Model Memorandum of Agreement Between The State of West Virginia and the US Environmental Protection Agency for the TRI Data Exchange

1. Overview – Exchange of TRI Data

This agreement is a voluntary agreement between The State of West Virginia, hereinafter referred to as the State, and the US Environmental Protection Agency, with the US Environmental Protection Agency Toxics Release Inventory (TRI) Program Division acting as a representative for the Agency and hereinafter referred to as EPA, for the exchange of Toxics Release Inventory data via the National Environmental Information Exchange Network, hereinafter referred to as the Exchange Network.

2. Purpose

The purpose of this Memorandum of Agreement (MOA) is to outline the specific roles and responsibilities between the State and EPA for the purposes of successfully transmitting TRI data via the Exchange Network. This MOA addresses two categories of data:

> (1) facility reports filed electronically using EPA's Central Data Exchange (CDX), where reports are accepted and simultaneously transmitted to participating States. Reports filed in this manner represent a facility's official submission to both EPA and the State.
>
> (2) facility reports submitted on diskette or paper. EPA must take additional processing steps to enter and/or format the data received in this manner so it can be electronically forwarded to states. This type of submission does not constitute official simultaneous submission to the State agency and facilities must continue to submit separate reports directly to their State.

This agreement does not supersede any existing agreement between the State and EPA, nor any future Memoranda of Understanding between the State and EPA.

3. Background

In 1986, the Emergency Planning and Community Right-to-Know Act was enacted including Section 313, which created TRI. Under Section 313(a) of EPCRA, certain covered facilities are required to submit annual toxic chemical release forms to EPA and to "an official or officials of the State designated by the Governor." 42 USC § 11023(a). EPCRA requires that EPA "establish and maintain in a computer data base a national toxic chemical inventory based on data submitted … under this section." 42 USC § 11023(j). EPCRA is silent as to what State recipients of TRI data should do with TRI data but individual States may have State laws or policies that govern the use of TRI data received by the State.

When submitting TRI data, TRI facilities may choose between several mechanisms including submission via EPA's Central Data Exchange (CDX), submission via paper forms, and submission via diskette for reporting years (RY) prior to RY 2009.

When a TRI facility submits TRI data through CDX (via TRI-MEweb) and the facility's State is a participant in the TRI Data Exchange, the facility's data are simultaneously submitted to both EPA and the State and the facility's statutory duty has been met.

When a TRI facility submits TRI data on diskette or paper, a second data flow allows the data to be forwarded to the State. The intention of the second data flow is to reduce the data processing burden on participating States. For these data, States have the option to rely on paper and disk submissions inputted by EPA rather than duplicating the processing of these submissions at the State level. If a facility chooses to submit via paper or diskette, the facility is responsible for submitting the data separately to both EPA and the State, even when the facility is located in a State that participates in simultaneous CDX reporting. New reports filed via diskette will no longer be accepted beginning with RY 2009.

4. Participant Responsibilities

4.1. Data Exchange Mechanism and Schedule

4.1.1. Submission of Reports by Reporting Facilities

TRI facilities may choose to submit or revise TRI reports to EPA via CDX or paper. Diskette revisions may also be submitted for reporting years prior to RY 2009. Revisions to TRI reports from RY 2004 onward are processed through the TRI Data Exchange. Revisions to TRI reports prior to RY 2004 are not processed through the TRI Data Exchange because the TRI XML schema used in the TRI Data Exchange is only compatible withTRI data from RY 2004 onward.

Reports Filed Electronically Via CDX

The data are initially submitted by a facility reporting to the TRI program via EPA's CDX using the TRI-Made Easy (*TRI-ME*) reporting tool. From CDX, the data are date-stamped and converted into a TRI XML format.

When CDX successfully receives a facility transmission, CDX sends an email to the reporting facility confirming that the data submission to CDX has been successful and that the facility data automatically will be forwarded to the State. The email confirms that the facility has fulfilled its obligation to report to both EPA and the State in accordance with EPCRA. Only submissions through CDX are considered simultaneous submission to both EPA and the State.

Reports Filed Via Paper

Certified TRI reports submitted via paper are entered into the TRI Processing System (TRIPS) and processed (e.g., including data validation/quality checks, facility reconciliation checks, etc.). After processing is complete, the data are extracted from TRIPS in the form of XML documents/files using the TRI Data Exchange Schema. A flag will be attached to the data to indicate the data's origin (i.e., paper report received at the TRI Data Processing Center). Reports submitted via paper are not considered to be officially submitted to the State because of intervening processing steps.

Reports Filed Via Diskette

New diskette submissions are no longer accepted as of RY 2009. TRI data submissions for reporting years prior to RY 2009 that are received on diskette (or other electronic media such as CD-ROM) at the TRI Data Processing Center (DPC) will be forwarded directly to the CDX node prior to being loaded into TRIPS. A flag will be attached to the data to indicate the data's origin (i.e., diskette or CD-ROM received at the TRI Data Processing Center). Reports submitted via diskette are not considered to be officially submitted to the State because of intervening processing steps.

4.1.2. Exchange Mechanism After Submission by Reporting Facilities

After the conversion to the XML format, the TRI data may take two different paths: Node Transfer and/or Download.

Node Transfer

Using Node Transfer, the TRI data are automatically transferred to the State node as soon as they are converted to the XML format. The exchange uses a "push" model in which the "raw" data entered by a TRI facility into CDX are automatically transferred to the State's node without any data quality corrections performed by EPA. The data are transferred on a facility-by-facility basis as they are received by CDX. The State node responds to a successfully-submitted report by sending a transaction identification number back to the CDX node. If the initial push of data to the State node fails, CDX will resend the submission based on its standard operating procedures. For reports filed via CDX, the State may choose to send a second confirmation email to the reporting facility confirming the successful receipt of the report by the State node.

Use of Node Transfer requires the State node to be appropriately configured and tested as described in section 4.6.

Download

Using Download, the State will have access through a password-protected account to the TRI data associated with the State that are stored by CDX. The State can access and download data using the SDX Viewer tool, a web-based application that is accessible via cdx.epa.gov. TRI data downloaded via Download are in the same format, XML, as the

data that are transferred to State nodes via Node Transfer and are available for viewing and download as soon as CDX converts them to the XML format.

4.2. Data Stewardship

The stewardship responsibilities of the two parties are described and acknowledged by this agreement. EPA agrees to be the steward for all TRI data submitted through CDX to the State. The State maintains oversight responsibility for the data. Each party agrees to provide notification and documentation to the other partner when either decides that data quality, completeness, or timeliness has fallen short of expectations.

4.3. Use of Data, Access to Data

Using Node Transfer, CDX transfers TRI data to the State node according to the protocols established in the published Exchange Network protocol and specifications. CDX also retains a copy of the submitted data for processing into EPA data systems. The State may use the data as defined by the State's business processes.

Note, however, that the data from reports filed via paper or diskette have not been compared to analogous data the State should have received separately from each facility. Although each facility must submit the same data to both the EPA and the State apart from any additional data required under State law, EPA has no way to verify that the data EPA receives are the same as the data the State receives. EPA provides data to the State prior to public release to allow the State's internal use, such as data reconciliation or early insights into changes in the data.

4.4. Consultation

Prior to EPA's release of the TRI National Analysis for a given reporting year, the State agrees to consult with EPA, specifically the TRI Program Division Director, before releasing to the public data that were submitted via paper or diskette as those data are not officially considered submitted to the State . The State will consult with EPA in writing and address the State's plans for releasing the data including when and why they plan to release the data and any major issues or findings.

4.5. Data Elements

The TRI data referred to in this document include the data elements found on TRI Forms R and A. These data elements are described in the TRI Flow Configuration Document (FCD), which serves as the technical reference for the TRI Data Exchange. The FCD can be found at <http://www.exchangenetwork.net/exchanges/cross/tri.htm>.

4.6. Standards and Technology

EPA and the State agree to exchange data using Web services technology as defined in the Exchange Network protocol and specification documents. The TRI Data Exchange configuration is explained in detail in the FCD. TRI Data Exchange participants agree to adhere to the technologies and exchange protocols as defined in the FCD.

4.7. Security

The TRI Data Exchange flow is encrypted by EPA-CDX for security purposes. The data are formatted in the TRI XML schema that is registered with the Exchange Network and then sent from the CDX node to the State node using secure protocols. A step-by-step description of security authentication is available in the FCD.

The data exchanged under this agreement are not confidential. The information is approved for public distribution and made available on a public Web site. Information claimed to be trade secret as defined by Section 322 of EPCRA and confidential business information (CBI) or trade secrets submitted to support a Section 322 trade secrecy claim will not to be transmitted via the TRI Data Exchange. See 42 USC § 11042. Confidential business information or trade secrets are managed outside of CDX and TRIPS.

4.8. Data Source and Data Quality

4.8.1. Reports filed electronically via CDX and simultaneously transmitted to participating States

For reports filed electronically via CDX by facilities, the data source is the TRI data reported by facilities that opt to use EPA's TRI-MEweb reporting tool beginning with the reporting year this MOA is signed. Only revisions to Reporting Year 2004 and subsequent years' data submitted through CDX will be automatically transferred to the State node. Revisions to TRI reports prior to RY 2004 are not processed through the TRI Data Exchange because the TRI XML schema used in the TRI Data Exchange is only compatible with TRI data from RY 2004 onward.

EPA and the State agree to cooperate to ensure that the data being exchanged are an accurate and complete replica of the data submitted as certified by the reporting facility. The process outlined in the section Dispute Resolution applies to reconciliation of data duplicates, discrepancies, or other quality issues. Individual submissions are tracked using a transaction identification number supplied by the State node to CDX in response to the successful transmission of TRI data.

4.8.2. Reports filed via paper or diskette

For paper or diskette reports, the data source is TRI data reported by TRI facilities beginning the year this MOA is signed.. EPA and the State agree to cooperate to ensure that the data being exchanged are an accurate and complete replica of the data submitted to EPA as certified by the TRI facility. Note that the data from reports filed via paper or diskette sent under this program represent data that facilities have submitted to EPA.

Facilities are also required to submit the data to their appropriate State agency. To fulfill its federal reporting requirements, the facility must submit the same data to both the EPA and the State, apart from any additional data required under State law. EPA makes no claims as to the consistency between the paper or diskette data EPA transmits to the State via CDX and the paper or diskette data facilities submit separately to the State to meet their reporting obligations.

The process outlined in the Dispute Resolution section applies to reconciliation of data duplicates, discrepancies, or other quality issues. Individual submissions are tracked using a Transaction ID supplied by the State node to CDX in response to the successful transmission of TRI data.

4.9. Data Timeliness

4.9.1. Reports filed electronically via CDX

Using Node Transfer, data submitted through CDX by facilities are converted to XML and pushed from CDX to the State node automatically on a facility-by-facility basis. Based on pilot testing of the TRI Data Exchange, it is expected that the data will be submitted to the State node within several minutes of its receipt through the CDX. For enforcement purposes, EPA and State agree that the date-stamp attached to a submission when it is successfully received by CDX will act as the date-received for the State. These data are also available to the State through Download at the State's convenience.

4.9.2. Reports filed via paper or diskette

Using Node Transfer, data that are submitted on paper or diskette are converted to XML and are pushed from CDX to the State node as they are processed by the TRI Data Processing Center on a facility-by-facility basis. Due to intervening processing steps, however, these are not considered official reports to the State. States also receive these data separately from the TRI Data Exchange and should consult those separate submissions for enforcement purposes. These data are also available to the State through Download at the State's convenience.

4.10. Data Reconciliation

If at any time one of the partners finds a technical problem with accuracy, completeness, or timeliness of submissions, they should alert the other party. If technical problems cannot be resolved in a timely manner for retransmission to the State node, another method of transmission will be used to forward facility data to the State.

4.11. Dispute Resolution

If at any time one of the partners finds a problem with data quality or completeness, they should start the resolution procedures.

The State and EPA data administrators agree to resolve disputes whenever possible. (Data administrators are those assigned with the overall management of TRI data in his or her agency.) The data administrator agrees to contact his or her counterpart, either by telephone, email, or in writing. If the data administrators cannot resolve the dispute within two weeks, they agree to bring it to the attention of their immediate supervisors.

5. Financial Arrangements

5.1. All commitments made in this agreement are subject to the availability of appropriated funds and EPA's budget priorities. Nothing in this agreement, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance or interagency agreement, or to incur other financial obligations. Any endeavor involving reimbursement or contribution of funds between the parties to this agreement will be handled in accordance with applicable laws, regulations, and procedures, and will be subject to separate subsidiary agreements that will be effected in writing by representatives of both parties.

5.2. EPA may not endorse the purchase or sale of products and services provided by private organizations that become partners in this effort.

6. Period of Agreement

This agreement is intended to facilitate the exchange of data between the State and EPA and is not intended to and does not create any right or benefit, substantive or procedural, enforceable by law or equity against EPA, the State, their officers or employees, or any other person.

This agreement becomes effective on the date of signatures by both parties and continues until modified by mutual consent or unless terminated with 60 days written notice by either party. Partners should review this agreement periodically, at least once per year. They should amend or revise it as changing needs, conditions, or technology warrant.

7. Legal Framework – Disclaimer

This is a voluntary non-binding agreement between the State and EPA regarding the exchange of TRI data through the Exchange Network. This agreement does not fulfill any specific federal reporting requirements and participation does not supersede any data or information management and reporting requirements of any grant, contract, or other agreement.

8 Points of Contact

The following individuals have been identified as points of contact within each participating agency:

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State of WV Alternate Contact Name: Jimmy J. Gianato Title: Director Agency: WVDHSEM Phone: 304.558.5380 Email: jimmy.j.gianato@wv.gov	EPA Alternate Contact Name: Dipti Singh Title: Chief, Information Outreach Branch Agency: EPA Phone: (202) 566-0739 Email: Singh.Dipti@epa.gov

9 Approvals

WV Division of Homeland Security and Emergency Mgmt.

James J. Gianato _____ 6/8/11
[type name of State official] Date

US EPA Headquarters

Rebecca Moser _____ 7/6/2011
Rebecca Moser, Division Director Date
Toxics Release Inventory Division
Office of Information Analysis and Access
Office of Environmental Information

APPROVED AS TO FORM PRIOR TO
ACKNOWLEDGEMENT THEREOF, THIS
6th day of June, 2011
DARRELL V. McGRAW, JR.
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