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TOXIC RIGHT-TO-KNOW PROTECTION ACT OF 2007

DECEMBER 19, 2007.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany S. 595]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 595) to amend the Emergency Planning and Community Right-to-Know Act of 1986 to strike a provision relating to modifications in reporting frequency, having considered the same, reports favorably thereon without amendment and recommends the bill do pass.

PURPOSE AND SUMMARY OF THE LEGISLATION

The purpose of the bill is to require the federal Toxics Release Inventory program to collect and provide to the public the same amount of information as the program collected and provided prior to a recent administrative change and to maintain the program's current reporting frequency for information.

BACKGROUND AND NEED FOR LEGISLATION

Legislative background of the Toxics Release Inventory Program

In 1984, a toxic chemical released from a U.S. owned plant in Bhopal, India killed approximately 3,800 people, according to an estimate cited by Union Carbide (there are other estimates, most of them higher), and injured thousands of other people. Shortly there-

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after, a serious chemical release from a plant in West Virginia also demonstrated the importance of protecting public health from such chemical risks. Spurred on by these and other threats and by various state and local initiatives, Congress moved to increase protections for public and worker safety from chemical threats and to expand the public's right-to-know about the storage, use and disposal of chemicals in their communities.

In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (42 U.S.C. 11001–11050) (EPCRA) under Title III of the Superfund Amendments and Reauthorization Act (P.L. 99–499). EPCRA's two main goals are to facilitate planning for the dangerous release of chemicals and to provide the public with important information, which was previously unavailable, on toxic and hazardous chemicals in their communities. Section 313 of EPCRA created the Toxics Release Inventory program (TRI), which requires facilities in the manufacturing sector and federal operations to report when they release specific quantities of certain chemicals.

In 1990, Congress enacted the Pollution Prevention Act (42 U.S.C. 13101 et seq.) to expand the types of reported information to include data on reducing the use of dangerous chemicals, reducing pollution levels, and expanding the public's right-to-know about the production, use, and disposal of toxic chemicals. A key aspect of this law was the requirement that facilities report the quantities of toxic chemicals that they manage in waste and the types of pollution prevention activities that they undertake.

Congress intended TRI to give the public broad access to environmental information that it could use to facilitate pollution reductions by ensuring industry and government agencies are accountable for pollution prevention activities. Congress also intended for government and other officials to use TRI to better measure the success of public health and environmental safeguards. The program was also meant to provide an important tool to help various stakeholders work with industry to identify ways to reduce pollution.

Section 313 (h) of EPCRA reflects the broad information collection and dissemination authorities Congress intended for TRI:

> The release forms required under this section are intended to provide information to the federal, state, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall . . . inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

Facilities submit this information to the Environmental Protection Agency (EPA), which compiles the data and puts it into a computerized database, known as the Toxics Release Inventory. The public has access to this database and the underlying data. The types of industries required to report include manufacturing, metal mining, coal mining, coal and oil burning electrical utilities, hazardous waste treatment and disposal facilities, chemicals distributors, petroleum bulk storage terminals, and solvent recycling operations.

The Toxics Release Inventory Program helps to prevent and reduce pollution

Our nation has benefited greatly from using TRI information. These benefits inure to individual citizens, businesses, investors, labor organizations, public health officials, academics, public interest and environmental organizations, state, federal and local government agencies and others that use TRI. This program provides citizens with information that they can use in deciding whether to move their families into certain areas, businesses with important information on ways to cut costs and reduce pollution, investors with key information on potentially risky businesses practices, and governments with data that helps to wisely spend taxpayer resources.

In 1991, shortly after EPA implemented TRI, the federal General Accounting Office (now, the Government Accountability Office) (GAO), investigated the benefits of TRI. The GAO noted:

> Although the inventory has been available only since 1989, it has become a valuable source of environmental information. For example, federal and state governments have used the data to enact laws designed to control and reduce toxic emissions. Also, the public availability of the data has prompted some companies to set emissions reduction goals. (General Accounting Office, *Toxic Chemicals: EPA's Toxics Release Inventory is Useful but can be Improved,* 5, GAO/RECD–91–121 (1991).

Over a decade later, another federal report found a continuation of these benefits. A 2003 EPA report summarized the following benefits of TRI:

- Communities use TRI data to begin dialogues with local facilities and to encourage them to reduce their emissions, develop pollution prevention (P2) plans, and improve safety measures.
- Public interest groups, government, academicians, and others use TRI data to educate the public about toxic chemical emissions and potential risk.
- Industry uses TRI data to identify P2 opportunities, set goals for toxic chemical release reductions, and demonstrate its commitment to and progress in reducing emissions.
- Federal, state, and local governments use TRI data to set priorities and allocate environmental protection resources to the most pressing problems.
- Regulators use TRI data to set permit limits, measure compliance with those limits, and target facilities for enforcement activities.
- Public interest groups use TRI data to demonstrate the need for new environmental regulations or improved implementation and enforcement of existing regulations.
- Investment analysts use TRI data to provide recommendations to clients seeking to make environmentally sound investments.
- Insurance companies use TRI data as one indication of potential environmental liabilities.
- Governments use TRI data to assess or modify taxes and fees based on toxic emissions or overall environmental performance.

• Consultants and others use TRI data to identify business opportunities, such as marketing P2 and control technologies to TRI reporting facilities.

(Environmental Protection Agency, *How Are the Toxics Release Environment Data Used?*, 1–2, EPA–260–R–002–004 (2003).

EPA's report highlighted the importance of TRI to people in communities across the country:

> Citizen activists and community organizations educate their citizens or residents about toxic chemical releases using TRI data, often combining education with a call to action. Some community organizations have used TRI data to initiate discussions with local industries or to call on local and public interest organizations to lobby for their causes. Local public interest organizations improve citizen environmental awareness, encouraging them to become involved in the environmental health of their communities. Members of a local public interest organization can be of technical and legal help to citizens in the field of environmental negotiation. (Environmental Protection Agency, *How Are the Toxics Release Environment Data Used?*, 3, EPA–260–R–002–004 (2003)).

Government reports also highlight the importance of TRI for businesses:

> For some industries, the creation of the TRI marked the first time that company managers and operators could look closely at the quantity of chemicals being released from their facilities. Initially, some companies expressed surprise at their own toxic chemical release amounts and set goals to improve their environmental performance. Some companies have reduced their toxic chemical releases and increased their efficiency at the same time, leading to an increased profit. (Environmental Protection Agency, *How Are the Toxics Release Environment Data Used?*, 9, EPA–260–R–002–004 (2003)).
>
> Company officials [have] stated that one key way that pollution prevention improves the bottom line is by reducing production costs. Certain pollution prevention techniques, for example, can help a firm lower its materials cost, improve the efficiency of the production process, or eliminate the costs of treatment and disposal . . . Several firms . . . also cited a firm's sensitivity to its community relations and public image as an important inventive to pursue pollution prevention. (General Accounting Office, *Environmental Protection: EPA Should Strengthen its Efforts to Measure and Encourage Pollution Prevention*, GAO–01–283, 6 (2001)).

Organized labor has a long history of advocating for the right to know about chemical hazards in the workplace in order to increase worker-safety. EPA information also provides a good example of workers successfully using TRI to increase safety:

The Amalgamated Clothing and Textile Workers Union teamed up with a Minnesota community and used the TRI data to pressure their company to reduce the use of methylene chloride, a known health hazard to the workers, and search for safe alternatives. Union members and activists pressured the state for tougher regulations that would force the company to cut emissions by 93%.

(Environmental Protection Agency, Toxics Release Inventory: Community Right-to-Know, *Using the Toxics Release Inventory* (2000))

TRI also benefits government agencies' efforts to protect public health. As far back as 1991, the federal Agency for Toxic Substances and Disease Registry (ATSDR) used TRI data to analyze the present and future impacts of exposure to hazardous substances on human health.[1] EPA uses TRI data to support clean air safeguards and to monitor companies' compliance with other public health and environmental protections.[2] TRI helps state and federal agencies to better allocate scarce public resources to safeguard public health, and to target initiatives that seek to help businesses conduct pollution prevention and reduction activities.

The following information describes how some state agencies have used TRI to reduce pollution:

The [pollution prevention] Program of the Colorado Department of Public Health and the Environment used TRI data, in combination with other data about hazardous waste and toxic chemical releases to air and water, to identify the ten industry organizations responsible for the largest quantities of hazardous waste generation or toxic chemical releases in the state. This research served as the basis for establishing priorities for P2 activities and for distribution of technical assistance grants. The report also aided in targeting large companies for participation in the "Governor's [Pollution Prevention] Challenge Program" to reduce toxic chemical releases and hazardous waste generation. (Environmental Protection Agency, *How Are the Toxics Release Environment Data Used?*, 11, EPA–260–R–002–004 (2003)).

The [pollution prevention] Division in Georgia's Department of Natural Resources used TRI data to identify the technical assistance needs of manufacturing sectors generating chemicals that pose the greatest relative risk to public health and the environment. The Division prioritized chemicals, examined manufacturing sectors releasing the highest priority chemicals, and identified particular subsectors for further assessment. The Division also conducted in-depth manufacturing sector assessments to determine which processes produce which wastes, what multi-media waste problems exist, what [pollution prevention] activities were being undertaken, and what additional opportunities might exist. *Id.* at 12.

The Florida Waste Reduction Assistance Program provides assistance in source reduction and waste minimization to facilities handling TRI chemicals. The Program relies on TRI and other data to target facilities for the Program. *Id.* at 12.

The Minnesota Office of Environmental Assistance reported a significant use of pollution prevention measure among the 10 largest managers of toxic chemicals in the state. Four of the 10 facilities achieved an overall reduction in chemical usage through pollution prevention. (General Accounting Office, *Environmental Protection: EPA Should Strengthen its Efforts to Measure and Encourage Pollution Prevention,* GAO–01–283, 5–6 (2001).

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[1] General Accounting Office, Toxic Chemicals: EPA's Toxics release Inventory Is Useful but can be Improved, 22 GAO/RECD–91–121,22 (1991).

[2] Environmental Protection Agency, Toxics Release Inventory: Community Right-to-Know, Using the Toxics Release Inventory (2000).

Under Massachusetts' Toxic Use Reduction Program, reporting facilities reduced toxic waste generation by 48 percent from 1990 to 1998—a decline state officials said could be attributed in part to greater use of pollution prevention. *Id.* at 6.[3]

A 2003 report from the National Pollution Prevention Rountable, partially funded by EPA, describes the myriad benefits from 60 state and local pollution prevention initiatives across the country. The study found that between 1990 and 2000, more than 167 billion pounds of pollution were prevented.[4] Additional benefits included the conservation of more than 4 billion gallons of water, and cost savings of $404 million from only just 13 programs with an annual budget of $1.9 million.[5]

TRI has also made our country a world leader in right-to-know efforts. EPA reports that TRI has served as a model for roughly 30 other nations to enact or consider similar programs.[6] Citizens have also used TRI when lobbying the United Nations to promote community right-to-know laws around the globe.[7]

Comprehensive and timely data is critical for the Toxics Release Inventory Program's success

Common sense and independent evaluations of the TRI program tell us that the program's utility is tied to the comprehensiveness of its data. In 1991, a GAO report concluded, "The inventory would be more useful to regulators and the public if it were comprehensive."[8] This helps to explain Congress' rationale for expanding the program's reporting requirements and why EPA has expanded such requirements during the program's history.

The law original required reporting for 313 chemicals or categories of chemicals, but gave EPA authority to add or eliminate chemicals in response to citizen petitions or on the agency's own analysis, consistent with the text and intent of the law. The Congressional Research Service found that EPA has added about 350 chemicals or categories of chemicals, while removing more than 15.[9] EPA reduced the reporting threshold for certain persistent, bioaccumulative, and toxic chemicals on October 29, 1999.[10] The Agency also issued a rule on January 17, 2001 that reduced the threshold for reporting releases of lead compounds.[11]

The TRI program also balances these reporting safeguards with provisions that ease the reporting burden. For example, TRI has a reporting exemption for small businesses with 10 or fewer employ-

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[3] A report by the Toxics Use Reduction Institute, which helps to implement the State program, recognizes the cumulative benefits of various state and federal programs, including TRI, for the success of source reduction and pollution prevention activities. The Massachusetts Toxic Use Reduction Institute, Benefit-Cost Analysis of The Massachusetts Toxic Use Reduction Act, 3–5 (1997).

[4] National Pollution Prevention Rountable, An Ounce of Pollution Prevention is Worth Over 167 Billion* Pounds of Cure: A Decade of Pollution Prevention Results 1990–2000,4 (2003).

[5] National Pollution Prevention Rountable, An Ounce of Pollution Prevention is Worth Over 167 Billion* Pounds of Cure: A Decade of Pollution Prevention Results 1990–2000,4 (2003).

[6] Environmental Protection Agency, How Are the Toxics Release Environment Data Used?, 14, EPA–260–R–002–004 (2003)).

[7] Environmental Protection Agency, How Are the Toxics Release Environment Data Used?, 14, EPA–260–R–002–004 (2003)).

[8] General Accounting Office, Toxic Chemicals: EPA's Toxics release Inventory Is Useful but can be Improved, 22 GAO/RECD–91–121,3 (1991).

[9] Congressional Research Service, The Emergency Planning and Community Right-to-Know Act (EPCRA): A Summary, 4 (2007)

[10] 64 Fed. Reg. 58665–58753.

[11] 66 Fed. Reg. 4500–4547. However, the then-incoming administration delayed this rule's effective date 60 days until April 17, 2001. 66 Fed. Reg. 10585 (Feb. 16, 2001).

ees and it has a reporting exemption for de minimis amounts of toxic chemicals. It allows facilities that release 500 pounds of toxic chemicals—including substances known to cause cancer—to use an expedited form for reporting. The program also has several reporting exemptions for different uses of chemicals, including janitorial services, maintenance activities for facilities and automobiles, personal use by employees, certain laboratory services, and certain other facilities that use and release toxic chemicals.

The need for timely data is without question. A right-to-know program by its very nature requires timely, accurate, and consistent data to ensure accountability, track results, and provide a usable dataset for comparisons across time and between industries or facilities. Business, public health officials, the public, government agencies and others rely on TRI data as a key tool to accomplish these types of analysis.

EPA's decision to change the Toxics Release Inventory Program

On October 4, 2005 EPA proposed to modify TRI reporting requirements in three ways. EPA, *Toxic Release Inventory Burden Reduction Proposed Rule,* 60 Fed. Reg. 57822 (2005). First, the agency proposed to eliminate annual TRI reporting and replace it with reporting only every other year. Second, the agency proposed to allow facilities to increase—by ten times—the amount of toxic chemicals released or managed before the facilities had to provide detailed information on these activities.[12] Third, the agency reversed its earlier position and proposed to allow less-detailed reporting on persistent, bioaccumulative toxins, such as mercury and lead that are used by the business but not released into the environment. *Id.* at 57839.

Opposition to EPA's proposal

Federal and state public health officials, states' attorneys general, first responders, labor unions, state pollution control officials, environmental groups and others opposed EPA's proposed reduction in TRI reporting. (See the Appendix for some of the documents referred to in this paragraph.) In all, 23 state agencies and attorneys general sent in comments opposing the proposed changes. EPA's Science Advisory Board also expressed concerned over the changes. The federal Centers for Disease Control and the federal Agency for Toxic Substances and Disease Registry noted that they relied on consistent TRI data to monitor and study health effects. The Environmental Council of the States opposed EPA's proposal.

A 2006 analysis of comments submitted to EPA on its proposal found:

EPA received comments from 122,420 individuals and groups. The vast majority of these commenters, 122,386 (99.97%), strongly opposed the changes, and only 34 commenters (0.03%) expressed

[12] EPA proposed to allow facilities that released or managed 5,000 pounds of toxic chemicals, which are not persistent, bioaccumulative, to report to TRI using a Form A, rather than a Form R. Form Rs provide more information than Form As, including a description of how the facility uses the chemical, the maximum amount of the chemical on-site during a year, on-site releases of the chemical (e.g. releases through stacks, discharges to streams or rivers, or injection in the ground), the methodology used to produce the release estimates, on-site waste management activities, including the amounts managed through recycling, energy recovery, or treatment, the type of recycling processes used (e.g. metal recovery by smelting, solvent recovery by distillation), and energy recovery methods (e.g. kiln, furnace, or boiler), waste treatment methods, and on-site waste treatment efficiency.

some degree of support for the proposals. The opposition came from over 120,000 average citizens, 23 state governments, more than 60 members of Congress, more than 30 public health organizations, more than 40 labor organizations and more than 200 environmental and public interest organizations. Support for the proposals came almost entirely from companies and industry associations in addition to a handful of government agencies and individuals. (OMB Watch, *Against the Public's Will,* 2 (2006)).

On May 18, 2006 the House of Representatives, in a bi-partisan rejection of EPA's proposed modifications, adopted an amendment 231 to 187 to prohibit EPA from implementing the proposed changes. The amendment was sponsored by Reps. Frank Pallone (D-NJ) and Hilda Solis (D-CA). In all, 48 Republicans joined with 182 Democrats and one Independent to support the amendment.

Despite widespread opposition, EPA issued a rule on December 18, 2006 that reduced detailed information provided to TRI. EPA, 71 Fed. Reg. 76932 (2006). While EPA dropped its proposal to institute biannual reporting, the agency quadrupled the amount of toxic chemicals that facilities could release or manage and still provide less-detailed information. The rule also allowed facilities to provide less-detailed information on the management of persistent, bioaccumulative toxins that are not released into the environment.

Government Accountability Office analysis of EPA's decision

The Government Accountability Office (GAO), has investigated EPA's activities with the TRI rulemaking, and provided the committee with GAO's interim findings on February 6, 2007. GAO testified that

> late in the (rulemaking) 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. (John Stephenson, Director, Natural Resources and the Environment, GAO, *Environmental Information, EPA Actions Could Reduce the Availability of Environmental Information to the Public* (2007)).

GAO reported 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." *Id.* GAO estimated that 3,565 facilities "would no longer have to report any quantitative information to TRI" and "that detailed information from more than 22,000 (reporting forms) could no longer be reported to the TRI if all eligible facilities choose to use (less detailed reporting forms), affecting more than 33 percent of reports in California, Massachusetts, and New Jersey." *Id.* "[S]tates could lose all quantitative information

about releases of some chemicals, ranging from 3 in South Dakota to 60 in Georgia." *Id.* Importantly, GAO found EPA's decision could reduce other critically important information, including data on facilities' efforts to reduce the use of toxic chemicals, recycle toxics, and transfer toxic chemicals to other facilities. *Id.* at 29–31. GAO also testified that EPA had *overestimated* cost savings from this proposal. *Id.*

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section sets forth the title of the bill as the Toxic Right to Know Protection Act.

Section 2. Modification of reporting frequency

This section requires facilities to annually report to the Toxic Release Reporting program.

Section 3. Requirements relating to toxic release inventory

This section requires the Administrator of the Environmental Protection Agency to establish the use of Form A at a threshold of not greater than 500 pounds for nonpersistent nonbioaccumulative and toxic chemicals and prohibits the use of Form A for chemicals of special concern.

LEGISLATIVE HISTORY, COMMITTEE VIEWS AND VOTES

HEARING

On February 6, 2007 the Senate Committee on Environment and Public Works held a hearing to examine recent administrative decisions, including EPA's proposed changes to TRI.

ROLL CALL VOTES

On July 31, 2007 the committee held a business meeting to consider a variety of legislation, including Senator Lautenberg's Toxic Right to Know Protection Act (S. 595). The committee passed S. 595 on a roll call vote of 10 to 9 (voting aye: Senators Boxer; Baucus; Lieberman; Carper; Clinton; Lautenberg; Cardin; Sanders; Klobuchar; and Whitehouse. Voting nay: Senators Inhofe; Warner; Voinovich; Isakson; Vitter; Barrasso; Craig; Alexander; and Bond).

REGULATORY IMPACT STATEMENT

The committee finds that while the legislation would increase some administrative burden on private entities, the industry-wide costs are estimated to be less than $10 million annually, which is well below the annual threshold established by the Unfunded Mandates Reform Act of 1995. The committee also notes that the Government Accountability Office has questioned the Environmental Protection Agency's estimates of burden reductions for its rule, which could reduce the potential costs of the legislation.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 595 contains both intergovernmental and private-sector unfunded mandates. How-

ever, the cost of complying with these mandates will not exceed the annual thresholds established under UMRA.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control act requires a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 595 would repeal the Environmental Protection Agency's (EPA's) authority to determine how often owners or operators of chemical facilities must submit certain information regarding the manufacture or use of toxic chemicals. This legislation also would require EPA to establish eligibility thresholds for using form-A certification (a less-detailed form used by owners and operators of chemical facilities to report on chemical releases and waste management under the Toxics Release Inventory Program) at not greater than 500 pounds for nonpersistent bioaccumulative and toxic chemicals. (Currently, form-A certification is allowed even if more than 500 pounds of a chemical is released.) Finally, this legislation would prohibit the use of this less-detailed statement for any chemical identified by EPA as a chemical of special concern.

Based on information from EPA, CBO estimates that enacting S. 595 would have no significant effect on the federal budget. CBO estimates that proposed changes in reporting requirements would not substantively change EPA's oversight of toxic chemical releases and would not significantly affect the agency's costs. Enacting this legislation would not affect direct spending or revenues.

S. 595 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would reduce the threshold for reporting chemical releases under the Emergency Planning and Community Right-to-Know Act of 1986. That change would increase the administrative burden for state and local entities required to file such reports with EPA. Based on information from EPA, the industry wide cost of the new requirements are estimated to be less than $10 million annually. Because state and local entities represent only a small portion of those costs, CBO estimates that the additional costs would not be significant and would not exceed the threshold established in UMRA ($66 million for intergovernmental mandates in 2007, adjusted annually for inflation).

S. 595 would impose a private-sector mandate as defined in UMRA by increasing the administrative requirements for certain facilities that report data on chemical releases to EPA. Under the bill, those facilities would be required to report chemical releases using a longer, more-detailed form. Based on information from EPA, CBO estimates that the incremental cost to the industry to comply with the mandate would be less than $10 million annually. Therefore, the cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($131 million in 2007, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), Neil Hood (for the state and local impact), and Amy Petz (for the private-sector impact). This estimate

was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

MINORITY VIEWS OF SENATORS INHOFE, WARNER, VOINOVICH, ISAKSON, VITTER, BARRASSO, CRAIG, ALEXANDER, BOND

We write separately to express our disagreement with the language and the intent of S. 595, the Toxic Right to Know Protection Act of 2007, and to urge the full Senate to reject this bill or any measure that seeks to rollback the Environmental Protection Agency's Toxic Release Inventory (TRI) final rule promulgated in December 2006. This rule was written to ease paperwork burdens of small businesses with respect to the use of forms required to be submitted under the TRI program and does not harm right-to-know.

First, we agree with the majority about the importance of the TRI Program. We also agree that the release forms required by TRI are intended to provide important information and data to the public regarding releases and transfers of toxic substances from industrial facilities. This data serves to encourage pollution prevention and reduction activities, as well as to facilitate research and inform regulatory processes at all levels of government. However, we disagree that the 2006 TRI rule jeopardizes the TRI program nor do we believe that the streamlined reporting requirements provided for by the rule run afoul of Congress' original intent.

EPA took four years to develop the TRI rule and during that time engaged stakeholders, including Congress, through multiple on-line dialogues, physical meetings, and formal rulemaking procedures. Significant changes were made to the content and scope of the rule due to the comment from interested parties.

Opponents of the final December 2006 TRI rule characterize it as weakening the public's right to know, eliminating disclosure requirements, and allowing facilities to hide the amounts of chemicals they may use. Yet, the TRI rule does not exempt any facility from reporting its releases. Everyone must still report. The rule simply changes the eligibility requirements for using the shorter, easier to complete Form A, allowing certain smaller reporters to use the less-detailed version. Under the new rule, the public will still receive the same detailed data on more than 99% of the releases; EPA's approach of retaining 99% of the release data in the Form Rs was first developed by the Clinton Administration under EPA Administrator Carol Browner in the creation of the Form A in 1994.

In addition, the only formal study of the effect of this new rule on the community right-to-know concluded that the rule would not have any significant effect on the TRI data uses.[1] Supporters of S. 595 have provided no evidence to contradict this study.

[1] E. H. Pechan & Associates, Inc., "Review and Analysis of the Effect of EPA's TRI Phase II Burden Reduction Proposal on TRI Data Uses, prepared for the US Small Business Administration, Office of Advocacy under Contract No. SBAHQ–03C0020, June 2007.

The rule, in fact, serves to provide a meaningful incentive to businesses, particularly small businesses, to reduce chemical emissions and increase environmentally preferred chemical waste management activities, such as recycling and energy recovery. For example, if a facility reduces their releases of the environmental substances of special concern to zero, the facility is allowed to use Form A to reflect that reduction. If they release even one-tenth of a pound of that substance, they must use the longer, more complex form. For other, less toxic substances, Form A is only available to a facility if they reduce their releases to below 2000 pounds and only if their total waste does not exceed 5000 pounds. The EPA asserts that "by imposing stringent limits on releases as a pre-condition of short-form reporting, EPA is encouraging businesses to minimize disposal into the environment."[2] We agree. This rule provides regulatory relief in exchange for superior environmental performance. Further, enactment of this bill would deny EPA the opportunity to evaluate and possibly improve the environmental incentives that EPA has carefully crafted.

Small businesses are disproportionately impacted by regulation. The overall regulatory burden in the United States exceeds $1.1 trillion.[3] For firms employing fewer than 20 employees, the most recent estimate of their regulatory burden is $7,647 per year per employee.[4] EPA estimates that, on average, the "reduction in reporting is about 15 hours for each PBT [persistent, bioaccumulative, toxic] report submitted on a short form and about 9 hours for a non-PBT chemical."[5] Proponents of suggest that 15 hours is not a meaningful reduction of time. However, the small business community ardently disagrees.

> "[T]ime spent on completing paperwork is time that I cannot spend on other things. * * * 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."[6]

The TRI rule does not alleviate all the burdens of small business; but with it, we believe EPA has taken a carefully balanced step in the right direction by relieving some of the costs borne by smaller reporting facilities yet retaining the integrity of the TRI program.

JAMES M. INHOFE.
GEORGE V. VOINOVICH.

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[2] August 20, 2007 EPA Assistant Administrator and Chief Information Officer Molly A. O'Neill letters to Senators Barbara Boxer and James Inhofe.

[3] Thomas S. Sullivan, Chief Counsel for Advocacy, U.S. Small Business Administration, Testimony before the Senate Environment and Public Works Committee, February 6, 2007.

[4] Sullivan 4.

[5] Stephen Johnson, Administrator, US Environmental Protection Agency, Testimony before the Senate Environment and Public Works Committee, February 6, 2007.

[6] Nancy Klinefelter, President, Baltimore Glassware Decorators, Testimony before the Senate Environment and Public Works Committee, February 6, 2007.

LARRY E. CRAIG.
JOHN WARNER.
JOHNNY ISAKSON.
LAMAR ALEXANDER.
JOHN BARRASSO.
KIT BOND.
DAVID VITTER.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986

* * * * * * *

42 USCS § 11023

§ 11023. Toxic chemical release forms

(a) Basic requirement. The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) for each toxic chemical listed under subsection (c) that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (f) during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

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[(i) Modifications in reporting frequency.

[(1) In general. The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:

[(A) All toxic chemical release forms required under this section.

[(B) A class of toxic chemicals or a category of facilities.

[(C) A specific toxic chemical.

[(D) A specific facility.

[(2) Requirements. A modification may be made under paragraph (1) only if the Administrator—

[(A) makes a finding that the modification is consistent with the provisions of subsection (h), based on—

[(i) experience from previously submitted toxic chemical release forms, and

[(ii) determinations made under paragraph (3), and

[(B) the finding is made by a rulemaking in accordance with section 553 of title 5, United States Code.

[(3) Determinations. The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):

[(A) The extent to which information relating to the proposed modification provided on the toxic chemical release

forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.

[(B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.

[(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

[(4) 5-year review. Any modification made under this subsection shall be reviewed at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

[(5) Notification to Congress. The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.

[(6) Judicial review. In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.

[(7)Applicability. A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.

[(8) Effective date. Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.]

[(j)] *(i)* EPA management of data. The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.

[(k)] *(j)* Report. Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:

(1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.

(2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the

public, and the purposes for which the information has been used.

(3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.

[(l)]*(k)* Mass balance study.

(1) In general * * *

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§ 11042. Trade secrets

(a) Authority to withhold information.

(1) General authority.

(A) * * *

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(h) Information on adverse effects.

(1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section 301 shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.

(2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section [313(j)]*313(i)* and is provided to any person requesting information about such toxic chemical.

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§ 11046. Civil actions

(a) Authority to bring civil actions.

(1) Citizen suits. Except as provided in subsection (e), any person may commence a civil action on his own behalf against the following:

(A) * * *

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(B) The Administrator for failure to do any of the following:

(i) Publish inventory forms under section 312(g).

(ii) Respond to a petition to add or delete a chemical under section 313(e)(1) within 180 days after receipt of the petition.

(iii) Publish a toxic chemical release form under [section] 313(g).

(iv) Establish a computer database in accordance with section [313(j)]*313(i)*.

(v) Promulgate trade secret regulations under section 322(c).

(vi) Render a decision in response to a petition under section 322(d) within 9 months after receipt of the petition.

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