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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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May 19, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator McCarthy:

On January 7, 2015, the Environmental Integrity Project (EIP) and other environmental organizations filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the District of Columbia seeking to compel the Environmental Protection Agency (EPA) to act on an EIP petition. This EIP petition was submitted on October 24, 2012, requesting EPA to add the Oil and Gas Extraction Industry, Standard Industrial Classification Code 13, to the list of facilities required to report under the Toxics Release Inventory (TRI). We believe that EPA should act immediately to reject the October 2012 EIP petition because it is frivolous, inappropriate, and unnecessary. An EPA denial would both respond to the initial petition and render the complaint moot.

The initial EIP petition argues that EPA should expand the current TRI to include the Oil and Gas Extraction industry. Such an action runs counter to the intent of the TRI and would further diminish the limited value that the current TRI serves, which we believe should be focused more narrowly. EPA's website describes the history of the TRI:

The TRI Program was created in response to several events that raised public concern about local preparedness for chemical emergencies and the availability of information on hazardous substances.

On December 4, 1984, a cloud of extremely toxic methyl isocyanate gas escaped from a Union Carbide Chemical plant in Bhopal, India. Thousands of people died that night in what is widely considered to be the worst industrial disaster in history. Thousands more died later as a result of their exposure, and survivors continue to suffer with permanent disabilities. In 1985, a serious chemical release occurred at a similar plant in West Virginia.

In 1986, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA) to support and promote emergency planning and to provide the public with information about releases of toxic chemicals in their community. Section 313 of EPCRA established the Toxics Release Inventory.

When the Senate deliberated on the structure of the TRI, it rejected a broad scope and focused the inventory on manufacturing operations – then defined as Standard Industrial Classification (SIC) Codes 20 through 39¹ – with limits on the size of facilities that reported. These constraints were designed to assure that facilities posing a potentially significant threat to populated areas were the targeted reporters, and this structure was retained in the final legislation.

The initial inventories produced results focused on these manufacturing facilities that are typically in populated areas because of the sizeable work forces they employ. However, in 1997, EPA strayed from the appropriate TRI focus and chose to use its authority to expand the facilities required to report under the inventory, adding seven new categories of industries to the reporting scope. These industry groups are metal mining, coal mining, electric utilities, commercial hazardous waste treatment, chemical and allied products wholesale, petroleum bulk terminals and plants (also known as stations) - wholesale, and solvent recovery services.

This action, particularly the inclusion of metal mining, diminished the value of the TRI. The metal mining industry must submit as “releases” on their TRI reports the trace amounts of naturally-occurring metal and metal compounds that are present in the rock and dirt that is moved and managed at a mine site. As EPA notes in the 2011 TRI National Analysis Overview:

The vast majority of its total disposal or other releases are on-site land disposals and are a result of very small concentrations of metals naturally present in the ore body.

In fact, 85 to 99 percent of what the metal mining industry reports consists of the management of these naturally-occurring substances. Similarly, the overwhelming majority of all mining industry releases are reported to on-site land-based units. These releases are characterized by low concentrations of chemicals in huge volumes of inert materials.

As a result of EPA’s decision to expand the TRI in 1997, the information available to the public, through TRI, is far from the original congressional intent. This shift is clearly evident in an EPA observation in the recent release of the 2013 TRI:

In 2013, the metal mining sector reported the largest quantity of total disposal or other releases, accounting for 47% of the releases for all industries. It also represents almost three quarters (71%) of the on-site land disposal for all sectors in 2013.

Almost half of the releases reported on the TRI are from the disposal of rock and dirt with minor amounts of toxic chemicals. Consequently, the value of information from the initial inventories has been cut in half.

At the same time that EPA moved to add metals mining to the TRI, it chose not to consider oil and gas exploration and production facilities. In explaining its decision not to propose expansion to oil and gas exploration and production facilities, EPA stated rather straightforward reasons:

¹ SIC Codes have subsequently been replaced by the North American Industry Classification System (NAICS).

This industry group is unique in that it may have related activities located over significantly large geographic areas. While together these activities may involve the management of significant quantities of EPCRA section 313 chemicals in addition to requiring significant employee involvement, taken at the smallest unit (individual well), neither the employee nor the chemical thresholds are likely to be met.²

Despite substantial new development of American oil and natural gas, these realities previously cited by EPA remain. Consequently, nothing has changed since the inception of the TRI to suggest that its purposes would be served by adding another high volume, low toxicity waste industry – particularly one that would overwhelmingly fall outside the reporting requirement thresholds.

For these reasons, we strongly believe that EPA should reject the EIP petition as soon as possible.

Sincerely,



James M. Inhofe
Chairman



David Vitter
U.S. Senator



M. Michael Rounds
U.S. Senator

² 61 Fed. Reg. 33588, 33592 (June 27, 1996).