level come from? The answer is that it came from London, and from dominantly fine PM data, not coarse PM data. As EPA's top science and policy staffer said in explaining where it came from:

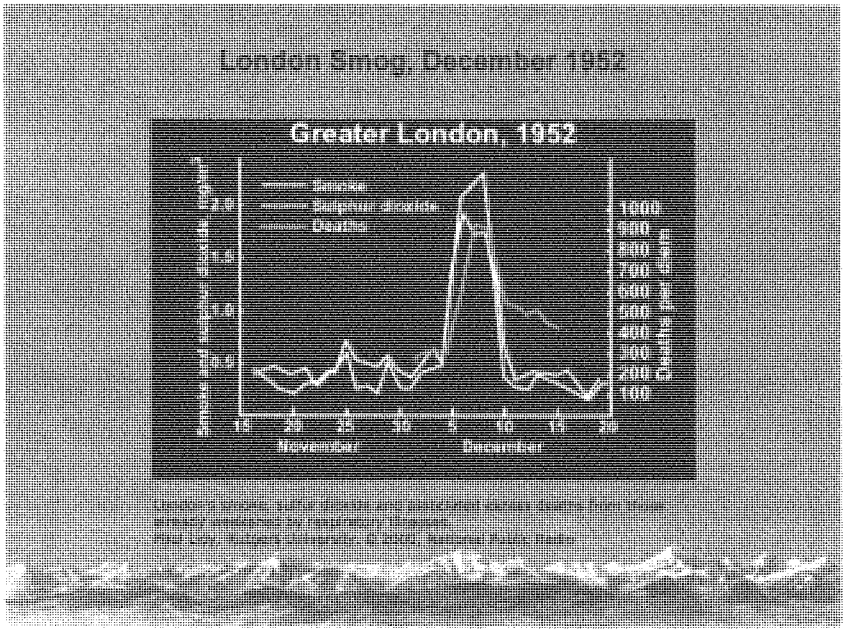
"And this is the plot of the data from London that shows where the 150 came from . . . . [T]he number originally, at the lower bound of the range, came from the lower bound of the data that existed in London. It was British Smoke [a measure of combustion, fine PM "blackness, estimated at $PM_{3.5-4.5}$]; it was not PM_{10}."

Testimony of John Bachmann to CASAC, December 15, 1995, Tr. at p. 119.

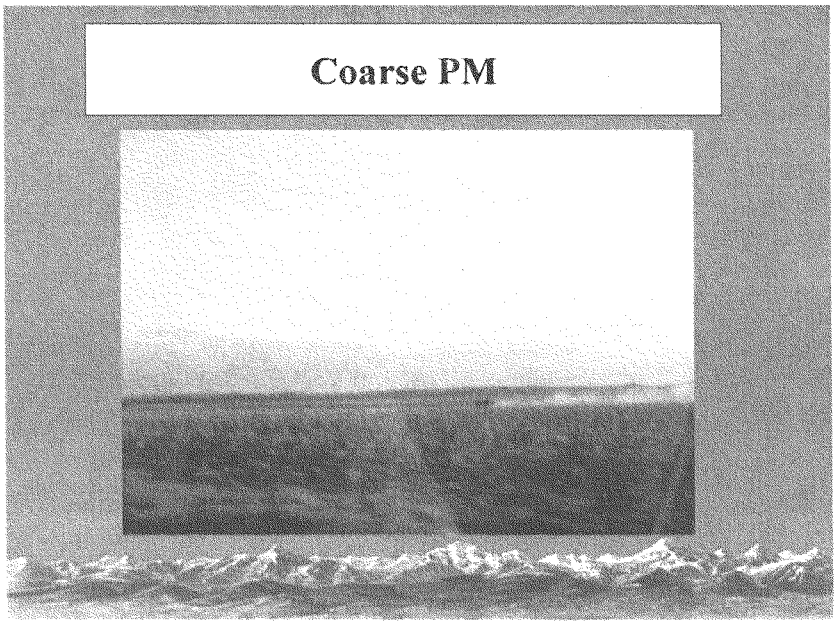
The pictures below show London during that episode.



The PM was dominantly fine PM from combustion, not coarse PM. It was a multi-day stagnation event. The picture above is at midday. Here is a graphic showing the levels at which these effects from high levels of fine PM and SO_2 were experienced. The fine PM, British Smoke averaged above 1,500 μg/m3 for several days.



By contrast, here's what coarse PM looks like:



Coarse PM, by definition, results from mechanical division of earthen and other materials. It falls out of the atmosphere over relatively short distances and periods of time. The London "150" data referred to occurred during an atmospheric stagnation event. Coarse PM levels typically reach high concentrations during high wind events.

What did CASAC conclude after all the thousands of pages of Criteria Documents and Staff Papers, tens of meetings and years of effort, as well as millions of dollars of EPA Staff time and effort? Here's what CASAC's May 2005 draft letter to the Administrator stated:

". . . The [CASAC PM Review] Panel recommends that the setting of this [coarse PM] standard be set aside until further deliberations on the appropriate metric can be made."

I was present for that meeting, and I believe this statement fairly reflects the consensus of that meeting. However, a few weeks later, in its Final Letter, CASAC stated:

"Regardless, most of the Panel members felt that the evidence that exists supports a causal role for health effects for $PM_{10-2.5}$. Moreover, setting this NAAQS would allow continuation and expansion of the $PM_{10-2.5}$ monitoring network that would facilitate collection of data for future exposure assessment and epidemiological studies."

CASAC June 6, 2005 Letter.

Did the science change? Did CASAC explain what changed its mind? Something extraordinary, and completely off the record, caused a complete reversal of the outcome of the public proceedings. I think that may be gleaned from the individual views expressed by several of CASAC's members:

"Having a standard means that we'll get a database, perhaps adequate in the next round but there's hardly a basis for it being a very restrictive standard. So you know, practical considerations and not strictly based on scientific merit."

Dr. Mort Lippman, CASAC Transcript at 374 (Nov. 2003). (Emphasis added.)

* * * * * * *

"Absent a standard for $UPM_{10-2.5}$, the Agency does not have a basis for implementing a national monitoring network and obtaining data on concentrations of $UPM_{10-2.5}$, that would . . . support the conduct of epidemiological research. Consequently, there is a need to either move forward on a relatively weak body of evidence or to overstate the strength of the evidence available. The Staff Paper appears to do both."

Comments of Dr. Jonathan Samet, Attachment D to CASAC Review of Final Staff Paper, at D–26.

* * * * * * *

"I have never been convinced that EPA could find means other than setting a standard to get monitoring data. Setting a health-based NAAQS is a 'heavy hammer' to use to get monitoring data."

Comments of Dr. Roger McClellan, Attachment D to CASAC Review of Final Staff Paper at D–14.

EPA's top science and policy Staffer has put forward the same consideration:

" . . . the number one recommendation will be we need significant additional research no matter what, no matter whether we set a standard or we do not set a standard. . . . "You be the judge of whether the folks who are likely to sponsor research . . . and EPA, remember, we are going to balance the budget in 7 years, so remember how much we are going to have. You may be the judge of how much new research will be done with and without a new standard.

"But that is not a reason to do a standard, frankly.

Testimony of John Bachmann

December 15, 1995, Tr. pp. 127–128.

CONCLUSION OF THE COARSE PM NAAQS REVIEW PROCESS

In the end, EPA proposed an "urban" $PM_{10-2.5}$ [an indicator that excluded fine PM from the coarse PM measured] standard at 70 μg/m3, excluding agriculture and mining, based on the "weak," "uncertain," "limited" urban evidence of coarse PM health effects at these concentrations. However, in the final rule, EPA said it was simply reverting to the 1987 PM_{10} standard, but adopted it as a coarse PM standard.

What conclusions can be drawn from this example, and what reforms suggested? I submit that they are at least the following:

- EPA Staff and its CASAC Science Advisers Have Recommended, and EPA Has Promulgated, a Coarse PM_{10} Standard for the purpose of obtaining data and funding further epidemiological studies.
- EPA Staff and its Science Advisers Have Recommended a Coarse PM Standard at Concentrations Not Supported by evidence that a coarse PM_{10} 24-hour standard at 150 μg/m3 is necessary to protect public health, and neither more nor less stringent than necessary to accomplish that purpose.

• It is difficult to characterize the coarse PM standard as based on science demonstrating that it is necessary to lower coarse PM concentration to the level of the standard. As one member of the CASAC PM Review Panel characterized the "consensus" view of the majority of that panel:

> "I think "the vast majority" of my colleagues have reverted to a pre-scientific "miasma theory" of disease causation, with UPM as the replacement for "foul and foetid odors." If I raised my voice . . . And am lapsing into outrage here, it is because I want clearly to dissociate myself from what I consider a mistake of historic proportions. I don't see how the indicators $PM_{2.5}$ and $UPM_{10-2.5}$ can both survive the inevitable legal challenges . . ."

Dr. Warren H. White, Individual Views, Sept. 15, 2005.

And, as Professor Frank Speizer of CASAC and the Harvard Medical School concluded at the end of the coarse PM NAAQS review process:

> "Up front we need to admit that[$UPM_{10-2.5}$] must be a relative term and set out some criteria for all of us to agree upon that make the measurement of interest first to go out and measure it and then to pay attention to the potential health related associations that might be found."

Dr. Frank Speizer, Individual Views, Sept. 15, 2005.

I happen to agree with those views. The NAAQS review and adoption process needs to be reformed to provide clearly that health and welfare standards need to be adopted after specifying what needs to be measured, going out and measuring it and finding out whether there are effects, and then paying attention to the concentrations where there are effects. The process is very clearly not doing that at this point.

WHAT SHOULD BE DONE?

The NAAQS review process needs to be opened up to free and fair dialogue. Transcripts need to be kept again. The process should be public and transparent. EPA and CASAC should make their decisions based on the weight of the evidence, and explain them, rather than simply hiding behind general statements that even though the evidence is "highly uncertain," "weak" and "limited" they nonetheless require the adoption of NAAQS that says they are "necessary" to protect public health.

Scientific review of proposed NAAQS should be by an independent scientific group, not one selected and connected to any group's agenda, including any group within EPA, and surely not one whose members are directed and funded by EPA.

NON-ENFORCEMENT OF HEALTH STANDARDS—A CONSEQUENCE OF ADOPTING NAAQS NOT NECESSARY TO PROTECT PUBLIC HEALTH AND WELFARE

In closing I should mention that one of the most insidious and untoward consequences of adopting coarse PM_{10} standards for research and data purposes that are required by law to define levels at which the exposed public's health will be adversely affected, but evidently, on their face, are not necessary for that purpose, is that neither EPA nor the scientists involved have any confidence that those effects in fact occur, or that the standard needs to be enforced. The result is that EPA has assured those whose emissions will result in violation of the standards that they need not be concerned about enforcement, stating that:

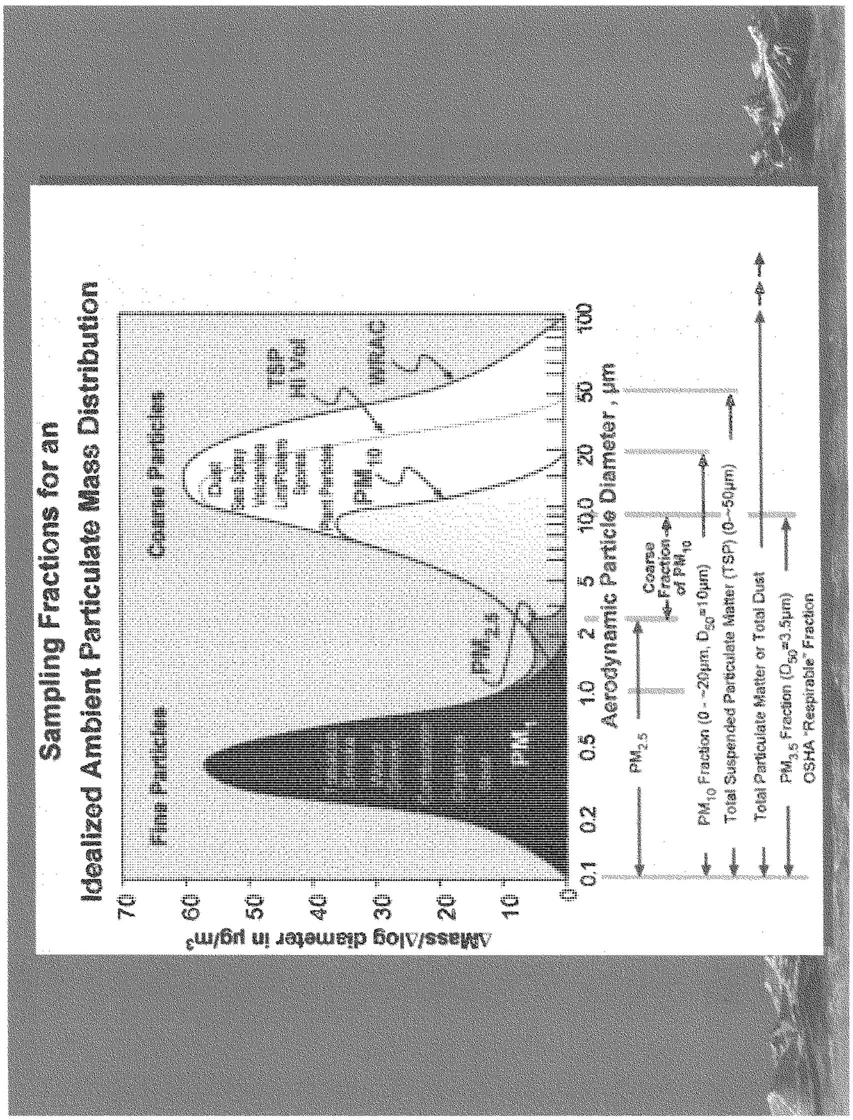
"In response to comments regarding potential impacts of any coarse particle standard on agricultural and mining sources, EPA notes that the NAAQS do not create emissions control obligations for individual sources or groups of sources. In this particular case, even if an individual source were shown to cause an exceedance of he 24-hour PM_{10} standard, this would not necessarily result in regulation of that source."

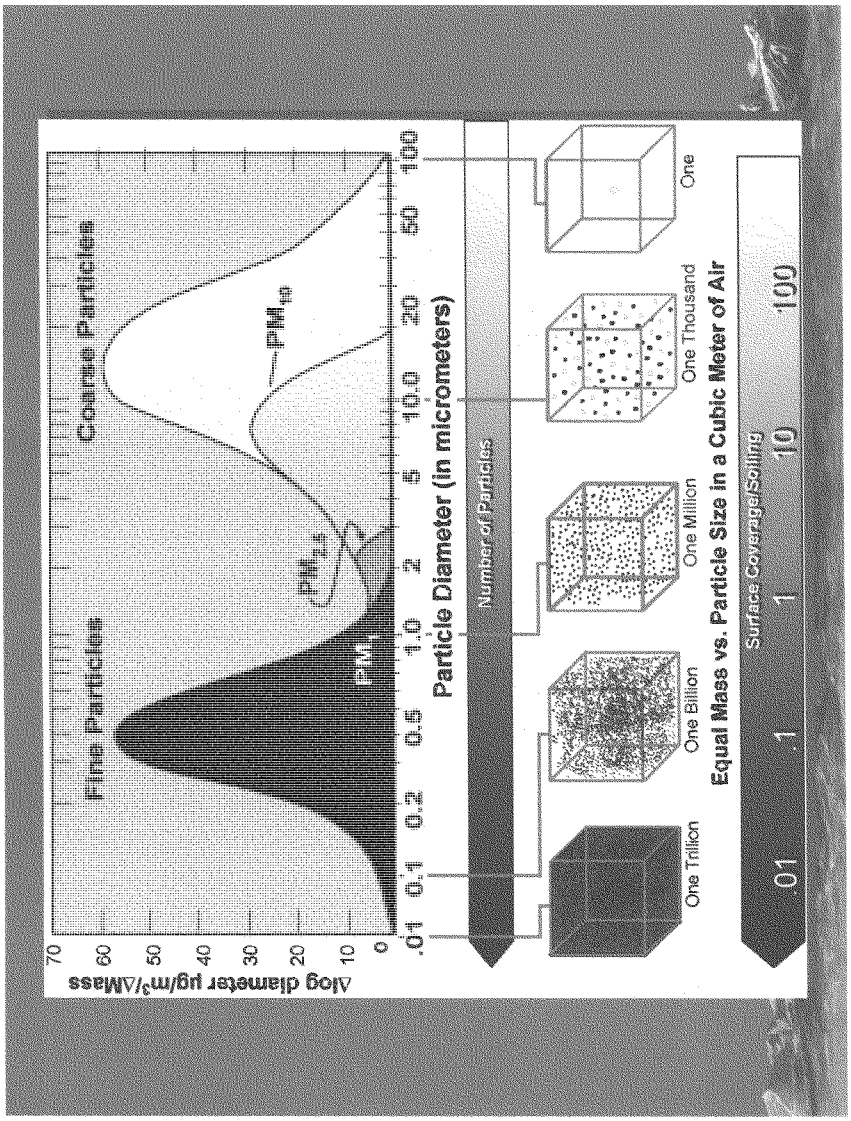
Final Coarse PM NAAQS Rule, 71 Fed. Reg. 61215 (October 17, 2006) (Emphasis added.)

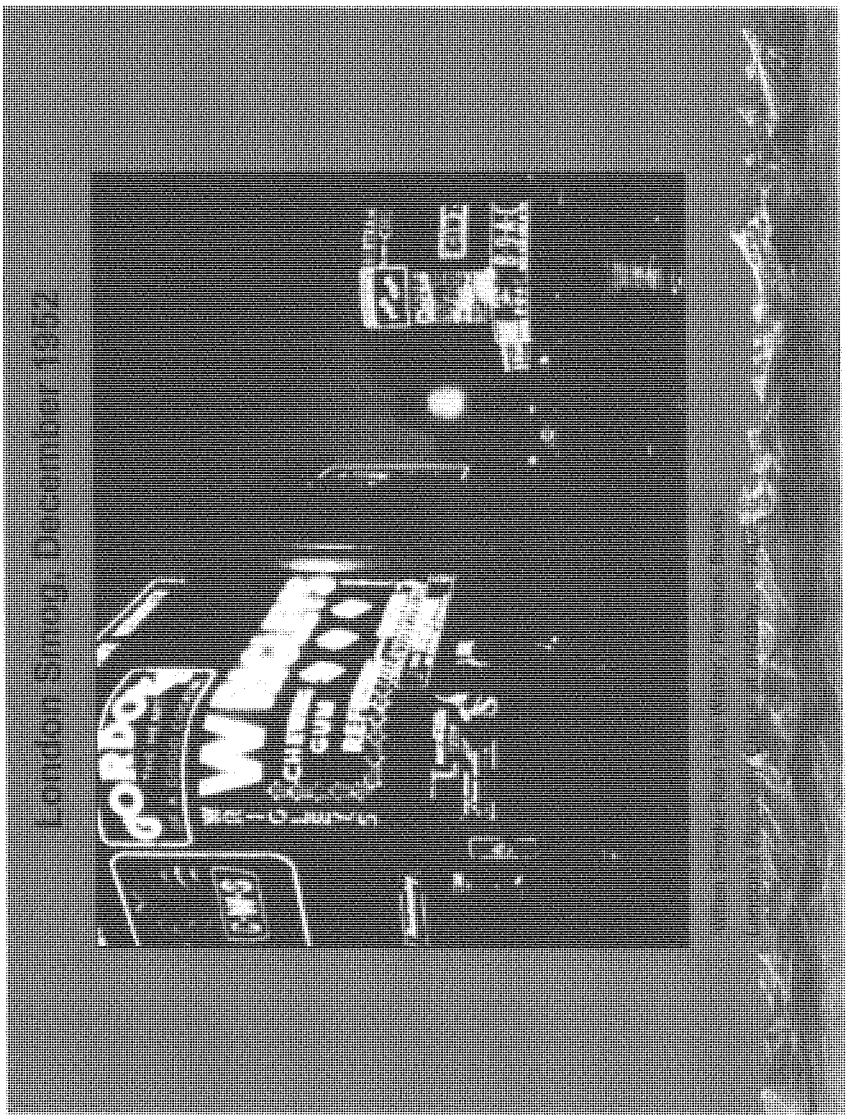
EPA's Acting Administrator for Air wrote on October 17, 2006 to the State of Iowa's air control Agency that "[t]he NAAQS themselves do not establish emission control obligations for individual sources or groups of sources." While true in an immediate technical sense, the central purpose of the primary, health NAAQS is the Clean Air Act's central requirement that States must adopt measures to meet them in order to protect public health. Every Administration from those of Presidents Carter and Reagan, to those of Bush and Clinton, have excluded rural fugitive dust from the PM NAAQS, because (1) that dust would exceed the PM NAAQS even after best management practices and controls were applied, (2) enforcement of the PM NAAQS against such sources would prohibit them due to their inability to comply,

and (3) the lack of substantial public health or welfare effects from such dusts at ambient levels. This is the first Administration that has proposed to exclude rural fugitive dusts from the PM NAAQS and then decided not to do so, and instead included those dusts in a new coarse PM standard based on weak, uncertain, limited evidence in a few urban areas, and none in rural areas. Why did it reverse its proposal? Because it had no evidence that its weak urban evidence did not apply to rural areas. That kind of specious, "double negative" reasoning and "science" is where the NAAQS process has taken us in the case of coarse PM. I would hope that you would agree that the NAAQS process is in need of reform.

Reform of the Process for Adoption
of
National Ambient Air Quality Standards
Presentation by
Robert E. Connors

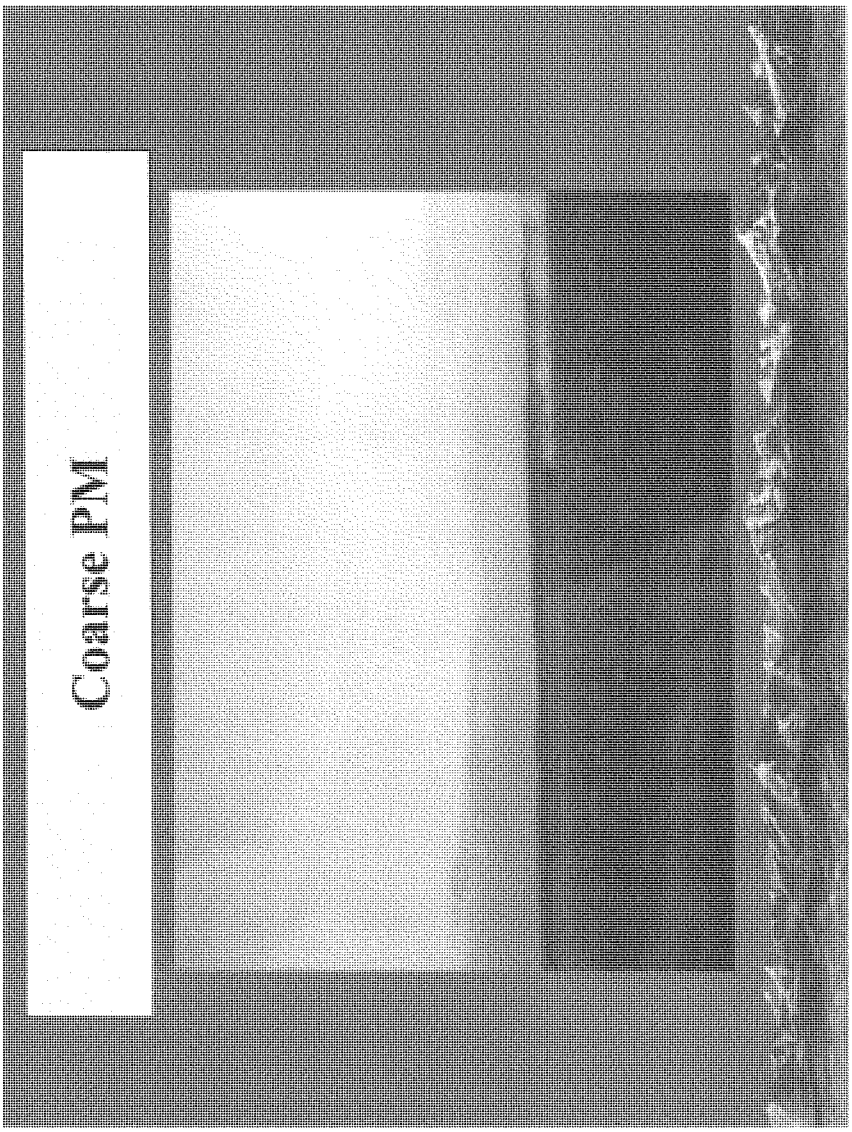

Sampling Fractions for an
Idealized Ambient Particulate Mass Distribution
Fine Particles
Coarse Particles
ΔMass/Δlog diameter in µg/m³
70
60
50
40
30
20
10
0
0.1
0.2
0.5
1.0
2
5
10.0
20
50
100
Aerodynamic Particle Diameter, µm
PM$_{2.5}$
TSP Hi Vol
WRAC
PM$_{10}$
PM$_{1}$
Coarse Fraction of PM$_{10}$
PM$_{10}$ Fraction (0 - ~20µm, D$_{50}$=10µm)
Total Suspended Particulate Matter (TSP) (0~50µm)
Total Particulate Matter or Total Dust
PM$_{3.5}$ Fraction (D$_{50}$=3.5µm)
OSHA "Respirable" Fraction


Δlog diameter μg/m³/ΔMass
70
60
50
40
30
20
10
0
Fine Particles
Coarse Particles
PM2.5
PM10
PM1
.01
.1
0.2
0.5
1.0
2
5
10.0
20
50
100
Particle Diameter (in micrometers)
Number of Particles
One Trillion
One Billion
One Million
One Thousand
One
Equal Mass vs. Particle Size in a Cubic Meter of Air
Surface Coverage/Soiling
.01
.1
1
10
100




London, Spring, December 1952

London Smog, December 1952
Greater London 1952
Smoke and sulphur dioxide, mg/m³
Deaths per diem
Smoke
Sulphur dioxide
Deaths
December
January
February


Coarse PM

Health Effects of Coarse PM
For perspective, OSHA's PM standards are instructive.
Chart below shows comparison of OSHA PM standards
and EPA 1997 ambient standards. EPA existing ambient
standards are two orders of magnitude more stringent.
Comparison of OSHA and Ambient Standards in µg/m3
OSHA
EPA
OSHA Respirable PM
5,000 (PM2.5) 8-hour Time Weighted Average
EPA Fine PM
65 (PM2.5) 24-hour average
15 (PM2.5) annual average
OSHA Total Dust
15,000 (~PM10) 8-hour Time Weighted Average
EPA Coarse PM
150 (PM10) 24-hour average
50 (PM10) annual average
TABLE 1

Health Effects of Coarse PM
"[F]ugitive dust at the levels measured in ambient air in the western and other parts of the United States over the years has never been documented to have had adverse effects on human health."

DR. MCCLELLAN: "[T]he CD tries to selectively cobble science for apparently meat some preconceived notions [*sic, worries*]. In this case, the apparent attempt is to provide the basis for a PM[2.5] standard based on alleged associations with mortality and morbidity. In this case, the science does not exist." CASAC letter to EPA Administrator Leavitt, August 16, 2006 at B-28 to B-29. (Emphasis added.)

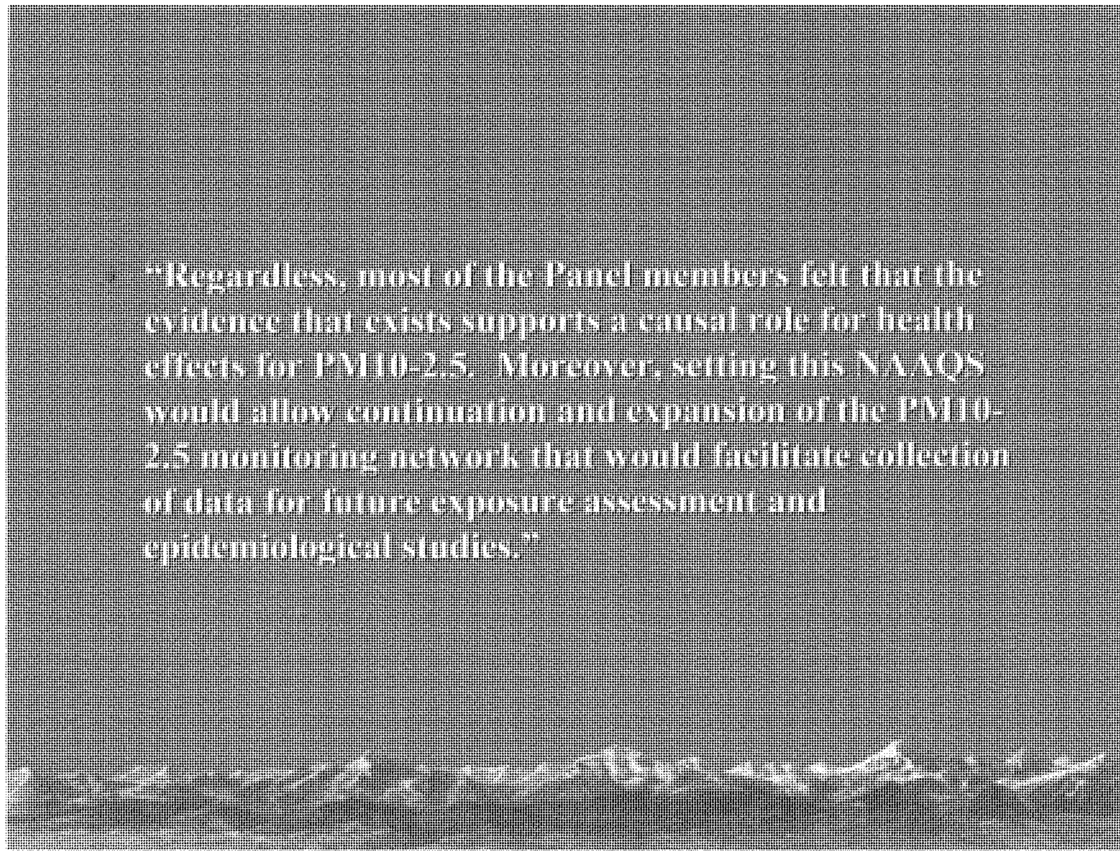
DR. KOURAKIS: "[the chapter 9] of the AQCDI tried to make a case for a coarse . . . standard, and the case was not there. . . . FORMER CHAIR, DR. HOWKE: "Okay, but that comes across, and that's a fair representation of the current state of the science . . . it's going to be very difficult to build the case on the science alone for any particular coarse particle standard. . . ." Transcript of July 21, 2010 CASAC and PM Review Panel Meeting at 45–46 (Emphasis added.)

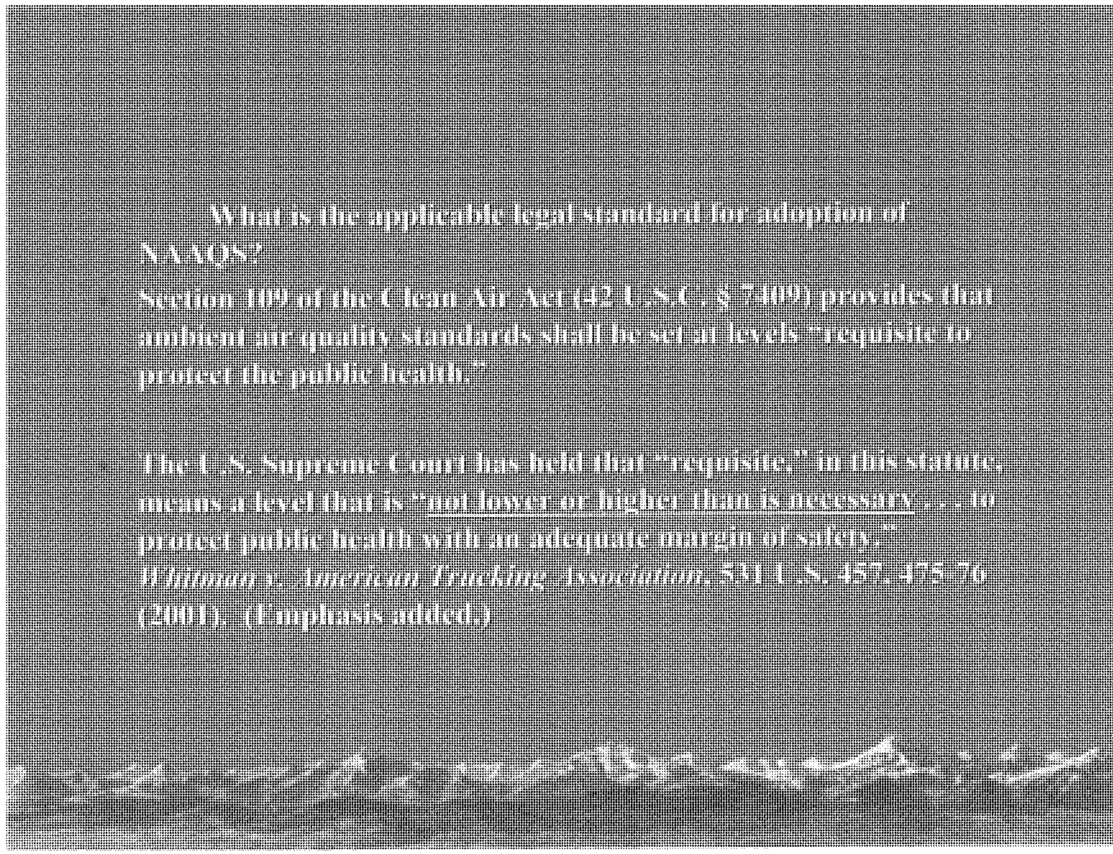
2. DR. KOUTRAKIS: "I just am not satisfied that the information put forward here is really supportive of [a coarse particle standard]." FORMER CHAIR, DR. HOPKE: "But, I think it's a fair reflection of the literature.... Now it's up to OAQPS then to decide, based on other considerations besides the science, as to the need for and the nature of the standard." *Id.* (Emphasis added.)

Health Effects of Coarse PM
"It is my opinion that proposing a coarse PM standard is premature at this time."
"[T]he coarse PM data do not include positive findings from cohort studies, and the toxicological data are slim."
Further, there is good evidence that PM of crustal origin, as a subset of particles included in the coarse fraction, are not particularly toxic as opposed to some other components in the coarse fraction. In many settings, the coarse fraction is dominated by crustal PM."
Dr. Steven Wade, CASAC Member, Written Comments of
EPA's Staff Paper presented to CASAC, November 2006 meeting

DR. NICCOLELLA: "I have concluded that
in the absence of a scientific basis specifically
for a PM10-2.5 implementation, the choice of such
an indicator would be arbitrary and
capricious."

CASAC May Draft Letter: "... The Panel
recommends that the setting of this [ozone NAAQ]
standard be set aside until further deliberations on the
appropriate metric can be made."


"Regardless, most of the Panel members felt that the evidence that exists supports a causal role for health effects for PM10-2.5. Moreover, setting this NAAQS would allow continuation and expansion of the PM10-2.5 monitoring network that would facilitate collection of data for future exposure assessment and epidemiological studies."


What is the applicable legal standard for adoption of NAAQS?
Section 109 of the Clean Air Act (42 U.S.C. § 7409) provides that ambient air quality standards shall be set at levels "requisite to protect the public health."
The U.S. Supreme Court has held that "requisite," in this statute, means a level that is "not lower or higher than is necessary . . . to protect public health with an adequate margin of safety."
Whitman v. American Trucking Association, 531 U.S. 457, 475-76 (2001). (Emphasis added.)

"[EPA] staff has . . . considered the extent to which the PM10–2.5 risk assessment results . . . can help inform consideration of alternative 24-hour PM10–2.5 standards. . . . Staff has considered that the nature and magnitude of the uncertainties associated with this portion of the risk assessment weigh against use of these risk estimates as a basis for recommending specific standard levels."

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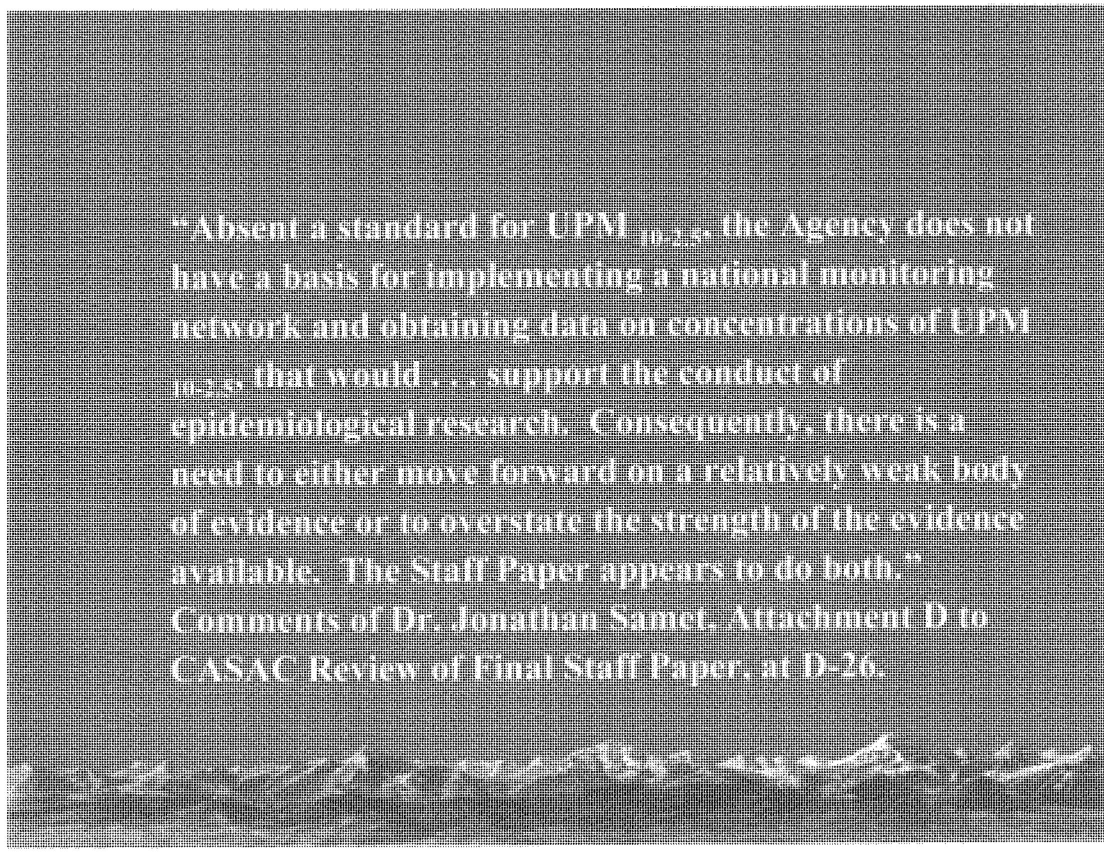
"Up front we need to admit that[UPNI10-2.5]
must be a relative term and set our sume
criteria for all of us to agree upon that make
the measurement of interest first to go on
and measure it and then to pay attention to
the potential health related associations that
might be found."

"Having a standard means that we'll get a
database, perhaps adequate in the next round but
there's hardly a basis for it becoming a very restrictive
standard. So you know, practical considerations
and not strictly based on scientific merit."

"I have never been convinced that EPA could find means other than setting a standard to get monitoring data. Setting a health-based NAAQS is a 'heavy hammer' to use to get monitoring data."


"Absent a standard for UPM 10-2.5, the Agency does not have a basis for implementing a national monitoring network and obtaining data on concentrations of UPM 10-2.5, that would . . . support the conduct of epidemiological research. Consequently, there is a need to either move forward on a relatively weak body of evidence or to overstate the strength of the evidence available. The Staff Paper appears to do both."
Comments of Dr. Jonathan Samet, Attachment D to CASAC Review of Final Staff Paper, at D-26.

"I think, the vast majority" of my colleagues have
reverted to a pre-scientific "miasma theory" or
disease causation, with UPM as the replacement for
"foul and fetid odors." It's criminal my voice . . . And
am tapping into outrage here. It's because I want
clearly to disassociate myself from what I consider a
mistake of historic proportions. I don't see how the
indictments, PMCs and UPMD-2.5 can both survive
the inevitable legal challenges . . .

Senator BOXER. Just so we know where we are, and we are going to look forward to Ms. Klinefelter's testimony, and for the benefit of Senator Whitehouse, if he would move up, Senator, could you move up a little bit closer?

Senator WHITEHOUSE. Will do.

[Laughter.]

Senator BOXER. Because I may have to just run out for a second and have you take over. But where we are is, we called this hearing to look at various rollbacks. Where we are is that the lead standard is under review, so we are very hopeful that with Dr. Solomon's expression of optimism that EPA will hear us and not roll back the lead standard, the testing.

The libraries, the status is very bizarre. We are going to have to continue to monitor, we don't know if they are destroying documents, what is going on. We are very concerned about that.

The air toxics rule is a proposed rule. The final policy is to take the science out of the NAAQS process, which Mr. Connery, I think from your testimony, I think you support that. The rest of the panel so far, I don't count Ms. Burger there, but the two doctors don't.

The perchlorate testing has ended. There is a Boxer-Lautenberg-Feinstein bill to start that up again. The Toxic Release Inventory, there has also been a final rule there. There is a Lautenberg bill coming shortly, I believe, to overturn that.

So that just gives you a sense of where we are headed. Now we are going to hear from Ms. Klinefelter, who I think is going to speak from the standpoint of a small business, is that correct?

Ms. KLINEFELTER. Yes, ma'am.

Senator BOXER. Please, go ahead.

STATEMENT OF NANCY KLINEFELTER, PRESIDENT, BALTIMORE GLASSWARE DECORATORS

Ms. KLINEFELTER. My name is Nancy Klinefelter, and I am president of Baltimore Glassware Decorators. I am a past president of SGCD and a member of NFIB.

The company was started in 1977, and we have 15 employees, including my mom and my dad, also two brothers that work there. We have no engineers on staff, let alone an environmental engineer, so TRI paperwork is my responsibility. We are a wholesale decorator. We custom imprint on mugs and glasses, and we may use lead-bearing enamels on the outside surfaces to achieve color and durability demanded by our customers.

As a rule, unleaded enamels do not have the durability, gloss or color ranges that our customers require. These lead-free colors do not hold up well for abrasion or deterioration in dishwashers. It is very important to understand that the leaded colors become part of the glass after they are fired. Also, due to the cost of these colors, we use only what is needed. 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 mine to utilize the simpler TRI reporting Form A, instead of the more complicated Form R. That is only if we meet very strict eligibility requirements. I equate this to the IRS allowing taxpayers with very simple returns to use the 1040EZ instead of the complicated 1040.

I will still be providing my neighbors the same information about release that I have always provided. But the Form A will make it a lot easier for me. Our neighbors will still have the same access to information about our releases as they do now. To qualify, we must use less than 500 pounds of lead in a year and report zero release of lead onsite and zero release offsite. That means that we will essentially be reporting nothing of significance to our neighbors. Lead compound is the only TRI chemical we need to report.

We try to complete the Form R properly. Every year, though, we receive notices from EPA that paperwork corrections are needed. These changes do not reflect any failure to report color use or release. They just reflect paperwork errors. Last year I received a 13 page notice that informed me that I had not identified lead compound by their chemical category code. Using Form A should prevent this paperwork runaround for myself and my company.

I would estimate that tracking color use and completing the Form R paperwork takes more than 130 hours a year. I can't say that I have ever attempted to formally track the time spent. Each ceramic color has a different percentage of lead, so we must calculate lead use differently for each color. This varies from day to day and the calculations take time.

If we can maintain zero releases, this would be a much easier process, since we would be reporting on the Form A instead of Form R. Remember that time spent on completing paperwork is time that I cannot spend on other things. Like I said, we have 15 employees and there are only so many hours in the day. That time could be spent supervising employees, working with customers and most importantly, looking for new business.

We face brutal competition from Chinese decorators. The reality is that paperwork burdens add to our cost of business by absorbing my time in particular. EPA estimates that I will save about 15½ hours a year of staff time if I qualify to use Form A instead of the complicated Form R. That is almost 2 days of my time, which would really help.

As a responsible small business owner, I believe that it is important that we keep track of any releases that might impact my neighborhood and my environment. That will not change as a result of EPA's new rule. If we have a release, no matter how minuscule or even if it is managed offsite, we would be required to use the Form R. If we do manage to avoid any releases, the ability to use the simpler Form A will make it easier for me to handle the paperwork.

I also believe that this new EPA rule encourages companies like mine to adapt the best decorating methods possible to eliminate releases. I am glad that EPA listened to our concerns and made an effort to reduce my paperwork burden. I am glad they did this without impacting the information that I will provide to the public. I urge this committee to support such paperwork burden reduction efforts. They are critical to maintaining the competitiveness of small companies in America.

Thank you again for giving me the opportunity to testify today.

[The prepared statement of Ms. Klinefelter follows:]

STATEMENT OF NANCY KLINEFELTER, PRESIDENT, BALTIMORE GLASSWARE DECORATORS

Thank you for the opportunity to testify on EPA's efforts to reduce the paperwork burden of TRI reporting on small businesses like my company. My name is Nancy Klinefelter, and I am President of Baltimore Glassware Decorators. I am a Past President of the Society of Glass and Ceramic Decorators (SGCD) and a member of the National Federation of Independent Business (NFIB). The company was started in Baltimore by my brother in 1977 with the help of my father who has worked in glass decorating for more than 50 years. We have 15 employees including my Mom who works in the office, my Dad who acts as general manager and my two brothers who work in sales and production. We have no engineers on staff, let alone an environmental engineer, so the TRI paperwork is my responsibility.

We are a wholesale decorator. Our specialty is custom printing small quantities of glass and ceramic ware for advertising specialty, restaurant and souvenir distributors. When custom printing mugs or glasses, we may use lead-bearing enamels on the outside surfaces to achieve the color and durability demanded by our customers. As a rule, unleaded enamels do not have the durability, gloss or color ranges that our 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, we 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 mine to utilize the simpler TRI Reporting Form A instead of the more complicated Form R if we 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. I will still be providing my neighbors and anyone else who might want to know with the same information about release that I have always provided, but the Form A will make it easier for me to file a report. Our neighbors will still have the same access to information about our releases as they do now.

To qualify, we 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 we will essentially be reporting nothing of significance to our neighbors. Lead is the only TRI chemical used at my shop, and we report our lead use since the reporting threshold is 100 pounds of annual usage. We do exceed that threshold, although only barely. I want to emphasize that these threshold numbers reflect lead used, not released.

We make every attempt to complete the Form R properly, but every year, we receive notices from EPA that paperwork corrections are needed. These changes do not reflect any failure to report color use or release; they just reflect paperwork errors. For example, last year, I received a 13-page notice from EPA that informed me that I had not identified lead compounds by their CAS Number or chemical category code. Using Form A should streamline the process for us, and prevent this paperwork run-around.

I would estimate that tracking color use and completing the Form R paperwork takes my company more than 130 hours a year, although I've never attempted to formally track the time spent. Each ceramic color has a different percentage of lead, so we must calculate lead use differently for each color used. This varies from day to day, and the calculations take time. If we can maintain zero releases, this would be a much easier process since we'd be reporting on the Form A instead of Form R.

Remember that time spent on completing paperwork is time that I cannot spend on other things. Like I said, we have 15 employees, and there are only so many hours in the day. The time that I spend on paperwork is time that is not spent supervising employees, working with customers, and most importantly looking for new business. We face brutal competition from Chinese decorators, and the reality is that paperwork burdens add to our cost of doing business by absorbing my time in particular. EPA estimates in the final rule that I'll save 15.5 hours a year of staff time if I qualify to use the Form A instead of the complicated Form R. That is almost two days of my time which would really help.

As a responsible small business owner, I believe that it is important that we keep track of any releases that might impact my neighborhood or the environment. That will not change as a result of EPA's new burden reduction rule. If we have a release, no matter how miniscule or even if it is managed off-site, we would be required to use the Form R as in the past. If we do manage our production process during a year to avoid any releases, the ability to use the simpler Form A will make it easier for me to handle the paperwork to demonstrate that fact.

I also believe that this new EPA rule encourages companies like mine 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. Both SGCD and NFIB have 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, although I understand that things move slowly here in Washington.

I am glad that EPA listened to our concerns and made an effort to reduce my paperwork burden without impacting the information that I will 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.

Senator WHITEHOUSE [presiding]. Thank you very much.

The Chair will be returning shortly, but while she is away, I would like to explore with the panel some of the thoughts that have already been brought up in this hearing today, particularly about the, what you might call the declining status of science in the environmental debate, which has, it appears to me, a number of components to it. For years, there has been phoney baloney science thrown around by the American Tobacco Institute, telling us that cigarettes were fine, or the American Lead Institute, telling us that lead wasn't a danger to anybody. Now we seem to have a few residual pockets of that sort of science, suggesting that global warming isn't really happening.

It seems to me that in the contest between science and spin, particularly where the world gets more complex and the science gets more complex and the audience is somebody who is working two jobs, who owns their own small business, who is driving around in the van from job to job and getting what news they can off the radio station as they go, and they don't have the luxury to sit down and read the authoritative journals or do the calculation as to which argument really stands muster or to look behind the phoney baloney names of the science organizations that try to look as if they are neutral and find out that in fact they are propped up entirely by an industry.

How do we cope with that as legislators, and is there a way to procedurally try to strengthen the science administratively so that in hearings and in the regulatory aspect, which is so important to environmental protection, there are, I don't know, stopgaps of some kind or another that can help people distinguish between where the science really is and what is nothing but adulterated spin and phoney baloney science?

Dr. Balmes, you are leaping for the microphone.

[Laughter.]

Dr. BALMES. I would submit, Senator, that the Clean Air Act National Ambient Air Quality Standard review process, while too slow in its current form, and it does need to be made faster so that the every 5-year deadline can be met, is in fact a model conceptually of how to do environmental health standard reviews. It is an environmental standard review process that doesn't require cost-benefit analysis. It is an environmental statute that requires protection of the public health with an adequate margin of safety. It statutorily has a scientific advisory committee of external scientists whose job

it is to determine what is the sound science, what do we know with scientific certainty.

The way that that scientific information gets translated for policy purposes, or the way it has been in the past, has been through the staff paper. Now, I am a member of CASAC currently. You didn't hear some of the testimony or statements of your fellow Senators earlier, where they were saying that getting rid of the staff paper is not changing the input of science at all, it is the same process, but that is actually not true. By substituting a policy statement or policy assessment for a staff paper, you take the scientists out of the dialog at a crucial point. Right now, the external scientists, the Clean Air Scientific Advisory Committee, reviews the research carefully, it takes too long. It could be streamlined. There are many ways you could streamline it.

But then the EPA staff, staff scientists, not the policymakers, try to translate that information into a document for the policymakers to use. So it is scientists talking to scientists. I think it is an incredibly powerful approach to environmental health policy. I think the impact goes beyond the Clean Air Act if the staff paper is removed from this kind of process.

So my answer to how we might ensure that the scientific knowledge base remains credible, is to make sure that there is dialog between external scientists and the internal EPA staff scientists without the policymakers hovering over them. It is fine for the policymakers to then take that science, the credible scientific information and figure out the best way to implement policy.

Senator WHITEHOUSE. There is the old saying, you are entitled to have your own opinion, you are not entitled to have your own facts.

Dr. BALMES. Correct.

Senator WHITEHOUSE. You are entitled to have your own opinion, you are entitled to have your own policy recommendations, based on the facts——

Dr. BALMES. But based on the facts.

Senator WHITEHOUSE. But you are not entitled to have your own facts.

Madam Chair.

Senator BOXER [presiding]. Well, it is hard for me to top that one.

I just want to thank this panel. I want to say to our small business people here, I really think there are ways we can work together and still protect the public health. I have a god-son who went for a regular checkup and they found high levels of lead and the mom and dad thought it was the toys, tested the toys, no. They finally found out it was Wedgewood china that had this lead. As soon as they stopped the exposure, the lead levels went down.

Well, the problem is, lead in a baby, in a child, is exceedingly dangerous in terms of their development of their brain. So if we can take that 15 hours and try to reduce it by using some way that we can make it easier, I think we need to do that. But whether we run small businesses, we are still all family members, we need to protect each other, we need to work together, we need to help each other with this.

So I think this hearing has been really important. Some people said, why would you put all these rollbacks in one hearing? It is because we have so much we want to do, looking forward, moving forward. I don't want to have hearing after hearing about what has been done in the past. But I thought it was important, and we will shine a light on these rollbacks. We are going to try to fix them if we can.

Because I think what I loved about this particular panel, to listen to our doctors, is this is why we are here. We are here to protect the people. That is our job, that is our role. This is not a question. It is the Environmental Protection Agency. Environmental Protection Agency. That is who we protect, the people, not the special interests. The special interests are powerful. The people, a little baby who is exposed to lead in a plate, how is he responsible for that?

We have to be brought back to why we are here. So I view this today, for me, as the new Chair of this committee, as reestablishing the fact that we are here to protect the public, the American people, families, the most vulnerable. If we do that, I think everybody does prosper at the end of the day. I don't see any conflict between a healthy environment and a strong economy. I think we proved it over and over again, since we passed the Clean Air Act, this is the greatest Country in the world, the strongest economy. We have some of the toughest laws.

But if we start to step back and our people get sick, and our workforce is not productive, we haven't done very much at all.

So I just want to thank all of you for coming here. As usual, I think my colleagues on both sides of the aisle were terrific. Everybody brought their own points of view but were very respectful. I think we are going to move forward from here on out.

Thank you very much, and the hearing stands adjourned.

[Whereupon, at 12:35 p.m., the committee was adjourned.]

[Additional statement submitted for the record follows.]

STATEMENT OF HON. BERNARD SANDERS, U.S. SENATOR FROM THE STATE OF VERMONT

Senator Boxer, Senator Inhofe, our oversight responsibilities of the Environmental Protection Agency are of great importance to Americans all across the country and that's why today's hearing is so significant. It has been far too long since this committee exerted its oversight role and I applaud the Chairman for holding this hearing.

As Vermont is on the receiving end of much of the Nation's air pollution, Vermonters are very concerned about the way the U.S. Environmental Protection Agency (EPA) sets clean air standards. In December 2006, EPA announced that it intended to change the way that health-based air quality standards are set, reversing its long-standing process. Until that announcement, the EPA had counted on scientific advice from recognized experts prior to reaching policy recommendations or decisions. Now, the process will be reversed in an "Alice in Wonderland first-the-verdict, then-the-trial" manner that has been roundly condemned by the legitimate scientific community. Under the new policy, high-level political appointees will become involved early on in the process to determine what the "policy-relevant science" will be so the political point of view is represented. This is as if EPA is saying, "Don't confuse me with the facts—my mind is made up."

This change in policy is particularly galling in that is comes after EPA Administrator Stephen Johnson overruled the advice of his scientists regarding the standards for fine particulates, which is the fine soot or particles that can get past human protective mechanisms and lodge deep in the lungs. The scientific advisory members have said that the EPA "twisted" or "misrepresented" the recommendations of the

scientists. It seems as if this recent change in policy is a pay-back for those scientists who dare to challenge the political appointees.

It is my hope that the Congress will not allow this outrageous approach to continue. Unfortunately, the scenario I describe regarding air quality standards is only one example of a number of rollbacks that the EPA has recently pursued. I will work with all members of this committee to ensure that we get the EPA back on track, for if we don't reverse its course, the health of our citizens will be at risk.