UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 13 2016

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Mr. Paul Noe
Vice President, Public Policy
American Forest & Paper Association
1101 K Street, N.W., Suite 700
Washington, DC 20005

Dear Mr. Noe:

The Environmental Protection Agency (EPA) has completed reviewing your petition requesting a full exemption from Chemical Data Reporting (CDR) requirements (see 40 CFR 711), for four pulping chemicals used in the kraft pulping process:

- Sulfite Liquors and Cooking Liquors, white (CASRN 68131-33-9) (white liquor)
- Sulfite Liquors and Cooking Liquors, spent (CASRN 66071-92-9) (black liquor)
- Sulfite Liquors and Cooking Liquors, spent, oxidized (CASRN 68514-09-0) (black liquor oxidized)
- Sulfite Liquors and Cooking Liquors, green (CASRN 68131-30-6) (green liquor).

For reasons explained below, your request that EPA undertake a rulemaking to amend 40 CFR 711.6(a), so as to include these chemical substances among those that are fully exempt from CDR, is denied.

The overarching goal of the Toxic Substances Control Act (TSCA) is to protect human health and the environment from risk associated with the manufacturing, processing and use of chemicals. Information on the manufacturing, processing and use, and other exposure-related data collected through the CDR rule, is used by EPA to support activities which are essential to achieving this goal. The CDR database provides important screening-level exposure-related information, such as the number and location of sites where the chemical substance is manufactured, the number of workers reasonably likely to be exposed at each site, the production volume, the fraction of that production volume that is used on site, and changes in production volume over time at each site. In conjunction with available hazard data, the CDR information will be used to support risk screening, assessment, priority setting, and management activities as appropriate.

The information collected under the CDR rule provides EPA with data to gauge potential exposures to chemical substances with increased accuracy and, because exposure scenarios can change significantly over time, CDR provides more current information. Data about production volume, exposures, and/or environmental releases helps EPA to prioritize chemical substances for further data gathering or risk management action. For example, data supplied by the CDR have supported a series of test rules in the HPV Challenge Program, which were implemented to generate health and environmental effects data on HPV chemical substances for risk assessment purposes, and, more recently, have been used in priority-setting applications such as the selection of chemicals for EPA's work plan chemicals prioritization process. EPA also makes the non-confidential business information that it collects available to the public, as a tool for better understanding the universe of chemical substances in commerce in the United States.

Your letter makes five assertions to support this request: (1) the hazard and exposure potential of the four pulping chemicals are well understood; (2) EPA already has ample CDR information for the four pulping chemicals; (3) the costs of reporting borne by manufacturers and EPA outweigh any benefit of reporting; (4) the potential risks of the pulping mixtures are adequately managed; and (5) a full exemption for the pulping mixtures would serve EPA objectives.

Your letter also asserts that a partial exemption would not be adequate alternative relief, because a partial exemption would only relieve the obligation to report processing and use information under 40 CFR 711.15(b)(4), and it is already the case that pulp and paper have "relatively little to report on downstream processing and use."

Regarding the five grounds of your request:

1. *"The hazard and exposure potential of the four pulping chemicals are well understood"*
   CDR submissions are not intended to provide EPA with hazard information on chemical substances. The purpose of the CDR is to report manufacturing, processing, and use information. This reporting allows EPA to understand the exposure potential. You claim that the hazard potential of these chemical substances is already well understood but you do not explain in your petition why such understanding would be a basis to forego a better understanding of exposure potential. In order to properly understand the exposure potential of the four pulping chemicals, particularly to workers, periodic reporting through the CDR is necessary.

   The examples you provided and documents referenced in your petition are focused on air emissions or water discharges of metals and other chemicals, but do not provide current exposure information nor do they include data regarding physical and chemical proprieties, environmental fate, or toxicity information regarding the four pulping chemicals to support your petition claim that the hazard potential of the four chemicals is well understood. Although one of the four chemicals in your petition, sulfite liquors and cooking liquors, spent (CAS No. 66071-92-9) (black liquor), was part of the HPV Challenge Program and EPA conducted a hazard characterization, the agency does not have similar information on the other three chemicals: sulfite liquors and cooking liquors, white (CASRN 68131-33-9) (white liquor); sulfite liquors and cooking liquors, spent, oxidized (CASRN 68514-09-0) (black liquor oxidized); and sulfite liquors and cooking liquors, green (CASRN 68131-30-6) (green liquor).

2. *"EPA already has ample CDR information from the four pulping chemicals"*
   EPA acknowledges that it has collected exposure-related information on these chemical substances in prior reporting years. But one of the characteristics that makes the CDR database particularly valuable is that it contains current information at the facility level at each reporting cycle, which can be compared to a robust historical baseline. This allows EPA and others to identify changes at the facility level. Your petition does not set forth a basis for EPA to conclude that the manufacturing and use of these chemical substances in the United States is now so static and will remain so static that a fixed collection of historical information could be considered an "ample" substitute for current and future information on the potential exposures to these substances at the facility level.

3. *"The costs of reporting borne by manufacturers and EPA outweigh any benefit of reporting"*
   The annual public burden for the CDR collection of information was approved under OMB control Number 2070-0162. The OMB approval process for information collection requests, which involves public notice and comment, includes a determination that the costs of reporting are

justified by the benefits of the information. In your petition, you calculate the reporting burden to the pulp and paper industry; however, you fail to mention the benefits from the CDR, as explained in the Economic Analysis for the Final Inventory Update Reporting (IUR) Modifications Rule[1]:

> "By enhancing the data supplied to Agency risk-screening programs, EPA expects to more effectively and expeditiously reduce the risks posed by chemicals. The more EPA can base its decisions on actual data, rather than on assumptions, the better EPA is able to tailor its risk management decisions to the level of actual risk, whether higher or lower than it would be if based only on assumptions. Ultimately, enhancing the risk screening process will have positive consequences for human and ecosystem health, and will use EPA's and society's resources more efficiently. Additional benefits will accrue from changes in reporting requirements that will improve consistency and compatibility with other EPA databases. EPA would be better able to anticipate industry trends, particularly for chemicals for which EPA has concerns, and to measure the effectiveness of Agency programs."

You suggest that EPA should exempt these chemicals from reporting because it would be easy to reverse the exemption if the exemption later proved to be a mistake. EPA acknowledges that if it exempted these chemical substances from CDR reporting by rulemaking, it could later restore CDR reporting for these chemicals by further rulemaking. EPA does not agree that filling in gaps in its CDR data records and restoring future data collection could be readily accomplished since such actions would require substantial rulemaking, which could take several years. EPA would need to substantively amend the basic structure of the CDR to replace missing years of data for a particular chemical substance. The passage of time increases the probability that the particular data will no longer be known or reasonably ascertainable.

4. *"The potential risks of the pulping mixtures are adequately managed"*
   You state that the pulping chemical substances are so bad-smelling and hazardous that the parties manufacturing them already have motivation to adequately manage them. You seem to be arguing that the risks of the pulping chemical substances are now and will continue to be well managed so that there would be no value in EPA collecting information that might inform a future evaluation of the adequacy of risk management. Setting aside the value of the CDR data for purposes other than planning future EPA risk management priorities, your petition does not set forth an adequate factual basis for EPA to be certain about the lack of a current or future need for risk management with respect to these chemical substances that would justify foregoing the collection of even the most basic sorts of exposure-relevant data bearing on them. Please note that during the review of your petition, EPA did not examine whether these chemicals are adequately managed or not.

5. *"A full exemption for the pulping mixtures would serve EPA objectives"*
   EPA believes that many factors play into whether a company chooses to recycle, including the value of the recovered materials, the expense of disposal, desire to maintain or build a "green" reputation, technical limitations or flexibility, state and local requirements or incentives, and the incentives offered or requirements imposed by other federal laws, such as the Resource Recovery and Conservation Act (RCRA).

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[1] EPA, 2011. U.S. EPA, Office of Pollution Prevention and Toxics, Economic and Policy Analysis Branch. *Economic Analysis for the Final Inventory Update Reporting (IUR) Modifications Rule*. June, 2011.

Your petition does not supply any evidence or rationale to suggest that manufacturers of the pulping chemical substances would recycle these substances to a greater extent than they currently do if they were relieved of the obligation to report their manufacture of these substances under CDR. EPA believes that it is extremely implausible that CDR reporting considerations have prompted any of the manufacturers of the pulping chemical substances to avoid recycling; rather, EPA strongly believes that the benefits of recycling usually outweigh the burden associated with CDR reporting. (76 FR 50850).

The passages you cite from the preamble to the 2011 CDR amendments do not suggest that a complete exemption from CDR reporting would be warranted for these chemical substances. The first passage, at 76 FR 50832-33, expresses a willingness for EPA to consider the concerns of certain manufacturers of chemical byproducts, who might otherwise recycle their byproducts, that may be motivated to dispose of these byproducts with the purpose to avail themselves of the reporting exemption at 40 CFR 720.30(g)(3). But your petition does not assert that any person is currently being motivated to dispose of any of these pulping chemicals in order to avail themselves of the exemption at 40 CFR 720.30(g)(3).

The second passage from 76 FR 50845-6 is actually an inaccurate quotation. EPA did not state generally that it "intends to use the CDR," to recognize certain industry sectors engaged in "green practices" (i.e., by offering CDR reporting exemptions to such industries as an incentive). EPA was explaining that the information it *collects* under CDR (the answer to a recycling checkbox) "could be used to recognize companies, industries, and sectors that are using "green" practices." The recycling reporting could allow EPA to identify potential exposures to a substance from an on-site recycling use, and could provide necessary data to potentially consider an exemption in the future.

EPA has determined that your petition has not set forth adequate grounds to grant the relief you are seeking (the commencement of rulemaking to amend 40 CFR 711.6(a), so as to include these chemical substances among those that are fully exempt from CDR). Accordingly, we are denying your request.

Your petition and this response letter will be publicly available. If you have additional questions, please feel free to contact Joel Wolf, Chief of the Existing Chemicals Branch, at 202-564-0432.

Sincerely,

James J. Jones
Assistant Administrator