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# **DISMANTLING THE PUBLIC'S RIGHT TO KNOW**

The Environment Protection Agency's  
Systematic Weakening of the  
Toxics Release Inventory

Sean Moulton and Cheryl Gregory conducted the primary research and wrote this report. Gary Bass, George Sorvalis, Clay Northouse and OMB Watch staff provided technical feedback, advice and support. Anna Oman designed the report. OMB Watch has worked to promote public access and use of the Toxic Release Inventory since the data was first compiled by EPA in 1988. Since 1989 we have operated the Right to Know Network (RTK NET), an online service providing public access to environmental data collected by EPA

OMB Watch is a nonprofit research and advocacy organization that has government accountability and improving citizen participation as its core mission. Public access to government information has been an important part of our work for more than 15 years and we have both practical and policy experience with disseminating government information. OMB Watch also actively engages in agency regulatory processes, encouraging agency rules to be sensible and more responsive to public need.

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This report is available electronically for download at  
[www.ombwatch.org/info/weakTRI.pdf](http://www.ombwatch.org/info/weakTRI.pdf).

**OMB WATCH**  
1742 Connecticut Ave., NW  
Washington, DC 20009-1171  
<http://www.ombwatch.org>  
202/234-8494  
[info@ombwatch.org](mailto:info@ombwatch.org)

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## DEFINITIONS OF ACRONYMS

ACRONYM	DEFINITION
ACC	The American Chemistry Council
e-FDR	electronic-facility data release
EPA	The U.S. Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
MEK	methyl ethyl ketone
OMB	The Office of Management and Budget
PBTs	persistent bioaccumulative toxins
PDR	Public Data Release (EPA analysis accompanying TRI data)
STAR	2005 Strategic Toxic Air Reduction program
TRI	Toxic Release Inventory

# EXECUTIVE SUMMARY

Under the Bush administration, the Environmental Protection Agency (EPA) is slowly dismantling its flagship environmental information tool—the Toxic Release Inventory (TRI). The program has been protected and improved for over the last 15 years, since it was put in place during the Reagan administration. The TRI database enables the public to learn about the environmental risks in our workplaces and communities by providing information about hundreds of toxic chemicals released into the environment. Moreover, the TRI program has served as a constant example of the vital role information plays in a democracy, and the importance of the public's right to know. Unfortunately, the program's success has made it a target for those that seek to reduce corporate oversight and accountability.

The easy access to pollution information provided by TRI has empowered citizens to push for improvements, and facilities have acted to reduce releases. Since facilities began reporting in 1988, there has been a nearly 60 percent reduction in total releases of the 299 core chemicals that the program began tracking. This is a significant drop, one that was fueled by merely making information publicly available.<sup>1</sup> As new chemicals have been added to the TRI program, those releases have also dropped. This year, EPA reported a 42 percent reduction in releases and disposal of the more than 650 chemicals now tracked under TRI over the 6 years between 1998 and 2003.<sup>2</sup> TRI is EPA's premier database of environmental information, and it demonstrates the power that information holds to promote change that benefits everyone's environment, health and safety.

Despite the program's positive impacts, the TRI is under attack from the very agency administering this success story. EPA's recent actions and stated plans are geared to downgrade and weaken the TRI program. These actions represent a recent and definitive shift in EPA's approach to TRI and are largely a result of the current administration's political priorities—corporations first, communities last.

This OMB Watch report outlines a set of troubling trends and developments regarding EPA's TRI program:

► **TRI Reporting Cutbacks:** EPA recently proposed reducing the accuracy of TRI reporting, letting companies produce ten times the pollution before requiring them to report the details of amount and destination (e.g., air, water). Furthermore, EPA announced its intention to cut the entire program in half by switching to reporting every other year, significantly reducing the level of accountability the program provides over facilities and making it impossible for communities to get timely information on toxic releases and trends.

► **Ineffective Legal Defense of TRI:** EPA had mounted limited and unenthusiastic legal defenses against industry court challenges of the TRI program that have cost the public important information about toxic releases and risk additional challenges.

► **Reduced Analysis:** Previously issuing voluminous and detailed reports to accompany each data release, EPA has reduced the report to a pamphlet with scant analysis and a few press materials.

► **Loss of Facility and Community Focus:** EPA has practically abandoned facility-specific analysis, even though this is the most highly sought after and useful data.

► **Misleading Analysis:** EPA analysis highlights the most positive results and buries any troubling data, effectively providing the public with only half the story.

► **Silent Release of TRI Data:** EPA engaged in a "stealth release" of the most recent TRI data to lower the profile of this highly successful program.

► **Delayed Information:** EPA has failed to get the TRI data out in a timely manner, regularly taking up to 18 months, severely reducing the usefulness of the data.

Taken individually, any of these actions could be seen as poor judgment, regrettable errors or even simple incompetence on behalf of the agency. However, when viewed collectively, they illustrate EPA's organized effort to downplay and dismantle the TRI program. It has become quite evident that the Bush administration's pri-

## WHAT IS TRI?

The Toxic Release Inventory (TRI) tracks the amount and types of toxic chemicals released into the environment, stored at facilities, or transferred in between facilities. The program's authority comes from the Emergency Planning and Community Right-to-Know Act (EPCRA), enacted in 1986. Later, in 1990, Congress passed the Pollution Prevention Act, which added waste management and source reduction activities to TRI reporting.

The primary purpose of the TRI is to allow citizens access to information on chemical hazards in their communities. By empowering citizens with this information, the TRI enables them to make choices to protect their families' health and safety.

Facilities must report under the TRI if they are within a specific industry, have over 10 full-time employees, and manufacture or process one or more of 667 chemicals over a certain threshold.

orities are corporations before communities, special interests before public interests, and catering to polluters over public health. This report details the advancement of this agenda with regards to EPA's TRI program and provides specific recommendations on how to restore and revitalize the TRI program.

## IMPORTANCE OF TRI DATA

The intent of TRI's founding statute, the Emergency Planning and Community Right-to-Know Act (EPCRA), was to help local communities protect their health, safety and the environment from chemical hazards. Public awareness of TRI data has caused significant reductions in toxic releases and has helped create safer, healthier communities. This is extremely significant, and the effects have been felt all across the country.

For example, in Louisville, Kentucky, citizens used TRI data to help establish a plan to improve the city's air quality, which EPA estimates is the unhealthiest air in the Southeast. The citizen group Rubbertown Emergency Action and local officials coupled TRI information with air monitoring data to identify facilities responsible for high levels of hazardous air pollution. This effort led to the city's new aggressive air pollution plan called the 2005 Strategic Toxic Air Reduction (STAR) program, which requires industrial facilities to reduce emissions. TRI data also informed concerned citizens in Chicago's Pilsen neighborhood. Pilsen residents learned that the H. Kramer Co. brass foundry was the city's largest emitter of airborne lead. In 2004, the residents formed the Pilsen Environmental Rights and Reform Organization to push for testing, which found highly elevated lead levels in the area. As a result, the group secured agreements from the company to reduce emissions. These are just a few examples of how TRI data is used on an ongoing basis around the country to protect human health.

TRI is now widely recognized as a valuable source of environmental information for the public, workers, legislators, the press, regulators, investors, and industry. Facilities use the data to identify opportunities to reduce the use of toxic chemicals, explore alternative methods and gauge progress. Academia uses the data to conduct research on toxic releases and overlay the data with other sources, such as census data. Public interest groups publish reports using TRI data and use it to push for environmental policy changes. Labor groups use the data to evaluate hazards to workers. The data is also vital to local emergency response efforts to protect the public against emergencies such as chemicals spills, or tragedies such

as the toxic waste released into the waters around New Orleans following Hurricane Katrina. Government agencies also use the data to monitor how the TRI contributes to overall pollution prevention efforts.<sup>3</sup>

These are just a few examples among many, but they illustrate the diversity of the data's benefits and uses. If anything, the TRI program should be augmented and improved to provide faster, more accurate information on what is polluting us and the environment. Individuals and families need information to make the best decisions to protect themselves and their communities.

## TRI REPORTING CUTBACKS

EPA recently proposed two basic changes to significantly alter TRI reporting requirements as part of an effort to reduce companies' reporting burden under the program. First, EPA proposes to enlarge a reporting loophole to allow thousands of companies to withhold details on exactly how much toxic pollution they are producing and where it is going. Second, the agency proposes to scale back the entire program from annual to biennial reporting. Each of these proposals will sacrifice the amount and accuracy of data collected under the TRI. Public interest groups have long questioned the notion that the program creates an unfair burden on facilities.

### **HIGHER THRESHOLDS FOR FULL REPORTING**

EPA intends to raise the toxic release threshold for which facilities may file an abbreviated certification, called the Form A, instead of the full TRI report, called the Form R. This would severely limit the information collected under the TRI, since the short form does not include information on the amount of chemical waste released or transferred, or where the waste goes (e.g. air, water, disposal facility). Currently, a facility may only use the Form A if total releases and transfers do not exceed 500 pounds and if the total chemical throughput at the facility does not exceed 1,000,000 pounds. Two proposed changes would allow significantly greater use of the program's short form.

The first proposed change would raise the Form A's total release and transfer threshold from 500 pounds to 5,000 pounds, allowing many more facilities to report with Form A.<sup>4</sup> Under this plan, the public would lose the details on how much toxic pollution thousands of facilities are producing and where the pollution is going, and, as a result, thousands of communities around the country would know less about the poisonous chemicals around them. Eliminating detailed data for so many facil-

ities would significantly inhibit reliable analysis. Increasing the Form A loophole tenfold would give facilities a greater opportunity to manipulate the reporting system. EPA previously considered this threshold increase, which has long been advocated by industry but, after serious investigations, never found sufficient reason to pursue the option. Lacking any new studies or scientific evaluations supporting EPA's policy reversal, this change is a clear indication of the administration's prioritization of corporate over community interests.

The agency is also proposing to allow companies, for the first time, to use the less informative short form to report certain quantities of the dangerous class of chemicals, persistent bio-accumulative toxins (PBTs). Currently, facilities may not use the short form for any reportable levels of PBTs, a policy established, along with significantly lower reporting thresholds for PBTs, that recognizes the fact that even small exposures to PBTs can pose enormous health risks. The reporting change would allow facilities to use the short form for any PBT, other than dioxin, if they produce less than 500 pounds and if there are no releases into the environment. This ignores the public's right to know that these toxic chemicals are present at the facility and in what quantity. EPA estimates that this change would eliminate the details on more than 2,700 productions of PBT chemicals.<sup>5</sup> Given the frequency of industrial accidents, the concern over the accidental release of PBTs far outweighs any concerns related to reporting burdens. Indeed, with production of PBT waste increasing, the public needs more information on these chemicals, not less.

EPA acknowledges that one-third of the facilities currently reporting under the TRI would be able to use these enlarged reporting loopholes to provide less data to communities about the toxic waste they produce.<sup>6</sup> OMB Watch estimates that more than 2,300 communities will lose more than half of the detailed data about toxic pollution in their neighborhoods under these changes.<sup>7</sup>

## ELIMINATING ANNUAL REPORTING

EPA's greatest attack on the TRI program lies just one year off, as the agency formally notified Congress in September that it intends to chop the entire program in half by only collecting data under the program every other

year instead of annually. This would gut the usefulness of the entire program.<sup>8</sup>

Without regular reporting, the constant pressure on companies to improve and reduce their toxic pollution would disappear. Communities would be unable to get timely information about what is in the air they breathe and the water they drink. Troubling trends such as the recent increases in PBTs would take six or eight years to emerge. In the meantime, workers and communities would unknowingly suffer the burden of these pollutants.

According to Kim Nelson, administrator of the Office of Environmental Information at EPA, other burden reduction options were explored but proved to be too complex and ineffective at reducing reporting burden. The agency considered alternate year reporting the "cleanest option" to achieve burden reduction. The agency claims that the

\$2 million saved during each non-reporting year would be reinvested into the program to improve data quality and search capabilities. However, this would do nothing to provide answers to communities that do not have accurate information about toxics in their water, land and air.<sup>9</sup>

EPA should not propose changes that so drastically detract from the primary purpose of the TRI—providing accurate useful information to the public about chemical releases into their environment. The public has a right to know about chemical dangers it is subjected to. Congress recognized this right when it passed the statute creating the TRI, and it is not EPA's role to undercut Congress's intention.

## INEFFECTIVE LEGAL DEFENSE

EPA's ineffective and indifferent legal defense of the TRI program is permitting industry associations to chip away at the program. Recent court decisions that weaken the TRI program by creating enormous loopholes or by completely eliminating reporting requirements for chemicals have gone unchallenged by the agency.

A federal appeals court ruled May 10, 2005 that EPA can no longer require facilities to report methyl ethyl ketone (MEK) releases under the TRI. The American Chemistry Council (ACC) filed the lawsuit to delist MEK from

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the program, claiming that since MEK did not meet the scientific definition of 'toxic' it should not be tracked under the TRI. The industry association first petitioned EPA on this issue in 1998, but the agency rejected the measure. EPA asserted that while MEK is not itself toxic to humans, once released into the environment, the chemical contributes to ground-level ozone, which is harmful to people. Under EPCRA, the agency is permitted to include chemicals in the TRI program that cause a significant adverse effect on the environment. EPA reasoned that creating harmful ozone qualified as an adverse environmental effect and listed MEK under the TRI.<sup>10</sup>

While a lower court ruled in favor of EPA in 2004, the ACC appealed the decision to the federal appeals court and received the decision to overrule the original ruling and ordered MEK removed from the TRI list of chemicals. EPA could have appealed this dangerous precedent and more vigorously defended MEK to a different court, but the agency chose to simply accept the decision and, instead, issued a rule eliminating the chemical from any future reporting requirements. According to 2003 TRI data, facilities released over 26 million pounds of MEK to the environment, and, in the future, no one will know how much of this chemical is being released and creating ozone. The agency's weak legal defense of MEK will almost certainly encourage additional court challenges of TRI chemicals.

In another example of EPA's unwillingness to fight for the TRI's integrity, Judge Thomas P. Jackson of the District Court for the District of Columbia ruled on April 2, 2003 that mining operations should be exempt from reporting toxic chemicals contained in waste rock if the concentrations were below 1 percent. Barrick Goldstrike Mines issued the suit against EPA seeking various exemptions and reductions in how mining companies reported toxic releases. The court ruled against Barrick on all matters except the claim that mining companies should not have to report toxics within waste rock if the toxics fall below a certain "de minimis" concentration. The court agreed with Barrick on this point. EPA did establish a "de minimis" exemption for minute concentrations of toxics that constitute no threat to the environment or to public health in TRI reporting regulations, but mining operations do not meet that definition. While the concentration of toxics within the waste rock is low, the extremely high quantities of waste rock produced means that the total amount

of toxic chemicals released represents a considerable threat to the environment and public health. More than half of the mining industry's three billion pounds of annual toxic releases from waste rock could go unreported as result of the district court's decision, which hardly seems "de minimis." However, even more troubling than the court's decision was EPA's unwillingness to appeal the ruling. With public disclosure of billions of pounds of toxic waste hanging in the balance, EPA walked away even though only one court had heard the case.<sup>11</sup>

While EPA had reasonable grounds to appeal both decisions, the agency did not even attempt an appeal in either case. It is not only EPA's responsibility

to administer the TRI program, but also to vigorously defend it from outside pressure seeking to chip away at the program's integrity and effectiveness. The agency's willingness to accept these questionable defeats in court invites additional legal challenges, which, if countered with EPA's current weak response, are almost certain to eventually result in the loss of more TRI information.

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## WEAKENING TRI ANALYSIS

EPA has weakened another vital component of the TRI program—its annual TRI analysis. For years, the release of a new year of TRI data was accompanied by EPA analysis, called Public Data Release (PDR), that helped stakeholders decipher the complicated data. However, under the Bush administration, EPA has chipped away at the quantity and quality of information contained in the PDR. The once lengthy report has been reduced to little more than a pamphlet and a small collection of tables and charts. The agency has practically eliminated facility and community-specific information from its analysis, even though it has proven to be the most useful breakdown of the data. Furthermore, EPA analysis has grown increasingly subjective, highlighting the positive results while skimming over troubling trends. These three problems combine to severely reduce the integrity, accuracy and usefulness of the PDR.

### REDUCED ANALYSIS

EPA's TRI database is extremely large and complex, and drawing conclusions from such complicated information can be difficult and arduous, beyond the abilities of most ordinary citizens, members of the press, and local officials.

EPA is viewed as the impartial expert in determining important results and providing a contextual explanation, and many depend on its annual PDR report—with data charts and analyses about the aggregate data—to provide an overall snapshot of releases. Such analysis also gives the agency the opportunity to emphasize key facts and conclusions that may promote greater reductions in toxic emissions.

For more than 10 years, the agency’s PDR consisted of two separate volumes, spanning hundreds of pages. The two-volume reports included easy-to-understand overviews of the data, detailed analysis, supporting tables, and numerous state fact sheets. All of these various reviews of the data were accompanied by narrative text that introduced the issue and explained the meaning and importance of the latest data. However, in 2004, EPA downsized from this comprehensive analysis and data breakdown to a *six-page* report.<sup>12</sup> The 2004 press materials for the PDR included approximately 60 tables and charts. However, this was still far from the hundreds of pages of extensive review and explanation done in previous years. In 2005, EPA went further, providing only a very short analysis and a few dozen tables with its press release.

EPA claims the public can produce the information and analysis previously available in the PDRs through online searches of the data. However, much of the information is complicated to produce, and multiple searches are required to put results together about general trends or categories of chemicals. Moreover, these research efforts will not provide concerned citizens with the perspective and context that EPA experts had provided in the full PDR. This creates confusion and uncertainty about TRI results and discourages those unfamiliar with the program from taking action on troubling TRI data.

### LOSS OF FACILITY AND COMMUNITY FOCUS

An alarming change in this year’s PDR analysis is the almost total exclusion of facility-specific and community-specific data. Even though the TRI is a national program, it is at the community level and even more often at the individual facility level that change and progress occur. The industry-specific top facility tables place pressure on corporations and fa-

cilities to improve operations and reduce toxic pollution. Without this facility-specific focus, the analysis and, by extension, the entire TRI program becomes less useful.

Disregarding the value of highlighting trouble spots, EPA scrubbed the PDR clean of most facility and community tables that had traditionally been provided in the report. Specifically, EPA eliminated tables on the 50 worst facilities within specific industry sectors, such as the mining, chemical manufacturing and electric utilities. The agency also eliminated data tables that listed the 10 counties with the highest TRI releases for each sector. Given that different industry sectors concentrate in different areas around the country, these tables were incredibly important, because they allowed people to quickly see the performance and problems of the industry most relevant to their area.

EPA also fails to provide any facility or community analysis for the high-risk chemicals that the agency gives special attention—specifically lead, mercury and dioxin. These three chemicals are highlighted among the long list of toxic chemicals in the TRI because of their adverse effects on human health, even at very small doses. Lead is extremely toxic and can cause various health troubles such as behavioral problems and learning disabilities.<sup>13</sup> Mercury adversely affects various organs in the body including the brain, heart and lungs.<sup>14</sup> Dioxin can cause chloracne, a severe skin disease, and studies indicate that workers exposed to high levels of dioxins have an increased cancer risk.<sup>15</sup> While the agency’s effort to report these chemicals is commendable, once again, the agency falls short of providing a complete picture.

EPA provides no tables or analyses focusing on the top facilities or top counties for any of these key chemicals. The agency only provides information on releases of lead, mercury and dioxin in broad overviews at the state level or for entire industry sectors. Considering TRI data indicates increased releases and disposals for each of these chemicals, it is imperative that EPA provide as much useful detail as possible, including facility and community specific data (e.g., the table of the top 10 counties for release of mercury). Unfortunately, due to an apparent aversion to listing the worst facilities and counties, the agency failed to highlight any

### TOP 10 COUNTIES FOR MERCURY RELEASES

County	Total Releases (lbs.)
Elko, NV	4,318,565
Humboldt, NV	1,841,962
Eureka, NV	271,748
Lander, NV	128,710
Kings, CA	119,577
Sumter, AL	97,738
Northwest Arctic Borough, AK	93,762
Cook, IL	76,882
Pershing, NV	23,476
White Pine, NV	22,976

Source: 2003 Toxic Release Inventory

of the following important facts about these dangerous chemicals:

- ▶ Mining operations dominate the facility list for highest lead releasers in 2003 due to lead in waste rock sent to landfills, where rain can leach the lead into lakes, rivers and drinking water supplies.<sup>16</sup>
- ▶ Two Missouri counties, Iron and Reynolds, made the top 10 list of counties with the highest lead releases, including high air emissions of the toxin. Reynolds, Missouri had almost 88,000 pounds of lead emitted into the air in 2003, and Iron, Missouri trailed slightly with more than 66,000 pounds.<sup>17</sup>
- ▶ Six of the ten counties with the highest mercury releases are located in Nevada, mostly due to metal mining operations there.<sup>18</sup> One facility accounted for over half of dioxin releases, Colfax Treating Co LLC in Pineville, LA, earning it a spot as the highest releaser of dioxin in 2003.<sup>19</sup>
- ▶ Two companies that release dioxin have multiple plants in the top 10—Dow Chemical had three facilities and Du Pont two.

Analysis of trends in chemical categories is another area where EPA has failed to provide detailed facility and community data. The agency fails to provide specific data tables on chemical categories such as PBTs and carcinogens or any charts on facilities, industry sectors, states or counties. PBTs, including lead, mercury and dioxins do not break down easily, accumulate up the food chain, and can damage nervous and reproductive systems and cause learning and developmental disabilities in children.

Carcinogens, including benzene, formaldehyde and nickel, are chemicals that have been determined likely to cause cancer in humans. Each of these two dangerous categories of chemicals is mentioned in the text of EPA's analysis, but the agency does not provide any specific data about the worst facilities, such as the table detailing the top 10 facilities for PBT releases and disposals.

EPA's lack of detailed information on these chemical categories deemphasizes the importance of reducing their emissions and leaves concerned individuals with little information on which to act. This lack of information means that EPA's analysis did nothing to alert communities to the following important facts:<sup>20</sup>

- ▶ The highest emitter of PBTs in 2003, by far, was the Red Dog Operations in Kotzebue, Alaska with more than 162 million pounds of PBTs in 2003, more than double the next highest facility.
- ▶ Nevada and Alaska were the only two states with more than one facility among the 10 worst PBT emitters for 2003. Nevada had four, and Alaska had two.
- ▶ The U.S. county with the highest releases of carcinogens in 2003 was Humboldt, Nevada, with more than 215 million pounds.
- ▶ Two of the top 10 facilities that released carcinogens are also located in Humboldt County—Newmont Mining Corp in Golconda, NV and Newmont Mining Corp in Valmy, NV.

### TOP 10 OVERALL FACILITIES RELEASING PBTs

Facility	City, State	Total (lbs.)
Red Dog Operations	Kotzebue, AK	162,135,188
Kennecott Utah Copper Mine Concentrators & Power Plant	Copperton, UT	79,714,810
US Ecology Nevada Inc	Beatty, NV	24,153,330
Barrick Goldstrike Mines Inc	Elko, NV	14,538,969
Kennecott Greens Creek Mining Co	Juneau, AK	14,484,126
Montana Tunnels Mining Inc	Jefferson City, MT	14,481,805
Newmont Mining Corp Twin Creeks Mine	Golconda, NV	8,141,057
Buick Mine/Mill	Boss, MO	7,131,020
Chemical Waste Management Inc	Kettleman City, CA	6,182,562
Coeur Rochester Inc	Lovelock, NV	6,043,713

Source: 2003 Toxic Release Inventory

▶ Three other Nevada counties joined Humboldt County on the Top 10 list of highest releases of carcinogens—Elko, Nye and Eureka Counties.

▶ The only other state with more than one county in the top 10 was Alaska, with Northwest Artic Borough and Juneau Borough.

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Little could explain this abandonment of facility and community focus other than EPA intention-

ally avoiding the uncomfortable task of placing specific companies and facilities in the hot seat by naming them as the worst polluters in the country. EPA is fully aware of the purpose of such tables. Many community groups have used them to pressure companies to reduce emissions. However, the information must be made public and highlighted, and it is EPA's responsibility to do so. Ranking tables also allow facilities to easily see where

they fall among their peers, creating competition that leads to cleaner air and water. Over the years, the names of the worst facilities often change, primarily because of the strong incentive to avoid negative attention associated with being listed. However, no incentive exists, if EPA does not produce the lists. The agency could easily correct all these failings with next year's TRI data release.

## MISLEADING ANALYSIS

In recent years, EPA's annual PDR analysis has become less objective and complete. The agency focuses the majority of its analysis on the TRI's accomplishments, with very little emphasis on difficulties or troubling setbacks revealed by the data. An impartial, responsible analysis would report equally on each aspect.

EPA has highlighted positive and misleading figures such as its assertion that TRI data dropped 6 percent from 2002 to 2003. The PDR eventually explains that a majority of this decrease is attributed to reporting changes by the metal mining sector, which adjusted its reporting for the past two years to conform to the Barrick court ruling. EPA acknowledges in the analysis that without the mining figures, the rest of the industry sectors only show a 1 percent drop from 2002 to 2003.<sup>21</sup> However, EPA fails to provide any additional analysis of TRI trends without the fast dropping metal mining data. Given that EPA previously reported a 5 percent increase in TRI releases and disposals from 2001 to 2002 after removing the questionable metals-mining data, it would make sense for EPA to provide additional analysis of TRI trends over several years absent the mining data.<sup>22</sup> However, the agency's refusal to provide analysis of negative results from the program means that the public never received these figures.

EPA also provided detailed energy recovery and recycling data in the most recent PDR, even though the agency's own analysis found that both recycling and energy recovery had dropped noticeably from the 2002 data.<sup>23</sup> Why would EPA drop tables that detail the worst facilities and counties for toxic releases and replace them with more than 20 detailed tables on the declining use of recycling and energy recovery? Whatever the reason, the PDR has become a vehicle to focus attention on the positive aspects of the TRI program—and creates an overly optimistic picture. While both recycling and energy recovery are important components of the TRI program, they should not receive exclusive emphasis within EPA's narrowed analysis, especially when such emphasis excludes critical TRI figures.

EPA's most recent PDR for the 2003 TRI data provides numerous examples of slanted and misleading analysis. The data shows many troubling trends regarding the continuing increase of total PBTs, including mercury and lead, as well as no significant improvements in industry sectors outside of metal mining. The agency downplays these figures and gives no clearly indication that they should remain a cause for concern. The "Key Findings" section of the PDR provides no breakdown of major accomplishments or key concerns.

## SILENT RELEASE OF TRI

This year, EPA downgraded the TRI program and reduced public attention by clandestinely releasing the data. For the first time, the agency eliminated the typical fanfare and promotion used in past years to maximize public awareness. Given the prominence and success of the program, this change could significantly hamper the TRI's continued success.

Traditionally, EPA holds a major press briefing the day it releases new TRI data. The press conference serves as a launching point for EPA to announce the data's major findings and highlight key data trends. Reporters formerly used the event to inquire about data anomalies as well as information particular to their region or issue beat. The event also allowed reporters to receive plain-language explanations of the more technical and scientific data. A more informed media translates into increased public awareness of the TRI findings through increased news coverage.

EPA did not hold a press conference for the May 2005 release, instead merely distributing a short press advisory announcing the new data and findings. Reportedly, EPA's Public Relations department determined that, for the first time in years, the TRI data did not merit a full press briefing. The agency did not even notify the media of when the latest TRI data would be available, an important caveat, given that reporters must plan their coverage in advance.

The end result of this "stealth release" was less media coverage and, consequently, less public attention on public health and pollution issues. The media is an essential vehicle for public exposure and education on the TRI results and trends. A news story on high releases of a chemical in a community often leads to community action. Examining the media coverage that the TRI has received over the years indicates that EPA's press efforts yielded consistent results. While the TRI is regularly

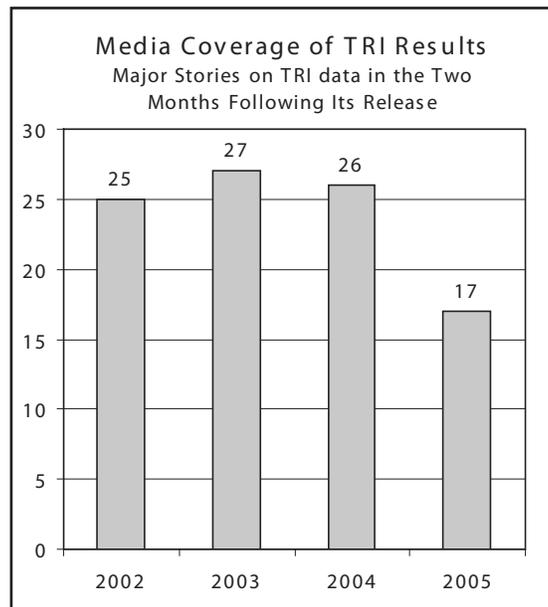
mentioned in the press, substantive stories about the results usually occur immediately after new data releases. From 2002 to 2004, EPA usually receives around 26 media stories focused on the TRI results in the two months following the release of new TRI data.<sup>24</sup> However, in the two months following the 2005 release, the stealth release resulted in only 17 news stories that substantively mentioned TRI results, representing a more than 30 percent drop in media coverage. Tens of thousands fewer citizens read about the latest figures on toxic releases, and fewer learned about problem facilities in their areas or especially dangerous chemicals being emitted in greater quantities.<sup>25</sup> It is thus more difficult for communities, like the aforementioned in Chicago, IL and Louisville, KY, to learn about toxic releases and take action.

In addition to the press event, the agency typically held briefings for stakeholders such as industry associations and public interest groups on the release day. Again, these briefings allow stakeholders to gather greater details and explanations from EPA about its findings. Groups often used this information to produce statements, alerts and even analyses of TRI data for an array of audiences.

While there was no press event, EPA did make a post-release offer to meet with stakeholder groups announcing:

As you may know, the Toxics Release Inventory's 2003 Public Data Release was released to the public yesterday. In an effort to improve stakeholder outreach, we would like to offer individual stakeholder meetings regarding the 2003 PDR.<sup>26</sup>

However, such a briefing for environmental stakeholders took weeks to schedule, while previous briefings had the distinct advantage of timeliness. By reducing information and providing no notice about the TRI release, the agency severely hindered public interest groups in responding and educating the public about pollution in their communities. Environmental and health groups likely released fewer announcements and alerts to their communities because of the stealth release.



EPA has long understood the importance of using the media and public interest groups as a vehicle to reach a much broader segment of the public. In fact, EPA has always refused to release TRI data before the agency's analysis is completed, because the agency does not want to lose press attention to environmental groups that might publish reports more quickly. This makes the recent stealth release, with the ensuing reduced coverage, a double hit to the TRI program.

EPA's 2005 "stealth release" runs contrary to the entire purpose of the program: to inform the public about toxics in their communities and across the country. If the agency continues this release pattern, it will likely damage the program's ability to reduce toxic releases. Less coverage and discussion of TRI results means less information available for communities and less pressure on polluting facilities to reduce emissions. Additionally, a lower profile TRI program means that there will be less discussion and fewer challenges of efforts to weaken TRI, including the significant proposals discussed above.

## DELAYED INFORMATION

EPA significantly missed its publicly stated goal of March 2005 for the release of 2003 TRI data, not releasing the information until mid-May. Even though TRI remains one of EPA's most widely used databases, the agency seems unable speeding up the data release process. The continually late release of TRI data reduces the integrity of the program and the amount of attention it receives.

In fact, only once in the past 10 years has EPA released the data before May. Typically, TRI data becomes public in either May or June, almost a full year after facilities are required to report and practically a year and a half after the close of the calendar year. Facilities are required to submit their TRI information to EPA six months after the reporting year ends. After this July 1 deadline, EPA begins the long process of data entry and verification. EPA still spends months of time pleading and coaxing facilities to file reports and correct errors, instead of establishing a firmer system of deadlines and requirements for submit-

ting correct information the first time. The lengthy delays sap the data of its timeliness, making it less useful to communities.

Public interest groups have regularly complained that the delays make the data less timely and, therefore, less useful. The Office of Management and Budget (OMB) also chastised EPA for these delays, sent a March 2002 letter urging EPA to speed up the annual release of TRI data.<sup>27</sup>

EPA has taken steps intended to expedite the TRI data release. Unfortunately, the steps appear to be overly timid and ineffective given the database's size and track record of delays. After EPA receives submitted TRI forms, the agency sends facilities an electronic profile of the submitted data complete with warning flags for potentially incorrect information. EPA also individually contacts certain facilities to double check questionable data, the completion of which taking weeks to months. Unfortunately, these extra, time-consuming measures are insufficient to avoid data quality errors each year.

The agency has also provided earlier public access to submitted information in a limited format in an effort to encourage companies to provide faster data quality. The electronic-facility data release (e-FDR) allows the public to examine individual TRI forms submitted to EPA months before the official release of TRI data. Unfortunately, EPA adds this step to the already lengthy data quality process; hence, little is done to speed up the process.

## RECOMMENDATIONS

EPA needs to recognize that the TRI program is a vital right-to-know tool that should continue to inform the public about the environmental and public health risks posed by U.S. facilities. This message also needs to be sent to the administration, from whom the agency takes many of its cues. The administration should value public access to government information, especially for those most vulnerable to the effects of toxic releases. The agency's first responsibility is to the American public, not corporations. In particular, EPA needs to speed up TRI data releases, provide useful and complete information

in its PDR, and raise the profile of the program. It should discontinue its practice of stealth releases and incomplete analyses. Most importantly, EPA should retract the proposed reporting changes that would all but destroy the TRI program.

OMB Watch has assembled a list of action items necessary to preserving and strengthening the TRI program and, as a result, the health and safety of the American public.

### ENSURE THE QUALITY OF FUTURE TRI DATA

Reevaluating reporting requirements under the TRI program is, of course, a reasonable and useful process. It allows the agency to identify and address ineffective or problematic requirements. However, EPA should endeavor to improve, rather than weaken, the accuracy and usefulness of the TRI data. The agency should take the following steps to ensure high quality and sufficient quantity of data collected and disseminated under the TRI:

- 1) Abandon plans for the expansion of Form A reporting.
- 2) Abandon plans for biennial TRI reporting, preserving the accountability and timeliness of annual reporting.

### REPORTING LAG FOR TRI DATA

Reporting Year	Release Date	Days after reporting year end
2003	11-May-05	497
2002	23-Jun-04	540
2001	30-Jun-03	546
2000	23-May-02	508
1999	11-Apr-01	467
1998	11-May-00	495
1997	13-May-99	498
1996	18-Jun-98	534
1995	20-May-97	506
1994	26-Jun-96	543

Source: www.epa.gov

- 3) Focus on implementing electronic reporting changes to reduce reporting burden before considering significant reporting changes.
- 4) Conduct a comprehensive review of the emission estimation equations used to generate TRI figures and use monitoring samples to confirm the reliability of any equations.
- 5) Explore the possibility of continuous monitoring technology to replace the less accurate estimations. As technology advances, costs for these devices will continue to drop, while their reliability and usefulness increases. EPA should conduct pilot projects to test the practicality of such monitoring devices.
- 6) Commit to mounting a more aggressive legal defense of the TRI program against attacks by industry.

### PROVIDE COMPLETE ANALYSIS

For two years running, EPA has reduced the amount of analysis it provides to the public in its PDR report, includ-

ing dropping numerous tables and lists that were well used by the media and public. The noticeable reduction in lists detailing the worst facilities indicates the agency's reluctance to present data that holds individual companies accountable for poor performance on toxic releases. EPA should take the following steps to ensure the public gets complete and useful analysis:

- 1) Restore the tables detailing the top facilities for each industry sector and top counties for total releases of toxic chemicals.
- 2) Double the number of counties listed in top counties tables from 10 to 20. Similar to the way the lists of worst facilities spurs action by companies, county lists encourage greater action by communities and local officials. Expanded tables will inform more at-risk communities.
- 3) Provide top facility and county lists for key chemicals highlighted by the agency, such as those for lead, mercury and dioxin.
- 4) Provide detailed data on releases of chemical categories such as PBTs, carcinogens and hazardous air pollutants. The information should include top facilities, top counties, state releases, industry-sector breakdowns and trend analysis.
- 5) Produce a balanced analysis of results that equally highlights positive accomplishments and troubling findings.

### **CONTINUE TO PROMOTE THE TRI PROGRAM**

Even with the most complete and useful analysis EPA could produce, the vast majority of Americans would never find the information if it were not delivered to them through other sources, such as the media and public interest groups. EPA needs to promote the TRI, especially around its annual release. EPA should take the following steps to maintain and heighten the program's profile:

- 1) Commit to holding press and stakeholder briefings the day of the annual TRI data release. Briefings should also be announced well in advance to give new organizations and public interest groups the opportunity to schedule resources to cover and respond to the data.
- 2) Provide press materials that elicit the most coverage, such as various top facility lists, top county lists and state rankings for total releases, as well as key chemicals and chemical categories.
- 3) Provide greater trend analysis complete with charts that illustrate performance over time.

### **SPEED UP TRI DATA RELEASE**

The consistently late release of TRI data is simply unacceptable. While the new e-FDR provides a positive step towards speeding up the release of the full TRI data set, it is not enough. EPA should commit to establishing a system that would release TRI information within one calendar year. The EPA should take the following steps to speed up TRI reporting and data release:

- 1) Require electronic reporting of TRI data, unless a specific exemption is granted. This would save weeks of data-entry and accelerate the data quality process. Additionally, the agency should impose penalties for late submissions.
- 2) EPA should grant facilities only 60 days to confirm or correct submitted data following posting of the information for facilities to correct. While EPA should continue to emphasize the quality of data, the responsibility of ensuring accurate data lies with the reporting facilities. EPA should not compromise the timeliness of TRI data waiting for facilities to correct their own errors.
- 3) EPA should establish a 30-day analysis period after the data quality check. One month is more than adequate to conduct primary analysis of the data, and additional analysis can be released later. This year, EPA is releasing an "In Context" analysis, which explains the releases in relation to chemical toxicity, months after the data has been made public. An official EPA analysis of the TRI data is useful but it should not paralyze the agency from releasing data to the public.

The TRI represents the public's right to know put into action, and that action has produced tremendous results. Toxic emissions have been reduced, unknowable numbers of accidents have been avoided, and health problems among workers and citizens have been prevented. The program is widely recognized as a valuable source of environmental information for all stakeholders, not the least of which is the American public. The TRI program, rather than being dismantled piece by piece, should be heralded, protected, improved and modeled.

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**OMB WATCH**  
1742 Connecticut Ave., NW  
Washington, DC 20009-1171  
<http://www.ombwatch.org>  
202/234-8494  
[info@ombwatch.org](mailto:info@ombwatch.org)

