

January 13, 2005

Office of Environmental Information
Environmental Protection Agency
Mail Code: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460
Docket ID: TRI-2005-0073

**RE: Comments on the Toxics Release Inventory Burden Reduction
Proposed Rule, (10/4/05, 70 FR 57822), Docket ID: TRI-2005-0073**

To Whom It May Concern:

The Synthetic Organic Chemical Association (SOCMA) is pleased to submit these comments in response to the Toxic Release Inventory (TRI) Burden Reduction Proposed Rule (Docket TRI-2005-0073). SOCMA is a trade association serving approximately 300 companies that have a common interest in the manufacture, distribution and marketing of organic chemical products. More than 2,000 batch-processing facilities produce 50,000 of the specialty and custom chemicals manufactured in the U.S. at a value about \$60 billion annually. SOCMA members are representative of these facilities, which are typically small businesses (79%) with fewer than 50 employees and less than \$100 million in annual sales. SOCMA supports the proposed rule and urges EPA to take prompt action to: (1) finalize the proposed rule, which will result in a modest improvement in the efficiency of TRI reporting; and (2) proceed to its contemplated second rulemaking of alternate year reporting to achieve more substantial burden reduction.

SOCMA appreciates and supports the Office of Environmental Information's long overdue and much needed efforts to pursue to improve TRI reporting and to make it less burdensome. SOCMA has been engaged with TRI issues since the enactment of EPCRA, and we have been an active participant in the recent stakeholder dialogues on TRI reporting, with a goal to assist the Agency in developing changes that will bring the most benefits. SOCMA supports EPA's authority to collect and report to the public information concerning any significant health and environmental effects that may be associated with chemicals. However, many SOCMA members, especially the small and medium sized companies, continue to be burdened with completing the TRI program's Form R.

SOCMA is cognizant that EPA is pursuing TRI burden reduction in a two-phase effort, with the first phase concerning threshold changes to the Form A and the second phase concerning alternate year reporting. Both phases are critically important. EPA also should take



the opportunity of TRI reform to exclude recycling and energy recovery from treatment of releases, which confuses the public and discriminates against facilities engaging in environmentally beneficial recovery practices.

Form A Usage and Enforcement

SOCMA has long been supportive of the use and promotion of the alternate threshold certification (Form A). It is a significant burden reduction option of the TRI program, particularly for small businesses. SOCMA is pleased that EPA has proposed to expand the eligibility for Form A by raising the level of the reporting threshold from 500 to 5000 pounds. This change will increase use of Form A, yielding some cost savings, and SOCMA supports it.

At the same time, EPA should eliminate a disincentive to use of Form A. Some facilities believe that its use may subject them to enforcement action for failure to file if it is later determined that the facility should have used Form R. EPA's current policy statement is confusing and not readily available to TRI reporting facilities. To encourage broader use of Form A, EPA should clearly state in the preamble to the final rule that incorrectly filing a Form A would be classified as an incorrect filing, not failure to report, for purposes of enforcement and penalty assessment (if any).

Alternate Year Reporting

The preliminary view of SOCMA's members is that the second phase of EPA's initiative -- alternate year reporting -- offers the greatest potential for burden reduction. The alternate year reporting option may save SOCMA members 216-1900 man hours per year filling out forms and have a possible cost savings of \$5,000-\$12,000 per site. These are significant savings for small sites that can equal more hours spent on real environmental management issues as opposed to paperwork. Alternate year reporting also may achieve the further benefits of improvement in the quality of the data and their analysis, including opportunities for further assessment of the data and its value by EPA.

Annual Reportable Releases Should Not Include Recycling

In past stakeholder meetings, EPA also indicated that it is considering clarification to the presentation of the context of TRI data. SOCMA supports this activity, which could encourage recycling and other beneficial practices and should be pursued in concert with the burden reduction initiative. As SOCMA has commented previously, for several reasons the TRI program should be revised to reflect only reported releases to the environment and not waste management activities such as recycling and energy recovery.

First, recycling and energy recovery is not in any way a "release" under the common understanding of that term. Unfortunately, despite numerous comments from stakeholders, EPA continues to mischaracterize legitimate recycling efforts as releases to the environment in the TRI Program. When completing Form R, SOCMA's members must indicate separately the amount of toxic chemicals released to the environment and the amount transferred off-site for reclamation, reuse and recycling. However, when EPA makes TRI information available to the public, both of these categories are combined and shown only as a "release". The public has no



way to discern the amount of toxic chemicals that are recycled by a facility or the amount actually released. EPA's misrepresentation of the reported data distorts public and press perceptions of how chemicals are managed at facilities and the risks they pose.

Second, combining recycling and energy recovery with actual releases discriminates against facilities engaging in beneficial recovery practices and fails to establish an appropriate incentive to promote those practices. It is federal environmental policy to encourage recycling and energy recovery. The Resource Conservation and Recovery Act (RCRA) establishes resource recovery as a major objective of EPA. There is even a Resource Conservation and Recovery Challenge (RCC) program in the Office of Solid Waste to encourage waste recycling. The Office of Solid Waste is also reviewing the Definition of Solid Waste regulations under RCRA to encourage more recycling of waste. Clearly, waste recycling and energy recovery is not considered a release in the context of RCRA and should not be in the TRI program. Including both in the TRI program creates a perverse disincentive to businesses that are interested in re-using waste materials. Changing the definition of "annual reportable amount" to exclude materials that are recycled or used for energy recovery would provide incentive for pollution prevention activities and clearly show that waste releases are declining.

Third, excluding recycling and energy recovery would achieve considerable burden reduction. The costs associated with calculation of releases would be reduced. Further, excluding recycling and energy recovery from the reporting thresholds would enable more facilities now using Form R to shift to Form A. EPA's current proposal to increase the Form A reportable amount to 5000lbs will help some facilities with small releases and recycling quantities, but it does not address the larger issue that these materials which are recycled and not released to the environment should not be included in TRI reporting thresholds for Form A or Form R. Even with the higher proposed threshold, inclusion of these recycled materials in the Form A or Form R reportable amount results in unnecessarily barring many facilities from burden relief specifically supposedly offered by the Form A reporting.

For these reasons, SOCMA urges EPA to act promptly to correct this longstanding flaw in the TRI program.

TRI is a significant and growing burden on SOCMA members and directly affects small and medium sized American chemical companies' ability to compete on a global basis. SOCMA is heartened that EPA is undergoing this burden reduction effort and will work with EPA to move quickly to an alternative year reporting format. SOCMA also stresses the need for EPA to act promptly on finalizing the proposed changes to the Form A and on proposing alternate year reporting. If you need further information, please contact me at (202) 721-4198 or gunnulfsenj@socma.com.

Sincerely,

Jeff Gunnulfson
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