Upcoming 2018 Reporting to the Toxics Release Inventory (TRI) Reports Due On or Before July 1, 2019 (Monday)

Morton E. Wakeland, Jr. ("Mort")
EPCRA § 313 Enforcement Coordinator
EPA Region 6
Dallas, Texas
Before worrying about calculating amounts released to air, land, and water; and amounts waste managed...

Determine first if your facility even comes under EPCRA § 313
So, what are the requirements?

1. Number of employees

2. PRIMARY NAICS covered @ 40 C.F.R. § 372.23

3. “Manufactured, processed, or otherwise used” a listed TRI chemical (40 C.F.R. § 372.28 (PBT’s) and 40 C.F.R. § 372.65 (“normal TRI chemicals”))
So, what are the requirements?

Of Importance!

A facility must meet all three (3) of the requirements to have to report to TRI.
So, what are the requirements?

Look first at the facility’s PRIMARY NAICS (North American Industry Classification System) code.

If the NAICS requirement is not met then you are off the hook - Totally! Take a breather or take a vacation.

See 40 C.F.R. § 372.23
So, what are the requirements?

Number of Employees – facility has 10 or more full-time employees.

More than meets your eyes!

Does not necessarily mean 10 “heads.”

Based on 2,000 hours/year = full-time equivalent. Could have less than 10 “heads.” However, if the total hours worked is 20,000 hours or more, the employee threshold has been met.
So, what are the requirements?

If the facility has less than 10 full-time "heads," tabulate the hours worked for all (includes hours for vacation and sick leave):

1. full-time employees
2. contract employees
3. anyone contributing services to the facility & is paid by the facility
4. Person does not have to be located on-site
So, what are the requirements?

For the reporting year (RY) in question, the facility’s *primary* NAICS code is a covered code, and it is determined the employee threshold has been met, then it comes down to:

Did the facility “manufacture, process, or otherwise use” a listed toxic chemical above the applicable threshold amount?
TRI Chemical Thresholds Vary

1. Depending on the chemical’s classification: PBT vs Non-PBT (Persistent Bioaccumulative & Toxic)
2. Depending on its activity: “manufacturing, processing, or otherwise using.”
1. Non-PBT TRI chemicals make the majority of potentially reportable chemicals to the TRI database.

2. Reporting threshold (pounds of chemical used per year) is based on how the chemical was used at the facility, i.e., its “activity.”
   a. manufacturing: 25,000 lbs/yr
   b. processing: 25,000 lbs/yr
   c. otherwise using: 10,000 lbs/yr

3. Threshold must be exceeded in a single activity to be reportable. Cannot add across activities.
1. Thresholds are individually listed at 40 C.F.R. § 372.28

2. Thresholds are significantly lower than Non-PBT’s, usually 10 lbs/yr or 100 lbs/yr.

3. Dioxin and dioxin-like compounds have the lowest threshold at only 0.1 gram/yr

4. Unlike Non-PBT’s, the thresholds for PBT’s are the same for all three (3) activities.
1. If this is your first rodeo, you have a lot to accomplish.

2. Reporting now is done electronically through what is called the Central Data Exchange (CDX).

3. Registering for CDX is FREE. Once registered you must add what is called TRI-MEweb to your account.

4. Amounts of the TRI chemical being reported are entered via TRI-MEweb.

5. In addition, you must get a certifying official approved.
Form R (a la 1040)

vs Form A (a la 1040EZ)
1. If threshold for a Non-PBT chemical has been exceeded, reporters have a choice of using a Form R or a Form A on which to report that chemical’s releases and other waste management amounts.

2. If threshold for a PBT chemical has been exceeded, reporters are limited to only using a Form R.

3. For each TRI chemical exceeding threshold, one form is filled out.
1. EPA understood that many reporters have minor amounts of TRI chemicals released and waste managed.

2. To lessen the burden on the regulated community, EPA initiated what was termed “alternate threshold” in 1994 for facilities that had less than 500 pounds for the Annual Reportable Amount ($\sum 8.1 – 8.7$) AND used less than 1,000,000 pounds of the chemical.

3. The new reporting form was/is only 2 pages and designated Form A – Certification Statement.
Implications of Form R vs Form A in Texas

1. Texas has what is referred to as the Waste Reduction Policy Act.

2. The Act applies to all TRI Form R reporters.

3. The Act DOES NOT APPLY to TRI Form A reporters who ARE NOT SQG’s or LQG’s.

4. Some facilities, although the TRI chemical qualifies for a Form A, report on Form R.

5. Can always file a Form R with EPA and be OK.
How do we target, and what do we look for when inspecting a facility?
Most Prevalent Violations/Mistakes

• Failing to report one or more TRI chemicals for one or more years when the TRI chemical(s) had been reported in other years – **Non-reporters**

• HOWEVER, could be a legitimate reason for not having to report a TRI Chemical

• **Late-reporters** – facilities that finally reported, but did so after the July 1st deadline (includes facilities that transmitted their forms, but failed to certify before the July 1st deadline)

• **Never non-reporters**: Still exists – facilities meeting the employee threshold, NAICS code criteria, and using TRI chemicals above the reporting threshold but have never reported
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Most Prevalent Violations/Mistakes continued

- Data quality violations – reporting incorrect amounts on Form R
- Usually discovered by large *increasers* or large *decreasers*
- Filing the shorter Form A when the facility did not qualify to report on a Form A (Sections 8.1 – 8.7 > 500 pounds)
- Failure to maintain records to support TRI reporting for a period of 3 years from the time the report was submitted (40 C.F.R. § 372.10 – Recordkeeping)
- Failure to supply notification (40 C.F.R. § 372.45, Subpart C) – regards identifying TRI chemicals on Safety Data Sheets (old MSDS – Material Safety Data Sheets) and their concentration.
Methodology for Targeting
Amazingly Simple
Using Certification Dates From TRI Database

5-Year single facility example of reporting history

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
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<td>2013</td>
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<td>2016</td>
<td>2017</td>
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<td>TRI Chemical Was Reported Late</td>
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<td>N-BUTYL ALCOHOL</td>
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<td>STYRENE</td>
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<tr>
<td>XYLENE (MIXED ISOMERS)</td>
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<tr>
<td>ZINC (FUME OR DUST)</td>
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</tbody>
</table>
### Using Certification Dates From TRI Database

#### 5-Year Regional Analysis – All Facilities / All Chemicals

<table>
<thead>
<tr>
<th>TRIFID</th>
<th>Facility Name</th>
<th>TRI Chemical</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
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<tr>
<td>85043VNWTR50S45</td>
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<td>7/1/2014</td>
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<td>5/13/2014</td>
<td>6/18/2015</td>
<td>6/17/2016</td>
<td>5/2/2017</td>
<td>6/13/2018</td>
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<td>WORLD RESOURCES CO</td>
<td>COPPER COMPOUNDS</td>
<td>5/13/2014</td>
<td>6/18/2015</td>
<td>6/17/2016</td>
<td>5/2/2017</td>
<td>6/13/2018</td>
</tr>
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<td>6/18/2015</td>
<td>6/17/2016</td>
<td>5/2/2017</td>
<td>6/13/2018</td>
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<td>6/18/2015</td>
<td>6/17/2016</td>
<td>5/2/2017</td>
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<td>6/17/2016</td>
<td>5/2/2017</td>
<td>6/13/2018</td>
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<td>5/2/2017</td>
<td>6/13/2018</td>
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<tr>
<td>85043WRLDR8113W</td>
<td>WORLD RESOURCES CO</td>
<td>ZINC COMPOUNDS</td>
<td>5/13/2014</td>
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<td>6/17/2016</td>
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<td>MESA INDUSTRIES</td>
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<td>6/18/2015</td>
<td>6/30/2016</td>
<td>6/29/2017</td>
<td>6/19/2018</td>
</tr>
</tbody>
</table>
EPA’s Audit Policy & Self-disclosing Violations

• Appears TCEQ has their own policy:

• *A Guide to the Texas Environmental, Health, and Safety Audit Privilege Act, RG 173, November 2013*

• EPA’s Audit Policy can be used to disclose violation(s) of any federal environmental law.

• Must have discovered the violation independent of any federal or state investigation to initially qualify for any Audit Policy.
Self-disclosing EPCRA § 313 violations continued

- Self-disclosures are submitted through 1 or 3 avenues:
  1. **EPA’s Audit Policy**: 65 Fed. Reg. 19618, April 11, 2000
     (9 conditions to meet to receive 100% gravity-based penalty mitigation)

     – only for small businesses, i.e., with < 100 employees
     (not as many conditions to meet to receive 100% gravity-based penalty mitigation)

  3. **EPA’s Interim Approach to Applying the Audit Policy to New Owners**: 73 Fed. Reg. 44991, August 1, 2008
     (must disclose within 9 months of closing the new acquisition)
Self-disclosing EPCRA § 313 violations continued

EPA’s Audit Policy (9 Conditions):

1. Systematic Discovery (Environmental Audit or Compliance Management System)
2. Voluntary Discovery
3. Prompt Disclosure (21 days)
4. Independent Discovery and Disclosure (*before an inspection!*)
5. Correction and Remediation
6. Prevent Recurrence
7. No Repeat Violations (same or closely related in past 3 years)
8. Certain Violations Excluded (actual harm to the environment, imminent and substantial endangerment to public health)
9. Cooperation
Self-disclosing EPCRA § 313 violations continued

- If ALL conditions (EPA Audit Policy) are met, except for #1 (Systematic Discovery of Violations), gravity based penalties are mitigated at 75%.

- If any of Conditions #2 - #9, are not met, policy is totally denied. Resolved via enforcement / penalties. However, consideration given that facility attempted to self-disclose.
Self-disclosing EPCRA § 313 violations continued

• If ALL conditions are met, in a Policy....

• 100% gravity-based penalty mitigation is granted.

• HOWEVER, EPA reserves the right to collect any economic benefit gained by non-compliance. If benefit is deemed insignificant, collection of benefit is waived.

• If ALL conditions are NOT met, penalties are drastically reduced and close with a Consent Agreement.

• If policy is denied, totally, case is resolved with enforcement + penalties.
Self-disclosing EPCRA § 313 violations continued

- Audit Policy and Small Business self-disclosures are now submitted to EPA HQ’s via the internet, i.e., CDX

- Central Data Exchange (CDX): https://cdx.epa.gov/

- Registration is FREE: If you already file TRI’s you have an account
Self-disclosing EPCRA § 313 violations continued

- To add EPA’s eDisclosure to your existing or new account:

- Log-in, at bottom of all your accounts click Add Program Service:

- On following screen look for eDisclosures
Self-disclosing EPCRA § 313 violations continued

Begin typing a program service name or related keywords to filter the list of available services (e.g., air quality system, AQIS, or Clean Air Act).

Active Program Services List

ARCS: Aircraft Reporting and Compliance System

BaSR: Burial at Sea

CDRS: Consent Decree Reporting System

CEDRI: Compliance and Emissions Data Reporting Interface

CROMERRS: CROss-Media Electronic Reporting Rule Services

CSPP: Submissions for Chemical Safety and Pesticide Programs

eDisclosure: Voluntary Disclosure System

EEP: General E-Enterprise Use

e-NEPA: NEPA Electronic Filing System

eNOI: Electronic Notice of Intent for the PGP
Self-disclosing EPCRA § 313 violations continued

• After clicking eDisclosures, following directions to finish registering.

• First step is to alert EPA you are self-disclosing under a particular environmental law, and are meeting or have met the 21-day notification time stipulation.

• Must correct the violation within 60-days of discovery (180 days for a small business disclosure) then, in eDisclosures, attest to the fact you have met the nine (9) conditions of policy you are using.

• eDisclosures User’s Guide:

Self-disclosing EPCRA § 313 violations continued

- New Owner Audit Policy

- This policy is submitted for resolution to the region in which the facility is located.

- Should check with the region to see who is the lead for self-disclosing under whatever law or laws that are applicable.

- Region 6, self-disclosing for EPCRA 313/TRI only, or including EPCRA 313/TRI notify Mort Wakeland, Wakeland.morton@epa.gov or phone: 214.665.8116
Useful EPA Internet Addresses
Toxic Release Inventory & other addresses:

- TRI Homepage
  [http://www2.epa.gov/toxics-release-inventory-tri-program](http://www2.epa.gov/toxics-release-inventory-tri-program)

- EPA Envirofacts
  [http://www.epa.gov/enviro/](http://www.epa.gov/enviro/)

- TRI Explorer
  [http://iaspub.epa.gov/triexplorer/tri_release.chemical](http://iaspub.epa.gov/triexplorer/tri_release.chemical)

- Enforcement Compliance & History Online (ECHO)
Toxic Release Inventory & other addresses continued:

- EPA’s Audit Policy homepage
  http://www2.epa.gov/compliance/epas-audit-policy

- National Service Center for Environmental Publications (NSCEP)
  http://www2.epa.gov/nscep

- TRI Questions & Answers (Q&A’s)
TRI &
EPCRA 313 HOTLINE NUMBER:

1-800-424-9346
Contact Information

Morton ("Mort") Wakeland,  
U.S. EPA Region 6  
1445 Ross Avenue  
Toxics Enforcement Section  
Enforcement & Compliance Assurance Division  
Dallas, Texas  
214.665.8116  
wakeland.morton@epa.gov
EPCRA § 313 & TRI INFORMATION
U.S. EPA REGION 6 – Additional TRI Contacts (800.887.6063, External Affairs)

- Enforcement Officer - David Riley
  / Audit Policy 214.665.2710 or riley.david@epa.gov

- Enforcement Officer - Stan Lancaster
  / Audit Policy 214.665.8034 or lancaster.stan@epa.gov

mailing address:
U.S. EPA Region 6
Enforcement & Compliance Assurance Division (ECD)
Toxics Enforcement Section (ECDST)
EPCRA § 313 / TRI
1445 Ross Avenue
Dallas, TX 75202-2733