

Summary of Stakeholder Suggestions Related to Toxics Release Inventory (TRI) Reporting by Metal Mining Facilities

Background

USEPA's Toxics Release Inventory (TRI) Program is considering clarification and/or changes to how EPA's TRI reporting requirements apply to metals mining operations. Currently, USEPA anticipates this would be accomplished through a rulemaking.

Before embarking on the formal phases of a regulatory development effort, the TRI Program Office decided to confer with a few representatives of key stakeholder groups to gauge their levels of interest in holding further discussions regarding the issues such a rulemaking might cover, and to get a sense of the scope of issues each stakeholder group would want to discuss.

The TRI Program Office hired an external facilitator to conduct this preliminary, informal "situation assessment" during the month of November, 2008. This document briefly summarizes the key points raised during the facilitator's discussions with the nine stakeholder representatives.

Summary of Stakeholder Representative Suggestions

On the two specific objectives of the stakeholder communication (i.e., possible stakeholder engagement and the scope of issue) there was some agreement:

1. All indicated an interest in further discussions if EPA decides to move forward with a rulemaking. All stated a desire for early "bilateral" discussions between EPA and individual stakeholder groups. All also expressed a willingness to discuss subsequent multilateral discussions. The technical consultants stated that multi-stakeholder dialogue would be important to development of a viable set of significant changes.
2. All indicated a preference for a broad scope of issues; none believed a rulemaking is warranted solely to clarify the (basis for the) status quo, or to make minor changes to it.

Each of these topics is summarized in more detail below.

Points Raised by Representatives of the Metals Mining Industry

- a. Industry representatives stated their desire to talk with EPA about the scope of issues, and the general approach to TRI reporting for this industry, if the Agency decides to proceed with a rulemaking or policy changes. They stressed this would be particularly valuable from their vantage point if conducted starting early in the regulatory development process. They expressed openness to discussing the possibility of multi-stakeholder

discussions if EPA were to decide to address the sorts of underlying issues that industry proposes (see ‘b’ below). However, they did not propose or endorse the scheduling of multi-stakeholder discussions until after a separate meeting(s) was first organized between industry and EPA TRI staff to discuss the scope of the rulemaking.

- b. Industry representatives expressed an interest in stepping back and looking at the legislative intent underpinning TRI regulations, and looking at how the Program could be (re)structured in the context of metals mining to best meet the intent. They suggested that some of the data this industry currently reports do not correlate in a direct way to significant environmental or public health impacts. Nor, in their opinion, does the TRI Program drive environmental improvement within this industry as it is currently implemented. They urged that any changes to the reporting requirements or policies focus on addressing these matters.
- c. Industry representatives also stated there are a number of definitional issues that should be addressed in a rulemaking to clarify areas of uncertainty. These include the issues discussed in key court cases as well as a number of others.

Points Raised by Representatives of Environmental and Citizens Advocacy Groups

- a. Representatives of environmental and citizen advocacy groups supported open early dialogue between EPA and the environmental community. They stated that multi-stakeholder discussions might have a role as a second phase of dialogue but that these are not something they currently envision. Any dialogue should include discussions with representatives of the environmental justice and tribal communities.
- b. Representatives of the environmental community expressed an interest in looking at how actual releases beyond the facility property (e.g.; fugitive air, surface and groundwater migration) could be more accurately measured and reported. All releases beyond containment, including those releases that are currently exempt from TRI reporting, should be made reportable. Mercury air emissions were repeatedly discussed as a prime example supporting the need for such changes.

Points Raised by Technical Consultants

- a. The technical consultants recommended that EPA engage key stakeholder groups in early dialogue if it proceeds with a rulemaking. Specifically, one recommended, EPA could conduct a first phase involving discussions with individual stakeholder groups (e.g. the environmental community, industry) aimed at identifying and understanding the issues. And a second stage involving two or three multi-stakeholder meetings aimed at reaching agreement on a set of strategies for addressing the issues.
- b. They also recommended that EPA consider more precise approaches to measuring reported data covering toxic (e.g. mercury) air emissions and water migration/leaching.

With a greater focus on chemicals leaving the property (or that have significant potential to do so), USEPA might consider reevaluating the approach for chemicals likely to remain on the site long term.