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December 21, 2005

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Johnson:

We are writing to express our concerns with EPA's proposed rollbacks of the Toxics Release Inventory (TRI).

Twenty-one years ago, a chemical leak from a pesticide plant in Bhopal, India, killed thousands of people and injured hundreds of thousands. Following the Bhopal tragedy, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA). This Act established the TRI program, now widely regarded as a model example of how simply providing information about industry use and release of toxic chemicals can empower the public to plan for potential emergencies and encourage facilities to reduce emissions.

Under the TRI program, facilities that manufacture, process, or use certain toxic chemicals over a specified threshold amount must submit an annual report to EPA, as well as state and local governments, providing information about the facility and its activities related to those chemicals.

TRI data is highly valuable to the public, communities, first responders, states, businesses, workers, and others. EPA detailed the many applications of TRI data in its May 2003 report, "How are the Toxics Release Inventory Data Used?"[1] In this report, EPA highlighted 45 specific examples of how governments, public interest organizations, and industry have used and benefited from TRI data. For example, EPA cited the use of TRI data by several state agencies to prioritize their pollution prevention efforts. EPA also discussed how public interest groups have used TRI information to expose disproportionate toxic chemical releases in poor and minority communities.

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[1] U.S. EPA, *How are the Toxics Release Inventory Data Used?* (May 2003).

TRI data is also essential to our homeland security. Hurricane Katrina emphasized the importance of TRI to federal, state, and local governments in the event of an emergency. Federal and local first responders were able to use TRI data to identify potential toxic hazards following the storm.

Despite EPA's own recent acknowledgement of the importance of this information, on September 21, 2005, EPA announced several proposals to change the Toxics Release Inventory that would significantly decrease the amount of information available. These changes would exempt many facilities from reporting virtually any details beyond the presence of a chemical at a facility and eliminate all data on the use and release of toxic chemicals every other year.

One of these initiatives is a proposed rulemaking that would allow certain facilities to avoid reporting any details about the chemicals they use and release. Under this exemption, facilities would only have to report the names of the chemicals used, but not the quantities used, released, held on site, recycled, or sent for disposal. A facility could submit the short TRI "Form A" for any non-persistent, bioaccumulative, and toxic (PBT) chemical if the facility releases less than 5,000 pounds of the chemical per year. This threshold would be a 10-fold increase over the current threshold for Form A eligibility, which is now limited to facilities releasing less than 500 pounds of a chemical per year.

This new 5,000 pound threshold excludes PBTs, a specific list of highly toxic pollutants that persist in the environment and build up in the food chain, but would cover the vast majority of chemicals that must be reported under TRI, including such toxic chemicals as arsenic and benzene.

Under EPA's proposal, thousands of facilities could avoid disclosing the specific amount of the chemical they are releasing. Facilities could also keep secret how the chemical is being released, i.e., into the air, water, or land. This could mean that 10% of communities across the country would no longer have access to this key information about local toxic chemical releases.

This proposal would also keep communities in the dark regarding how much of a certain chemical a facility has on site. This is particularly troubling given the recent incident in China where a petrochemical plant explosion caused a 90 mile benzene slick in the Songhua River that polluted the drinking supply of millions of people. According to EPA's analysis of 2002 TRI data, raising the Form A reporting threshold for non-PBT chemicals to 5,000 pounds would result in 246,092 pounds of unreported benzene releases and 393,790 pounds of unreported benzene production-related waste.[2]

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[2] EPA, Economic Analysis of the Proposed Toxics Release Inventory Phase II Burden Reduction Rule, A-4 (Sept. 19, 2005).

EPA's proposed rule would also allow facilities to keep secret details about their use of persistent, bio-accumulative toxins (PBTs) if they manage less than 500 pounds of waste and have zero releases to the environment. Given EPA's expressed commitment to reduce human and environmental exposure to PBTs such as mercury and polychlorinated biphenyls (PCBs), it is hard to understand why EPA would propose allowing industry to hide details about its use of these dangerous chemicals. Under this proposal, facilities using this exemption would no longer have to report the quantities of these chemicals that are kept on-site. Yet PBTs, such as lead and mercury, are among the chemicals of greatest public health concern. Furthermore, according to EPA, the burden of completing the longer TRI "Form R" is small for the majority of PBT forms that would be covered under this proposal.

In addition to this proposed rulemaking, EPA also notified Congress that it plans to initiate a rulemaking to change the frequency of TRI reporting from every year to every two years. We are concerned that the integrity of the TRI program would be compromised if TRI only reflects data for alternate years, creating huge gaps in the data record. This would make it difficult to identify trends in releases and it would reduce incentives for businesses to continue to make progress in reducing the levels of chemicals they use and release. This proposal is particularly alarming in light of the fact that first responders rely on current TRI data to identify potential hazards and organize an appropriate response in the event of an emergency.

As you know, some of our Senate colleagues recently sent a letter raising concerns with EPA's proposals to weaken the TRI program. We share the concerns identified in that letter and we look forward to EPA's response. We have some additional questions regarding EPA's proposed changes to the TRI program. Please respond to the following questions:

1. EPA's stated purpose of the proposed rule to allow greater use of the short TRI "Form A" is to reduce the reporting burden for facilities. EPA's analysis of the estimated burden reductions that facilities would experience included projected burden reductions for completing the required TRI forms as well as burden reductions for record-keeping and mailing. In order to determine whether it is eligible to use Form A for a given chemical, a facility would still have to calculate the amount of the chemical it is managing and releasing to determine eligibility for Form A. Additionally, EPA's proposal states that facilities would still be subject to the same record-keeping requirements.

    a. How will the burden on facilities be noticeably reduced if they still must perform detailed calculations to determine eligibility and if they still must keep the same records? Do EPA's burden–reduction estimates take this into account?

    If the TRI reporting frequency were to be changed to be biannual rather than annual, would facilities have to keep records for the alternate (non-reporting) years?

    b. EPA has reported that it has reduced the time facilities must spend filling out TRI forms through the use of the Toxics Release Inventory-Made Easy (TRI-ME) software. Did the baseline used by EPA to measure the estimated changes in

burden that would occur under the proposed rule take into account the burden reductions that have taken place since the incorporation of the TRI-ME software?

c. If the frequency of TRI reporting were changed to be a biannual requirement rather than an annual requirement, how would EPA ensure that first responders have access to current and accurate data on local hazards?

2. Given the fact that state and local governments rely on TRI data for numerous reasons including emergency preparedness and pollution prevention, what efforts did EPA make to involve state and local governments in the development of these proposals? Do state and local governments support the concept of decreasing the amount of information that facilities must report by allowing greater use of Form A for PBTs and non-PBTs? Do state and local governments support changing the TRI reporting requirement to be biannual rather than annual? Please provide a list of all meetings with state and local governments as well as a summary of the comments received by EPA on these TRI proposals.

3. In the proposed rule to allow increased use of TRI Form A for both PBTs and non-PBTs, EPA provided only a conclusory statement that it is not aware that either of the proposals presented in the rule will disproportionately impact minority or low-income communities. As you know, industrial facilities that use toxic chemicals are often located in poor and minority communities. It is difficult to understand how EPA's proposed rule would *not* disproportionately impact these communities.

   What analysis has EPA performed to reach this conclusion? EPA evaluated the potential impact of the proposed rule on local communities by analyzing the impact of the proposals by zip code. Of the zip codes that EPA found would lose data under the proposed rule, what percentage is low-income and/or minority communities? Has EPA performed any analysis on the potential impact on poor and minority communities of changing the TRI reporting frequency?

4. On November 4, 2005, you issued an internal agency memorandum titled "Reaffirming the U.S. Environmental Protection Agency's Commitment to Environmental Justice."[3] In this memo, you asked the heads of the agency's offices to "consider environmental justice in every aspect of our work to the greatest extent practical and permitted by law." You indicated that this includes "[e]nsuring greater public participation in the Agency's development and implementation of environmental regulations and policies."

   a. What special measures will EPA take to ensure that the concerns of poor and minority communities who may be impacted by the proposed changes to TRI are taken into consideration? Did EPA take any such measures prior to developing these proposals and if not, why not?

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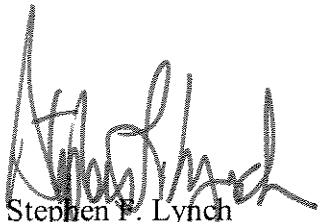
[3] Memorandum from EPA Administrator Stephen L. Johnson, Reaffirming the U.S. Environmental Protection Agency's Commitment to Environmental Justice (Nov. 4, 2005).

5. Included in the docket for the proposed TRI rule are notes from a "TRI Burden Reduction Stakeholder Briefing" that EPA held on October 19, 2004.[4] How many state and local government representatives were invited to this briefing? Included in the list of "stakeholder attendees" are the names of several House and Senate committee majority staff. Did EPA invite any Congressional minority staff to this briefing? If not, why not? Were any representatives of low income/minority communities invited? How were the "stakeholders" selected?

6. How many meetings did EPA hold with industry representatives in the development of these proposals? Please provide copies of all communications sent to, or received from, industry sources related to EPA's TRI proposals that are not included in the docket for the proposed TRI rule.

We would appreciate a response to this request by January 11, 2006. If you have any questions regarding this letter, please contact Krista Boyd of the Committee on Government Reform staff at 202-225-9493.

Sincerely,



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Ranking Minority Member
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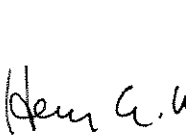

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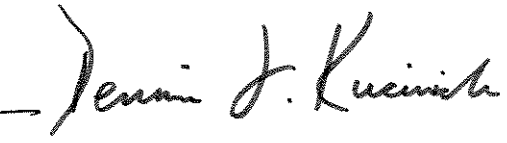

Dennis J. Kucinich
Ranking Minority Member
Subcommittee on National Security, Emerging Threats and International Relations

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[4] EPA, *Meeting Summary: TRI Burden Reduction Stakeholder Briefing, October 19, 2004* (online at http://www.epa.gov/tri/programs/stakeholders/TRIburdenreductionmeetingsummary_oct192004.pdf).