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EPA and the Internet

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I. EPA's Websites: a World of Information

A. The hardest working agency in the web business

1. EPA's philosophy of community empowerment & direct action

Goal 7 of EPA's Strategic Plan is "Expansion of Americans' Right to Know about their Environment."

"The purpose of this goal is to empower the American public with information, enabling them to make informed decisions regarding environmental issues in their communities." EPA, *FY2000 Annual Performance Plan and Congressional Justification*, at (VII-2).

EPA believes that:
- "'right-to-know' is fundamental to EPA's mission" (*id*.), and
- "easy access to a wealth of information about the state of the local environment will expand citizen involvement and give people tools to protect their families and their communities as they see fit" (*id*. at VII-1).

2. www.epa.gov – Scale of Activity

EPA maintains 1,364 separate data systems.
EPA spends over $300 million annually on information systems.
Cumulative web usage (www.epa.gov/reports/retrievals.gif)
Web usage details (www.epa.gov/reports/server/August_1999.html)
"Most innovative federal government website" – *PC Week* (3/15/99).

3. EPA's new Information Office

Office of Information Transition & Planning (www.epa.gov/itop)
Organizational chart for new office (www.epa.gov/itop/office.htm)
Framework for EPA's New Information Office (3/9/99)
(www.epa.gov/itop/framewk2.htm)

B. Program office web pages

1. Office of Air & Radiation

Policy and guidance memos (www.epa.gov/ttn/oarpg/t5pgm.html)

Regulatory models (www.epa.gov/ttn/scram)
Criteria pollutant "weather reports" (www.epa.gov/airnow)
Applicability Determinations Index
(http://es.epa.gov/oeca/eptdd/adi.html)

2. Office of Solid Waste & Emergency Response

Laws, regs & policies (www.epa.gov/oswer/osw/laws-regs.htm)
RCRAOnline (guidance search tool)(www.epa.gov/rcraonline)

3. Office of Water

Rulemaking records (www.epa.gov/ost/guide)

4. Office of Prevention, Pesticides & Toxic Substances

Regulatory deadlines (www.epa.gov/opptsfrs/home/final.htm)

5. Office of Enforcement & Compliance Assurance

General enforcement policies (e.g., confidentiality of information under audit policy) (http://es.epa.gov/oeca/sahmemo.html)
Statute-specific enforcement policies (e.g., new enforcement response policy for TSCA §§ 8, 12 & 13)
(http://es.epa.gov/oeca/ore/tped/erp8_12r.pdf)
Searchable SEP database (http://es.epa.gov/oeca/sep/searchsep.html)

6. Office of Reinvention

Overview of major EPA information products
(www.epa.gov/reinvent/new898)
Sector-specific assistance (www.epa.gov/sectors/national.htm)
Innovative Approaches Task Force final report
(www.epa.gov/reinvent/taskforce/report99)

7. Office of Research & Development

Integrated Risk Information System (www.epa.gov/iris)

8. FOIA

Email your FOIA request to EPA (www.epa.gov/foia/broc.htm#b)
Be aware of the Electronic FOIA Amendments
(www.usdoj.gov/oip/foia_updates/Vol_XVII_4/page1.htm)

II. EPA's Websites: Regulation by Information

A. Uncle Sam wants YOU, directly or indirectly

1. EPA's philosophy, again

Helping "concerned citizens" report violations
(www.epa.gov/epahome/violations.htm)
Helping "concerned citizens" get EPA grants
(www.epa.gov/ogd/appkit.htm)

2. Envirofacts -- EPA's facility-based website

Looking at facility NPDES compliance
(http://www.epa.gov/enviro/html/pcs/pcs_query_java.html)

3. Sector Facility Indexing Project -- OECA targeting five specific sectors

Compliance histories made easy (www.epa.gov/oeca/sfi)

4. Surf Your Watershed/Index of Watershed Indicators

National water quality maps
(www.epa.gov/surf2/iwi/national/index.html)
Specific waterbodies
(www.epa.gov/surf2/locate/index/html)

5. EPA's Cumulative Exposure Project, brought to you by EDF

EPA's description (www.epa.gov/oppecumm/air/air.htm)
EDF's application (www.scorecard.org/env-releases/hap)

6. Risk Screening Environmental Indicators Model

EPA's description (www.epa.gov/opptintr/env_ind)

7. EMPACT (Environmental Monitoring for Public Access and Community Tracking)

Near-real time public notification of NPDES violations
(www.epa.gov/empact/factsheet/npdestx.htm)

8. CEIS (Center for Environmental Information & Statistics)

Enviromapper Interactive Geographic Interface
(http://www.epa.gov/ceisweb1/ceishome/atlas/enviromapper)

9. Unfair notice?

OECA issues its own interpretations of program office rules, thus giving "fair notice" of them (e.g., http://es.epa.gov/oeca/ore/enfalert)

B. Policy Issues raised by EPA's information activities

See "CMA Positions on Environmental Information Management" (3/26/99)

1. Accuracy and other data quality issues

   SFIP error rates & "refreshment" glitches

2. Information stewardship

   a. SFIP compliance index

   b. CEP disclaimer

3. Balancing issues

   a. Worst-Case Scenario Offsite Consequence Analyses on the Web

      i. EPA's original plan to post them

      ii. Interagency work group; EPA's Nov. 1998 decision not to

      iii. What about FOIA & state law? Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act, Pub. L. No. 106-40 (signed August 5, 1999)

      iv. But who decides next time?

   b. The "mosaic"problem

   c. Privacy

4. Accountability

   See Coalition for Effective Environmental Information, "Government Accountability for Environmental Information Policy" (May 4, 1999).
   See also GAO, *Environmental Information; Agencywide Policies and Procedures Are Needed for EPA's Information Dissemination*, GAO/RCED-98-245, at 14-19 (9/98).

   a. No process for regularly addressing quality, stewardship, balancing.

   b. Apparent lack of procedural requirements (APA, FTCA)

   c. What's needed:

      i. Information agenda

      ii. Prior notice, oppt'y to comment

      iii. Response to comments, incl. error correction

      iv. Some sort of peer review in appropriate cases

      v. Judicial review in appropriate cases

March 26, 1999

CMA Positions on Environmental Information Management

New EPA Office of Information

CMA supports EPA's creation of a central Information Office, with responsibility for providing policy direction for all EPA information management, and for managing all EPA databases that are not operated solely to support a single program office's functions. Such an office should:

- Focus the Agency's attention on important information policy and management issues;
- Increase the likelihood that wise policies will be adopted and implemented Agency-wide; and
- Provide a single point of contact for information issues.

CMA supports ECOS's position that either the head or deputy head of this office should be someone with experience working with states.

Important Information Management Issues

CMA believes that, in managing environmental information, EPA should embrace the following concepts:

QUALITY.

Quality incorporates a number of ideas:

Accuracy/standards. At a minimum, quality means accuracy. EPA should promptly establish meaningful data quality standards, and then take steps to ensure that its data systems produce data that meet these standards. Data that do not meet these standards should not be affirmatively disseminated by the Agency; where they are released pursuant to FOIA, their limitations should be clearly identified. EPA should also establish procedures to ensure that errors noted by the public will be promptly corrected.

All EPA databases should be regarded as publicly available. Historically, the Agency (and other governmental agencies) have applied higher standards to data that are released to, and relied upon by, the public than to data that are only used for internal managerial purposes. Increasingly, however, there is no distinction between data used for internal Agency management and data that are externally released. This means that the Agency will need ensure that all of its databases meet a "suitable for public release" standard.

Direct linkage to data sources. CMA believes that a critical means for improving data quality is minimizing data transactions. Thus, EPA should strive to restructure its data systems, or implement the "one stop" concept, so that data are retrieved as needed from the original source (regulated entities or states), with EPA serving as a conduit rather than a separate repackager of data.

First things first. Ensuring data quality also means that the new Information Office should concentrate on completing its fundamental, structural initiatives (REI, Environmental Data Registry, Facility Identification Initiative, Data Quality Plan, information security). EPA should be careful not to shortchange or defer REI tasks in order to launch new information initiatives or expand existing ones like CEIS or EMPACT.

Burden reduction. CMA recognizes that burden reduction means different things to different entities. We believe that the greatest opportunity for reducing reporting burdens will arise in the course of completing the REI. The REI process should make it more clear which data are redundant or no longer very useful. In this connection, CMA supports the "value/cost" approach, under which governments should pursue information activities that produce the highest value to cost ratio.

Information Stewardship

CMA members recognize that they have a responsibility for the foreseeable downstream uses and consequences of the products they make, and that they cannot simply disclaim that responsibility. Under the Product Stewardship Code of Responsible Care®, CMA members identify foreseeable downstream consequences of their products, and then take those consequences into account at every stage of product design, manufacture, marketing and distribution.

Information also has consequences, and those who disseminate it have a similar responsibility that they cannot disclaim. Instead, they should anticipate the way it may be (mis)used and (mis)understood, and then take those factors into account when they make decisions about when and how to release the information. This is the concept of information stewardship. As an arm of the federal government, moreover, EPA has a public trust that it must discharge responsibly. The federal government also speaks with unique authority, further raising its responsibilities.

As a practical matter, information stewardship means:

- Being clear and upfront about the purpose for which information is being released. This enables the public to assess how well the information actually serves that purpose, or whether other information might do a better job.

- Clearly conveying limitations and uncertainty, and not using information for purposes for which it is not suitable, or beyond its limitations. This is the idea of "suitability" or "respectful use." At some point, information may be so uncertain, old or incomplete that it simply should not be used at all, due to its potential to mislead or lack of utility.

- Making sure that information actually conveys something meaningful; i.e., actually provides its users with knowledge. For example, multiplying the volume or concentration of a substance in the environment by its toxicity does not give a meaningful indication of risk.

- Putting the information into an appropriate context. The total volume of TRI releases of a given substance are a subset of all releases of that substance from all sources. Without the latter figure as a denominator, the relative significance of the TRI volumes (the numerator) cannot be appreciated.

- Making sure that characterizations are appropriate to the setting being discussed. For example, a "toxin" may not actually present any toxicity at the concentrations at issue.

- Where information is being presented to inform choices, making sure that other factors relevant to that choice are also presented. In particular, the tradeoffs created by the choice should be clearly noted. For example, if a product is discontinued, what are the risks of substitutes? The fact that some of these tradeoffs may not pose "environmental" risks would not justify EPA's omitting them.

- Not oversimplifying information to the point where the result is misleading. For example, the Sector Facility Indexing Project's "quarters out of compliance" concept takes informative compliance data and simplifies it to the point that differences among regulated entities' compliance rates are obliterated and many are lumped into a single, pejorative category.

BALANCING

CMA supports the public's right to know about environmental hazards. At times, however, this important policy objective can come into conflict with other important objectives, such as national security, personal privacy

and the need to protect confidential business information. For example, EPA has recognized that putting worst-case scenario offsite consequence analyses on the internet, while serving some public right-to-know purposes, creates an overriding risk to national security. EPA should support the creation of procedures designed to ensure that such potential conflicts between policy goals are identified and the appropriate balance struck. EPA may not, by itself, be the most appropriate entity to make these decisions.

Accountability

When the federal government wants to affect behavior through regulation, the Administrative Procedure Act protects the public by requiring the government to provide prior notice, to accept comments and to respond to them thoughtfully. It also makes the rules subject to judicial review. When the government wants to influence behavior through information activities, by contrast, it takes the position that NO requirements apply. As a result, the path of least resistance is to rely on information approaches. While that might be preferable in many cases, CMA believes the government should conform to a minimum set of procedural requirements to ensure that it implements the concepts of quality, stewardship and balancing when it conducts information activities. Inherent in this proposal is the notion that information activities which EPA has traditionally viewed as internal, managerial or proprietary activities (e.g., IRIS) in fact have consequences for the public that entitle the public to have a say in how they are conducted.

These procedural protections should include:

Prior notice. Two forms of notice should be provided to the public:

- a comprehensive future-oriented list of planned information activities, like the current federal Regulatory Agenda; and
- notice when specific information activities are being developed, like a notice of proposed rulemaking.

An opportunity to comment. Members of the public should be able to get errors corrected promptly; they also should be able to comment on the full range of quality, stewardship and balancing issues raised by an information activity. Many of the concerns that have been expressed about the Sector Facility Indexing Project and the Cumulative Exposure Project might have been avoided if the affected entities had been given earlier notice of the Agency's plans. Obviously, such an opportunity is only useful if it is provided early enough for the comments to have an effect on the activity in question.

Appropriate peer review. Some information products or activities would benefit from peer review; others may not warrant it.

Fairness Doctrine. Entities that are the subject of an information activity, or that regard themselves as adversely affected by it, should have the opportunity to respond publicly in the same forum. The company response field in EDF's Scorecard accomplishes this function to some extent.

Review. The APA ensures that persons aggrieved by a final agency action can challenge that action in federal court. Such a right may also be appropriate for certain information activities. Some sort of formal, internal agency review might serve some of the same purpose.

Governmental Accountability for Environmental Information Policy

Coalition for Effective Environmental Information White Paper

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Ropes & Gray

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Executive Summary

New developments in information technology are making profound changes in the global economy and in the personal lives of many people. These same changes are also influencing how governments use their powers to affect public policy. In particular, the U.S. Environmental Protection Agency (EPA) is using information disclosure as a means to advance its agenda for environmental protection. As EPA expands the use of its "power of the spotlight", it must also establish the basic ground rules to assure that the tools of the Information Age are used in an effective and responsible manner.

A core value of democracy is that government must be accountable to the public for the effects of its decision. This value is enshrined in a variety of federal and state laws that require agencies to provide the public fair notice about their intentions, an explanation of decisions made, an opportunity to participate in decision making and appropriate recourse to the courts for adverse decisions. These principles have not been adequately considered in the evolving information disclosure programs at EPA.

This White Paper examines emerging concerns about the adequacy of procedural protections in government information programs. The Paper focuses on EPA because the Agency has been at the forefront of government efforts to adopt information disclosure as a tool of public policy. EPA's effort to use the "power of the spotlight" to press companies for reduction in environmental releases began in the late 1980's with the Toxics Release Inventory (TRI), a program mandated by the Emergency Planning and Community Right to Know Act that provides annual public reports on environmental releases and waste management practices at over 20,000 industrial facilities.

EPA has now expanded the TRI's "right to know" philosophy throughout its operations, and most Agency offices conduct some type of information dissemination program for the public. One of the results of this effort is a burgeoning Internet presence offering unique information resources, including a "data warehouse" of EPA's files on particular facilities, a program to generate localized maps showing pollution sources in neighborhoods, a color-coded rating of the quality and vulnerability of over 2100 watersheds and a "real time" simulation of changes in ozone levels that resembles a weather map.

The absence of clear ground rules for how such resources will be developed, used and changed is a serious concern. The concern is particularly acute at EPA because the Agency is intentionally using the power of disclosure to achieve ends that have traditionally been the subject of command and control regulation. The U.S. has a long history of adapting its laws and policies about "fair process" to institutional and technological changes in order to maintain the checks and balances necessary for accountable government. This democratic tradition is of great relevance in the

emerging "Internet culture", a world in which even libertarian advocates of free expression have articulated a need for establishing processes that allow participants to protect their interests.

This Paper describes five "accountability" issues defining areas where EPA will need to accept greater responsibility:

1. Participation in the Development of New Issues - EPA has not established policies for public involvement in the development of new information resources. Thus there is no clear forum for the public to express views on issues of methodology, data quality and public presentation of data. The Paper describes the process that led to the issuance of EPA's Sector Facility Indexing Project as an example of how the absence of early stakeholder involvement led to controversy, litigation and ultimately a delay in the project. The Paper highlights several emerging issues, including:

1) EPA's obligations under the Paperwork Reduction Act to solicit public involvement in information dissemination activities;
2) public interest in notification about information resources under development; and
3) the value of stakeholder engagement on the design of new information resources.

2. Responsiveness - EPA does not have procedures in place to allow the public to seek changes in existing information resources. Several groups have become quite concerned about the absence of a process to make simple error corrections or to petition the Agency to reconsider an important characterization of environmental conditions or performance. The Paper reviews two EPA examples where this issue has become controversial - the Envirofacts database and the Integrated Risk Information System (IRIS). The Paper emphasizes the need for EPA and the states to create a process for prompt error correction and for greater public involvement in the reconsideration of data characterizations presented to the public.

3. Balancing of Interests - At times the government must balance the desire for disclosure of information against the need to protect other societal interests, such as personal privacy, trade secret protection and physical security. The Paper describes two situations that highlight the issues arising in this area: (1) how EPA's planned posting on the Internet of "worst case" chemical accident information could assist terrorists; and (2) the adequacy of EPA's protection of confidential business information under current policies. The discussion highlights the need to establish better processes for reviewing the national security implications of data releases and to establish policies that allow protection of data that would reveal a "mosaic" picture of a trade secret.

4. Recourse for Adverse Decisions - The strong legal presumptions in favor of judicial review of decisions by administrative agencies may not be operative in information-based programs. Federal law provides agencies like EPA an immunity from liability for

libel and slander. In addition, the law is uncertain about when information disclosure could be reviewed under the Administrative Procedure Act. The Paper outlines the basis for EPA's apparent position that judicial review is not available for most of the reports and websites that it creates. The principal issue needing further consideration is whether agencies should be allowed to insulate themselves from court oversight, even for information products that are false, have great private sector impact or are intended to achieve regulatory objectives by other means.

5. Data Security - Companies and citizens presume that the sensitive information they are required to give to government agencies will be protected from access by other parties. Yet many government data systems are not secure against intrusion. The Paper describes the current state of EPA computer security measures, such as firewalls, for the data it collects. There is increasing concern that EPA has not moved quickly enough to meet its legal obligations to assure the security of the information in its files.

Potential Actions to Address the Issues

While policy reforms will be necessary on several fronts to address the issues raised above, the White Paper is not intended to recommend a specific set of actions. To facilitate debate, however, the Paper outlines the following types of actions that could be taken:

1. Notice of Upcoming Information Products - EPA could publish periodically an "Information Products Agenda" that briefly describes the content, contact point and schedule for major information resources under development.

2. Ombudsman/Clearinghouse - EPA could establish a staff to answer questions about the Agency's current data holdings and about the plans for new information resources.

3. Notification on Change of Use of Data - EPA could provide notice to a submitter when the Agency intends to use the submitter's data for purposes beyond the data's original intent.

4. Stakeholder Involvement in New Information Products - EPA could establish a policy for timely engagement of the public on the policy aspects (e.g., methodology, data quality, public presentation) of new information resources.

5. Error Correction Process - EPA and the states could establish a clear process for prompt correction of data errors when they are identified.

6. Modification of Public Messages - EPA could establish a process that provides a timely response to public requests to reconsider a characterization in a public information resource.

7. Balancing Process: Security Issues - EPA could work with other agencies and establish a clear process for considering the security implications of a release of Agency information.

8. Balancing: Confidential Business Information - EPA could centralize its current system for administering CBI claims and reconsider its policies that frustrate confidentiality claims based on the argument that particular pieces of data contribute to a "mosaic" picture of a trade secret.

9. Balancing: EPA's Role - The government could decide that determinations about the balance between disclosure and other objectives would be made by a decisionmaker outside EPA, in light of the Agency's increasing advocacy of information disclosure.

10. Revision of the Administrative Procedure Act - Congress could make a series of reforms to this statute to address questions of judicial review, public participation, public notice, error correction and disclosure of data limitations.

11. Eliminate Government Liability - Congress could remove the immunity government agencies have against suits for libel, slander and any other forms of defamation.

12. Enhanced Data Security - EPA could establish stronger computer security measures in its data system and provide for periodic testing by independent experts of the effectiveness of those measures.

Governmental Accountability for Environmental Information Policy

Over the last decade, developments in information technology have led to profound changes in the American economy and in the personal lives of many people. These changes are beginning to shape how the government exercises its power in many areas of public policy. The trend toward the use of information disclosure as a policy tool is nowhere more apparent than in the field of environmental protection.[1] As a result, environmental policy has become a precedential context in which the government must establish the institutions and ground rules to assure that the new tools of the Information Age are used in an effective and responsible manner.

A core value of democracy is that government must be accountable to the public for the effects of its decisions. In the U.S. Constitution this principle has been expressed as the government's duty to provide "due process of law" before depriving a citizen of life, liberty or property. In support of this principle, a broad array of federal and state laws have been enacted to assure that administrative agencies provide fair notice to the public of their intentions, an explanation of their rationale for decisions, an effective opportunity for citizens to participate in the decisionmaking process and appropriate recourse to the courts for review of administrative decisions.

While these principles are enduring in American law and society, they now must be translated into the processes and culture of the Information Age. The government and related institutions must begin to define the basic ground rules for fair use of information disclosure as a public policy tool. This issue has become particularly salient at the U.S. Environmental Protection Agency (EPA) because the Agency has, for the last several years, been operating at the cutting edge of the federal government's effort to empower the public with information.

This White Paper reviews the emerging issues concerning the government's accountability for decisions about public disclosure of environmental information. The Paper focuses on the activities of EPA because the Agency has been the leading federal agency adopting a public disclosure ethic. At the same time, it must be recognized that similar issues are arising in other federal and state agencies. After describing the issues, the White Paper summarizes some of the possible solutions to the problems identified. In presenting these options, the Coalition for Effective Environmental Information (CEEI) does not intend to advocate their adoption at this time. CEEI offers these options as a means of stimulating public discussion about a broad range of legislative and administrative actions.

[1]See Stephen Breyer, *Regulation and Its Reform* (1982), at 161, for a broader discussion of information disclosure as "another form of classic regulation."

The Range of EPA's Information Resources

In developing its information resources, particularly those presented on the Internet, EPA is attempting to exceed mere compliance with the Freedom of Information Act (FOIA), which anticipates disclosure of government documents upon request from the public. Instead, EPA has been actively engaged in efforts to encourage the use of the Agency's data in environmental decisions by other governments and private sector institutions.

EPA has made a conscious decision to use information disclosure to influence behavior in the private sector. This ethic is well-captured in the following quotation from EPA's mission statement:

> The mission of the U.S. Environmental Protection Agency is to protect human health and to safeguard the natural environment - air, water and land - upon which life depends.
>
> EPA's purpose is to ensure that:
>
> ***
>
> - All parts of society - communities, individuals, business, state and local governments, tribal governments - have access to accurate information sufficient to effectively participate in managing human health and environmental risks.

In this context EPA sees its role as providing information that will be used by others to reduce risks. The Agency does not link this part of its mission to a specific statutory obligation or even to a particular regulatory action that it would take.

EPA's belief that it has a primary role in disseminating information to the public has grown out of its implementation of the Toxics Release Inventory (TRI) program under the Emergency Planning and Community Right to Know Act. Since the mid-1980's, EPA has been collecting and issuing to the public annual reports about chemicals released to the environment and to wastestreams at over 20,000 facilities in the manufacturing sector. This program has helped frame EPA's policy perspective on the "public right to know."

It is important to recognize that EPA has seen the TRI program as more than a form of general environmental education about the environment. EPA's public descriptions of the program have portrayed it as a tool that will support actions by community groups and governments to pressure companies to reduce chemical releases. For example, a recent version of the annual national report on TRI data contained a section describing the uses of TRI. Public education was just one of ten uses cited; the list included voluntary emission reduction programs, targeting of government programs, legislation and regulation, enforcement, environmental justice initiatives, influencing investor

decisions, and the implementation of environmental taxes or fees.[2] Thus the TRI program has strong alignments with existing command and control programs, and is best understood as an alternative or supplement to traditional forms of regulation.

Beginning in the mid-1990's the TRI program's ethic was adopted by multiple EPA programs. Virtually every EPA office is now administering some kind of program that disseminates information about the environment to the public in the interest of serving the "public right to know." Much of this information is presented on EPA's Internet Web site. The Agency adds new documents, databases, software tools and other information resources to this site frequently and the site now includes over 10,000 documents. This large enterprise has garnered significant public attention. EPA's Web site receives over 50 million "hits" per month.

In addition, EPA is presenting relatively complex information, using the unique interactive characteristics of on-line resources. For example, EPA now offers the following types of resources to the public:

1. A data warehouse containing the EPA-reported data about specific facilities;

2. Maps allowing the user to align EPA-regulated sources with local demographic data in communities;

3. Links to real-time air monitoring data (updated every five minutes in some states) and color-coded maps showing the changes in ozone levels over a day in a manner similar to a weather map;

4. National and local maps of all of the nation's watersheds providing numerical ratings of the quality and vulnerability of the water bodies; and

5. A characterization of facility compliance records in specific industries.

I. Importance of Process

Most of the information resources at EPA were not subject to any systematic process of public engagement or vetting before they went on line. In addition, there are no clear guideposts for how a member of the public could seek a change in one of these information resources to correct an error or change a mischaracterization. EPA has not attempted to establish any specific policies on public involvement in information resources.

Therefore, it is important to highlight at the outset of this paper the importance of procedural protections. The tools of the Information Age have handed the government a significant new power. Through the Internet the government now can deliver a message about a company, product or facility to an unlimited number of world-wide

[2]U.S. EPA, "Appendix D: Uses of TRI Data," in *1994 Toxics Release Inventory: Public Data Release*, EPA 745-R-96-002 (June 1996), at D-1.

customers instantaneously. The incremental cost to the government of delivering such a message has been significantly reduced.

As mentioned above, EPA's perspective on information disclosure has been shaped in large measure by the TRI program, which consciously used the "power of the spotlight" to achieve reductions in chemical releases that have historically been the target of regulatory programs. This view that information disclosure is an alternative to regulation has heavily influenced EPA's approach to information policy, as reflected in following statement from the Agency's Strategic Plan for information management:

> EPA does not produce widgets, maintain parks, or fight wars. EPA's products are information-based products, whether they be rules, environmental education, new science, or enforcement actions. Information is a common thread in all of EPA's work. Thus, EPA will view information management as a core function that is everyone's responsibility, and is essential to the mission...Information that is cared for as an asset, that is treated as a trust for all staff, EPA's partners, and the public, is the ultimate weapon in EPA's mission to protect the environment.[3]

The implications for the parties affected by information disclosure, however, are profound. The information could:

- Affect the physical safety of a plant or person;
- Disclose a trade secret;
- Damage unfairly a reputation for environmental stewardship that has been built up over many years; or
- Trigger unwarranted sanctions by governments, customers or financial institutions.

One of the founding principles of the American system of government is the importance of checks and balances. The powers of government institutions have been matched with responsibilities and countervailing pressures to assure that power will not be abused. Throughout history, new procedural protections have arisen when there was a broad perception that government power was not accountable to public concerns. For example, the Administrative Procedure Act was passed in the 1940's as a response to the proliferation of new administrative agencies in the New Deal that had broad powers to direct private behavior in the economy.[4] In the 1960's there was a broad perception, held strongly by the print media, that the government had been too

[3]U.S. EPA, "Providing Information to Decision Makers to Protect Human Health and the Environment: Information Resources Management Strategic Plan," EPA 220-B-95-002 (April 1995), at 30.
[4]Kenneth Culp Davis and Richard J. Pierce, Jr., Administrative Law Treatise, 3rd Edition (1994), §1.4, at 11.

secretive about its internal decisionmaking. This concern eventually led to the passage of the Freedom of Information Act (FOIA) in 1966.[5]

The Information Age presents a similar challenge to the basic principles of fair play and constraints on unaccountable government power. Thus an inquiry into the ground rules that apply to government disclosure is an important extension of long-standing traditions into the current day.

Interestingly, a focus on "fair process" issues draws support from the "New Age" libertarian philosophy that is commonly associated with Internet culture. While "netizen" advocacy groups have expressed strong opposition to government regulation of the content of Internet communications, they have also expressed support for cyberspace ground rules that allow people to protect their own interests, such as privacy. For example, groups like the Electronic Frontier Foundation have expressed strong opposition to governmental limitations on cryptography, arguing that such controls "will make us less secure and more vulnerable to electronic terrorism."[6]

Advocates of the "New Economy" believe that the future of technology and society is ultimately unknowable in the present day, and thus they are skeptical about most forms of social engineering. They believe that important social problems will ultimately be addressed through experimentation and innovation as they come along. These advocates, however, also believe in "protecting processes" by which society identifies and solves social problems.[7] Under this view, the establishment of legitimate processes to address the problems arising with social change becomes part of the core social fabric of an open-ended future.

From any of these perspectives, a careful inquiry into the processes for using information resources as a tool of policy is particularly important in the public sector. The government must take particular care because it is the government, and thereby enjoys a presumption that it is neutral, objective and accurate. EPA's Web site is not just another Internet site. It is presumed by many people to be an authoritative source and, in some cases, the definitive source on many environmental matters.

Part of that credibility is, in fact, related to a *presumption that there has been an adequate process* to generate the information. Most government agencies, and certainly a regulatory agency like EPA, use decisionmaking processes that emphasize

[5]Bert A. Braverman and Frances J. Chetwynd, Information Law: Freedom of Information, Privacy, Open Meetings, Other Access Laws, Volume 1 (1985), at 11.
[6]Electronic Frontier Foundation, press release "50th Anniversary of the Declaration of Human Rights a Reminder that Privacy Must Be Preserved" (December 9, 1998), at http://www.eff.org/udhr/freecrypto_protest.html.
[7]Virginia Postrel, "Technocracy R.I.P.", Wired Magazine (January 1998), at http://www.wired.com/wired/archive, Archive 6.01, at 3.

transparency, stakeholder involvement and the careful weighing of scientific and social data.
As the next section of this White Paper explains, however, these values have not been adequately implemented in the development and use of information resources.

II. Core Components of Accountability

While the concept of governmental "accountability" encompasses a wide range of responsibilities, this White Paper uses five categories to frame the issue and to explain how EPA is currently operating. The five categories include the following:

a. *Participation in the Development of New Resources*: fair notice and the ability to participate in the development of new information resources;

b. *Responsiveness:* the opportunity to make corrections or change mischaracterizations in existing information resources;

c. *Balancing of Interests:* the ability to seek non-disclosure of information that will harm an important private interest;

d. *Recourse for Unreasonable Action*: an opportunity for review of an adverse agency decision by a neutral body with authority to redress any harm caused; and

e. *Data Integrity:* the assurance that sensitive data held by the government will be protected from theft or alteration.

Each of these subjects will be discussed below. The White Paper describes the current state of EPA policy in the area and identifies emerging issues.

A. Participation in the Development of New Resources

EPA posts new information on the Internet continuously. Many of these postings are documents or information on regulatory actions that have been discussed with the public in other venues, often in a rulemaking or other formal regulatory context. Posting them on the Internet is simply a means of assuring broad, convenient access to a document that is already in the public domain.

Many times, however, EPA posts information resources on the Internet that have not been seen elsewhere. These resources were created solely as Web sites and are intended to convey a message about the environment to the public. These resources are some of the most attractive sites found on the Web page because they make use of the interactive nature of the on-line medium. These resources may allow an individual to tailor information for personal use or to view dynamic, real time information (e.g., daily ozone maps) that cannot be conveyed effectively through other modes of communication.

These resources are often complex, and EPA has had to make a large number of decisions in order to create them. The creation of these resources are *acts of policy* by EPA that go beyond passive dissemination of raw data. Typically a large number of technical determinations and value judgments go into the creation of such information resources. In addition, policy questions inevitably arise about how the information will be presented and what message EPA intends to convey.

The public has an interest in the policy decisions that EPA has made in the course of creating new Web sites of this nature. Questions about data accuracy, data collection protocols, the comparability of different data sets, the suitability of the information to address particular issues, modeling methodology, default assumptions, the timeliness of the data and the value judgments reached by EPA are all issues on which the public could provide important insights and has a right to be heard. These are precisely the issues that dominate public processes on rules and other, more formal EPA actions.

Yet no formal policy is in place at EPA that clarifies when the public can participate in the development of new information resources. There also is no publicly available listing of the new information resources under development at the Agency that would be comparable to the Unified Regulatory Agenda published semi-annually by OMB. Thus the public does not have an understanding of what new web sites are "in the pipeline" at EPA.

In the absence of any Agency-wide policy, the various offices at EPA have provided different degrees of public involvement. Some engage stakeholders on major information resources just as they would with any major policy. A more common pattern is a selective discussion of the new resource with some constituencies. EPA is, for example, more likely to discuss a new software tool or database with state agencies than with any other constituency. These efforts, however, usually fall short of a full opportunity for participation by all interested parties.

EPA's experience in developing the Sector Facility Indexing Project (SFIP) provides a useful example of how the absence of strong stakeholder involvement in the development of a new information resource can lead to substantial controversy, misunderstanding and delay. The SFIP, which was released publicly as a Web site in May 1998, presents compliance information and chemical release data about the facilities in five industrial sectors. In its original conception, the SFIP was also to include a characterization of the relative risk presented by each facility and a relative ranking of facilities.[8]

[8]A factsheet on the project, circulated by EPA in March 1996, stated: "Based on pollutant release and other data known about each facility, relative hazard rankings for all indexed facilities will be developed. As the Agency moves closer to adoption of a toxicological risk model, an actual risk factor for each facility can also be provided based primarily upon release data, chemical fate and transport, and exposed populations."

EPA began the SFIP in response to the March 1995 report from the President entitled "Reinventing Environmental Regulation." This document, which served as a blueprint for a variety of reform initiatives at EPA, called for more "risk-based" enforcement and directed EPA to "provide the public with data on compliance history and environmental performance for facilities within at least five industrial sectors." While EPA began work on the project in 1995, it did not initially attempt to engage the affected stakeholder groups in the project.

EPA did not establish any public participation opportunities for the project during 1995 and did not clearly identify what industries had been selected. Early in 1996 representatives of the affected industries began to hear about the project through informal channels at EPA. They contacted officials in EPA's Office of Enforcement and Compliance Assurance (OECA) and learned that their industries would be included in the SFIP and thereby be the subject of a major, precedential experiment in the public presentation of environmental data.

The decision to avoid early discussion of the SFIP with stakeholders proved to be a major error because the project was inherently controversial, raising three important issues of concern to many groups: (1) the accuracy of compliance information in state and EPA files; (2) the proper characterization of environmental compliance; and (3) the appropriate expression of the relative risks of facilities. The absence of a clear public process for consideration of these issues fostered distrust of EPA's motives and frequent charges that inadequate procedures were used to develop the project.

In May of 1996, EPA began to receive letters from the major trade associations for the affected industries expressing these concerns. These groups raised both substantive issues and concerns about the adequacy of the process to develop an ambitious resource like the SFIP. Initially EPA had to clarify, through letters and meetings, what the intended scope of the project would be.[9] The scope of the letter-writing campaign about the project broadened in August when a coalition of environmental groups requested expedited completion of the SFIP.[10]

In September, a group of trade associations representing several of the industry sectors affected by the SFIP met with senior OECA officials to reiterate their concerns about the SFIP. Expressing concern about the accuracy of the SFIP database, the group asked for an opportunity to have individual companies review the data about their facilities and submit error corrections before the data went on-line. EPA was initially unwilling to provide this opportunity, suggesting that companies could correct the data after they

[9]For example, EPA had to explain how the data would be used in setting enforcement priorities, how the hazard rankings would be presented and how the project aligned with other EPA "reinvention" initiatives. By October 1996, EPA was circulating a substantial "Q & A" document on the project.

[10]Letter from Michael Belliveau, Communities for a Better Environment, et al., to EPA Administrator Carol Browner (August 7, 1996).

were made public and that error correction was a state obligation rather than EPA's responsibility. Eventually EPA agreed to make the data available to states and industry groups for a quality review.[11]

In October, EPA formally engaged the states in the SFIP by requesting review of the accuracy of the data that EPA's Regional offices had developed on the facilities. In response, several states wrote letters expressing concern about potential public misunderstanding of the data and complaining about the imposition of a new workload on the states to review and process corrections of the data. As part of these complaints, the states noted that they had not been consulted about the design of the project but simply had been asked to check the data for accuracy. These concerns culminated in the passage of a resolution by the Environmental Council of the States (ECOS), on March 22, 1997, calling on EPA to put the project on hold until there had been better consideration, including a review by the Science Advisory Board (SAB), of the project's methodology.

Meanwhile concerns about the project in the business community continued to build. By January 1997, industry groups affected by the SFIP had joined forces and submitted a thorough critique of the project to the Agency.[12] The concerns raised emphasized the inadequacy of EPA's process for developing the SFIP and the merits of the database. The business community called for SAB review of the methodology, an Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA) and formal public comment on the methodology to be used before EPA presented the data on the Internet.

Recognizing that it had to address a major public controversy on the SFIP, EPA decided to request SAB review of the project methodology and announced a public meeting on the project. The public meeting, which took place on May 14, 1997, was the first formal public airing of the goals, methodologies and data of the SFIP, even though the project was then over two years old. The SAB presented its views to EPA in September of 1997, indicating that the risk ranking effort in the project fell short of actual risk assessment because the model did not consider exposure potential.[13] By that time the procedural aspect of the SFIP had become further complicated by proceedings before OMB. Jim Tozzi, an industry consultant, filed a petition with OMB in June of 1997 seeking review of the SFIP under the PRA.

The public meeting in May did not, however, resolve stakeholder concerns about the project. Interested groups continued to press EPA for changes in the SFIP. A group of 19 environmental state commissioners wrote to EPA in September of 1997, reiterating their concern about the presentation of SFIP data and expressing their view that a state investment to improve data quality for the project was not warranted. EPA also

[11]Recollections of James Conrad, Chemical Manufacturers Association.
[12]Letter from American Automobile Manufacturers Association, et al., to EPA Administrator Carol Browner (January 4, 1997)
[13]Ultimately the SAB concluded that the inclusion of "hazard only" scoring system was a policy decision for EPA.

received in September a letter signed by several Senators, including Majority Leader Trent Lott, expressing concern that after two years of activity on the SFIP EPA had not "formally sought comment through the rule-making process."[14] In January 1998 EPA Deputy Administrator Fred Hansen held separate meetings with state and industry groups to hear out their concerns about the project.

The final procedural complexity for the SFIP arose in January 1998 when Tozzi filed a lawsuit in federal court seeking to enjoin public release of the SFIP. The court heard arguments on a preliminary injunction in the case in March. Just a few days before the hearing, EPA announced that it had abandoned the hazard ranking component of the SFIP, the aspect of the project previously reviewed by the SAB. The court denied the request for a preliminary injunction on April 21, 1998, indicating that plaintiffs were unlikely to be able to show a violation of the PRA given what remained in EPA's plan for the SFIP.

With the legal challenge essentially resolved, EPA proceeded to post the SFIP information on the Internet on May 1, 1998, approximately three years after the concept of the project was first proposed. During the course of those three years, the issues of concern to stakeholders were aired and EPA ultimately responded to those concerns with a more limited project. Yet the project was marred by a divisive process, including angry letters, a critical resolution by a state association, a Congressional inquiry, a petition to OMB and a lawsuit. The chaotic nature of the process substantially delayed the data's release.[15]

Experiences such as the SFIP have highlighted three issues about the process for developing new information resources. First, the controversy focused attention on the adequacy of EPA's compliance with the PRA. The Tozzi lawsuit was ultimately unsuccessful on its theory that the use of the TRI data for purposes of the SFIP constituted a material change to the original OMB approval for collection of TRI data. The court did not accept this theory, concluding that "the PRA does not require an agency to obtain OMB approval in order for the agency to use the information that it collects in additional ("new") ways."[16]

Nonetheless, there are many remaining questions about whether EPA's current pattern for developing new information resources is consistent with other aspects of the PRA. The statute places significant information management responsibilities on agencies, beyond the OMB process for approval of information collections. In 44 U.S.C. §3506(d), agencies must meet a variety of obligations concerning "information dissemination":

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[14]Letter from Senators Trent Lott and Kay Bailey Hutchison to EPA Administrator Carol Browner (September 24, 1997).

[15]As an example, EPA's decision that it needed SAB review to address concerns about the project added at least six months to the project, yet the Agency ultimately abandoned at the last minute the methodology that had prompted the SAB review.

[16]Tozzi v. U.S. Environmental Protection Agency, No. 98-0169 (TFH), 1998 U.S. Dist. LEXIS 6234, at *3 (D.D.C. April 21, 1998).

1) "timely and equitable access" for the public to the agency's information, including an obligation to disseminate information in "an efficient, effective and economical manner";

2) a requirement to "regularly solicit and consider public input on the agency's information dissemination activities"; and

3) a duty to "provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products."

EPA has not provided any public explanations on how it is meeting these statutory mandates. These statutory obligations may well provide the appropriate legal framework for establishing a more coherent process for public involvement in the development of new information resources.

Second, experiences such as the SFIP underscore that stakeholders would like to know what information projects EPA has "in the pipeline" so they can determine whether they would like to participate in their development. EPA's agenda for regulatory activity is often quite clear in federal statutes, and the semi-annual publication of the Regulatory Agenda provides useful notice to stakeholders about the schedule for regulations. There is no equivalent process or document for new information resources.[17]

Third, stakeholders would like to have an opportunity to participate in the development of major information resources. They may have strong interests in the resource's design, methodology, data quality and presentation to the public that should be heard. The analogy to rulemaking processes is again apt because there are relatively clear ground rules about public engagement in rule development.

The subtlety in the information context is that not every act of information disclosure warrants a robust public participation process. In fact, stakeholders would not want to participate in the almost daily decisions by EPA to post particular reports, data sets or other explanatory materials on the Internet. Thus a key aspect of this issue is the identification of criteria defining when stakeholder review of an information resource is necessary.

B. Responsiveness

Like any form of government action, the broad dissemination of environmental information can be expected to elicit a response from the public. Sometimes citizens will seek a clarification or more information about a topic. Sometimes they will request

[17]It is not clear that such an agenda of information initiatives exists for internal management purposes at the Agency. Some version of the agenda, however, would appear to be necessary for effective administration of the Clinger-Cohen Act, Pub.L. 104-106, Div. E, Feb. 10, 1996, 110 Stat. 679.

a correction or a change in the characterization of an issue. Whatever their concern, citizens have a right to expect that the government will be responsive to their concerns.

While EPA has made a strong commitment to public dissemination of information and is now routinely launching new information resources, there has been very little investment in the infrastructure needed to be responsive to public concerns. There is a common concern among those who want to use the Agency's resources and those who are characterized in those resources that EPA's inability to be responsive to public input is a major failing of the current system.

This issue is closely correlated with process weaknesses in the design of new information resources as well. EPA does not generally test new information resources with the public before they go on line to determine how the public uses and understands the resource. As a result, the launch of a new Web site at EPA is commonly an experiment in risk communication, often with little foreknowledge about what message the public is likely to draw from the site. At a minimum, such a mode of operation places more pressure on the Agency to respond to public confusion and misunderstanding that may arise after the information resource is in the public domain.

Similarly the assembly of information resources that characterize the environmental performance of particular facilities, companies or products can be expected to generate some sensitivity among the parties affected. If these groups have not been involved in the design of the information resource or in data quality checks before the resource goes on line, EPA can expect that it will face a particular need to be responsive to concerns that arise once the resource is in place. In fact, effective participation is needed both before and after an information resource goes on-line.

EPA has not been able in the last several years to develop a consistent set of policies and processes to assure responsiveness to public concerns about the existing array of information resources.[18] While EPA has suggested in public meetings that it is considering the development of an "ombudsman" function to help the public use its resources, no such institution now exists. The Agency has also been unable to develop a working system for correcting errors in its current databases. Similarly EPA does not have in place any consistent framework for considering requests to change characterizations of risk or performance that can arise in its presentation of public information. Two examples of these issues are described below.

One of the centerpiece elements of EPA's Web page is a database known as Envirofacts, a "data warehouse" that assembles in one place all of the separate data files EPA has

[18] EPA has recognized that it needs to do a better job in this area. For example, in 1998 the Agency committed to develop a Data Quality Plan that would, among other issues, establish a clear process for prompt correction of data errors. Memorandum from Deputy Administrator Fred Hansen to Assistant Administrators, "Assuring High Quality Environmental Data," (April 29, 1998).

about a particular facility. These files are drawn from the databases of EPA's regulatory programs in the air, water, waste, Superfund and toxics programs. Envirofacts does not attempt to integrate the data or engage in any quality control of the data. In most cases, the data is actually collected by the states because most of EPA's regulatory programs are now implemented by state agencies. Thus the quality of the Envirofacts data is highly dependent on the accuracy of the "hand-offs" of data that flow from the states to the EPA Regional offices to the national EPA databases and then to Envirofacts.

When Envirofacts was created and became known to the public, a variety of companies began to check the accuracy of the data in Envirofacts about them and discovered significant errors. These experiences caused several business groups to raise concerns about the quality of the Agency's data. The response to those inquiries from EPA officials was that the public disclosure of the data was a useful spur to improved data quality and that the companies should seek correction of the data with the states.[19]

Unfortunately, companies often found that the states were not set up to process correction requests or did not see their job as supporting EPA's Envirofacts through a time-consuming data correction process. It also became clear that the correction of errors in a state database would not automatically translate into a prompt correction of the data in Envirofacts. Several EPA Regional and national offices were not staffed to process corrections. No institutional structure was in place to accomplish the "self-correcting" vision articulated by senior EPA officials.[20]

A second example of the lack of responsiveness concerns the Agency's Integrated Risk Information System (IRIS). This database holds EPA's characterization of the hazards associated with over 500 commonly found chemicals. IRIS was created in the mid-1980's as an internal mechanism to allow EPA scientists to record consensus views about the hazards of chemicals. Over time, however, IRIS has become a major policy statement, serving as the scientific underpinnings of a variety of regulatory, cleanup and policy decisions. IRIS hazard values are also embedded in a variety of information tools that EPA has presented to the public for the characterization of public risk. Simply stated, IRIS has become one of the most pervasive and powerful databases at EPA. In February of 1998, the home of IRIS was officially moved to the Internet, marking its transition from a closely held internal communication tool to a major public statement of science policy.

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[19]Peter Fairley, "EPA's Internet Leaves Industry Feeling Exposed," Chemical Week (April 2, 1997), at 43.

[20]Many of these problems surfaced again in the SFIP, discussed earlier in this Paper. Several companies in the affected industries worked with state and EPA officials to determine why there were major discrepancies between their own files and the government's files about the same facilities. The effort uncovered data errors at all levels of the process and a variety of root causes, including the lack of staffing in agencies, human errors and incompatibility of computer systems. At present, the SFIP database frequently drops corrections and reverts to prior errors when the system is "refreshed" with new data.

Given the power of IRIS in environmental policy, EPA faces a major challenge to keep this database up to date with new data and new scientific insights into health and environmental effects. This obligation has proven to be a major failing of IRIS, in part because the Agency has not provided adequate financial support to match the database's increasingly important role.

IRIS has also suffered from the lack of an open process for consideration of changes to the database. There is broad perception in the business community that it is virtually impossible to change a chemical hazard benchmark in IRIS. This perception is fed by the very limited role that EPA has created for environmental stakeholders in the updating of IRIS characterizations.

For many years changes to IRIS characterizations were handled through internal EPA processes that were generally unknown to the public. In 1996 EPA began the IRIS Pilot Program as an effort to make the updating of IRIS more systematic. In 1998 EPA outlined its IRIS Program for the first time and provided an explanation of how the public would be involved.[21] Under EPA's approach, the Agency selects a set of substances for IRIS review and then issues a public call for technical information on those substances in a Federal Register notice. EPA then reviews the data, prepares a draft health assessment and submits that draft for internal review and some form of external peer review. Based on the internal comments and external peer review comments, EPA prepares a final assessment and then makes corresponding changes in the IRIS database found on the Internet.

This process does not embody the type of public engagement that is characteristic of many other EPA policymaking efforts. EPA chooses the chemicals to be updated, without seeking public comment before or after the list is announced. The IRIS program offers the public a limited window to send in technical information about a chemical without knowing what issues have prompted the Agency to call for a reconsideration of the IRIS characterization of the chemical. Once EPA's draft assessment is prepared, the Agency does not share the document with the public. Thus there is no opportunity for the public to understand and comment on the reasoning that EPA is relying on for the characterization.[22] Members of the public first receive notice of EPA's final conclusions when the revised characterization appears on the Internet.

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[21] 63 Fed. Reg. 75 (January 2, 1998). The next iteration of the IRIS Pilot Program followed a similar pattern. 63 Fed. Reg. 68285 (December 10, 1998).

[22] The external peer review step does not necessarily guarantee a full airing of the science policies that may arise on a given chemical. While peer review can be quite robust for some chemicals, this is a matter of some discretion for Agency risk assessors. Under EPA's peer review policy a minimal review by a handful of researchers on contract with the Agency can also qualify as peer review. In addition, peer review is not intended to serve as a substitute for public participation on matters of science policy, as evidenced by other policy processes used by EPA.

The examples of Envirofacts and IRIS illustrate major questions about the meaning of responsive government in the Information Age. The inability of the system to correct simple errors quickly is seen by many factions as a fundamental flaw in EPA's current information system. Until this situation is addressed, users of EPA's information cannot be sure that they are relying on accurate data and those who are characterized by EPA's information doubt the basic fairness of the system.

EPA's decision to limit public involvement in the reassessment of chemicals under IRIS is an example of a rising tension in environmental policy. In the name of public "right to know" EPA is placing more data, and sometimes rather complex characterizations of environmental performance, in the public domain. Yet the Agency regards these data, and the processes it uses to generate them, as matters for internal deliberation in which the public has a minimal role. As a result, many stakeholders who are concerned about those characterizations do not see an effective opportunity to petition for changes to those characterizations or to participate in deliberations on any reconsiderations that may arise.

C. Balancing of Interests

In a democratic society, disclosure of information about public risk and environmental performance is an important public value. However, the desire for disclosure of more information must be balanced against the need to protect other societal interests. When competing values of equal legitimacy come into conflict, there is a need for a clear set of procedures to resolve disputes and for principled decisionmaking by neutral decisionmakers.

Recent experience with information disclosure by the government has revealed at least three important interests that should be weighed against the otherwise strong interest in public access to government information. These interests concern personal privacy, sensitive business information and physical security.[23]

Protection of personal privacy has received perhaps the greatest attention in discussions about the implications of Internet access to information. The Privacy Act, 5 U.S.C. §552a, provides strong legal protections against disclosure of information about individuals that may be held in government files. The Clinton Administration has also articulated strong policies for the protection of personal privacy as part of the development of the Internet.[24] In Congress a plethora of bills have been introduced

[23]Not surprisingly all three of these interests have long been recognized under FOIA as areas in which the general presumption in favor of disclosure may need to be tempered. See 5 U.S.C. §552(b).

[24]See U.S. Information Infrastructure Task Force, *Privacy and the National Information Infrastructure: Principles for Providing and Using Personal Information* (June 6, 1995); Office of the Vice President, *Vice President Gore Announces New Comprehensive Privacy Action Plan for the 21st Century* (May 14, 1998) (calling for an "electronic bill of rights"); and the *Framework for Global Electronic Commerce* (July 1, 1997) (calling for personal privacy protections in international data transactions).

that address various aspects of personal privacy protection.[25] Personal privacy has not, however, been a major issue in the context of disclosure of environmental information.[26]

In contrast, protection of sensitive business information is a perennial concern in the collection and dissemination of environmental information. The legal framework for protection of "confidential business information" (CBI) is drawn from a variety of federal statutes.[27] The issue has been more or less salient depending on the nature of EPA's information collection strategies. Trade secret issues seldom arise when EPA is collecting ambient environmental data. When EPA seeks to collect and disseminate information about the operation of industrial processes, however, CBI issues have been quite controversial. For example, when EPA considered the addition of "materials accounting" data to the TRI, industry groups expressed major concerns about the potential loss of CBI.

Recently a third "balancing" interest has arisen in relation to environmental data. Some parts of the government and the private sector are concerned that public release of information, including environmental data, can assist terrorists seeking to identify targets for their operations. With the end of the Cold War, national security experts have become increasingly concerned about the damage to domestic and international security that can arise through attacks on the critical information infrastructure of the U.S. economy.[28]

Terrorist groups may take actions to disrupt the fundamental infrastructure of the United States, including the information infrastructure that is an underpinning of the U.S. economy. These groups may also take hostile actions toward facilities owned by

[25]Bureau of National Affairs, "Congress Will Look Hard at Privacy; Leaders Cool to FCC Regulation of Internet", Electronic Commerce & Law Report, vol. 4, no. 4 (January 27,1999), at 66.

[26]With greater public disclosure of health-related research information at agencies like the Center for Disease Control, issues related to the Privacy Act may become more significant. Privacy issues could also arise during implementation of provisions contained in the FY99 Omnibus Appropriations Act, Pub.L. 105-277, and conference report that require federal agencies to assure public availability under FOIA of all data produced under a federal grant.

[27]The Trade Secrets Act, 5 U.S.C. §1905, prohibits federal employees from disclosing trade secret information received from private entities. The Economic Espionage Act, 18 U.S.C. §1831, et seq., authorizes the federal government to seek criminal and civil sanctions against parties, including the agents of foreign governments, who obtain trade secret information through improper means. As mentioned earlier, FOIA has had a long standing exemption from the general government obligation to disclose information for confidential commercial information that is likely to cause substantial competitive harm. Finally, virtually all major statutes administered by EPA have special provisions addressing confidential business information that provide different levels of protection.

[28]White Paper: The Clinton Administration's Policy on Critical Infrastructure Protection: Presidential Decision Directive 63 (May 22, 1998), at 1.

American corporations as a surrogate for attacks on the U.S. government. There is an emerging concern within the private sector and among national security experts that disclosure of information about the operations of industrial facilities, while serving legitimate "right to know" objectives, also provides a blueprint for terrorists on how to inflict the maximum damage upon a community or a company.

The latter issue has been crystallized by public controversy over the placement of certain chemical accident information on the Internet. Under Section 112(r) of the Clean Air Act, EPA has issued regulations requiring approximately 60,000 facilities to prepare "risk management plans" that address how they would prevent and respond to chemical accidents involving a specified list of chemicals. One element of the plans is an "off-site consequence analysis" (OCA) that explains what the effects of a worst-case chemical accident might be in the community around a plant.

These regulations were issued in 1996.[29] In conjunction with the issuance of the rule, EPA announced plans to post the information contained in the risk management plans, including the OCA data, on the Internet once the plans were submitted in June of 1999. To facilitate the implementation of this and other objectives, EPA consulted with the Accident Prevention Subcommittee of its Clean Air Act Advisory Committee.

The potential use of OCA data by terrorists rapidly became the most controversial issue the Subcommittee had to face. In response to the lack of consensus on this issue, EPA commissioned a study to determine the value of the OCA data for parties considering a terrorist strike. The study, completed in December of 1997, concluded that

> the risk (although still very small) is slightly more than two times higher with unrestricted availability of the RMP with OCA data on the Internet... Taken together, the primary utility of the unrestricted RMP and OCA data to terrorists emerges from the capability to scan across the entire country for the best targets.[30]

Groups concerned about the terrorist issue saw the report as recognizing the legitimacy of the issue. Groups favoring Internet dissemination of the OCA data saw the report as supporting their view that the terrorist threat was minor in relation to the value of disclosure.

The controversy intensified after the report was issued. Several influential Congressmen asked EPA to find alternative methods to Internet disclosure for

[29] 61 Fed. Reg. 31668 (June 20, 1996)

[30] U.S. Environmental Protection Agency, *Security Study: An Analysis of the Terrorist Risk Associated with the Public Availability of Offsite Consequence Analysis Data under EPA's Risk Management Program Regulations,* EPA 550-R97-003, (December, 1997), at 10.

providing community access to the OCA data.[31] Members of the Accident Prevention Subcommittee, including representatives from the U.S. Federal Bureau of Investigation and the National Safety Council, continued to voice objections to Internet posting of the OCA. After further deliberations with these parties, EPA announced in November of 1998 that it would not post the OCA data on the Internet and would encourage state and local officials to refrain from Internet posting as well.[32]

EPA's decision did not completely resolve the matter, however, because the OCA analyses, once submitted to EPA, become subject to the disclosure provisions of FOIA. Several public interest groups opposed to EPA's decision indicated they were considering submission of a FOIA request to obtain the OCA analyses and then posting those analyses on the Internet. In response to this possibility, the Congress began to consider legislation preventing disclosure of the OCA analyses by EPA. The House Commerce Committee held hearings considering such legislation on February 10, 1999 and the Senate Environment and Public Works Committee held similar hearings on March 16, 1999. Final resolution of this issue will need to occur before the RMP's are submitted in June of 1999.

The need to balance the value of disclosure against other interests - personal privacy, sensitive business information protection and physical security - will continue to be a central issue as Information Age technology allows easy access to virtually any form of information. This topic is inherently controversial because it requires a consideration of what information should not be broadly available. The credibility of government action in such an area requires clear decisionmaking criteria implemented through a fair and open process. EPA's current system for addressing the balancing of these issues poses two basic problems.

First, for some issues processes are not in place to address conflicts when they arise. The debate over the disclosure of OCA analyses on the Internet was hampered by the absence of any clear process for resolving the questions involved. It is not surprising that the issue was addressed by an ad hoc process because EPA had not faced a similar question before. A lesson of the controversy, however, is that the Agency needs to have procedures addressing the interplay between its activities and national security issues. This will become more significant as EPA, along with other federal agencies, participates in efforts to protect the critical infrastructure, including the information systems, of the United States.[33]

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[31]Letter from Rep. Sherwood Boehlert, House Permanent Select Committee on Intelligence, to Carol Browner, EPA Administrator (February 17, 1998); letter from Senator Trent Lott, Majority Leader, to Carol Browner, EPA Administrator (February 17, 1998); letter from Tom Bliley, House Commerce Committee, to Carol Browner (October 26, 1998).

[32]Memorandum from Jim Makris, Director, Chemical Emergency Preparedness Office, EPA, to Clean Air Act FACA - Accident Prevention Subcommittee (November 5, 1998). EPA did, however, indicate that it would post on the Internet other aspects of the Risk Management Plans.

[33]In Presidential Decision Directive 63, the government has explicitly adopted a strategy to "take all necessary measures to swiftly eliminate any significant vulnerability to both

In developing a strategy for balancing disclosure and national security values, the government will need to articulate a clear process for how these issues can be raised and resolved. The government will need to define the relative roles of EPA and the other federal agencies that have access to and understanding of information about criminal activities, terrorism, foreign government threats and other risks to public security. Finally, the government will need to consider the role of private groups in disclosure of government-held information and how the strong policies of FOIA should be reconciled with emerging threats to national security.

Second, even where procedures are in place to balance interests, there is a growing interest in revisiting past approaches in light of modern trends in information access. The regulatory system at EPA for protecting confidential business information is the leading example of such a need. Government officials and other experts have estimated that approximately 90% of competitive intelligence is conducted with publicly available information.[34] Experts in competitive intelligence assemble disparate pieces of information about a facility, a product or other business-related activity into a "mosaic" picture that can reveal a strategic secret about a company.[35]

In developing its regulatory system for protecting sensitive business information, EPA has explicitly recognized that such practices are common in competitive intelligence and has expressed a willingness to protect information as confidential if a submitter can show that the information would reveal a trade secret through a "mosaic" approach.[36] Unfortunately, this willingness to consider the implications of "mosaic" analysis has had little reality for companies that submit information to EPA.

Through a series of separate statutory provisions and regulatory policies, EPA has established a patchwork of policies that prevent claims of confidentiality for large categories of information.[37] For example, emission data submitted under the Clean Air

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physical and cyber attacks on our critical infrastructures, including especially our cyber systems." This Directive is to be achieved through cooperative activities among federal agencies, state and local governments and the private sector.

[34]Chemical Manufacturers Association, *Protection of Sensitive Business Information at the Environmental Protection Agency* (CMA Report) (November 20, 1998), at 94. This phenomenon has been further reinforced by the passage of laws like the Economic Espionage Act, which have increased the legal liability for clandestine activities. Federal law does not prohibit competitive intelligence assessments drawn from publicly available sources.

[35]While competitive intelligence experts use many sources, data found in environmental permits have often been extremely valuable. CMA Report, at 97.

[36]EPA's acceptance of this line of argument draws strong support from FOIA case law and the policies of the U.S. Department of Justice. See CMA Report, at 43.

[37]CMA Report, at 100. The report documents the range of EPA policies that operate to withdraw "mosaic" argument protections.

Act and effluent data submitted under the Clean Water Act cannot be claimed as confidential. EPA has broadly defined these terms to include detailed information about the operations of plants. Likewise the applications for water permits cannot be claimed as confidential even though they may provide detailed process flow diagrams. The combined effect of these policies is that a large universe of EPA information is immune from protection under a "mosaic" rationale, no matter how legitimate the argument might be.

With new innovations in access to information and with the increased availability of information in "real time," it is likely that the business community's concern about the possible loss of trade secrets will continue to grow. Since EPA's policies in this area reflect a series of separate statutory and regulatory actions spread over the last 25 years, rather than an integrated policy on CBI protections, it is likely that EPA will be asked to develop a more current, systematic approach to these issues.

D. Recourse for Adverse Decisions

For most important policy decisions made by administrative agencies, there is a general presumption that judicial review provides an avenue for correcting an erroneous decision. The existence of such a review mechanism is valuable in itself, but also provides an important incentive for agencies to exercise their powers with care and attention to the interests of all parties.

The presumption of access to the courts to redress wrongs is much less clear when the government is issuing information for public consumption. In the absence of explicit statutory provisions for judicial review of a particular report or information product, the generally applicable law for review of agency action under the Administrative Procedure Act (APA) does not guarantee that review will occur. The absence of such a guarantee is particularly problematic in the case of information disclosures because it is rare that the information products currently offered to the public were developed to comply with an explicit statutory mandate. At an agency like EPA, for example, the plethora of new information products draw their presumable legal authority, if any, from broad, highly discretionary mandates.[38]

The threshold question for judicial review under the APA is whether there has been "final agency action." The dissemination of information would have to qualify as "final agency action" under the APA before judicial review would be allowed. The application of the "final agency action" concept to information disclosure has been evolving in recent court opinions but still remains uncertain.

After the passage of the APA, a few early cases considered whether a government report constituted a "final agency action." Those cases generally concluded that reports

[38]In fact, it is often difficult to determine what authority EPA relies upon when disseminating a new information product. EPA does not have a policy mandating disclosure of its authority to develop and disseminate a particular information product.

did not fall within the specific list contained in the statutory definition of "agency action" and thus were unreviewable under the APA.[39] This general view has remained in favor with many courts.

Of particular interest in the EPA context is the example of Industrial Safety Equipment Association Inc. v. Environmental Protection Agency, 837 F.2d 1115 (DC Cir. 1988), which considered the reviewability of a written guide on respirators published by EPA and the National Institute for Occupational Safety and Health. The guide indicated that only a few of the respirators available on the market were recommended for use. A group of respirator manufacturers brought a suit against the agencies, arguing that their respirators had essentially been "decertified". While the court questioned "Hearst Radio's absolute immunity rule for agency publications", the court ultimately applied the same analysis, concluding that the guide did not qualify as a rule or sanction that fit within the APA definition of "agency action." The court also emphasized that the guide did not impose any mandatory rules on the industry; the ultimate marketplace effect would depend on the choices of customers and workers.

Historically the response of the courts to this issue, however, has not always followed the Hearst Radio rationale. For example, some courts questioned the potential of the Hearst Radio rationale, along with other statutory immunities from tort liability, to immunize an agency from libel and slander.[40] In several cases, the courts have found the public reporting of health and safety data to constitute agency action. In Synthetic Organic Chemical Manufacturers Association v. Department of Health and Human Services, 720 F.Supp. 1244 (W.D. La. 1989), the court held that the annual report published by the National Toxicology Program identifying carcinogenic chemicals was an agency action under the APA. Similarly, in Flue-Cured Tobacco Cooperative Stabilization Corporation v. EPA, 857 F.Supp. 1137 (M.D.N.C. 1994), *appeal docketed*, Nos. 98-2407, 98-2473 (4th Cir. September 15, 1998), the court concluded that EPA's report on the second-hand effects of environmental tobacco smoke (ETS) was reviewable under the APA.[41]

In more recent history, the legal framework for determining when information products might constitute "final agency action" has been shaped by a series of Supreme Court cases. The cases have established a two-part test defining when APA review would be appropriate. The first criterion is whether the action is the consummation of the agency's full decisionmaking process. The second test is whether the action determines rights and obligations from which legal consequences will flow.

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[39]Hearst Radio v. Federal Communications Commission, 167 F.2d 225 (DC Cir. 1948).

[40]Impro Products, Inc. v. Block, 722 F.2d 845, 848 (DC Cir. 1983).

[41]Both the SOCMA and Flue-Cured Tobacco decisions emphasized the fact that the reports under review were being issued pursuant to specific statutory mandates as a key factor supporting APA review.

In Bennett v. Spear, 520 U.S. 154 (1997), the court found a Biological Opinion and Incidental Take Statement issued by the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act (ESA) to be a reviewable agency action under the APA. The court recognized that the FWS's action constituted the final step in its process and that both the Biological Opinion and the Incidental Take Statement framed the legal requirements for the agency taking the action.[42] Similarly, in Japan Whaling Association v. American Cetacean Society, 478 U.S. 221 (1986), the court allowed APA review of the Commerce Department's certification to the President that certain foreign nations were endangering fisheries. The court emphasized that the certification automatically triggered sanctions by the State Department independent of any further actions taken by the President.

In contrast, the Supreme Court did not find reviewable agency action in two other situations. In Franklin v. Massachusetts, 505 U.S. 788 (1992), the court concluded that the Commerce Department's submission of the decennial census to the President could not be reviewed under the APA. In this context, the court concluded that the Secretary of Commerce was a subordinate official providing recommendations to a superior official for a final decision and the President was free to make appropriate policy decisions about the census before it was submitted to Congress. Similarly, in Dalton v. Specter, 511 U.S. 462 (1994), the court rejected APA review of the Defense Department's recommendations to the President on military base closures. The court again emphasized the President's right to exercise independent judgment and reject the recommendations he received. In both of these cases the key issue in the court's view is that the agency action did not constitute a final determination of the legal rights of particular parties.

While it remains uncertain how the courts will ultimately apply these principles to the array of new information products that EPA is now offering the public, it is clear that the Agency plans to take a narrow view of the scope of judicial review in this context. This perspective is reflected in the Agency's position in the ETS report litigation, which is now on appeal to the U.S. Court of Appeals for the Fourth Circuit. As mentioned earlier, various tobacco groups challenged EPA's ETS report in a district court in North Carolina. In a set of decisions, the district court concluded that the report was reviewable, that the report was legally flawed and that the process for development of the report violated statutory provisions.

EPA has appealed that decision and filed its brief in the case on November 23, 1998. While acknowledging that the ETS report has had a persuasive effect on decisions by other public agencies to institute smoking bans, the government argued strongly against review of the report because it established no legal rights and made no explicit

[42]The court emphasized that the Incidental Take Statement operated as a kind of "permit" for the lead agency action and that the failure to follow the Biological Opinion could subject agencies to the penalties of the ESA.

recommendations.[43] EPA's perspective is well-captured in the following statement from the brief:

> Characterizing ETS as a "known human carcinogen" does not determine any legal rights or force any action. To the extent that other entities may rely on the conclusion that ETS is a known human carcinogen in taking their own regulatory actions, plaintiffs can attack the persuasiveness of that classification, and the reasoning underlying it, in other fora.[44]

The current state of the law, coupled with EPA's perspective, raise major issues for those who might be adversely affected by the public disclosure of information about them. The case law on APA review of information disclosures by the government is rather unsettled. The Supreme Court has begun to grapple with the APA review issue, but has yet to address directly the kind of publicly available databases, maps and software tools that EPA is routinely posting on the Internet.

Based on its position in the ETS case, it can be assumed that EPA would contest judicial review of the sites it now posts on the Internet. The apparent Agency view is that a characterization of environmental performance or status may only be challenged in a regulatory context where the outcome is the imposition of sanctions or the establishment of legal rights. Yet EPA does not generally intend that the characterizations on its Web pages will be translated into formal regulatory proceedings. Instead, EPA has emphasized that its public offerings will be used in "community-based decisions" and actions in the marketplace. These are not contexts where it can be assumed that any formal process or judicial review opportunities would be available.

This viewpoint is made more controversial when considered in the context of the legal immunities that federal agencies enjoy. If a private party showed a reckless disregard for the truth in publishing statements about another party, the private law of libel and slander could be invoked to address any wrong that occurred. These same remedies are not similarly applicable to federal agencies.

Under the Federal Tort Claims Act (FTCA), federal agencies are held immune from "any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit or interference with contract right[.]"[45] The courts have refused to hear a large number of tort claims, grounded on a variety of negligence and other tort theories, that involved the

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[43]The briefs of the tobacco companies, however, emphasized that when the report was issued the EPA Administrator made strong public statements that the report would induce businesses to impose smoking bans due to liability concerns.
[44]Brief for Appellant U.S. Environmental Protection Agency at 17, Flue-Cured Tobacco Cooperative Stabilization Corporation, et al. v. United States. Environmental Protection Agency, et al., Nos. 98-2407, 98-2473 (4th Cir., filed September 15, 1998).
[45]28 U.S.C. §2680(h).

communication of false information to the public about a particular person or business. The courts have reasoned that a case grounded in communication of false information leading to damage to reputation is, in essence, a defamation-based claim that cannot be heard under the FTCA.[46]

At least one court has suggested that the strong bar against monetary liability for libel and slander that the FTCA provides raises special concerns about the applicability of the APA to public statements by agencies. If the APA does not apply to dissemination of information and there is no monetary liability under the FTCA, then agencies have a complete immunity for the issuance of concededly false public statements.[47] This prospect of a government agency facing no accountability for the publication of false or misleading information is a source of major concern in the emerging world of information-centered public programs.

E. Data Security

In the normal course of business, agencies like EPA collect a wide range of data from companies and individuals. Some of this data is inherently sensitive business information. In addition, the information carries significance because it often reflects the submitter's best estimate of environmental conditions or performance. These data relate directly to the submitter's compliance with the law and its environmental reputation.

It is understandable, then, that submitters expect EPA to handle the information in secure data systems that have been protected from intrusion by outside parties. It could be quite damaging to the submitters if "hackers" are able to enter data systems to view, alter or destroy the basic information that EPA holds about individuals and companies. Thus, EPA has a core public trust responsibility to assure that the security of its information systems are maintained.

These obligations are codified in a set of statutes and policies that apply across the government. In particular, the Paperwork Reduction Act,[48] the Clinger-Cohen Act,[49] and the Computer Security Act[50] collectively require that federal agencies develop computer security plans and provide effective training for implementing the plans. The Office of Management and Budget (OMB) has issued two directives, OMB Circular A-123, "Management Accountability and Control", and OMB Circular A-130, "Management of Federal Information Resources", that require agencies to provide for security of their

[46] Art Metal-USA v. United States, 753 F.2d 1151 (DC Cir. 1985).

[47] Impro, *supra n.38,* at 849.

[48] See 44 U.S.C. §3506.

[49] See 40 U.S.C. §1441. This law was formerly known as the Information Technology Management Reform Act.

[50] See 40 U.S.C. §1441note. The Computer Security Act was amended by the Clinger-Cohen Act.

information systems. In addition, the agencies have received several guidance documents to assist them in the development of computer security programs.[51]

In response to these directives, EPA issued a formal security policy in 1996 as part of its Information Resources Management Policy Manual.[52] The EPA Manual offers a strong policy rationale for a computer security system:

> The EPA relies on its information collection authority under various enabling statutes to effectively fulfill its environmental missions. The willingness of the regulated community and State and local agencies to supply requested information in a cooperative and timely fashion depends on their confidence that the information will be adequately protected...Moreover, the Agency can be subject to acute embarrassment and litigation if certain business or personal information is inadvertently or maliciously disclosed. As a result, it is essential that an overall program be established to preserve and adequately protect the Agency's information resources.[53]

While the above statement indicates that EPA recognizes the importance of the computer security issue, the Agency has been unable to implement its objectives effectively in this area. In September of 1997 the EPA Inspector General issued a report on the adequacy of EPA's measures to prevent unauthorized access to the Agency's data systems. The report concluded that EPA did not have in place adequate security measures (e.g., firewall technologies) to protect its systems and that there had been actual breaches of system security on several occasions.[54]

In response to this report, EPA has identified its information system security planning as a "material weakness" under the Federal Managers Financial Integrity Act (FMFIA). It developed a plan of corrective measures to address the problem that extended into 1999. The latest report to the President on the status of FMFIA obligations shows that the Agency's schedule of actions has been delayed but the planned corrective measures should be completed in 1999.[55]

The corrective measures contained in the EPA FMFIA plan focus on the establishment of appropriate policies and plans to address computer security. The plan does not, however, establish firm commitments for implementation of the plans or for testing of

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[51]OMB Bulletin No. 90-08, *Guidance for Preparation of Security Plans for Federal Computer Systems that Contain Sensitive Information* (July 9, 1990); National Institute of Standards and Technology, *Keeping Your Site Comfortably Secure: an Introduction to Internet Firewalls*, Special Publication No. 800-10 (February 3, 1995).
[52]EPA Directive 2100 (July 19,1996).
[53]Id., at Chapter 8, Section 3.
[54]EPA Office of Inspector General, *EPA's Internet Connectivity Controls*, Report No. 7100284 (September 5, 1997).
[55]U.S. EPA, "Fiscal Year 1998 Integrity Act Report to the President and Congress," (December 29, 1998).

the effectiveness of the controls. Thus there is likely to be ongoing concern about the ability of the Agency to develop computer security measures that are robust and that will keep up with technological developments.

III. Potential Actions to Address the Issues

The issues identified in this White Paper will need attention in the immediate future. There are many different strategies that could be pursued to enhance the accountability of government agencies for information policy. The purpose of this section of the Paper is to enumerate some of the major steps that could be taken to improve the current system. CEEI offers these approaches as options to consider and thereby stimulate serious discussion of what needs to be done.[56] *At this time, CEEI is not explicitly endorsing any one of these options as the preferred approach*.

The following discussion presents a menu of approaches that are not mutually exclusive and do not need to be adopted as a whole. CEEI also does not intend to offer this list necessarily as a legislative agenda. While some of the options would require statutory change, most of the approaches could be accomplished by administrative action.

With that understanding, CEEI identifies the following options for consideration:

A. Notice of Upcoming Information Products

EPA could establish an "Information Products Agenda" that would be published on a quarterly or semi-annual basis. This agenda would be directly analogous to the current Regulatory Agenda that OMB publishes twice a year. This Agenda would be a compendium of the information projects that the EPA Headquarters and Regional offices have under development. For each project there would be a brief summary of the project, a schedule for its issuance and an identification of the key contact points for the public.

Such a notification process would be of great value to EPA stakeholders who might want to learn more about particular projects and to participate in a product's development. By analogy, the Regulatory Agenda has been of great value to stakeholder groups of all kinds who want to determine how best to engage EPA on a wide range of issues.

B. Ombudsman/Clearinghouse

EPA could establish an ombudsman function in the Agency that would serve as a clearinghouse for members of the public interested in information issues. Citizens would be able to contact a single group to answer a wide range of questions. This

[56]This list is not meant to be exhaustive. Other approaches are certainly possible.

group could answer questions about the status of particular projects and guide people toward the most promising information sources to answer their questions.

While no group could be expected to provide instant answers to every possible public question, a staff dedicated to helping the public understand the Agency's large holdings of information could have the insights of a sophisticated user of EPA information and provide valuable advice for those seeking better information. A staff function along these lines would provide an important augmentation to the current set of search engines in the EPA Web site, which tend to generate overwhelming lists of documents in typical searches.

C. Notification on Change of Use of Data

EPA collects data for particular purposes. It is common, however, for EPA to decide some time after the initial collection of data that there can be other "secondary uses" of the data. A typical scenario is the collection of data to measure compliance with a particular technology-based regulatory program, followed by a later decision to use the data to describe general environmental conditions.

EPA could establish a policy that it will notify information submitters before it decides to use data they have submitted for a purpose different than its original intent.[57] Affected parties could then provide any appropriate supplementary information or caveats that are believed appropriate for the new use of the data.

D. Stakeholder Involvement in New Information Products

EPA could establish a general policy for stakeholder involvement in new information products requiring timely public engagement on the policy aspects of such products (e.g., methodology, data quality, content of public message.) This policy would also clarify situations where public engagement is not necessary (e.g., Internet posting of current EPA policies.)

The policy would articulate the criteria determining the extent of stakeholder involvement. These criteria would address a variety of considerations, including

(1) the impact of the information disclosed on particular companies, facilities or products;
(2) the technical complexity of the methodologies used;
(3) the precedential nature of any science policies used in the product; and
(4) the application of data in a context different than its original purpose.

E. Error Correction Process

[57]This approach is analogous to the provisions of the Privacy Act that require written consent from an individual before data about that individual will be provided to other parties, except for certain specified situations. See 5 U.S.C. §552a(b).

Government could develop specific procedures for the correction of errors in current databases. This would require a close partnership between EPA and the states because much of the information appearing in EPA databases is collected and maintained by state agencies.

To be effective a data correction system should embody the following characteristics. First, the system should be guided by clear performance standards that reflect customer expectations. For example, if an error is not corrected in all government systems within a fixed period of time, the relevant data files should be "closed for repairs." Second, the correction process should be transparent to the public and all accountable officials should be clearly identified. Third, the process should be expedited when a data entry error needs correction. If the state or EPA want to address broader questions about a submitter's compliance with reporting requirements or the quality of a particular estimate, such questions should be addressed through processes other than the error correction process.

F. Modification of Public Messages

EPA could establish a more systematic process for stakeholders to petition the Agency to change a characterization of a particular environmental risk, condition or performance. This approach differs from the error correction process described above in that it is not necessarily limited to the simple accuracy of data. EPA could also make sure that stakeholders can request and obtain a timely response on proposals to change the messages that EPA is delivering to the public. This process could address complex scientific questions or simple misunderstandings in the language used in particular Web sites or documents.

Several characteristics are needed to make such a process effective.[58] First, citizens should have the ability to petition for a change based on new information or analysis. Second, EPA should commit to a *timely* response to the request. Third, if EPA decides to review a request, the petitioner and other interested parties should have an opportunity to participate in the process, at least in providing comment on a proposed decision by the Agency.

G. Balancing Process: Security Issues

EPA could establish a general process for how it will address issues concerning the balance between information disclosure and public security. This process would clarify how such concerns could be raised, identify the decisionmakers and define the criteria for decision. Perhaps most significantly, the process would address how EPA will

[58]While the administrative costs of a petition process are a legitimate consideration, the Agency should not allow its concern about the possible workload to curtail the process unnecessarily. EPA sometimes overestimates how severe the demands may be on its time and resources. It is preferable to design a fair and open process initially and only modify it if the demands exceed the Agency's capacity.

interact with other agencies on these matters. In particular, the roles of law enforcement and national security agencies could be clarified in this process.

H. Balancing: Confidential Business Information

EPA could address CBI protection policy on two levels. First, it could revisit the CBI provisions of its current major statutes and determine whether the mandatory disclosure provisions of those laws are necessary and desirable in the modern world. The Agency could assess whether its objectives, including the pursuit of public disclosure objectives, could be adequately addressed by the carefully crafted balancing provisions set forth in FOIA. Second, EPA could centralize its current administrative system for addressing CBI claims to provide more consistent policy leadership on these issues, including its consideration of claims based on the "mosaic" argument. As part of this centralization effort, EPA could conduct a comprehensive reassessment of its FOIA and CBI rulings.

I. Balancing: EPA's Role

EPA has adopted a "right to know" philosophy as a core component of its mission. This presents difficulty for EPA as it seeks to maintain neutrality in balancing disclosure and other public objectives. The government could decide that determinations about the proper balance between disclosure and other objectives are best made by a decisionmaker outside of EPA. Thus the administrative system for hearing and adjudicating claims could be conducted by an agency other than EPA. In this model, EPA staff would become the advocate within the government for full disclosure of environmental data.

J. Revision of the APA

As the centerpiece statute framing the conduct of agency administrative processes, the APA could be amended to provide greater government accountability on information disclosure matters. The scope of the "APA Reforms for the Information Age" could address several topics. First, the concept of "final agency action" subject to judicial review could be clarified to assure that information products with a strong policy content and private sector impact would be reviewed in court. Second, the standard for review of agency action, the "arbitrary and capricious" test, could be modified explicitly to incorporate private law principles related to defamation and other tort actions.

Third, the statute could assure notice and an opportunity to participate in the development of new information products. The degree of participation would be linked to the potential impact of the resource, its complexity, the use of data for "secondary" purposes and the overall policy content of the resource. Fourth, the law could require an understandable description of the strengths and limits of any database offered for public use. Fifth, the statute could establish a government duty to provide expeditious correction of any error identified in a government database. Sixth, the law

could establish an expeditious process for the consideration of petitions seeking a change in a public characterization of information.

K. Eliminate Governmental Immunity

The FTCA prevents the filing of libel or slander actions against the government. This immunity has been interpreted broadly by the courts. In the Information Age, where disclosure of information is a particularly attractive tool for the government to use, this immunity may need to be revisited. The FTCA could be modified to remove the broad immunity for defamation liability. This action could take the form of articulating a form of agency behavior, such as "intentional disclosure of false information" or "reckless disregard for the truth" that would be subject to private rights of action under the FTCA.

L. Enhanced Data Security

Several statutes and EPA policies affirm the need for strong computer security programs. To assure that these commitments are met, several steps could be taken. First, EPA could administer its computer security program more centrally, in part to assure that linkages between data systems do not provide opportunities to invade otherwise secure systems. Second, EPA could establish minimum security standards for new systems developed for public use that would have to be met before the system could be made publicly available. Third, EPA could conduct an ongoing program for testing the security of its system, utilizing the expertise of top experts in the private sector.

IV. Conclusions

In the modern day the greatest challenges of the Information Age for government institutions like EPA are not matters of technology. The technical innovations of the Information Age represent an irresistible force that cannot be denied. Moreover, these innovations should not be frustrated because they hold great promise for the enhancement of public welfare.

The central question, however, is whether the government is developing the types of institutions and processes to assure that important public values are not damaged in the course of the technological and societal changes under way. A core element of the government's responsibility is to assure that basic principles of fairness and public accountability of governmental institutions are preserved in the Information Age. Such a commitment is not an obstacle to realizing the full potential of information technology. Instead, the establishment of Information Age ground rules minimizes conflict over the adequacy of participation in new developments. Such a renewal of American democratic principles, if pursued wisely, can provide strong support for the spirit of innovation in our emerging information-centered society.

For EPA, there is a need to examine more holistically how it is approaching the issues outlined in this White Paper. While some of the issues presented are relatively new, the Agency has addressed similar concerns in the past on transparency and public participation in its policy processes. EPA must recognize that its information management activities are increasingly matters of public policy that have ripple effects throughout the country and the world. With this enhanced power comes an absolute duty to enhance EPA's accountability to the public.

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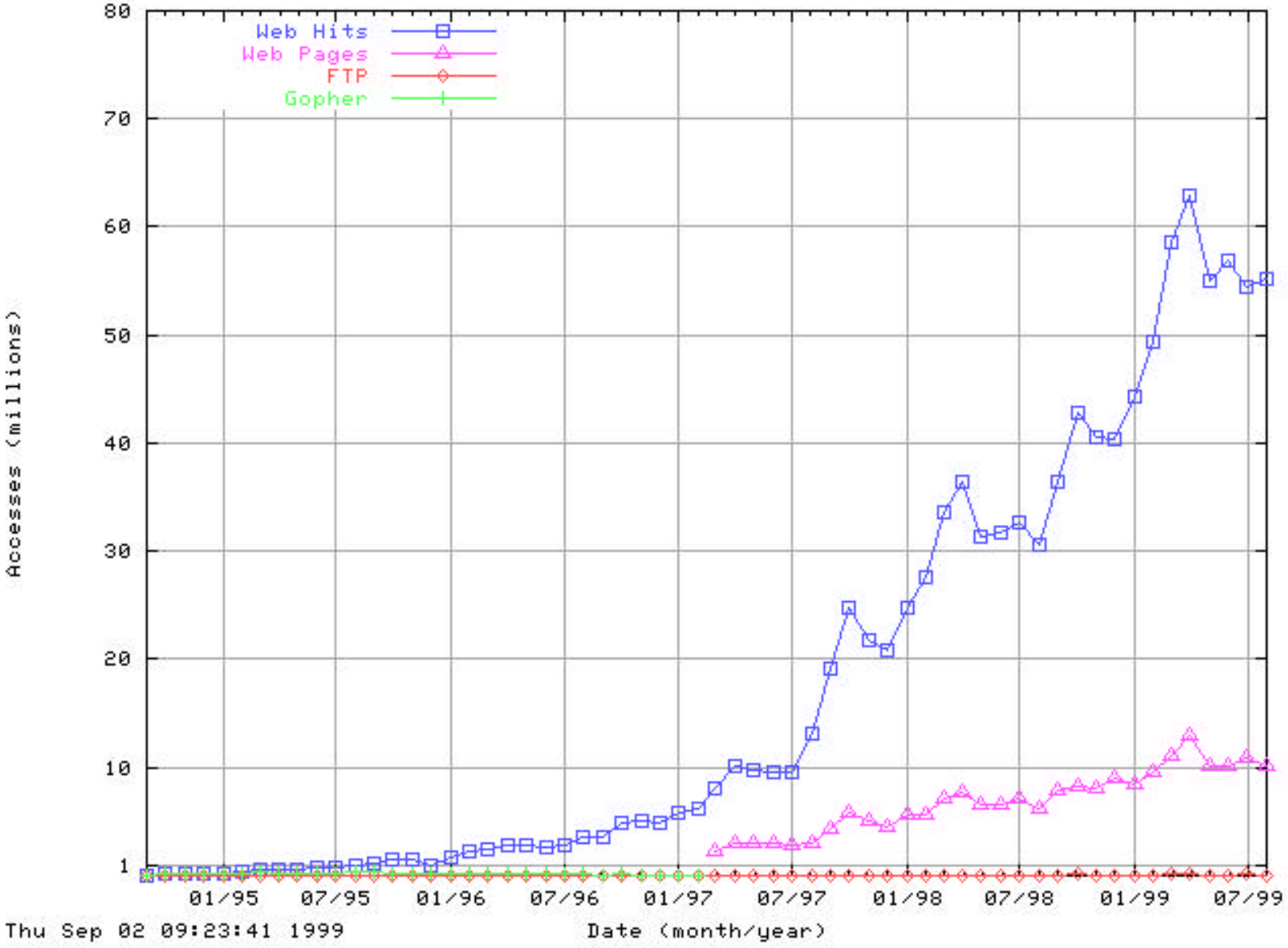
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Web Server Statistics for EPA

Glossary of Terms

Program started at Wed-01-Sep-1999 05:32 local time.
Analysed requests from Sat-31-Jul-1999 23:57 to Tue-31-Aug-1999 17:15 (30.7 days).

Total successful requests: 55 278 719
Average successful requests per day: 1 799 348
Total successful requests for pages: 10 082 844
Total failed requests: 841 077
Total redirected requests: 498 791
Number of distinct hosts served: 478 964
Corrupt logfile lines: 1 037
Total data transferred: 831 768 Mbytes
Average data transferred per day: 27 074 Mbytes

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Daily Summary

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Each unit (▬) represents 60 000 requests for pages, or part thereof.

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 1/Aug/99: 119697:  534734: ▬▬▬▬▬▬

 2/Aug/99: 396491: 2345699: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
 3/Aug/99: 469417: 2525620: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
 4/Aug/99: 432083: 2404946: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
 5/Aug/99: 376837: 2278568: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬
 6/Aug/99: 356222: 1987526: ▬▬▬▬▬▬▬▬▬▬▬▬▬
 7/Aug/99: 153037:  513872: ▬▬▬▬▬▬
 8/Aug/99: 135385:  574995: ▬▬▬▬▬▬

 9/Aug/99: 373682: 2277067: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬
10/Aug/99: 423170: 2425284: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
11/Aug/99: 372229: 2244016: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬
12/Aug/99: 393979: 2285093: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬
13/Aug/99: 390899: 1986506: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬
14/Aug/99: 124256:  508578: ▬▬▬▬▬▬
15/Aug/99: 118607:  544661: ▬▬▬▬▬▬

16/Aug/99: 395254: 2370342: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
17/Aug/99: 434730: 2474210: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
18/Aug/99: 391263: 2342411: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
19/Aug/99: 409466: 2339088: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
20/Aug/99: 355715: 1996515: ▬▬▬▬▬▬▬▬▬▬▬▬▬
21/Aug/99: 153347:  531020: ▬▬▬▬▬▬
22/Aug/99: 138717:  571161: ▬▬▬▬▬▬

23/Aug/99: 405647: 2317252: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
24/Aug/99: 462041: 2468476: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
25/Aug/99: 422603: 2353084: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
26/Aug/99: 460703: 2420535: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
27/Aug/99: 416450: 2070589: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬
28/Aug/99: 144772:  547541: ▬▬▬▬▬▬
29/Aug/99: 120238:  580398: ▬▬▬▬▬▬

30/Aug/99: 394590: 2413891: ▬▬▬▬▬▬▬▬▬▬▬▬▬▬▬
```

31/Aug/99: 341090: 2044145:

Hourly Summary

(**Go To**: Top: Daily summary: Daily report: Domain report: Browser summary: Browser report)

Each unit (▬) represents 20 000 requests for pages, or part thereof.

```
hr:  pages:   #reqs:
--  ------  -------
 0: 187909:  769309:
 1: 181524:  669395:
 2: 161883:  613985:
 3: 174728:  603080:
 4: 166536:  579684:
 5: 171739:  596820:
 6: 168153:  669545:
 7: 244133: 1302088:
 8: 444543: 2609991:
 9: 619974: 3789795:
10: 779166: 4568230:
11: 785902: 4765972:
12: 722869: 4241056:
13: 748611: 4474330:
14: 780296: 4842455:
15: 768890: 4790153:
16: 711461: 4380839:
17: 550097: 3016222:
18: 423708: 2021155:
19: 321635: 1519772:
20: 267112: 1238090:
21: 260232: 1184013:
22: 243064: 1135165:
23: 198679:  897575:
```

Domain Report

(**Go To**: Top: Daily summary: Daily report: Hourly summary: Browser summary: Browser report)

Printing all domains with at least 1 request for a page, sorted by number of page requests.
Printing all requested subdomains with at least 300 requests for pages.

```
   pages :  %pages :     #reqs :  %bytes : domain
---------  --------  ----------  --------  ------
 3145898 :  31.20% :  13895223 :  27.25% : .com (Commercial, mainly USA)
( 337537): ( 3.35%): ( 1593460): ( 3.14%):   aol.com (America Online)
(  29227): ( 0.29%): (  176459): ( 0.26%):   netcom.com (Netcom)
(    334): (      ): (    1928): (      ):   prodigy.com (Prodigy)
 2324360 :  23.05% :  12750601 :  24.63% : [unresolved numerical addresses]
 1458134 :  14.46% :  10257839 :  12.29% : .gov (USA Government)
(1201345): (11.91%): ( 8840771): ( 9.68%):   epa.gov (EPA)
 1321690 :  13.11% :   8104012 :  15.02% : .net (Network)
  472021 :   4.68% :   2613050 :   4.88% : .edu (USA Educational)
  364131 :   3.61% :   2099547 :   3.42% : .us (United States)
  127571 :   1.27% :    856401 :   1.38% : .org (Non-Profit Making Organisations)
  109189 :   1.08% :    716212 :   1.26% : .mil (USA Military)
   80180 :   0.80% :    394585 :   0.89% : .jp (Japan)
   76484 :   0.76% :    449460 :   1.00% : .ca (Canada)
   75823 :   0.75% :    172632 :   0.42% : .de (Germany)
   65087 :   0.65% :    426218 :   0.82% : .au (Australia)
   33895 :   0.34% :    200482 :   0.40% : .uk (United Kingdom)
   33004 :   0.33% :    158776 :   0.41% : .ar (Argentina)
   26336 :   0.26% :    106863 :   0.43% : .tw (Taiwan)
   23968 :   0.24% :    137562 :   0.36% : .br (Brazil)
   22075 :   0.22% :    108312 :   0.25% : .mx (Mexico)
   21076 :   0.21% :    144715 :   0.21% : .sg (Singapore)
   19653 :   0.19% :    149900 :   0.21% : .my (Malaysia)
   19445 :   0.19% :    109526 :   0.33% : .it (Italy)
   17194 :   0.17% :     71875 :   0.32% : .kr (South Korea)
   16796 :   0.17% :     61336 :   0.14% : .za (South Africa)
   15861 :   0.16% :     83896 :   0.23% : .fr (France)
   15292 :   0.15% :    101407 :   0.20% : .nz (New Zealand)
   13396 :   0.13% :     78733 :   0.21% : .es (Spain)
   10926 :   0.11% :     65007 :   0.23% : .th (Thailand)
   10731 :   0.11% :     68697 :   0.18% : .nl (Netherlands)
   10249 :   0.10% :     55162 :   0.14% : .be (Belgium)
   10201 :   0.10% :     40628 :   0.14% : .pt (Portugal)
    9531 :   0.09% :     57430 :   0.12% : .se (Sweden)
    9089 :   0.09% :     49602 :   0.14% : .ch (Switzerland)
    7969 :   0.08% :     38350 :   0.14% : .gr (Greece)
    7735 :   0.08% :     43309 :   0.09% : .in (India)
    6752 :   0.07% :     41576 :   0.09% : .co (Colombia)
    6286 :   0.06% :     35646 :   0.10% : .dk (Denmark)
    5808 :   0.06% :     34941 :   0.07% : .fi (Finland)
    5724 :   0.06% :     17498 :   0.05% : .ru (Russian Federation)
    5662 :   0.06% :     39711 :   0.09% : .il (Israel)
    4901 :   0.05% :     28137 :   0.08% : .cl (Chile)
    4689 :   0.05% :     26859 :   0.03% : .arpa (Old style Arpanet)
    4457 :   0.04% :     28920 :   0.07% : .hk (Hong Kong)
```

4115	0.04%	24683	0.06%	.no	(Norway)
3244	0.03%	14966	0.06%	.hu	(Hungary)
3085	0.03%	10714	0.02%	.ro	(Romania)
3082	0.03%	15944	0.08%	.pl	(Poland)
2885	0.03%	21403	0.05%	.ie	(Ireland)
2850	0.03%	16856	0.03%	.at	(Austria)
2654	0.03%	14812	0.05%	.tr	(Turkey)
2591	0.03%	15763	0.04%	.id	(Indonesia)
2501	0.02%	10508	0.32%	.cn	(China)
2407	0.02%	11943	0.03%	.uy	(Uruguay)
2218	0.02%	13335	0.05%	.cz	(Czech Republic)
2003	0.02%	8870	0.06%	.si	(Slovenia)
1934	0.02%	14665	0.02%	.ae	(United Arab Emirates)
1756	0.02%	11449	0.03%	.ph	(Philippines)
1658	0.02%	8952	0.02%	.lb	(Lebanon)
1441	0.01%	6638	0.03%	.yu	(Yugoslavia)
1396	0.01%	8885	0.03%	.pe	(Peru)
1322	0.01%	4647	0.02%	.mo	(Macau)
1279	0.01%	8506	0.01%	.sa	(Saudi Arabia)
1074	0.01%	6334	0.01%	.cr	(Costa Rica)
1049	0.01%	5337	0.01%	[unknown]	
1047	0.01%	8001	0.01%	.tt	(Trinidad and Tobago)
977	0.01%	5229	0.01%	.ve	(Venezuela)
835	0.01%	5148	0.01%	.hr	(Croatia)
798	0.01%	4255	0.02%	.sk	(Slovak Republic)
775	0.01%	3525	0.01%	.mu	(Mauritius)
639	0.01%	984	0.02%	.ir	(Iran)
621	0.01%	3563	0.01%	.ee	(Estonia)
615	0.01%	2138		.bm	(Bermuda)
592	0.01%	4541	0.01%	.do	(Dominican Republic)
586	0.01%	2765	0.01%	.ec	(Ecuador)
565	0.01%	4151	0.01%	.pk	(Pakistan)
541	0.01%	2072		.cy	(Cyprus)
538	0.01%	3185	0.01%	.jo	(Jordan)
458		2250		.mk	(Macedonia)
446		2107	0.01%	.ua	(Ukraine)
430		3439	0.01%	.lt	(Lithuania)
424		3160		.is	(Iceland)
399		2175		.bg	(Bulgaria)
378		3212		.pr	(Puerto Rico)
377		1898		.int	(International)
353		2727	0.01%	.bn	(Brunei Darussalam)
346		2384		.vn	(Vietnam)
314		1289	0.06%	.py	(Paraguay)
312		2243		.lk	(Sri Lanka)
257		1675		.ni	(Nicaragua)
253		1557		.lv	(Latvia)
244		1694		.ke	(Kenya)
198		1180		.vi	(Virgin Islands (USA))
151		1255		.bo	(Bolivia)
150		1004		.lu	(Luxembourg)
150		1090		.qa	(Qatar)
138		1423		.bs	(Bahamas)
115		580	0.01%	.na	(Namibia)
114		1144		.nu	(Niue)
107		666		.jm	(Jamaica)
105		848		.eg	(Egypt)
103		735		.kh	(Cambodia)
92		570		.md	(Moldavia)
84		655		.su	(Former USSR)
76		382		.bw	(Botswana)
72		454		.gb	(Great Britain)
67		234		.fj	(Fiji)
64		763		.sv	(El Salvador)
62		391		.zw	(Zimbabwe)
58		110		.et	(Ethiopia)
58		160		.ye	(Yemen)
56		382		.dm	(Dominica)
55		486		.om	(Oman)
50		530		.pg	(Papua New Guinea)
47		300		.tc	(Turks and Caicos Islands)
44		295		.pa	(Panama)
39		232		.aw	(Aruba)
37		218		.mt	(Malta)
37		338		.np	(Nepal)
35		381		.tz	(Tanzania)
34		294		.ng	(Nigeria)
33		276		.bb	(Barbados)
33		346		.hn	(Honduras)
31		338		.by	(Belarus)
31		243		.mv	(Maldives)
31		194		.ug	(Uganda)
29		207		.gt	(Guatemala)
22		280		.kw	(Kuwait)
22		125		.zm	(Zambia)
21		85		.gu	(Guam (USA))
20		159		.cu	(Cuba)
19		218		.fm	(Micronesia)
18		134		.gi	(Gibraltar)
18		20		.uz	(Uzbekistan)
15		195		.ge	(Georgia)
15		305		.gy	(Guyana)
15		91		.ma	(Morocco)
14		105		.mz	(Mozambique)
13		108		.az	(Azerbaidjan)
13		181		.tg	(Togo)

```
      12 :         :       140 :         : .ag (Antigua and Barbuda)
      10 :         :        52 :         : .kz (Kazakhstan)
       9 :         :        75 :         : .ad (Andorra)
       9 :         :       139 :         : .am (Armenia)
       9 :         :       102 :         : .pf (Polynesia (French))
       8 :         :        50 :         : .ba (Bosnia-Herzegovina)
       6 :         :        30 :         : .gl (Greenland)
       5 :         :        44 :         : .fo (Faroe Islands)
       5 :         :        40 :         : .to (Tonga)
       4 :         :         5 :         : .bf (Burkina Faso)
       4 :         :         7 :         : .sm (San Marino)
       3 :         :        30 :         : .ls (Lesotho)
       3 :         :        11 :         : .mn (Mongolia)
       2 :         :         2 :         : .cc (Cocos (Keeling) Islands)
       2 :         :         2 :         : .kg (Kyrgyzstan)
       2 :         :         8 :         : .mc (Monaco)
       2 :         :         4 :         : .mg (Madagascar)
       1 :         :         9 :         : .bt (Bhutan)
       1 :         :         5 :         : .cx (Christmas Island)
       1 :         :        17 :         : .gf (French Guyana)
       1 :         :        18 :         : .io (British Indian Ocean Territory)
       1 :         :         6 :         : .sn (Senegal)
```

Browser Summary

(**Go To**: Top: Daily summary: Daily report: Hourly summary: Domain report: Browser report)

Printing the first 20 browsers, sorted by number of page requests.

```
  pages: %pages:    #reqs: browser
-------  ------  --------  -------
4696818: 45.88%: 26998199: Microsoft Explorer
3899453: 38.09%: 27056864: Netscape
 216039:  2.11%:   238733: Slurp
 166963:  1.63%:   170996: Googlebot
 135336:  1.32%:   142422: Scooter
 125559:  1.23%:   126932: contype
  71084:  0.69%:    72777: Wget
  63540:  0.62%:    66167: ArchitextSpider
  58364:  0.57%:    63525: htdig
  52083:  0.51%:    67499: Astra
  38883:  0.38%:    42988: ia_archiver
  38642:  0.38%:    63621: Teleport Pro
  35937:  0.35%:    44337: Slurp.so
  31576:  0.31%:    35088: vscooter
  31427:  0.31%:   318286: MSProxy
  31111:  0.30%:    40521: Xenu's Link Sleuth 1.0p
  25771:  0.25%:    28183: Harvest
  24746:  0.24%:    27286: ESISmartSpider
  23903:  0.23%:    24040: Enfish Tracker
  23391:  0.23%:    23415: LWP::Simple
```

Browser Report

(**Go To**: Top: Daily summary: Daily report: Hourly summary: Domain report: Browser summary)

Printing the first 100 browsers, sorted by number of page requests.

```
 pages: %pages:   #reqs: browser
------  ------  -------  -------
859905:  8.40%: 5898348: Mozilla/4.0 (compatible; MSIE 4.01; Windows 95)
549755:  5.37%: 3850256: Mozilla/4.0 (compatible; MSIE 4.01; Windows 98)
475668:  4.65%: 3245263: Mozilla/4.0 (compatible; MSIE 4.01; Windows NT)
291589:  2.85%: 1755775: Mozilla/4.0 (compatible; MSIE 5.0; Windows 98; DigExt)
278563:  2.72%:  942182: Mozilla/4.04 [en] (Win95; I)
271581:  2.65%: 2405243: Mozilla/4.05 [en] (Win95; U)
243736:  2.38%:  253024: Mozilla/4.0 (compatible; MSIE 4.0; Windows NT; Site Server 3.0 Robot) Kinderhook Systems, Inc.
240282:  2.35%: 2286176: Mozilla/4.5 [en] (Win95; U)
222547:  2.17%: 1469185: Mozilla/4.0 (compatible; MSIE 5.0; Windows 95; DigExt)
174086:  1.70%: 1247164: Mozilla/4.5 [en] (Win95; I)
166963:  1.63%:  170996: Googlebot/1.0 (googlebot@googlebot.com http://googlebot.com/)
156090:  1.52%:  276431: Mozilla/4.x (Win95)
155403:  1.52%:  719269: Mozilla/2.0 (compatible; MSIE 3.01; Windows 95)
154418:  1.51%:  173067: Slurp/2.0-Owl_Weekly_Temp (spider@aeneid.com; http://www.inktomi.com/slurp.html)
129860:  1.27%: 1111006: Mozilla/4.04 [en] (Win95; U)
125550:  1.23%:  126923: contype
120083:  1.17%:  123660: Mozilla/4.0 (compatible; MSIE 4.0; Windows NT; Site Server 3.0 Robot) Dow Jones & Company, Inc.
108385:  1.06%:  725313: Mozilla/4.05 [en] (Win95; I)
106827:  1.04%:  727461: Mozilla/4.0 (compatible; MSIE 5.0; Windows NT; DigExt)
 96563:  0.94%:  592064: Mozilla/4.0 (compatible; MSIE 4.0; Windows 95)
 86855:  0.85%:  872134: Mozilla/4.03 [en] (Win95; U)
 82457:  0.81%:  374497: Mozilla/2.0 (compatible; MSIE 3.02; Windows 95)
 74016:  0.72%:  377609: Mozilla/4.0 (compatible; MSIE 4.01; AOL 4.0; Windows 98)
 70218:  0.69%:   72181: Scooter/2.0 G.R.A.B. X2.0
 70139:  0.69%:  291231: Mozilla/2.0 (compatible; MSIE 3.02; Update a; Windows 95)
 70087:  0.68%:   71725: Wget/1.5.3
 67992:  0.66%:  481311: Mozilla/4.51 [en] (Win95; I)
 65844:  0.64%:  482376: Mozilla/4.61 [en] (Win95; I)
 65085:  0.64%:  166755: Mozilla/4.0 (compatible; MSIE 4.01; MSIECrawler; Windows 95)
 64982:  0.63%:   70103: Scooter/2.0 G.R.A.B. V1.1.0
```

```
 64951:  0.63%:  480349: Mozilla/4.6 [en] (Win95; I)
 64606:  0.63%:  411726: Mozilla/4.0 (compatible; MSIE 5.0; Windows 95)
 63540:  0.62%:   66167: ArchitextSpider
 60588:  0.59%:  385866: Mozilla/4.0 (compatible; MSIE 5.0; Windows 98)
 60097:  0.59%:  431191: Mozilla/4.5 [en] (Win98; I)
 59784:  0.58%:  393900: Mozilla/4.5 [en] (WinNT; I)
 58101:  0.57%:  505781: Mozilla/4.5 [en] (Win98; U)
 57314:  0.56%:   62470: htdig/3.1.1 (digger@forumone.com)
 57081:  0.56%:  364358: Mozilla/4.51 [en] (Win95; U)
 53514:  0.52%:  274084: Mozilla/4.0 (compatible; MSIE 4.01; AOL 4.0; Windows 95)
 51561:  0.50%:   66963: Astra/1.0 (WinNT; I)
 50248:  0.49%:  368722: Mozilla/4.61 [en] (Win98; I)
 48877:  0.48%:  247147: Mozilla/2.0 (compatible; MSIE 3.0; Windows 95)
 48535:  0.47%:   49519: Mozilla/4.0 (kompatibel; MSIE 4.0; Windows NT; Site Server 3.0 Robot) SINITEC Service
 46864:  0.46%:  409396: Mozilla/4.61 [en] (Win95; U)
 46692:  0.46%:  348973: Mozilla/4.08 [en] (Win95; I ;Nav)
 40135:  0.39%:  265466: Mozilla/4.04 [en] (Win95; I ;Nav)
 39151:  0.38%:  245990: Mozilla/4.05 [en] (Win95; I ;Nav)
 38883:  0.38%:   42988: ia_archiver
 38076:  0.37%:  295372: Mozilla/4.01 [en] (Win95; I)
 37177:  0.36%:  255364: Mozilla/4.6 [en] (Win98; I)
 36778:  0.36%:   58335: Teleport Pro/1.29
 36364:  0.36%:  251565: Mozilla/3.01 (Win95; I)
 35936:  0.35%:   44336: Slurp.so/1.0 (slurp@inktomi.com; http://www.inktomi.com/slurp.html)
 35564:  0.35%:   38265: Slurp/2.0-OwlWeekly (spider@aeneid.com; http://www.inktomi.com/slurp.html)
 35445:  0.35%:  267937: Mozilla/4.06 [en] (Win95; I)
 34914:  0.34%:  262454: Mozilla/4.03 [en] (Win95; I)
 34323:  0.34%:  229180: Mozilla/4.0 (compatible; MSIE 5.0; Windows NT)
 33953:  0.33%:  236689: Mozilla/4.51 [en] (WinNT; I)
 33853:  0.33%:  239459: Mozilla/4.08 [en] (Win95; U ;Nav)
 33031:  0.32%:  244678: Mozilla/4.5 [en] (WinNT; U)
 31576:  0.31%:   35088: vscooter/2.0 G.R.A.B. V1.1.0
 31512:  0.31%:  233064: Mozilla/4.61 [en] (WinNT; I)
 31111:  0.30%:   40521: Xenu's Link Sleuth 1.0p
 30333:  0.30%:  310209: MSProxy/2.0
 30262:  0.30%:  241464: Mozilla/4.0 (compatible; MSIE 4.01; MSN 2.5; Windows 98)
 29505:  0.29%:   78329: Mozilla/4.0 (compatible; MSIE 4.01; MSIECrawler; Windows NT)
 29096:  0.28%:  372751: Mozilla/4.06 [en] (Win95; U)
 28522:  0.28%:  205948: Mozilla/4.51 [en] (Win98; I)
 27057:  0.26%:  242093: Mozilla/4.6 [en] (Win95; U)
 26900:  0.26%:  176692: Mozilla/4.6 [en] (WinNT; I)
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EPA United States Environmental Protection Agency

ITOP Office of Information Transition and Organizational Planning

Welcome!

Welcome to this new web site about EPA's plan to set up a new Information Office. The site has been created to keep you informed about activities during the final months leading up to the launch of the new office. It includes information on how the office will be set up, what its responsibilities will be, which projects are high priorities, who has been designated as managers, and background information.

To date we have spoken with representatives from a wide range of stakeholder groups and partners including the private sector, non-profit groups, Congressional committees, all levels of government, and tribes. Please let us know if your organization would like more information. We also have had extensive discussions with EPA employees across headquarters and in our regional offices to coordinate our efforts and work toward a smooth transition.

Please send us your comments and questions at IO-Outreach@epa.gov. We look forward to hearing from you.

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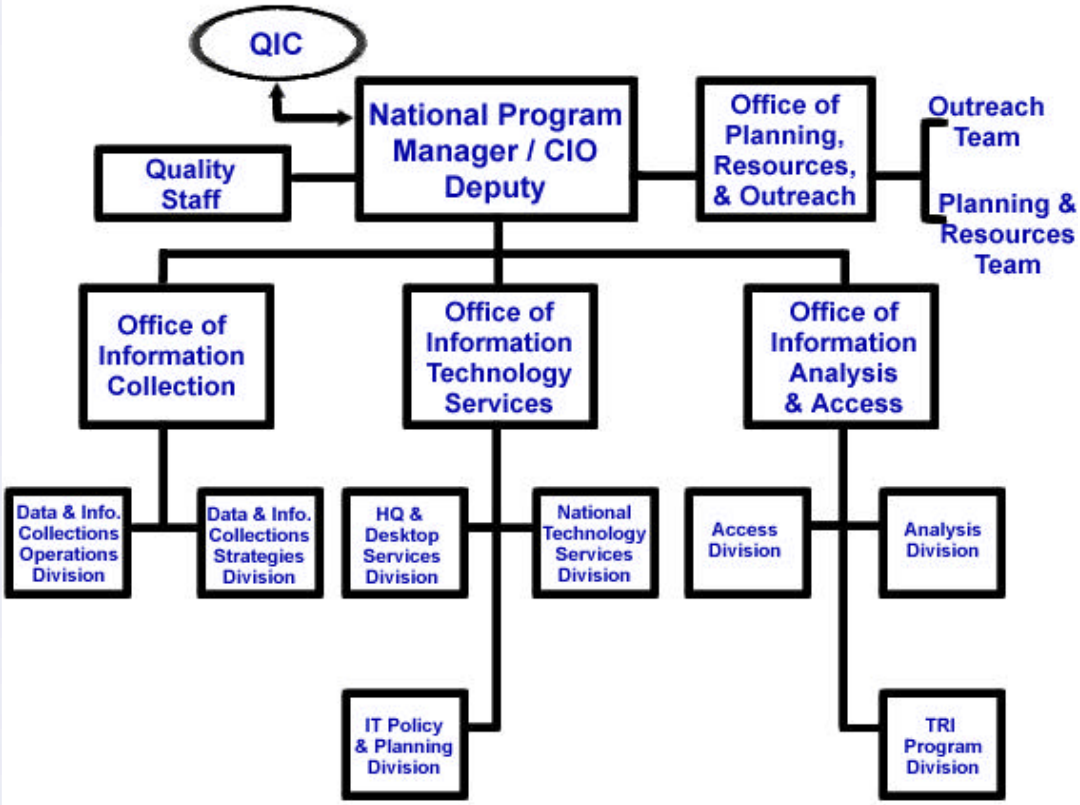
New Office Organizational Chart



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United States Environmental Protection Agency

ITOP

I -- FRAMEWORK FOR EPA'S NEW INFORMATION OFFICE

Overview

High quality, accurate environmental information is a strategic resource for protecting public health and the environment. To make the most effective use of this important resource, we need to strengthen the ways we collect, manage, use and share data and information. We also need to strengthen the relationships among those who provide environmental information and use it in decision making – EPA and other federal agencies, EPA's state partners, Tribal governments, the regulated community, local governments, citizen organizations and the general public. Toward this end, EPA is consolidating many of its information activities into a new information office that will provide better service to our partners and stakeholders, and improve EPA's ability to manage and use information across all of our programs and offices.

The new office will integrate various aspects of information management, policy and technology at EPA. It went and public access functions. It will also improve consistency across these operations and systems, providing the necessary foundation for future transfer of data across the full range of sources. Further, the new office will work to strengthen the Agency's information technology infrastructure, maintaining and improving quality of service, while pursuing opportunities to minimize costs. The Agency's program offices will retain many of their information responsibilities, with the new office leading the creation of a coordinated and consistent policy and information framework.

Key to the success of this new office are strong, cooperative relationships with our partners, the states. Much of the total volume of environmental data is collected or provided by them. Several states are on the forefront in assessing public demand for information and increasing quality and accuracy in the data they provide. We intend to work closely with the states to identify the information we both need to manage our programs well, to develop mechanisms for providing this information as efficiently as possible, and to eliminate unnecessary or redundant data. In doing so, we will also work closely with our stakeholders in industry, other federal agencies, Tribes, local governments, interest groups and the general public.

EPA's new information office will serve EPA, its federal and state partners, and all of its customers and stakeholders as a center of excellence that advocates the use and management of information as a strategic resource to enhance public health and environmental protection. We are designing an office that will act decisively and provide leadership on matters of information management, information policy and technology stewardship, and overall data quality. This national leadership vision is one of an integrated data and information environment. The integrated information environment involves stong links in how EPA receives, manages, assesses, analyzes, and provides access to data. This is a holistic approach, requiring the Agency to develop and implement more consistent approaches to information matters – including approaches that promote data accuracy and quality – and to ensure compatibility with other environmental information sources, both public and private.

The office will rely on a unified approach to information technology – one that works strategically across each of the three main components of the integrated information environment:

- Receiving and sharing information;
- Managing and using information; and
- Providing access to information.

Together, these components support a common goal of informing decision making on public health and environmental matters by government, industry, communities and individuals. As discussed in the following paragraphs, our goal is to make significant improvements in the way that we manage each of these components.

Receiving and Sharing Information

Working with our partners and stakeholders, we need to assure that we select, collect, receive and share information in ways that encourage the best environmental decision making. We will foster the ability of many different information users, public and private, to access and understand high quality information. EPA itself generates or collects only a small amount of the total volume of environmental data. The Agency receives information from a variety of sources: states, tribes, local governments, individual facilities and other private entities, and other federal agencies. A top priority for the new office will be to make environmental information easier to get and also easier to provide. Working with our partners and stakeholders at the front end of the process, the new office will help EPA identify and access the information we need to support our mission and public needs, and to identify and eliminate information collections that are no longer necessary. It will facilitate the ready sharing of information across EPA programs, which should lead to better environmental decision-making, avoid collection of redundant data, and promote public access.

Managing and Using Information

EPA must make the best use of the environmental data we compile. Increasing efficiency in data collection is an important first step. But having the right data, efficiently gathered, is only part of the equation. We also need to improve data quality and accuracy, and provide data users with a better understanding of the limitations that data may have for certain purposes. The new office will lead the effort to create information policies and data standards that will apply to all EPA programs. These policies, supported by the right technology, will ensure that all data users can rely on the accuracy and suitability of the information they use to design environmental policy, analyze environmental trends, or assess local environmental quality. They will also ensure that users can move easily between data collections to gain a more complete picture of environmental conditions.

A key overriding focus of this policy effort will be on data accuracy and quality, to make sure that the data received and disseminated is of a level of quality and accuracy that meets the needs for which it is intended. Historically, the data EPA develops, receives and uses has been of varying quality, and has sometimes not met particular user needs. An important focus of this office will be to improve data quality and incorporate quality considerations into all aspects of the Agency's business. To maximize the usefulness of data, it is essential that all data users be able to rely on the accuracy of the data and, further, understand the specific context within which the data was collected and therefore its potential limitations (in terms of data quality or suitability).

In addition, understandable interfaces among data collections across the Agency will enable more robust analysis of environmental problems by allowing easier access to more and better environmental information. In recognizing that most of our data comes into the Agency from the states, we will seek to learn from their experiences and successes on data quality

and accuracy through our partnership with them.

Providing Access to Information

An important element of EPA's mission is enabling citizens to understand environmental conditions and to participate in decision-making that affects them. Geographic information systems, mapping tools, and other innovative information technologies will continue to be important means for analyzing environmental information. But effective public participation also depends on access to meaningful information that is understandable, and the new office will strive to meet this need in three ways. First, we will leverage state and EPA investment in learning what the public wants to know and what technologies will best meet that demand. Second, we will ensure that our information is not only accurate and reliable, but that it is made available in a variety of forms that the public can understand and use. Third, in partnership with the states, we will continue to work with our stakeholders to identify evolving information needs.

Using the information tools of the 21st Century to provide more information to the public will require new policies on the respectful use of data – providing information to those who receive data from EPA about the context in which the data was collected, and information about its quality. Prior to releasing data, we also need to provide appropriate notice to those who provided data to EPA. We also need more reliable mechanisms for correcting and updating data once it has been submitted or released. We will continue to make sure that strong security policies are followed to protect proprietary business information, and to prevent use of environmental data for purposes that could harm public health and safety.

II -- INTEGRATION AND LEADERSHIP OF ONGOING INFORMATION COMMITMENTS

Over the past several years, EPA has launched a number of activities that, in one way or another, relate to how environmental information is obtained, used, and disseminated. As we proceed with creating the new information office, we will maintain momentum on existing priority activities even as we build momentum on selected new projects that reflect the mission of the new office. Moreover, we will look for opportunities for integration and synergy among projects as we move toward our new integrated information environment. Throughout all of these efforts, our work with our state partners will continue to provide creativity, energy, consistency, and mutual gains.

EPA/State Partnership on Reinventing Environmental Information

Last year EPA and the states launched a program, known as Reinventing Environmental Information (REI), to improve the way environmental information is managed by EPA and state agencies. The program is designed to implement key information management reforms that support EPA and state government's evolving approaches to environmental and public health protection.

Through REI, we are developing data standards (including facility identification) and promoting electronic reporting into EPA's and states' environmental information systems. Together with the states, EPA is developing data standards and technology that will allow environmental information to be readily shared. For example, EPA is developing standards that will allow much easier access to its information about facilities, chemicals, and places. The REI program will benefit the reporting community by providing electronic reporting capabilities, which will reduce reporting burdens and improve data quality. The public will benefit through access to more environmental data that is better integrated and more accurate, and with easier ways to use and interpret information.

Enhanced Public Access to Environmental Information

The Agency will continue and expand its efforts to better understand and respond to the information needs of various segments of the public. Among the questions we are working to answer: Who are our current and potential information customers? What are they looking for, and how do needs vary among the many different groups of information users? How can we improve our responsiveness to varied customers and needs? What should our priorities be? EPA is about to conduct a first-of-its-kind national telephone survey of the general public, designed to provide valuable information about who is, or may be, seeking environmental information. Other means we will use to answer these questions are focus groups, stakeholder meetings, and feedback from users of EPA's Web sites and other information products and services.

In response to what we've already heard from customers, we will be enhancing the EPA Internet website to ensure that visitors can find the information they need. Through feedback from users and our analysis of our website use patterns, we are aware that many customers are not always finding the information they want, even when that information is available. In response, we are working to improve the effectiveness of the search tools used on our site. We will also begin making changes to help specific customer segments find the information they need. For example, we will focus on providing more geographic information in a more unified, easily accessible, format. We will provide access to data and tools that allow customers to conduct their own analysis of information. And we will continue the Agency's effort to make EPA guidance and policy documents available on the Internet.

Reducing Burden

EPA is looking at reporting burden from three perspectives: (1) the burden on our state partners when reporting information to EPA, (2) the compliance burden placed on regulated entities who report information to the Agency and the states, and (3) the burden placed on users of information as they try to navigate our systems to find the information they need. While efforts to reduce reporting obligations continue at the program level, we anticipate that we will identify larger burden reduction opportunities through a cross media burden reduction strategy which will be possible through implementation of the REI data standards and electronic reporting.

In addition, a hard look by EPA and the states at the data needed for programmatic and public access purposes should yield further reductions. Immediate activities that focus on regulated entities include creating an automated capability to portray the full range of EPA reporting requirements. With this, EPA, the states, and regulated entities can get a better picture of reporting obligations, and can look at this burden sector-by-sector to identify burden reduction opportunities.

With respect to state reporting burden, EPA and its state partners are creating a process to facilitate collaborative partnerships between individual states and EPA Regional offices to fully explore burden reduction ideas on a state-by-state basis. We will establish an ongoing process to make sure that reporting requirements yield high quality, needed information at the lowest possible costs. All of these efforts will facilitate coordinated action through the state/EPA partnership to pursue alternatives to current reporting approaches, including whole facility reporting.

Ensuring Quality Information

A cornerstone of EPA's ability to collect, manage, and provide access to information is a strong commitment to data quality, which must be a foundation in the work of the new organization and which must extend throughout the Agency's information continuum. Building on the initial work in EPA's 1998 Data Quality Action Plan, we must work to create a more

comprehensive and clear understanding of data quality, and what it means to all aspects of our environmental and public health mission. Creating this understanding will be an early focus of the new organization. We will also create a Quality Board which will have broad responsibility for leadership, coordination, and oversight of issues related to quality. The Board, which will be supported by a full-time staff, will serve as the EPA locus for ensuring that data quality policies are developed and implemented in EPA programs and apply throughout the life cycle of information that EPA generates and uses.

Toxics Release Inventory - Streamlining data collection and public release

The Toxics Release Inventory is an important community right-to-know tool that has successfully promoted emissions reduction and pollution prevention by giving the public critical data on toxic chemical releases in their communities. EPA is committed to working with our partners and stakeholders to improve the usefulness of this powerful tool by making the TRI data available more quickly, while maintaining data quality and continuing to provide the level of data analysis that our stakeholders have come to expect. As part of that effort, EPA will continue to promote the faster, more accurate electronic submission of TRI data (now about 70% of the total), and will explore Internet-based reporting options.

Technology for Environmental Information

Fundamental to all improvements in EPA's information management is a sound technological base. This technology base must deliver in three critical areas: First it must provide reliable operations. For example, when the public uses the Internet to access EPA data, the system must be available and operating at acceptable speed. The system must offer similar reliability to the staff of EPA and its state partners. A critical part of meeting these criteria is ensuring Year 2000 compliance. We are on schedule to meet this critical challenge, but it requires strong and continuous management attention.

Second, EPA must protect the information we receive from unauthorized use or changes to ensure the public that the information we provide is accurate and reliable, to assure those reporting sensitive personal or business information that it will not fall into unauthorized hands, and to protect the integrity of environmental decisions based on the information received. To this end, we have an ongoing information security program that is continually growing and evolving to meet the increased threats inherent in the information age. EPA is cooperating with other federal agencies in development of a critical infrastructure protection plan to ensure the best security possible.

Finally, EPA must have state of the art tools to provide sophisticated analytical and communications capability for EPA work and public information. Our mission requires sophisticated tools to provide information needed to target policy effectively and efficiently and provide information and analytical results in ways that are easy to access, use and understand. We must continually research and apply new technology to meet these needs. We continue to work on better tools to present information on maps and in graphics so that the public can quickly and easily use the information to make sound decisions about environmental and public health matters. We also continue to build better and stronger tools to allow access to the vast amounts of information EPA receives and generates.

III -- PROPOSED NEW ACTIVITIES TO REINFORCE THE FRAMEWORK

The new information office will catalyze efforts in three key new areas. During the transition period leading up to full operation of the new office, designated EPA teams will work with our partners and stakeholders to frame the scope of each of these areas and lay the groundwork for rapid progress as the new office assumes the leadership role.

Develop an Information Plan

The new information office will provide leadership to develop an information plan (technically referred to as an information architecture) for the information and information technology to support EPA's mission. Developing this type of plan at an Agency-wide level is a relatively new approach to information management across government and is very complex, but the value is clear: this planning approach provides a better mechanism to effectively and efficiently plan our information and technology investments on a multi-year basis. We will identify and coordinate information needs, with anticipated burden reduction for existing requirements, coordinate technology investments, and improve public access to and ability to use information from multiple sources.

As a first step in this effort, EPA will develop a high-level plan to define the information needed to support our public access mission. We will build upon the current work in identifying emerging information needs and opportunities for burden reduction to determine both priority information needs for public information and critical data needs for implementing EPA's programs. This approach will be coordinated with improvements in the Agency Strategic Plan and work on core performance measures under the National Environmental Performance Partnerships program. EPA will combine the results with other architecture planning processes across our other mission areas as the new organization builds this capacity. We will then be in a position to identify high and low priority needs, opportunities to increase effectiveness and lower costs, make plans on a multi-year basis to acquire needed information and technology, and phase out unneeded or outdated information and technology.

Promulgate Policies on Providing Public Access to Data

A fundamental aspect of the Agency's mission is fulfilling the public's right to know about their environment by improving the quality and quantity of environmental information and making current and accurate information widely and easily accessible. As EPA uses the Internet and other emerging information technology tools to make more information available, the need to develop clear and consistent policy in a number of issues becomes increasingly important. Among these areas are:

- data accuracy; responsiveness to customer needs;
- "labeling" our information with information about its origins and intended uses (also known as "metadata");
- the proper involvement of our information partners and stakeholders in designing public access approaches;
- approaches to making information available, both electronically and in non-electronic forms;
- issues about how information may be interpreted once it has been released

. The new office will provide direction and leadership by developing and implementing Agency-wide policies to address these and other aspects of public-oriented information dissemination.

Provide Open Data Access

As EPA makes environmental information available to the public, the new Information Office will facilitate the use of open data access technology. Open data access is a newly emerging technical capability that provides data users access to disparate environmental databases via the Internet and allows them to ask questions and retrieve results. In other words, it will allow many parties to "use" a data set maintained by one organization without having to buy and maintain that data set.

EPA may well be the largest consumer in the federal government of geospatial data predominantly provided by outside sources. One area where we will use open data access technology is Web-accessible mapping that works with multiple data

sets that are maintained by multiple sources. Open data access standards and procedures are now being tested in the federal government on data that characterizes the nation's physical environment like river flows and forest cover as well as the location of plants, schools, hospitals, etc. The new office will work to test and implement open data access capability in a way that will allow data sets collected by the federal government (not just EPA) to be open to our partners, industry, and the public. The Agency will also seek to use open data access technology in demonstration projects which build mapping tools to display geospatial data for local environmental planning and decision-making.

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http://www.epa.gov/itop/framewk2.htm
This page last updated on June 25, 1999

Memoranda for Operating Permits (Title V)

Policy & Guidance Memos

From the listing below, find the file you would like to download. The document may be available in one or more file formats, as represented by the icons on the righthand side of the listing. Click on the icon that represents the format you wish to receive.

For details on TTNWeb's file type icons, standard file formats, and how to use them, see the TTNWeb File Types page.

File Description	Release Date	File Types
Permit Applications Streamlining: White Paper and Proposed Part 70 Revisions: Letter	10-4-99	PDF
Letter to Environmental Commissioners on Title V Permit Issuance	7-12-99	PDF WPD
MACT/Title V and Title I/Title V Interface Issues	5-20-99	PDF WPD
Draft Periodic Monitoring Technical Reference Document (TRD)	5-4-99	HTML
Title V Program Responsibilities Concerning the Accidental Release Prevention Program	4-20-99	PDF WPD
Title V Applicability of One-Time "Reporting" Provisions for Nonmajor Sources"	4-19-99	PDF WPD
Status of Area Source Deferrals from Operating Permits	4-15-99	PDF WPD
Federal Enforceability of Terms and Conditions in Preconstruction Permits	3-31-99	PDF WPD
Potential to Emit (PTE) Transition Policy for Part 71 Implementation in Indian Country	3-7-99	PDF WPD
Interpretation of the Definition of Fugitive Emissions in Parts 70 and 71	2-10-99	WPD
Periodic Monitoring Guidance for Title V Operating Permits Programs	9-15-98	PDF WPD
Periodic Monitoring Cover Memorandum	9-15-98	PDF WPD
Second Extension of January 25,1995 Potential to Emit Transition Policy and Clarification of Interim Policy	7-10-98	PDF WPD
Title V Program Costs under the Federal Operating Permits Program	5-20-98	PDF WPD
Potential to Emit (PTE) Guidance for Specific Source Categories	4-14-98	PDF Part 1 WPD Part 1 PDF Part 2 WPD Part 2
Draft Preamble for Revisions to the Part 70 Operating Permits Regulations	3-25-98	PDF WPD

Draft Revisions to the Part 70 Operating Permits Regulations	3-25-98	PDF WPD
Implementing the Part 71 Program in Indian Country	12-4-97	PDF WPD
Pollution Prevention in Permitting Pilot (P4) Project - CYTEC Industries Inc. Project at Region I - Technical Supp. Document	6-23-97	PDF WPD
Title V Permit Objection Communication Strategy	5-30-97	PDF WPD
Clarification of Methodology for Calculating PTE for Batch Chemical Production Operations	8-26-96	PDF WPD
Guidance for Major Source Determinations at DOD	8-2-96	PDF WPD
Policy on enforcement of state-only reqs and on periodic monitoring and the proposed CAM rule	6-3-96	PDF WPD
Guidance-effect of audit laws on Title V	4-5-96	PDF WPD
"Effective" Limits on Potential to Emit	1-31-96	PDF WPD
Interim Policy Memo - Potential to Emit	1-22-96	PDF WPD
Incorporation of Startup, Shutdown, and Malfunction Plans into Title V Permits	1-18-96	PDF WPD
Calculating PTE for Grain Handling Facilities (11/14/95)	11-14-95	PDF WPD
PM10 as the Regulated Pollutant for Title V	10-16-95	PDF WPD
Calculating PTE for Emerg. Generators (9/6/95)	9-6-95	PDF WPD
EPA Reconsideration of Application of Collocation Rules to Unlisted Sources of Fugitive Emissions	6-2-95	PDF WPD
Deferral of Non-Major Sources from Title V Requirements	5-16-95	PDF WPD
Coordinating Title IV/Title V Permitting Schedules (8/94)	4-25-95	ZIP
Update to Sanctions Policy-Title V	3-28-95	PDF WPD
Correction to the 1/25 PTE Memo	2-16-95	PDF WPD
Potential to Emit, Memo and Guidance	1-25-95	ZIP
Contract/Temporary Operations and Title V	11-16-94	PDF WPD
Letter on use of Minor NSR to Limit PTE	11-2-94	PDF WPD
Radionuclide NESHAP and Title V	9-20-94	PDF WPD
105 Grant/Fee Transition Memo	7-21-94	PDF WPD
Policy on Permit Data Elements	3-17-94	PDF WPD

Sanctions Policy for Title V SOPS	3-15-94	
Policy Memo on Fugitive Emissions	3-8-94	
Federally Enforceable Limits on Potential to Emit	11-3-93	
Limiting Potential to Emit VOC	10-15-93	
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About This Website

This website is maintained by the Environmental Protection Agency. It is a source of information on atmospheric dispersion (air quality) models that support regulatory programs required by the Clean Air Act. Documentation and guidance for these computerized models are a major feature of this website. The computer code, data and technical documents offered herein deal with mathematical modeling for the dispersion of air pollutants.

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url: http://www.epa.gov/scram001/index.htm

Address modeling questions to: *Dennis Atkinson*

Address website questions & comments to: *Jerry Mersch, Webmaster*

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Text version

The goals of the US EPA's AIRNOW website are to: 1) provide real-time air pollution data in an understandable, visual format, 2) provide information about the public health and environmental effects of air pollution, 3) provide the public with information about ways in which they can protect their health, and actions they can take to reduce pollution.

This website currently focuses on ground-level ozone (smog). Future plans for this website are to expand the geographic coverage of the current ozone maps and to include other pollutants.

The Ozone Mapping Project is part of EPA's Environmental Monitoring for Public Access and Community Tracking (EMPACT) initiative - a new approach to providing timely environmental information to communities.

EMPACT
Environmental Monitoring for Public Access & Community Tracking

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http://www.epa.gov/airnow/ October 1, 1999

Applicability Determination Index (ADI)

The Applicability Determination Index (ADI) is a database that contains memoranda issued by EPA on applicability and compliance issues associated with the New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (with categories for both NESHAP, Part 61, and MACT, Part 63), and chlorofluorocarbons (CFC). There are also separate categories for asbestos (Part 61, Subpart M) and woodstoves (Part 60, Subpart AAA). Recently issued determinations are added to the database on a quarterly basis.

The Office of Enforcement and Compliance Assurances (OECA), Manufacturing, Energy and Transportation Division (METD) maintains the database. Both Macintosh and IBM-compatible PC users can access ADI. For information on how to use the ADI, including access to the system and searching, viewing, and downloading information, select the 'User's Guide' link.

ADI allows users to search for determinations by a combination of subparts, regulatory citations (references), issue dates, EPA Region/office and word search strings connected with an "AND" or an "OR." Users can then view information from the determinations found including the header (which gives basic data about the determination), the determination abstract, or the full text of the determination. ADI users can tag one or more determinations to download to their computers. The downloaded information will be in an ASCII text file that can be read or printed using their word processor or a text editor.

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EPA United States Environmental Protection Agency

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- The Resource Conservation and Recovery Act (RCRA) US code EXITING EPA
- The RCRA Regulations (40 CFR Parts 240-299)
- Mercury-Containing and Rechargeable Battery Management Act
  Adobe Acrobat PDF File || ASCII Text File
- RCRA Hotline Training Modules - *"Introduction to Other Laws that Interface with RCRA"*
  Adobe Acrobat PDF File || ASCII Text Tile
- RCRA Hotline Training Modules - *"Introduction to RCRA Statutory Overview"*
  Adobe Acrobat PDF File || ASCII Text File
- NEW! RCRA Online
- RCRA Orientation Manual - July 1998
- RCRA: Reducing Risk from Waste
  en Español

Rules, Regulations and Policies - Listed by Topic Area

Cement Kiln Dust
Cleanup Hazardous Waste
Chlorinated Aliphatics
Disposal of Nonhazardous Waste
Financial Assurance
Fossil Fuels
Generate and Transport Waste
Identification of Hazardous Waste
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Military Munitions
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- Clinton Administration's Remediation Waste Legislative Specifications - April 15, 1998
  Adobe Acrobat PDF File || ASCII Text File || *About . . .*
- Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities - Proposed Rule - May 1, 1996
- Hazardous Waste Identification Rule for Contaminated Media - March 1996
- Ground Water

Disposal of Nonhazardous Waste

- Guidance for Industrial Waste Management - June 11, 1999
- Agency Information Collection Activities: Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements (Renewal); Notice of Request for Renewal
- Alternatives for Ground-Water Monitoring at Small, Dry, Remote Municipal Solid Waste Landfills - Summer 1995
- Conditionally Exempt Small Quantity Generator (CESQG) Rule - June 1996
- Financial Assurance for Municipal Solid Waste Landfills - November 1996
- Site-Specific Flexibility Requests for Municipal Solid WasteLandfills in Indian Country; Draft Guidance - August 1997

Financial Assurance

- Financial Assurance Mechanisms for Corporate Owners and Operators of Municipal Solid Waste Landfill Facilities - April 10, 1998

Fossil Fuels

Generate and Transport Waste

- Agency Information Collection Activities: Notification of Regulated Waste Activity and RCRA Hazardous Waste Part A Permit Application and Modification - May 14, 1999.
- The 1999 Hazardous Waste Report (draft) *"Supporting Statement for EPA Information Collection Request 976.09" - October 1998*
  Adobe Acrobat PDF File [70 K] || *About...*
- Conditionally Exempt Small Quantity Generator Rule - June 1996
- Control of Transfrontier Movements of Wastes Destined for Recovery Operations OECD Council Decision Implementation Final Rule - April 1996
- Hazardous Waste Generator Standards - ICR - *"Supporting Statement for EPA Information Collection Request Number 0820.06 - Hazardous Waste Generator Standards"* - July 15, 1997
- Hazardous Waste Requirements for Large Quantity Generators - June 1996
  ASCII text file || Adobe Acrobat PDF File || *About...*
- Office of Solid Waste Burden Reduction Project; Notice of Data Availability and Request for Comment - June 18, 1999
- Request for Information Concerning Transfrontier Movements of Wastes Destined for Recovery Operations Within the OECD Area - August 17, 1999
- Requirements for Generators, Transporters, and Waste Management Facilities Under the RCRA Hazardous Waste Manifest System Information Collection Request
- Universal Waste - Final Rule - May 1995

Identification of Hazardous Waste

- 180-Day Accumulation Time for Waste Water Treatment Sludges From the Metal Finishing Industry - Proposed Rule - February 1, 1999.
- Clarification of the Used Oil Management Standards - May 6, 1998.
- Hazardous Waste Identification Rule: Waste - November 1995.
- Hazardous Waste Identification Rule for Contaminated Media - November 1998.
- Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rule - August 25, 1999.
- Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Dye and Pigment Industries; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rule - July 23, 1999.
- Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Solvents Final Rule - November 19, 1998.
- Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps; Final Rule - July 6, 1999.
- Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Solvents Proposed Rule - August 1996.
- Information Collection Request: Identification and Listing of Rulemaking Petitions - January 23, 1998.
- Information Collection Request # 1848.01 Survey of the Inorganic Chemicals Industry
- Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities; Final Rule and Support Materials - May 1998.
- Petroleum Refining Process Wastes Listing: Final Rule - August 6, 1998.
- Request for Comment on Proposed Statement of Policy Regarding Spent Antifreeze - April 23, 1998.
- Supporting Statement for Collection of Information under the Industry Studies Program: Chlorinated Aliphatics Industry - June 1998.
- Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris; Proposed Rule

Land Disposal Restrictions

Military Munitions

- Military Munitions Final Rule - February 1997

Mining Waste

- Mining Waste- Bevill Amendment and Supporting Documentation - August 1994
- Land Disposal Restrictions, Phase IV - Final Rule
  Treatment Standards Proposed for Toxicity Characteristic (TC) Metal and Mineral Processing Wastes

Municipal Solid Waste Landfills

Oil and Gas Drilling and Production Waste

- **Oil, Gas, Geothermal Drilling and Production Waste Regulation** - July 6, 1988
  ASCII text file || WordPerfect file || *Description of files...* (text file)
- **Oil, Gas, and Geothermal Energy Wastes Regulatory Clarification** - March 22, 1993
  ASCII text file || WordPerfect file || *Description of files...* (text file)

Permits and Permitting

- Agency Information Collection Activities:Continuing Collection; Comment Request; Part B: Permit Application, Permit Modifications and Special Permits - July 23, 1999.
- Agency Information Collection Activities: Notification of Regulated Waste Activity and RCRA Hazardous Waste Part A Permit Application and Modification - May 14, 1999.
- Permit Improvement Team - July 1996.
- NEW! RCRA Online - September 1998.
- RCRA Permit Policy Compendium - July 1997.
- Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure

Permit Requirement and Closure Process; Final Rule - October, 1998.

Procurement Guidelines

- Comprehensive Procurement Guidelines III - August 1998
- Comprehensive Procurement Guidelines II - November 1997
- Comprehensive Procurement Guidelines I - April 1995
- Paper Products Recovered Materials Advisory Notice (RMAN); Final Guidelines - May 1996
- Paper Products Recovered Materials Advisory Notice II - June 1998

Recycling

- **Hazardous Waste**
  Implementation of the Mercury-Containing and Rechargeable Battery Management Act
  Adobe Acrobat PDF file || ASCII Text File || *About...*

  Universal Waste - Final Rule - May 1995

- **Non-Hazardous Waste**
  Supporting Statement for Jobs Through Recycling Information Collection Request - June 1998
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State Authorization

- Final Authorization for Hazardous Waste Management Programs *Information Collection Request Number 0969.04 - November 1998*
- State Rule Authorization and Adoption Status

Treatment of Hazardous Waste

- Agency Information Collection Activities; Continuing Collection; Comment Request; General Hazardous Waste Facility Standards - June 17, 1999
- Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors
- The 1999 Hazardous Waste Report (draft) *"Supporting Statement for EPA Information Collection Request 976.09" - October 1998*
  Adobe Acrobat PDF File [70 K] || *About...*
- Hazardous Waste Combustors; Revised Standards;Final Rule - Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent To Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions - July 1998
- Hazardous Waste Combustion Rulemaking Continuous Emissions Monitoring System Notice of Data Availability - December 1997
- Land Disposal Restrictions: Notice of Intent To Grant a Site-Specific Treatment Variance to Chemical Waste Management, Inc. Proposed Rule
- NEW! Part 279 Requirements: Used Oil Management Standards (Poster)
  Adobe Acrobat PDF File [85 K] || *About...*
- Proposed Revised Technical Standards for Combustion Units - March 1996
- Office of Solid Waste Burden Reduction Project; Notice of Data Availability and Request for Comment - June 18, 1999

Universal Waste

Final Rule—May 1995

Waste Minimization

NEW! Notice of Availability of Draft RCRA Waste Minimization PBT Chemical List - November 1998

* Some of the documents provided by EPA are Adobe Acrobat PDF (Portable Document Format) files. They can be viewed, and printed, with the use of an Adobe Acrobat Reader. The Adobe Acrobat's Reader is available, free, for Unix, Macintosh, IBM DOS, and IBM Windows operating systems. Click this button to download the latest version of Adobe Acrobat. The readers are available directly from Adobe.

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United States Environmental Protection Agency

OFFICE OF SOLID WASTE

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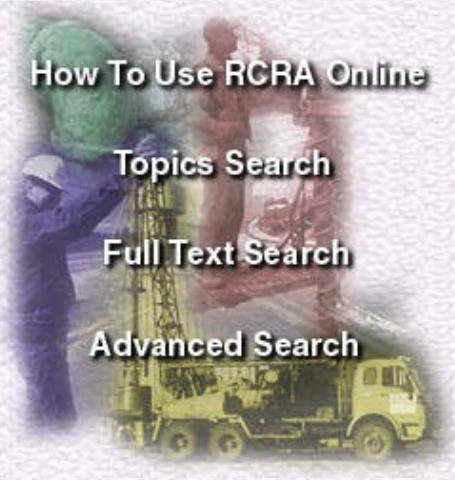

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If you would like to order hardcopies of the documents referenced in the database, or if you would like more information about RCRA issues referenced in this database or any RCRA regulatory issues, please call the RCRA, Superfund & EPCRA Hotline 9 AM to 6 PM Eastern Time, Monday through Friday, except for federal holidays, at the numbers listed below:

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National toll-free for the hearing impaired (TDD):
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EPA United States Environmental Protection Agency
Office of Water

EFFLUENT GUIDELINES

Effluent Guidelines

Effluent guidelines are national standards for wastewater discharges to surface waters and publicly owned treatment works (municipal sewage treatment plants). EPA issues effluent guidelines for categories of existing sources and new sources under Title III of the Clean Water Act. The standards are technology-based (i.e. they are based on the performance of treatment and control technologies); they are not based on risk or impacts upon receiving waters.

Ongoing Rule Projects and Recently-Published Rules
Included on these pages are Federal Register notices of proposed and final rules, supplemental notices, pre-proposal documents, background information, draft industry questionnaires, public meeting notices, development documents and other supporting documents, and related documents.

- Centralized Waste Treatment
- Coal Mining
- Construction and Development
- Industrial Laundries
- Industrial Waste Combustors (Incinerators)
- Iron and Steel Manufacturing
- Landfills
- Leather Tanning and Finishing.
- Metal Products and Machinery
- Oil and Gas Extraction (Synthetic-Based Drilling Fluids)
- Pesticide Formulating, Packaging, and Repackaging
- Pesticide Chemicals Manufacturing (Amendments for Pendimethalin)
- Pharmaceuticals Manufacturing
- Pulp, Paper, and Paperboard
- Transportation Equipment Cleaning

Preliminary Studies
Preliminary Studies provide recent technical and economic information on a category of dischargers. The findings are published as "Preliminary Data Summaries", and are not used directly as a basis for rulemaking, but are used by EPA management to help select new rulemaking projects.

- Airport Deicing
- Aquaculture
- Feedlots
- Urban Storm Water (Best Management Practices)

Effluent Guidelines Plan
The Effluent Guidelines Plan provides an overview of the Effluent Guidelines Program. It lists ongoing and future effluent guidelines projects and preliminary studies. The Plan is published biennially in the Federal Register.

Effluent Guidelines Task Force
A Federal Advisory Committee which meets periodically to recommend improvements to the Effluent Guidelines Program.

Existing Effluent Guidelines - Code of Federal Regulations

Supporting Documents for Older Regulations and Projects
Publications ordering information (documents not available on-line).

Other Regulations

- Uniform National Discharge Standards (UNDS) for Armed Forces Vessels
  Uniform national discharge standards (UNDS) are mandated by Section 312 of the Clean Water Act for discharges incidental to the normal operation of Armed Forces Vessels.

URL: http://www.epa.gov/OST/guide/index.html
Revised February 26, 1999

United States Environmental Protection Agency

Office of Prevention, Pesticides, and Toxic Substances

1999 Final Rules and Effective Dates

Pub. Date (64 FR Cite)	FRL No.	Title	Objections and Hearing Requests Due	Effective Date
08/04/99 (42280)	6086-9	Azoxystrobin; Emergency tolerance exemptions	10/04/99	08/04/99
08/06/99 (42839)	6091-9	N-(4-fluorophenyl)-N-(1-methylethyl) -2-[[5-(trifluoromethyl)- 1,3,4-thiadiazol-2-yl]oxy]acetamide; Emergency tolerance exemptions	10/05/99	08/06/99
08/06/99 (42846)	6091-6	Sodium chlorate; Extension of emergency tolerance exemptions	10/05/99	08/06/99
08/18/99 (44829)	6092-8	Glufosinate ammonium; Emergency tolerance exemptions	10/18/99	08/18/99
08/18/99 (44826)	6098-1	Pyriproxyfen; Re-establishment of emergency tolerance exemptions	10/18/99	08/18/99
08/23/99 (45885)	6096-3	Buprofezin; Extension of emergency tolerance exemptions	10/22/99	08/23/99
08/23/99 (45888)	6097-8	Carfentrazone-ethyl; Extension of emergency tolerance exemptions	10/22/99	08/23/99
08/25/99 (46290)	6096-7	Desmedipham; Extension of emergency tolerance exemptions	10/25/99	08/25/99
08/25/99 (46292)	6094-7	Pyridate; Emergency tolerance exemptions	10/25/99	08/25/99
09/01/99 (47689)	6095-8	Chlorfenapyr; Re-establishment of emergency tolerance exemptions	11/01/99	09/01/99
09/01/99 (47687)	6094-4	Cymoxanil; Extension of emergency tolerance exemptions	11/01/99	09/01/99
09/01/99 (47680)	6094-3	Difenoconazole; Emergency tolerance exemptions	11/01/99	09/01/99
09/07/99 (48548)	6380-7	Avermectin B_1 and its delta-8,9-isomer; Tolerance	11/08/99	09/07/99
09/21/99 (51060)	6097-8	Sulfentrazone; Emergency tolerance exemptions	11/22/99	09/21/99
09/22/99 (51245)	6381-7	2,6-Diisopropylnapthalene; Temporary tolerance exemption	11/22/99	09/22/99
09/22/99 (51248)	6381-6	Tebuconazole; Extension of emergency tolerance exemptions	11/22/99	09/22/99
09/22/99 (51251)	6380-1	Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide; Tolerance	11/22/99	09/22/99
09/23/99 (51451)	6381-9	Spinosad; Tolerance	11/22/99	09/23/99
09/27/99 (51901)	6382-5	Trifloxystrobin; Tolerance	11/26/99	09/27/99
09/28/99 (52450)	6382-1	Diflubenzuron; Emergency tolerance exemptions	11/29/99	09/28/99
09/28/99 (52438)	6385-6	Pymetrozine; Tolerance	11/29/99	09/28/99
09/28/99 (52457)	6383-6	Tebufenozide; Tolerance	11/29/99	09/28/99

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Last Revision: October 4, 1999
URL: http://www.epa.gov/opptsfrs/home/proposed.htm

MEMORANDUM

SUBJECT: Confidentiality of Information Received Under Agency's Self-Disclosure Policy

FROM: Steven A. Herman /s/
Assistant Administrator for Enforcement and Compliance Assurance

TO: OECA Office Directors
Regional Counsel
Regional Administrators
Deputy Regional Administrators
Regional Enforcement Coordinators

Summary

This memorandum sets out the policy of the Office of Enforcement and Compliance Assurance (OECA) with respect to the confidentiality of self-disclosures received by EPA under the Agency's policy on "Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations" ("self-disclosure policy"). In brief, the Agency will withhold self-disclosures from release under the Freedom of Information Act (FOIA), assuming the self-disclosure qualifies for FOIA exemption, until such time as the Agency and the self-discloser have formally settled the case. In cases where the Agency determines that release of the document poses no harm to on-going attempts to settle the case, it may choose to release a self-disclosure prior to settlement, but only if: (1) the submitter has not made a Confidential Business Information (CBI) claim, or (2) such a claim has been made and rejected by EPA, and (3) Headquarters has been consulted on the decision to release.

Withholding Self-Disclosures Until Settlement is Reached

Provided that the material meets the necessary conditions, the Agency will generally withhold self-disclosures from release under FOIA exemption 7(A) until such time as the case has been formally settled. The purpose of this policy is to minimize interference with settlement negotiations. Exemption 7(A) of FOIA protects from disclosure, "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings." Your denial letter should explain, consistent with exemption 7(A), that release of the self-disclosure might reasonably interfere with the Agency's efforts to prepare and settle an enforcement case against the self-discloser.

As noted below, the Region has discretion to determine that the information sought under FOIA does not affect settlement. In such cases, the Region must, prior to release, consider whether any of the self-disclosed information might be claimed as confidential, and must take appropriate steps if the answer is yes **(see CBI discussion, below; see also the section below on Releasing Self-Disclosures Prior to Settlement)**.

Once a self-disclosure case has been settled, copies of the settlement agreement (excluding CBI, if any) and all other pertinent documents appropriate for release under FOIA will be made publicly available. This is in keeping with the self-disclosure policy, which provides in Section II.H that "EPA will make publicly available the terms and conditions of any compliance agreement reached under this policy, including the nature of the violation, the remedy, and the schedule for returning to compliance." 60 *Federal Register* 66706, 66712 (December 22, 1995).

Confidential Business Information

The Agency's current CBI regulations, found at 40 C.F.R. Part 2, require that specified procedures be followed when a person submitting material to EPA claims that the material contains CBI. The regulations also generally require the Agency, when no claim has been made but there is reason to believe that the material might contain CBI, to contact the submitter and ask whether it wishes to make a CBI claim.(1)

Thus, when the submitter self-discloses violations and claims the material as CBI, the Agency must follow the CBI regulations and determine whether the material is in fact CBI. Where no CBI claim is made but the

Agency has reason to believe that the submission might contain CBI, EPA must contact the submitter and ask whether it wishes to claim the material as CBI. If the answer is "yes", the attached "Model CBI Substantiation Letter" can be used to help verify the claim. (See also the attached document entitled, "Procedures for Handling FOIA Requests for Confidential Business Information".)

Generally, where a FOIA request is received for information for which there is an

outstanding CBI claim, the Region should withhold the self-disclosure from release pending determination of the claim. In so doing, the Region should cite exemption 4 of FOIA, which protects "trade secrets and commercial or financial information obtained from a person [which information is] privileged or confidential."

Releasing Self-Disclosures Prior to Settlement

For the time being, where the Region feels that releasing a particular self-disclosure prior to formal settlement of the case will cause no harm to negotiations and will not otherwise delay or complicate settlement,[(2)]

it should contact Gary Jonesi, Senior Counsel for Strategic Litigation in the Office of Regulatory Enforcement, before proceeding. This informal consultation will help ensure that the Agency treats self-disclosures consistently across Regions with respect to confidentiality and FOIA.

If you have any questions about this memorandum, contact Robert Fentress at 564-7023.

Attachments (2)

cc: Self-Disclosure Policy Task Force

Quick Response Team

MODEL CBI SUBSTANTIATION LETTER

Approved OMB 2020-0003

Approval expires 1/31/97

[date stamp]

Certified Mail

Return Receipt Requested

[Addressee]

Re: [Reference the RIN number and or the Information which is the subject of the final confidentiality determination.]

Dear [name of the representative of the Affected Business]:

The Environmental Protection Agency (EPA) has received a request under the Freedom of Information Act (FOIA) for certain records pertaining to (description of the information which is the subject of the final confidentiality determination). You asserted a business confidentiality claim covering (all or part) of this information. In accordance with EPA's Freedom of Information Act regulations (40 C.F.R. Part 2), the request has been initially denied to afford you an opportunity to substantiate your claim before a final determination is made.

This letter is to notify you that the EPA [appropriate legal office] will be making a final confidentiality determination concerning this information. If you feel that some or all of the above information is entitled to confidential treatment, please specify which portions of the information you consider confidential. Please be specific by page, paragraph and sentence when identifying the information subject to your claim. *Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you.* For each item or class of information that you identify as being subject to your claim, please answer the following questions:

l. For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

5. Is the information contained in any publicly available material such as promotional publications, annual reports, articles, etc.? Is there any means by which a member of the public could obtain access to the information?

6. For each category of information claimed as confidential, discuss with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is "voluntarily submitted" as defined at 40 C.F.R. sec. 2.201(i)? If so, explain why, and how disclosure would tend to lessen EPA's ability to obtain similar information in the future.

8. Any other issue that you deem relevant.

Please note that *you bear the burden of substantiating your confidentiality claim* pursuant to 40 C.F.R. 2.208(e). Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response "**CONFIDENTIAL**" or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2. If you fail to claim the information as confidential upon submission of your response, it may be made available to the public without further notice to you.

Your comments must be postmarked or hand delivered to this office by the 15th working day after your receipt of this letter. You may seek an extension of time to submit your comments, but the request must be made to the [appropriate legal office] before the end of the l5-day period. Except in extraordinary circumstances, no extension will be made without the permission of the requester. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim, and EPA may release the information.

Should you have any questions in this matter, please call me at [telephone number].

Sincerely,

[Signature and Title]

[***NOTE:*** Please be sure to check with your FOIA Officer or FOIA Coordinator to determine whether the affected business has designated a specific person or office to receive this letter. If they have, you *must* address the request for substantiation to that designated person or office (see 40 C.F.R. 2.213).]

Procedures for Handling FOIA Requests for Confidential Business Information

1. The program office checks for the existence of CBI claims. Even if no claim has been asserted, where circumstances suggest that the submitter might object to disclosure if he or she knew EPA proposed to do so, the office must ask the submitter whether he or she claims the information as CBI (unless the submitter has already been notified that information not claimed as CBI may be made public).

2. When a CBI claim is found, the program office initially denies the FOIA request, pending a final confidentiality determination.

- Note that if a claim is clearly invalid (e.g., an EPA determination or regulation states that the data is not entitled to confidentiality), the program office may issue a final determination of business confidentiality.

3. The program office requires the submitter to substantiate the CBI claim, giving 15 working days (following receipt of the substantiation request) to respond. The office must call the submitter to inform him/her that the substantiation request is coming, and send the request via certified mail, return receipt requested, or via other means which allows verification of the fact and date of receipt. An extension of the response period may be granted if a timely request is received, but if no timely substantiation or extension request is received, the claim is waived. If no response is received, the office must first verify with the submitter that the request was not lost in the mail before considering the claim waived.

4. The EPA legal office (Regional Counsel or General Counsel) then makes a final determination whether the information is entitled to confidentiality,

5. If the information is entitled to confidentiality, the FOIA request is given a final denial.

6. If the information is not entitled to confidentiality, the legal office issues a final determination denying confidentiality. The submitter is given 10 days advance notice (30 days if the information was collected under TSCA or FIFRA) of EPA's intent to disclose the information, in the absence of other FOIA exemptions that would authorize withholding.

7. During the notice period, the submitter may file in district court to enjoin disclosure of the information determined not to be subject to the CBI exemption.

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1. OECA intends to publish a Notice in the *Federal Register* amending the self-disclosure policy to state that submissions under the policy will be publicly available unless the submitter claims them as CBI, or unless they are subject to another exemption under FOIA. After this amendment becomes effective, self-disclosures for which no CBI claim is received from the submitter will be released unless OECA determines that another FOIA exemption applies. Thus, following publication of the *Federal Register* notice, we need only determine whether release would harm settlement negotiations, **unless** the submitter affirmatively asserted CBI when submitting the self-disclosed material. In the meantime, where a self-disclosure appears to contain CBI but no CBI claim has been made, you must still contact the submitter and ask if it wishes to make a CBI claim.

2. This exception to the general rule of withholding self-disclosures prior to settlement will not, of course, apply to those cases where the submitter has made a CBI claim for the self-disclosure and such claim has either been accepted or has not yet been resolved.

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Last Updated: December 7, 1998
URL: http://es.epa.gov/oeca/sahmemo.html

Final

THE ENFORCEMENT RESPONSE POLICY

FOR

REPORTING AND RECORDKEEPING RULES AND REQUIREMENTS

FOR

TSCA SECTIONS 8, 12 AND 13

TOXICS AND PESTICIDES ENFORCEMENT DIVISION
OFFICE OF REGULATORY ENFORCEMENT
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
U.S. ENVIRONMENTAL PROTECTION AGENCY

Revised March 31, 1999
Effective June 1, 1999

Enforcement Response Policy (ERP)
for
Reporting and Recordkeeping Rules and Requirements
for
TSCA Sections 8, 12 and 13

CONTENTS

INTRODUCTION

Section 8 of the Toxic Substances Control Act (TSCA) authorizes EPA to require persons engaged in the manufacture (manufacture includes import for purposes of TSCA), processing and distribution in commerce of chemical substances to keep certain records and report certain information. The TSCA § 12(b) rule requires chemical exporters to submit to EPA certain information about chemical exports. The TSCA § 13 rule requires chemical importers to submit certification statements concerning import shipments of chemical substances. These reporting and recordkeeping provisions impose similar types of requirements, and therefore, failure to comply leads to similar types of violations. For this reason, this Enforcement Response Policy addresses all of these provisions as TSCA reporting and recordkeeping requirements.

Failure to comply with the recordkeeping and/or reporting provisions of TSCA is a violation of TSCA §§ 15(3)(A) and 15 (3)(B) and is thus subject to the remedies in TSCA § 16.

Requirements or Rules Covered[1]

TSCA § 8(a) Inventory Update Rule - (51 FR 21438, 40 CFR Part 710)

TSCA § 8(a) Preliminary Assessment Information Reporting Rule (PAIR) - (47 FR 26992, June 22, 1982, 40 CFR Part 712)

TSCA § 8(a) Chemical Specific Recordkeeping and Reporting Rules - (40 CFR 704 Subpart B)

TSCA § 8(c) Allegations of Significant Adverse Reactions Recordkeeping and Reporting Rules - (48 FR 38178, August 22, 1983, 40 CFR Part 717; amended 50 FR 46766, November 13, 1985, 40 CFR Part 717)

TSCA § 8(d) Health and Safety Studies Submission Requirement - (47 FR 38780, September 2, 1982, 40 CFR Part 716 amended September 15, 1986, 51 FR 32720)

TSCA § 8(e) Substantial Risk Information Reporting Requirement - (Policy Statement, 43 FR 11110, March 16, 1978 and Reporting Guidance, June 1991 available from the TSCA Hotline)

[1] TSCA § 8(b) Notice of Commencement Requirement (NOC) - the NOC requirement is so closely related to the §5, PMN provision of TSCA that any penalty determinations related to this violation are covered in the TSCA Section 5 Enforcement Response Policy issued on August 5, l988.

TSCA § 12(b) Exports Notification Rule - (40 CFR Subpart D)

TSCA § 13 Import Certification Rule - (48 FR 34734, August 1, 1983, 19 CFR §§12.118 through 12.127 and 127.28, as amended, and 40 CFR Subpart B)

Additional Rules - refer also to 40 C.F.R. Part 766 for additional chemicals and reporting requirements under §§ 8 and 12(b).

FUTURE TSCA RULES or REQUIREMENTS - This policy also covers all future rules promulgated under TSCA §§ 8, 12(b), 13 or amendments to the above rules and policies.

DETERMINING THE LEVEL OF ACTION

Enforcement alternatives include a notice of noncompliance, a civil penalty, injunctive relief, criminal action, or some combination of these actions. Each is described below along with a discussion of when each enforcement action would be an appropriate response.

[Note: Many instances of reducing penalties for Voluntary Disclosure (see Page 15 of this ERP), which had been included in prior versions of this policy, are now superceded by the "Audit Policy." The application of the Audit Policy for self-disclosures has eliminated the use of the Notice of Noncompliance for first time violators of TSCA §§ 12(b) and 13, since 100% mitigation of the gravity based penalty is now guided by the conditions enumerated in the Audit Policy. To bring this ERP in line with other Agency policies for self-disclosure, adjustments to the Circumstance Level for self-disclosure, which had also been included in prior versions of this policy, are no longer an appropriate response.]

Notice of Noncompliance

A Notice of Noncompliance (NON) is appropriate for minor violations of TSCA where the impact on the Agency's regulatory and decision making process is minimal and the violator has not received a previous NON for a violation of that particular subsection.

Violations of TSCA § 8 which warrant NONs include:

- Minor technical omissions, i.e., failure to supply required noncritical information (such as the phone number of a technical contact);
- Failure to use certified mail in making a notification (as required by a rule);
- Report sent to an incorrect EPA address but correctly identified as a specific TSCA § 8 submission;
- Report sent to correct EPA address but not properly identified as a specific TSCA § 8 submission.

Administrative Civil Penalties

An administrative civil penalty is the appropriate response for most violations of the covered regulations.

Nationally Significant Issues - Authority to take enforcement action under TSCA was delegated to Headquarters Enforcement and the Regions by the Assistant Administrator for Enforcement and Compliance Assurance on June 6, 1994. Civil penalties are to be assessed according to this policy. Regional enforcement personnel must follow the procedures set out in the memorandum regarding Nationally Significant Issues which was issued by the Office of Regulatory Enforcement on November 1, l994. In some instances this requires written consultation with TPED prior to issuing and resolving TSCA cases.

Injunctive Action

Injunctive action under TSCA may be appropriate in certain circumstances. Although Section 17 of TSCA can be a very effective tool in obtaining compliance, it is also more resource intensive than a civil penalty action. In addition, it has been the Agency's experience that a civil penalty action is usually sufficient to obtain compliance. For these reasons, the Agency believes that the use of TSCA § 17 remedies generally should be limited to those instances where a civil penalty action would not result in sufficiently swift compliance to protect human health or the environment. For example, injunctive action could be used to require a company to maintain records where the attitude of the violator indicates that this would not be done otherwise or where there is a repeated history of failure to keep records.

Criminal Sanctions

Criminal sanctions pursuant to TSCA § 16 (b) are the most serious sanctions available for violations of the recordkeeping/reporting rules. If the case involves false statements submitted to the government or false statements submitted through the U.S. mail, then other criminal statutes may apply. EPA must establish knowing and willful conduct to impose criminal sanctions. Accordingly, criminal sanctions may be sought in situations that -- when measured by the nature of the conduct, the compliance history of the subject (s) or the gravity of the health or environmental consequences -- reflect the most serious cases of misconduct.

Several factors distinguish criminal cases from administrative or civil actions. First, criminal sanctions will ordinarily be limited to cases in which the prohibited conduct is accompanied by evidence of "guilty knowledge" or intent on the part of the prospective defendant(s). TSCA imposes criminal penalties only for violations of the Act which are committed "knowingly or willfully".

A second factor to consider is the nature and seriousness of the offense. As a matter of resource allocation, EPA will investigate and refer only the most serious forms of misconduct. Of primary importance to this assessment is the extent of environmental contamination or human health hazard that resulted from, or was threatened by, the prohibited conduct. Also of significance is the impact, real or potential, on EPA's regulatory functions.

Third, the compliance history of the individual(s) or person(s) for a potential criminal case is important. Criminal sanctions become more appropriate as incidents of noncompliance increase. While not a prerequisite, a history of noncompliance will often indicate the need for criminal sanctions to achieve effective individual deterrence.

Multiple Remedies

There may be unusual instances where a particular situation will present facts that suggest that more than one final action should be taken. TPED does not encourage the use of multiple remedies except as discussed below. The purpose of this Section is to outline when multiple remedies are appropriate.

Criminal Sanctions - Simultaneous civil and criminal enforcement proceedings are legally permissible and, on occasion, are clearly warranted. (See United States v. Kordel, 397 U.S. 1, 11 (1970.) Note also that the Supreme Court considered the double jeopardy clause in Hudson v. U. S., 522 U.S. 93 (December 10, 1997), and held that an administrative proceeding is not a bar to later criminal prosecution since administrative proceedings are civil, not criminal. Thus, there may be situations where an administrative action precedes a criminal prosecution. When parallel proceedings are contemplated, please refer to the Office of Enforcement and Compliance Assurance, Parallel Proceedings Policy of June 22, 1994 and the Coordinated Settlement of Parallel Proceedings: Interim Policy and Procedures of June 9, l997.

Notice of Noncompliance - In general, a notice of noncompliance should not be used in conjunction with any other final remedy. Where a particular situation presents several violations, some of which would merit a notice of noncompliance, while others would merit civil penalties, no notice of noncompliance should be sent. Instead, an administrative penalty action should be initiated, pleading all violations, with no penalties for minor infractions which would otherwise warrant an NON.

Civil Administrative Penalties and Specific Enforcement - The criteria outlined in this section anticipate that civil penalties and specific enforcement (injunctive action) will be used sequentially. There may, however, be instances where the concurrent use of these remedies is appropriate. If the Region deems this to be appropriate in any case, it should consult with TPED before bringing either action.

ASSESSING A CIVIL ADMINISTRATIVE PENALTY

I. Statement of the Penalty Policy

Background - The TSCA Civil Penalty Policy, published in the Federal Register on September. 10, 1980, establishes a system for determining penalties in administrative actions brought pursuant to TSCA § 16. EPA believes that the system is a reasonable interpretation of the statutory penalty factors in TSCA section 16. Under that system, penalties are determined in two stages: (1) determination of a "gravity based penalty" (GBP), and (2) adjustments to the gravity based penalty.

To determine the gravity based penalty, TSCA § 16(a)(2)(B) requires the Agency to take into account the statutory factors of "Nature", "Circumstances", "Extent", and "Gravity." This policy takes those factors into account in the following manner:

1. Nature: The "nature" of all record keeping and reporting violations discussed in this policy is "hazard assessment."

2. Circumstances: The "circumstances" of the violation is evaluated through an assignment of levels for each situation;

3. Extent: The "extent" of harm to the Agency's ability to assess the risk posed by a chemical substance which could occur from a given violation is evaluated as major, significant or minor;

4. Gravity: The "gravity" of the violation is taken into account in this policy as a "dependent variable" so that the evaluation of "nature", "circumstances", and "extent" determines the gravity.

[Note: Since the statutory factor of "nature" is a constant throughout this policy, and the statutory factor of "gravity" is a "dependent variable", the gravity based penalty is determined by applying a matrix with "circumstances" on the vertical axis and "extent" along the horizontal axis.]

These factors are incorporated in a matrix which allows determination of the appropriate gravity based penalty.

Once the gravity based penalty has been determined, upward or downward adjustments to the penalty amount are made by taking into account the following factors with respect to the violator:

- Degree of Culpability;
- History of prior such violations;
- Ability to pay;
- Ability to continue in business; and
- Such other matters as justice may require (economic benefit from violation etc.).

While the TSCA Civil Penalty Policy system provides an overarching framework for the development of penalties, this document sets forth Agency policy to assess penalties for specific violations of TSCA §§ 8, 12, 13 and regulations promulgated pursuant to these sections, consistent with the statutory factors of TSCA section 16.

Applicability

This policy supersedes all prior Enforcement Response Policies for §§ 8, 12, and 13. This policy applies to all administrative penalty calculations for violations concerning TSCA §§ 8, 12, and 13 violations which are discovered by EPA or disclosed to EPA on or after the effective date of this policy. Violations which were discovered by EPA or disclosed to EPA prior to the effective date of this policy are to apply the ERP effective at the time of such disclosure or discovery unless this policy would result in a reduction of the penalty. Ongoing cases issued prior to the date of this policy should be reviewed to determine whether the penalty calculated under this policy is lower than the penalty in the civil complaint. If this policy yields a lower penalty, either an amendment to the complaint should be made to substitute the lower penalty, or the revised lower penalty should be fully considered and documented in settlement of the action.

This policy sets forth factors for consideration that will guide the Agency in the exercise of its prosecutorial discretion under TSCA § § 8, 12, and 13. EPA believes that this policy is a reasonable interpretation of TSCA section 16. This policy does not constitute rule making by EPA. It may not be relied upon to create a right or a benefit, substantive or procedural, enforceable at law or equity, by any person.

Calculation of the Gravity Based Penalty

Penalties for TSCA §§ 8, 12 and 13 violations vary depending on the date of violation, extent, circumstances, whether penalties are to be calculated as one day assessments versus per day assessments, and by capping the number of days for which a violation may be assessed as appropriate. In establishing each of these, the Agency considered the following factors in a comparative manner:

- ✓ Impact on the Agency's ability to assess the hazards and/or risks to human health and the environment;
- ✓ Relative degree of harm to human health, the environment and the regulatory process caused by the failure to comply;
- ✓ Time frames in which the Agency decision making process generally occurs;
- ✓ Time to generate information not reported;
- ✓ Relative costs of studies;
- ✓ Likelihood that sufficient information is available from other sources;
- ✓ Type of information involved, i.e., human exposure versus animal toxicity studies and allegations versus actual data.

The Gravity Based Penalty (GBP), a function of the nature, circumstances and extent of each violation, is to be determined by using one of the following matrices, depending on when the violation occurred. The first matrix is used for violations that occurred on or before January 30, 1997. This matrix is based on the penalties set forth in TSCA when it was enacted in 1976.

The Federal Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA) requires Agencies to adjust penalties for inflation, with a maximum increase of 10% at any one time. On December 31, l996, EPA promulgated the civil penalty inflations adjustment rule, 61FR 69359, and thereby increased the statutory penalty provisions for TSCA by ten percent (10%). The rule became effective January 30, 1997. Accordingly, the second matrix, which increases the original penalties by ten percent (10 %), is used for violations that occurred after January 30, 1997.

Penalty Matrix For Violations Occurring On or Before January 30, 1997.

CIRCUMSTANCES ⇓⇓⇓	◂EXTENT▸ A Major	B Significant	C Minor
LEVELS 1 High Range 2	$25,000 $20,000	$17,000 $13,000	$5,000 $3,000
3 Mid Range 4	$15,000 $10,000	$10,000 $6,000	$1,500 $1,000
5 Low Range 6	$5,000 $2,000	$3,000 $1,300	$500 $200

Penalty Matrix For Violations Occurring After January 30, 1997

CIRCUMSTANCES ⇓⇓⇓	◂EXTENT▸ A Major	B Significant	C Minor
LEVELS 1 High Range 2	$27,500 $22,000	$18,700 $14,300	$5,500 $3,300
3 Mid Range 4	$16,500 $11,000	$11,000 $6,600	$1,650 $1,100
5 Low Range 6	$5,500 $2,200	$3,300 $1,430	$550 $220

After determining the initial or "base penalty" from the matrix for the first day of violation, additional per day penalties are to be determined, where applicable. Whether a penalty is to be assessed as a one day assessment or as a continuing violation on a per day basis is specified in the Circumstances section. Days of violation are based on calendar days and includes weekends and holidays.

Nature

A violation may be classified as either chemical control, control-associated data gathering, or hazard/risk assessment in nature. For purposes of assessing a penalty, the nature of a record keeping or reporting violation is "hazard assessment." For all penalty assessments under this policy for record keeping and reporting violations, the nature of the violation is “hazard/risk assessment.”

Circumstances

The first step in selecting the base penalty is to determine which level on the circumstances axis applies to the violation.

Non reporting violations under TSCA § 8 occur when information, studies, or reports are not submitted to EPA. Reports that are submitted more than 30 days after the due date are considered grossly late. Such reports are considered non-reporting for purposes of this policy. Late reporting under TSCA § 8 occurs when information, studies, or reports are provided late to EPA, but within 30 days from the due date.

The circumstances axis of the GBP matrix reflects the probability that harm will result from a particular violation. For recordkeeping and reporting rules, violations rank as follows on the circumstances axis:

CIRCUMSTANCE LEVEL

		Violation Assessed
LEVEL 1	Non reporting for TSCA § 8(e)	Per day
	Non reporting for TSCA § 8(e) Emergency Incident of Environmental Contamination (EIEC)	One day
	Non reporting for TSCA § 8(d)	Per day
	Non reporting for TSCA § 8(c)	Per day
	Non reporting for TSCA § 8(a) Chemical Specific Rules	Per day
	Non reporting for TSCA §8(a) PAIR	Per day
	Non reporting for Inventory Update	One day
	Failure to establish/keep records; or False/incorrect/misleading reporting	
	TSCA § 8(a) Chemical Specific, § 8(a) PAIR, § 8(d), § 8(e)	Per Day
	Failure to record section 8(c)	One Day

LEVEL 2	Failure to maintain records/report in a manner that meets the standard required in the rule. All except TSCA § 8(c).	One day
	Failure to report under TSCA § 8(d) involving omission of a study in a list of studies which a manufacturer knows of but which is not in his possession.	One day
LEVEL 3	Failure to maintain TSCA § 8(c) records/report in a manner that meets the standard required in the rule. Assess one violation where all allegations are filed but not in the manner prescribed.	One day
	Failure to report completely after EPA has requested missing information or a correction of erroneous information. TSCA § 8(a) Chemical Specific, § 8(a) PAIR, § 8(d), § 8(e)	Per Day
LEVEL 4	Late reporting violations under § 8.	Per day
	All TSCA § 12(b) violations.	One day
LEVEL 5	No violations are level 5 in the TSCA §§ 8, 12, and 13 ERP. (This level is retained to keep the policy parallel with § 5 ERP)	
LEVEL 6	TSCA § 8 report sent to incorrect office and not identified as a specific TSCA § 8 submission as required.	One day
	TSCA § 8 report properly identified but sent to incorrect office after a company received a previous notice of noncompliance for a violation of the same subsection.	One day
	TSCA § 8 report sent to correct office but not properly identified after a company received a previous notice of noncompliance for a violation of the same subsection.	One day
	Failure to keep records showing that the manufacturer is not subject to reporting under the TSCA § 8(a) Inventory Update Rule.	One day
	TSCA § 13 violations involving a negative or no certification when the chemical is subject to TSCA and is in compliance with all other TSCA requirements (e.g. has a PMN).	One day

VARIABLE LEVEL	TSCA § 13 violations involving a positive/negative, or no certification when the chemical does not comply with TSCA §§ 5, 6 or 7 will have the same circumstance level as the TSCA § 5, 6 or 7 violation. However, the penalty for a TSCA § 13 violation shall not exceed the amount of a Circumstance Level 3, Significant Extent violation (either $10,000 or $11,000 depending on date of violation) per count.	Per day

Extent

The second step in selecting the base penalty for a specific violation from the matrix is to determine its position on the extent axis.

This axis of the GBP matrix reflects the extent of potential harm caused by a violation. In the case of record keeping/ reporting rules, harm is defined as the inability of the Agency to carry out its risk assessment responsibilities under TSCA.

EXTENT LEVEL

MAJOR

Violations of TSCA §§ 8(c), 8(d), or 8(e) which directly interfere with the Agency's ability to address situations involving potential imminent hazard, unreasonable risks, or substantial endangerment to health or the environment. (This determination must have written concurrence from OPPTS.)

Violations of TSCA §§ 8(d) and 8(e) involving human data. (Note that 8(e) determinations must have OPPTS written concurrence.)

Violations of TSCA § 8(e) involving information on emergency incidents of environmental contamination (EIEC). (Note that 8(e) determinations must have OPPTS written concurrence.)

All TSCA § 8 Circumstance Level 6 violations.

SIGNIFICANT

Violations of TSCA §§ 8(d) and 8(e) involving animal/aquatic studies, environmental monitoring, workplace monitoring (non invasive human monitoring), and any other study not addressed in the major or minor extent category.

Level 1, 2, 3, or 4 violations of the TSCA Inventory Update, § 8(a) PAIR, § 8(a) chemical specific, or § 8(c) rules, except major 8(c) violations.

All Violations of TSCA § 12(b).

TSCA § 13 violations involving a negative or no certification when the chemical is subject to TSCA and is in compliance with all other TSCA requirements (e.g. has a PMN).

MINOR

Violations of TSCA § 8(d) involving physical chemical properties or environmental fate data.

§ 8(a), failure to keep records showing that a manufacturer is not subject to reporting under the Inventory Update Rule

VARIABLE

Violations of TSCA § 13. The extent category of a TSCA § 13 violation involving a chemical that does not comply with TSCA §§ 5, 6 or 7 will vary with the extent category of the TSCA § 5, 6 or 7 violation.

However, the penalty for a TSCA § 13 violation shall not exceed the amount of a Circumstance Level 3, Significant Extent violation (either $10,000 or $11,000 depending on date of violation) per count.

Per Day Assessments

Where per day assessments are specified in the Circumstances Level section, the base penalty is calculated for the first day of violation and per day penalties are assessed for each subsequent day of violation based on the following formula:

1) TSCA 8(c), 8(d), 8(e)
when there is OPPTS written determination that the violation disrupts the Agency's ability to address situations which involve Potential Imminent Hazard/Substantial Endangerment Situations/Unreasonable Risks

Base Penalty x # of days in violation = Penalty

2) TSCA § 8(e)

Base + (# of days of violation - 1) x base penalty = Penalty
Penalty 30

3) TSCA § 8(a) Chemical Specific

Base + (# of days of violation - 1) x base penalty = Penalty (1 yr. cap)
Penalty 360

4) All others

Base + (# of days of violation - 1) x base penalty = Penalty (Not to exceed cap)
Penalty 180

Caps on Number of Days for Penalty to be Assessed Per Violation

TSCA § 8(e)	No cap
TSCA § 8(d)	5 year cap Major Extent Violations 3 year cap Significant Extent Violations 1 year cap Minor Extent Violations
TSCA § 8(c)	1 year cap
TSCA § 8(a) Chemical Specific	1 year cap
PAIR	1 year cap

Determining Number of Violations - Multiple penalties are to be used if there is more than one violation of the same rule or violations of different rules. Violations will be determined as follows:

TSCA § 8(a) Inventory	Per Chemical
TSCA § 8(a) Inventory Update	Per Chemical Per Site

TSCA § 8(a) PAIR	Per Chemical Per Site
TSCA § 8(a) Chemical Specific Rules	Per Chemical (Per Chemical Per Site if Site-Specific Reporting Is Required
TSCA § 8(c) Failure to Keep Records	Per Allegation Submitted to Company and Not Filed
TSCA § 8(c) Failure to Maintain Records as Required	Per Requirement Not Met Per Firm
TSCA § 8(c) Report	Per Allegation Not Reported
TSCA § 8(d)	Per Study Per Chemical
TSCA § 8(e)	Per Type of Reportable Effect or Event Per Chemical
TSCA § 12(b)	Per Chemical Per Country Per Year (§ 4 limited to 1st year only)
TSCA § 13	Per chemical per day (Multiple shipments of the same chemical on the same day is one violation. Multiple chemicals in only one shipment is one violation. Multiple shipments of different chemicals on the same day are multiple violations; one violation for each different chemical in a separate shipment.)

Determining the Gravity Based Penalty

Since the category for nature is "hazard/risk assessment" for all penalty assessments under this policy, the circumstances level and the extent category for each violation will define the gravity based penalty in the matrix. See The TSCA Civil Penalty System for its description of the penalty factor of gravity as a "dependent variable" factor.

For those violations designated as per day in the circumstances matrix, calculate the gravity based penalty as indicated under per day assessments, taking into account the caps on the number of days the penalty is to be assessed. Refer to the Penalty Calculation Worksheet, appendix 3, and adjust the gravity based penalty by taking into account the factors discussed in the TSCA Civil Penalty System and this policy.

Adjustment Factors

The TSCA Civil Penalty System discusses adjustment factors EPA uses to take into account the statutory factors of TSCA section 16. Below is additional explanation of the adjustment factors for the gravity based penalty specific to this policy.

Voluntary Disclosure (Other Factors as Justice May Require)

Facilities that conduct an audit and voluntarily self-disclose any violations of TSCA §§ 8, 12 or 13 under the Incentives for Self-Policing: Disclosure, Correction and Prevention of Violations Final Policy Statement, 60 Fed. Reg. 66,706 (December 22, 1995), may be eligible for a 100% reduction in the gravity-based penalty, if they meet the nine criteria established in the policy.

If a facility self-discloses violations that do not qualify under the Agency's Self-Policing Policy, the penalty amount may still be reduced for such a voluntary self-disclosure under this policy. To be eligible for such a reduction, a facility must submit a signed statement of voluntary disclosure to EPA describing the alleged violations.

Voluntary disclosure of a violation will result in a 25% reduction of the gravity based penalty. To encourage immediate disclosure, an additional 25% reduction will be given for voluntary self- disclosures made within 30 days of having reason to believe that a violation occurred.

The reduction for voluntary disclosure and immediate disclosure may be made prior to issuing the administrative complaint. The complaint should state the original penalty and the reduced penalty and the reason for the reduction.

For voluntary disclosure of Section 8, 12 and 13 violations, the gravity based penalty is to be adjusted downward as follows:

Voluntary Self -Disclosure 25%
+
Voluntary Self -Disclosed within 30 days 25%

Total GBP reduction for voluntarily disclosing w/in 30 days 50%

As a further incentive, EPA will not consider a regulated entity's prior history of violation in determining the penalty for a violation that is disclosed voluntarily under this ERP. However, if a regulated entity has received penalty mitigation for the violations under another policy for self-disclosing the particular violation, there is no adjustment for self -disclosure of the

same violations under this policy.

The Agency will not consider a disclosure voluntary if the disclosure is received after the company has been notified of a scheduled inspection or an investigation has begun. Information received after these events will be considered as failure to report. However, if the disclosed violations are clearly outside the scope of the investigation, then the self-disclosure reductions may apply. If additional violations are disclosed after an Administrative Complaint has been issued, this situation may be addressed through: 1) an amendment to the original complaint; 2) an additional complaint; or 3) by including additional charges in the Consent Agreement and Consent or Final Order.

Economic Benefit (Other Factors as Justice May Require)

In no case should the final penalty imposed be less than the economic benefit. In those cases where the initial gravity based penalty is less than the economic benefit derived from noncompliance, EPA reserves the right to impose penalties up to the statutory maximum of $25,000 per day (or $27,500 per day for violations that occurred after January 30, 1997) to assure that the penalty is not less than the economic benefit.

Exposure Reduction (Other Factors as Justice May Require)

In cases warranting per day assessments of the base penalty (e.g. those involving potential imminent hazard, etc.), if the Respondent provides EPA with credible evidence that demonstrates, for example, exposure has ceased by all routes of exposure, environmental and/or commercial; that evidence may be considered to mitigate the penalty. That evidence must be submitted in the form of an affidavit or other means that provides EPA with a reasonable certainty of truthfulness. In those cases, the penalty will be assessed at the maximum base penalty per day during the duration of the exposure presenting imminent hazard/substantial endangerment/unreasonable risk and assessed as a violation not presenting the potential hazard/risk/endangerment during the time that the hazard/risk/endangerment had ceased to exist.

Attitude

In assessing the violator's attitude, the Agency will look at the following factors: whether the violator is making good faith efforts to comply with the appropriate regulations; the promptness of the violator's corrective actions; and any actions taken to minimize harm to the environment caused by the violation.

This adjustment applies equally to companies that voluntarily disclose violations and to those that do not. A company would generally qualify for a downward adjustment of a maximum of 15% if it immediately halts the violative activity and takes steps to rectify the situation. An upward adjustment of a maximum of 15% may be justified where company officials continue the violative activity after being notified to stop, do not act in good faith, hinder EPA's progress, cause increased government expenditures, or are otherwise uncooperative.

For TSCA § 13 violations, for example, if the company had a system in place to track import certifications and comply with TSCA § 13 requirements, and a chemical "slips through", a 15% good attitude reduction may be given as provided for in the TSCA Penalty Policy. Larger reductions are inappropriate in that companies are required to comply with certification requirements and credit should not be given for attempting to comply with the law. If a company experiences numerous occasions where chemicals "slip through" their system, a good attitude reduction is no longer appropriate.

Supplemental Environmental Projects

To further the goals of the EPA to protect and enhance public health and the environment, certain environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be included in the settlement.

SEPs are environmentally beneficial projects which a respondent agrees to undertake in settlement of an environmental enforcement action, but which the defendant is not otherwise legally required to perform. In return, some percentage of the cost of the SEP is considered as a factor in establishing the final penalty to be paid by the respondent. EPA has broad discretion to settle cases with appropriate penalties. Evidence of a violator's commitment and ability to perform a SEP is a relevant factor for EPA to consider in establishing an appropriate settlement penalty. The commitment to perform a SEP may indicate a respondent's new or extraordinary efforts to be a good environmental citizen.

While SEPs may not be appropriate in settlement of all cases, they are an important part of EPA's enforcement program. Whether to include a SEP as part of a settlement of an enforcement action is within the sole discretion of EPA. EPA must ensure that the inclusion of a SEP in settlement is consistent with the Agency's SEP Policy effective May 1, 1998 unless revised.

History of Previous Violation

The GBP Matrix is designed to apply to first offenders. Where a violator has demonstrated a history of "prior such" violations as stated in TSCA, the penalty will be adjusted upward to increase his motivation to comply.

If the "prior such" TSCA violation is not related to a Section 8, 12(b), or 13 TSCA provision or regulation, then the penalty should be upwardly adjusted 25 percent for the first repetition and 50 percent for additional repetitions of the violation. If the "prior such" violation is of any corresponding TSCA Section 8, 12(b), or 13 provision or regulation, the penalty should be upwardly adjusted by 50 percent for the first repetition and 100 percent of the second repetition. However, the penalty may not be increased beyond the statutory maximum.

The Agency will consider all prior violations. These include both self-disclosed and non self-disclosed violations.

II. Explanation of the Penalty Policy

Nature

The ERP is one of several documents that, together, define the national TSCA Enforcement Program. This ERP must be read in conjunction with the Guidelines for Assessment of Civil Penalties under Section 16 of the Toxic Substance Control Act (September 10, 1980).

As discussed before, the nature of a record keeping or reporting violation is "hazard/risk assessment." For all penalty assessments under this policy for record keeping and reporting violations, the nature of the violation is “hazard/risk assessment.”

TSCA §§ 8 and 12(b) require that information concerning chemicals be reported to EPA or kept at the company and made available to the Agency. TSCA § 13 requires importers to certify that chemicals imported are either not subject to TSCA or are in compliance with TSCA.

Section 8 information is used by the Agency to evaluate the potential risks associated with the manufacture, process, distribution and use of a chemical. This data gathering often occurs at the early stages of regulatory decision making. Therefore, complete and accurate information is essential. Incomplete and inaccurate information will have far-reaching effects on the Agency's risk assessment, regulatory priority setting, and regulation development processes. Some information such as TSCA § 8(e) information may affect the Agency's ability to initiate immediate action necessary to protect health and the environment, e.g., seeking injunctive relief. In addition, reports under the original Inventory Reporting Rule establish the basis for what is an "existing" chemical versus a "new" chemical under § 5, the latter being those for which a premanufacture notice must be filed and the chemical reviewed by the Agency.

Section 12(b) collects information about the export of chemicals subject to certain proposed or final testing or regulatory requirements under TSCA §§ 4, 5, 6, or 7. The Agency provides this information to the government of an importing country to allow that country to initiate its own risk assessment process.

The section 13 rule describes procedures for certifying that imported chemical substances subject to TSCA are in compliance with TSCA. This information permits the Agency to determine if importers of chemicals are complying with applicable TSCA regulations.

Circumstances (Harm from Non-compliance)

The circumstances axis of the GBP matrix reflects the probability for harm resulting from a particular violation. For the reporting rules, the potential harm is to the Agency's ability to assess hazard/risk to human health and the environment.

High Range Violations - Level 1

Non reporting/failure to report and failure to keep records are extremely serious violations of these rules. The Agency will have to proceed with chemical assessment and priority setting, and perhaps, even regulation development, especially for TSCA § 4 test rules, without critical information or without the knowledge that such information even exists. This is true even if a company reports some information but does not report each study or under-reports the extent of health effects or number of allegations for a particular effect. Thus, each report omitted or incompletely reported will be treated as a separate non reporting violation.

False/incorrect/misleading reporting of information is equally harmful because the Agency is misled in its analysis of the potential risks posed by the chemical or in the amounts or types of information available.

TSCA § 8(a), the Inventory Update Rule (IUR) requires chemical manufacturers and importers to provide, once every four years, chemical production volume and location information. The updated Chemical Substances Inventory then provides EPA with a significant tool for identifying, prioritizing, and evaluating toxic chemicals, and for developing a profile of the chemical industry in the United States. The IUR provides for the collection of information regarding commercially produced chemicals so that the exposure to a chemical and its total impact on health and the environment can be monitored and evaluated. The data in the inventory are considered the only reliable source of national production/importation volume information for organic chemicals. The Chemical Substances Inventory data are used to justify testing and regulatory actions taken by the Agency including TSCA § 4 test rule decisions. The data are also provided to other federal and state agencies to assist in establishing an integrated toxic substances program. Moreover, international organizations use the data base's information to establish international chemical testing priorities. Failure to report under IUR undermines the data base used in the Agency decision making process.

TSCA § 8(c) violations in level 1 include failure to keep records and failure to report if the Agency has requested that the information be submitted. Thus, if a company has received TSCA § 8(c) allegations, but does not maintain TSCA § 8(c) records, and the Agency requests that TSCA § 8(c) allegations be submitted and the company fails to make a submission, there are two violations - one for the failure to keep records and another for the failure to report. Even if a company submits most allegations but not all, each failure to submit an allegation shall be separately charged and assessed as a failure to report.

TSCA § 8(d) level 1 violations include the following:

- Failure to submit unpublished studies in the possession of a subject person;
- Failure to notify EPA of unpublished studies the subject person knows of but is not in possession of;

- Failure to notify EPA of ongoing studies which the subject person initiated or sponsored. Includes future studies required to be reported if they are initiated during the reporting time frame;

- Failure to send EPA the final report of a study which was listed as an ongoing study. Includes future studies required to be submitted;

- Failure to submit underlying data to EPA on EPA's request.

Failure to comply with the TSCA § 8(e) reporting requirements can be the most serious violation of TSCA § 8. These reports alert the Agency to new information which may have a bearing on the Agency's chemical hazard/risk assessment and chemical control efforts. This ERP reflects the seriousness the Agency attaches to violations of TSCA § 8(e) by not placing caps on the penalties assessed for these violations.

High Range Violations - Level 2

Failure to maintain records or report in a manner that meets the standard required by the rule has effects similar to falsified information. Both mislead the Agency and are difficult to detect. Failure to report in a manner that meets the standard refers to those cases where reporting is essentially complete and the missing/incorrect information does not impact the report in such a manner as to mislead the Agency. An example is the failure to report one ongoing TSCA § 8(d) study when another similar study is reported by the company. Another example is a small error in reporting production volume, i.e., less than an order of magnitude (a factor of 10).

Level 2 also includes a TSCA § 8(d) violation involving the failure to report a study which a manufacturer knows of but which is not in his possession. The Agency considers this violation to have less potential harm than other failure to report violations since the Agency may learn of this study from other persons reporting.

Mid Range Violations - Level 3

Failure to report completely after EPA has requested missing information is a significant violation. Such a violation denies the Agency access to information necessary to its analysis of chemical risks. This type of violation is not as serious as the high range violations because it is usually relatively easy to detect and therefore easy to remedy. A form, for instance, will have blank spaces where answers are expected. Even though the Agency does not have the information, it knows that an information gap exists, and therefore, is less likely to be misled into making invalid chemical risk assessments. However, the withholding of information is a serious impediment to risk assessment, and if it becomes a widespread practice, it could significantly affect the Agency's chemical risk assessment processes. Thus, this violation, while not as serious as a total failure to report or false or misleading reporting, is still of sufficient severity to be treated in the higher level of the mid range.

For TSCA § 8(c) files, the failure to maintain reports as required in the rule, e.g., files which are present but which are not cross-indexed or which are not kept in one location, is a level 3 violation. In those cases where the company maintains files of § 8(c) information, but does not submit information when requested by EPA because it was unable to retrieve the information during it's file search, the failure to submit is a level 1 violation. The company may also be charged with a level 3 violation. Please note that failure to file an allegation under TSCA § 8(c) although other allegations are filed constitutes a level 1 failure to keep records violation.

Mid Range Violations - Level 4

Reports which are late (those documents submitted less than 30 days after the original due date) can slow or disrupt the Agency's decision making process. The submission deadlines vary for each rule. Lateness is classified in the lower level of the Mid Range Circumstances level because the disruption caused by the untimely submission of information is corrected within a short period of time.

Most TSCA § 12(b) violations are categorized as level 4. The Agency considers TSCA § 12(b) reporting to be important to its ability to notify other countries to which chemicals subject to certain TSCA rules are being exported. The potential harm is that the violation prevents the Agency from fulfilling its statutory obligation to notify other countries that EPA has a concern with the chemical and has issued proposed rule under §§ 5, 6, or 7 or an order or final rule under §§ 4, 5, 6, or 7.

Low Range Violations - Level 5 None for §§ 8, 12(b), or 13 of TSCA.

Low Range Violations - Level 6

Level 6 violations include minor technical omissions which do not affect the Agency's ability to follow up the information either by contacting someone in the company or consulting outside references. They are among the least serious because the violation is readily detected, does not affect initial risk assessment and may only slightly hinder the Agency's decision making process. In such cases, a notice of non-compliance rather than a penalty may be appropriate for the first violation. However, if a company repeats this type of violation, the Agency will assess a penalty.

A second level 6 violation is the failure on the part of a manufacturer to keep records showing that he is not subject to reporting under the TSCA § 8(a) Inventory Update Rule, which requires persons who produce less than 10,000 lbs. of a substance to maintain records documenting that fact.

Other low range violations include the submission of TSCA § 8 information which is not specifically identified. Also, submitting the information to the incorrect office or not correctly identifying the information after a previous Notice of Noncompliance has been issued for a

violation of that Subsection warrants a level 6 assessment. Although the Agency receives the information, it may take some time to reach the correct office or to be placed into the review process, and therefore, the Agency's decision making is delayed or impeded.

The Agency considers TSCA § 13 violations that do not occur with violations of TSCA §§ 5, 6 or 7 , to be low range level 6 violations. The violation reflects the importer's failure to assure full compliance with TSCA. Failure to certify or filing a false import certification circumvents the purpose of TSCA § 13 and could lead to the importation of chemicals which violate other provisions of TSCA.

Variable Range for § 13 Violations

Where a violation of TSCA § 13 involves a chemical substance that is also in violation of a TSCA §§ 5, 6, or 7 requirement, the Circumstance Level of the § 13 violation will vary. TSCA § 13 is designed to assure that an importer takes affirmative responsibility in assuring that his shipments comply with TSCA §§ 5, 6, or 7. Accordingly, where §§ 5, 6, or 7 violations are found, a TSCA § 13 violation will be assessed at the same circumstance level as the TSCA §§ 5, 6, or 7 violation. However, the penalty for a TSCA § 13 violation is capped so it may equal the penalty assessed for the TSCA § 5, 6, or 7 violation but not exceed the penalty assessed for a Circumstance Level 3, Significant Extent violation.

Extent

This factor reflects the extent of potential harm to EPA's hazard/risk assessment process. The Agency relies on information gathered under §§ 8(a), 8(c), 8(d), and 8(e) to perform risk assessments. The Agency uses TSCA §§ 12(b) and 13 in a different way. TSCA § 12(b) information is used in order to notify foreign governments. TSCA § 13 is used to assure that importers verify and certify compliance with TSCA.

For risk assessment, information may be related to toxicity or exposure, both important in determining risk. In examining the extent of potential harm, the type of information is important, i.e., human effects data, human exposure data, animal data, environmental effects, actual environmental contamination information. Also, scientific studies versus allegations typically differ in their importance.

Major Extent

Violations which directly interfere with the Agency's ability to address potential imminent hazards, unreasonable risks, or substantial endangerment to health/environment are placed in the major extent category. TSCA §§ 8(c), 8(d), and 8(e) are designed to help the Agency address these scenarios. Examples of such violations include: 1) information on injury to humans where continued manufacture or use poses a potential imminent hazard; or 2)

information on a spill/release which is covered by TSCA § 8(e) and which poses an imminent hazard or results in widespread environmental contamination from which persons exhibit serious health effects. In the second case, two violations are possible, one for the failure to report the spill and another for the failure to report the health effects.

Other major extent violations include TSCA §§ 8(d) and 8(e) violations involving information on human effects. Such information can weigh heavily in the Agency's decision making process.

Violations involving emergency incidents of environmental contamination reportable under TSCA § 8(e) are also considered to be of major extent since the Agency needs such information immediately. Otherwise, the opportunity to provide adequate protection may be lost.

All TSCA § 8 level 6 violations are placed in the major extent category.

Significant Extent

The Agency places slightly less importance on animal studies as opposed to data reporting effects in humans. Nonetheless, such information is critical to the Agency's decision making process. Such tests may be expensive, may take a long time to conduct, and require rule making by the Agency to obtain them. For example, if a company fails to report a study it has, the Agency may decide that such data are needed and proceed to do unnecessary rule making under TSCA § 4. Given the time/costs for such rule making and the time/costs needed to conduct tests and submit results to the Agency, the violation results in a major delay in the Agency's risk assessment of the chemical and an unnecessary expenditure in resources, both EPA's and industry's. Please note that failure to report a study which is required to be reported but which indicates no adverse effects of the chemical still results in this harm.

The Agency has also decided to place violations involving exposure related data in the significant extent category when the EPA has made a decision that it needs such information for a specific chemical. Thus, TSCA §§ 8(d) and 8(e) violations involving exposure related information as well as violations of the PAIR, and TSCA § 8(a) chemical specific rules, all of which involve exposure related information, are considered to be significant extent violations. Although exposure information is critical to any risk assessment, the impact on the Agency's decision making if one company fails to report and all other companies comply is less than if one company fails to submit a toxicity study since it is less likely that another company will submit the same study. This distinction is reflected in the establishment of caps for different types of violations.

TSCA § 8(c) involves allegations and not actual test data. However, such information is important to the Agency's decision making process in that it involves patterns of human health or environmental effects. Therefore, these violations are categorized as significant extent.

Violations of TSCA § 8(a) Inventory Update Rules are also designated as significant in extent. Although information under these rules is not required as a result of the Agency

identifying a specific need for information on specific chemicals, this information provides exposure related information which is important to the overall decision making of the Agency in terms of setting its priorities and deciding whether rule making should be pursued.

TSCA § 12(b) violations are also considered significant in extent since § 12(b) reporting is necessary for EPA to fulfill its statutory responsibility to notify other countries of chemicals for which EPA has taken certain actions under TSCA §§ 4, 5, 6 or 7. TSCA § 13 violations are significant in extent since they hinder EPA/Customs' ability to monitor chemical substance imports for compliance with TSCA.

Minor Extent

Two types of violations fall into the minor extent category, i.e., violations of TSCA § 8(d) involving physical/chemical properties or environmental fate data; and violations of TSCA § 8(a), failure to keep records showing that a manufacturer is not subject to reporting under the Inventory Update Rule.

Variable Extent

Where a violation of TSCA § 13 involves a chemical substance that is also in violation of a TSCA § 5, 6, or 7 requirement, the extent category of the § 13 violation will vary. TSCA § 13 is designed to assure that an importer takes affirmative responsibility in assuring that his shipments comply with TSCA. Accordingly, where other TSCA violations are found, a TSCA § 13 violation will be assessed at the same extent category as the TSCA § 5, 6, or 7 violation. However, the penalty for a TSCA § 13 violation is capped so it may equal the penalty assessed for the TSCA § 5, 6, or 7 violation but not exceed the penalty assessed for a Circumstance Level 3, Significant Extent violation.

Per Day Penalties or One Day Assessments

The Agency has determined that a one day penalty assessment is appropriate for violations involving the failure to report under a requirement dealing with the manufacture or processing of a chemical that falls within a class of chemicals meeting certain criteria. (e.g. the IUR requirements). In other words, one day assessments are appropriate in cases where the Agency uses the information to set priorities and may use it as the need arises on a specific chemical evaluation but has not affirmatively identified a particular chemical for which specific information is needed.

In contrast, a per day penalty assessment is appropriate when the violation involves either a chemical which EPA has specifically identified in a rule as requiring certain reporting information or a violation which is a continuing impediment to the Agency's decision making process. For example, in a situation where EPA has published a rule which lists a specific chemical(s), per day assessments are appropriate because the Agency has identified a need for the information for risk identification, risk assessment, or risk management purposes. Per day

assessments also apply to any TSCA § 8(e) information (except EIEC's that do not present an imminent hazard). Although the §8(e) information is not being requested for a specific chemical, it is likely to be used immediately for hazard/risk assessment purposes.

A one day assessment is appropriate for a failure to list a TSCA § 8(d) study which a company knows of but which is not in its possession. Level 2 and level 6 violations are to be assessed as one day penalties. TSCA § 12(b) violations are considered to be one day violations for each chemical per country. TSCA § 13 is considered one violation for each day of importing a particular chemical despite multiple shipments during that day. However, multiple days of importing a chemical are counted as separate violations. As with TSCA § 8(e) violations dealing with an EIEC, violations of these rules do not impede the Agency's regulatory decision making process in that such information would not normally result in rule making. However, such information is necessary for more immediate actions such as injunctive relief or seizing chemicals which are otherwise in violation of TSCA, e.g., a TSCA chemical imported in violation of TSCA §5.

Violations involving TSCA § 8(c) files, i.e., failure to record information, are treated as one day violations because the effect on the Agency's decision making is not critical until the Agency requests the submission of TSCA § 8(c) information. Once the information is requested, the Agency has a specific need for the information to make its decisions. Therefore, "failure to report" violations under TSCA § 8(c) are assessed on a per day basis due to their adverse impact on the Agency's ability to assess hazard/risk.

Per Day Assessment Calculation

For violations involving TSCA § 8(e) information which directly disrupts the Agency's ability to address situations involving potential imminent hazard, unreasonable risk, or substantial endangerment to health/environment, the base penalty is to be assessed for each day of violation. These are the most serious violations, and therefore, warrant the highest penalties provided for by the statute.

For other TSCA § 8(e) violations, the base penalty is to be used for the first day of violation. For each day thereafter, the per day penalty is the base penalty divided by 30. This adjustment was selected for the following reasons: 1) these violations involve significant adverse effects; 2) the Agency has an immediate need for the information in order to protect the public and environment, as reflected in the statute's language to "immediately notify"; and 3) the timing of the Agency's decision making process once such data is received.

For TSCA § § 8(c) and (d) violations, for which per day assessments are to be made, the base penalty is to be used for the first day of violation and for each day thereafter, the per day penalty is the base penalty divided by 180. For TSCA § 8(a) Chemical Specific violations the per day penalty is the base penalty divided by 360. This method was selected in order to provide

further distinction between types of violations and their impact on the Agency's decision making process and its mission to protect the public and the environment.

Caps

In establishing caps for some violations, the Agency took into account factors such as the length of time that a violation continues, the timing of the Agency 's decision making process, the relative costs of studies and the length of time needed if unnecessary studies are conducted. Please note that the cap does not refer to a limitation on the time elapsed since the violation occurred - only a limit on the number of days for which a penalty is assessed even though a violation continues for a longer period.

There is no cap on TSCA § 8(e) violations. The harm continues as long as the violation continues.

For TSCA § 8(d) studies, which often relate directly to TSCA § 4 rule making, the caps depend on the type of study, the length of time to conduct the study, the relative costs of the studies, and the timing of the Agency's decision making.

For other TSCA § 8 violations for which per day assessments are to be made, a one year cap is set based on the estimated time of the Agency's decision making process. This decision also reflects the fact that TSCA § 8(a) requirements are more exposure oriented than toxicity oriented, and therefore, the quality of the information is sensitive to time. As indicated in the discussion on extent categories, exposure information is important but one company's failure to report may not have as much of an impact as non reporting of toxicity information because the exposure information is used in the context of total exposure. Therefore, these violations are capped at one year.

A chart is provided in Appendix I which indicates the caps per violation and their maximum assessments. Caps refer to maximum penalties for each separate violation; they are not cumulative caps for multiple violations.

Determining Number of Violations

The number of violations depends on the requirements which are in each rule. Multiple violations are to be assessed whenever more than one rule is violated and for each violation within a rule. The Inventory Update rule requires reporting for each chemical and for each site. Therefore, TSCA § 8(a) Inventory Update violations are assessed per chemical per site.

Violations of PAIR are assessed per chemical per site. TSCA § 8(a) Chemical Specific Rules violations depend on the information required by the rule. If the rule requires site specific information, then violations are assessed per chemical per site. If the rule requires aggregate information for each company, then violations are assessed for each chemical not

reported/otherwise in violation.

TSCA § 8(c) violations are determined depending on the violation. TSCA § 8(c) "failure to keep records" violations and "failure to report" violations are assessed per allegation not maintained/reported. This is because the omission of any allegation may impact the Agency's decision making process, especially if there is significant under-reporting of allegations. However, a "failure to keep records as required" under TSCA § 8(c) is assessed per plant site because these violations involve files not maintained as prescribed but for which the information is available. An allegation consists of each report (i.e., one or more pieces of paper) whereby an individual/group submits an allegation to a company. If one person alleges that six chemicals produced ten effects in the same report, and the company fails to file the allegation, this is assessed as one violation. If two persons file separate reports regarding the same health effect, and the company does not file the allegations, this constitutes two violations. If a union files a report for 100 persons regarding an allegation, and the company does not file the allegation, this is assessed as one violation.

TSCA § 8(d) violations are assessed for each required study. The omission of a single study even if others are submitted may have a serious impact on the Agency's decisions regarding a specific chemical. TSCA § 8(e) violations are assessed per type of effect per chemical not reported. Omission of one significant adverse effect even if other effects are reported impedes the Agency's risk assessment.

TSCA § 12(b) violations are assessed per chemical per country per year not reported. This decision was based on the determination that the export notification requirement is a one-time requirement per year for each chemical and for each country of export. That is, the first time a chemical is exported in a calendar year to a particular country, the exporter must notify the country if data requirements or rules apply under §§ 5, 6, or 7. For chemicals with §4 data requirements, notice must be given only for the first export to a particular country. Subsequent exports of the same chemical during the same calendar year to the same country do not require notification.

For the most part, TSCA § 13 violations are assessed one violation per chemical per day, irrespective of the number of shipments or the number of ports through which a chemical enters on the same day. EPA's concern is entry of chemicals into the United States each day. If the same chemical is imported on the same day to one or more ports in three separate shipments, this is one violation. If the same chemical is imported once a week over a period of 5 weeks, this is 5 separate violations, one for each day in which there was an import. If 6 different chemicals are imported in 6 separate shipments on the same day, 6 separate violations would be assessed, one for each chemical in a different shipment.. However, if two or more chemicals are imported on the same day in only one shipment, then only one violation would be assessed.

Adjustment Factors

Voluntary Disclosure

The Agency considers it important to foster voluntary disclosures of violations for TSCA §§ 8, 12(b), and 13. Most disclosures of TSCA § 8 violations will either receive full mitigation of the gravity based penalty under the Audit Policy or they will receive 50% reduction under the ERP in order to provide a voluntary disclosure incentive. For TSCA §§ 12(b) and 13 violations, explicit reductions for voluntary disclosure are also provided. If violations of TSCA §§ 12(b) and 13 are brought to the Agency's attention, it can act to remedy the situation, e.g., foreign countries can be notified or imports in violation of other sections of TSCA can be identified and appropriate action taken.

As a further incentive for the voluntary disclosure of violations, the Agency has decided to forego the imposition of penalty increases for a previous history of noncompliance in assessing penalties for voluntarily disclosed violations.

However, a voluntarily disclosed violation does constitute a history of violation and is to be used to increase penalties for future violations which the Agency discovers.

History of Prior Violation

The GBP Matrix is designed to apply to first offenders. Where a violator has demonstrated a history of "prior such" violations as stated in TSCA, the penalty will be adjusted upward to increase his motivation to comply. Also, repeat violators are penalized more severely because additional enforcement resources are spent on the same violator.

The Agency's policy is to consider only prior violations of TSCA or its rules, even though a violator could have a history of violations of other EPA statutes, or remedial statutes in general (e.g., OSHA, CPSC). Congress did not expressly state that it wanted the Agency to go beyond TSCA Section 15 prohibited acts in determining violation history.

The following considerations apply when evaluating a history of "prior such" violations:

(a) In order to constitute a prior violation, the prior violation must have resulted in: a final order, either as a result of an uncontested complaint, or as a result of a contested complaint which is finally resolved against the violator; a consent order, resolving a contested or uncontested complaint by the execution of a consent agreement; the payment of a civil penalty by the alleged violator in response to the complaint, whether or not the violator admits to the allegations of the complaint.

Violations litigated in the Federal courts, under the Act's imminent hazard (Section 7), specific enforcement and seizure (Section 17), and criminal (Section 16(b)) provisions, are part of a violator's "history" for penalty assessment purposes , as are violations for which civil penalties have been previously assessed. However, a notice of noncompliance does not constitute a prior violation for the purposes of penalty assessment, since no opportunity has been

given to contest the notice.

(b) To be considered a "prior such" violation, the violation must have occurred within five years of the present violation. This five-year period begins on the date of a final order, consent order, or payment of a civil penalty.

(c) Both EPA discovered and voluntarily disclosed violations qualify as candidates for consideration as "prior such" violations.

(d) Generally, companies with multiple establishments are considered as one when determining history. If one establishment of a company commits a TSCA violation, it counts as history when another establishment of the same company, anywhere in the country, commits another TSCA violation. In most cases of violations by wholly-or partly-owned subsidiaries, the history of the parent corporation shall apply to its subsidiaries, and the subsidiaries to the parent, particularly when the parent has a majority share of ownership. The exception would be where two companies are held by the same parent corporation. The companies may not necessarily affect each other's history if they are in substantially different lines of business, and they are substantially independent of one another in their management, and in the functioning of their Boards of Directors.

(e) If the "prior such" violation is of a non-Section 8, 12(b), or 13-related TSCA provision or regulation, then the penalty should be upwardly adjusted 25 percent of a first repetition and 50 percent for a second repetition of the violation,. If the "prior such" violation is of any corresponding TSCA Section 8, 12(b), or 13 provision or regulation, the penalty should be upwardly adjusted by 50 percent for the first repetition and 100 percent of the second repetition.

Attachments (3)

APPENDIX 1

CAPS FOR PER DAY VIOLATIONS

Caps for Per Day Violations

All Caps are per Violation

Section or Subsection TSCA	Violation **on or before** January 30, 1997	Violation **after** January 30, 1997
§ 8(e)	**no caps**	**no caps**
§ 8(d) non or false reporting Major, level 1 (5 year cap)	**$278,333**	**$306,166**
§ 8(d) non or false reporting Significant, level 1 (3 year cap)	**$120,322**	**$132,354**
§ 8(d) non or false reporting Minor, level 1 (1 year cap)	**$15,111**	**$16,622**
§ 8(d) late reporting Major, level 4 (5 year cap)	**$111,333**	**$122,466**
§ 8(d) late reporting Significant, level 4 (3 year cap)	**$42,467**	**$46,714**
§ 8(d) late reporting Minor, level 4 (1 year cap)	**$3,022**	**$3,324**
§ 8(c) non or false reporting Significant, level 1 (1 year cap)	**$51,378**	**$56,516**
§ 8(c) Late Reporting Significant, level 4 (1 year cap)	**$18,133**	**$19,946**
§ 8(a) Chemical Specific Rules non or false reporting Significant, level 1 (1 year cap)	**$34,189**	**$37,608**
§ 8(a) Chemical Specific Rules Late Reporting Significant, level 4 (1 year cap)	**$12,067**	**$13,273**
§ 13 Imports	flexible penalty not to exceed Circumstance level 3, Significant Extent **($10,000)**	flexible penalty not to exceed Circumstance level 3, Significant Extent **($11,000**)

APPENDIX 2

EXAMPLES Of APPLYING THIS POLICY

EXAMPLES

Note: Penalties in the following examples were determined on the assumption that the violations occurred on or before January 30, 1997.

TSCA § 8(a) Chemical Specific Rules (PAIR, etc.)

Example 1 - A company fails to report. EPA discovers the violation. Failure to report, level 1, significant.

Discovered after 181 days - $25,500

$$\$17,000 + \frac{180 \times \$17,000}{360} = \$25,500$$

Discovered after 361 days - $34,000
Discovered after 1,095 days - $34,189 (1 yr. cap)

Example 2 - A company discovers what it has reason to believe is a violation of TSCA § 8(a) and immediately and voluntarily self reports that it failed to report. If the disclosure does not meet the Audit Policy for penalty reduction, then apply this policy as follows: Non reporting, level 1, significant, with 25% reduction for voluntary disclosure and 25% additional reduction for disclosing immediately.

Report 181 days late - $12,500

$$\$17,000 + \frac{180 \times \$17,000}{360} = \$25,000 - (50\% \text{ reduction for self disclosure}) = \$12,500.$$

Report 361 days late - $17,000
Report 1,095 days late - $17,095 (1 yr. Cap reduced 50% for self disclosure)

Example 3 - A company reports under the rule. EPA later discovers that the information was falsely reported. False reporting, level 1, significant.

Discovered after 181 days - $25,500

$$\$17,000 + \frac{180 \times \$17,000}{360} = \$25,500$$

Discovered after 361 days - $34,000
Discovered after 1,095 days - $34,189 (1 yr. cap)

TSCA § 8(a) Inventory Update

Example 1- A company fails to report 1 chemical at 4 different sites for the Inventory Update. Six months later, the company is bought by another company who, upon checking records, discovers the failure to report and immediately notifies the Agency. (Assume for this example that the disclosure does not meet the conditions of the Audit Policy.)
Non-reporting, level 1, significant, 4 counts, one-time penalty and voluntary self disclosure outside the audit policy.

Self disclosed non-reporting, 4 counts - $34,000

$17,000 x 4 = $68,000

Voluntary Disclosure	50%	(25% for Voluntary Self-Disclosure and 25% if immediately disclosed w/in 30 days of reason to believe violation exists)

Total penalty - $34,000

Example 2 - Use the facts from example 1 except that the company self discloses 4 IUR form U reports less than 30 days after the due date and that the self disclosure does not meet the conditions of the Audit Policy.
Late reporting, level 1, significant, 4 counts with a reduction for voluntary self disclosure.

Self disclosed late reporting, 4 counts - $12,000

$ 6,000 x 4 = $24,000

Voluntary Disclosure	50%

Total penalty -$ 12,000

Example 3 - Use the facts from example 1 except that after EPA issues the complaint, EPA agrees to settle the case by reducing the penalty by 5% for good attitude.

Full 55% reduction is from GBP before adjustment. $30,600

GBP before adjustment for self disclosure	$68,000
25% voluntary disclosure + 25% w/in 30 days + 5% attitude = 55%	-$37,400
Settlement payment	$30,600

TSCA § 8(c)

Example 1 - A union contacts EPA complaining that they submitted 1 report to the company regarding health effects to 10 workers due to their exposure to chemical X. The report was presented to the company in accordance with the rule, and the union provided acknowledgments of receipt by the company. EPA requested the company to provide all allegations of health effects due to exposure to chemical X. The company failed to respond. EPA inspected the company's TSCA § 8(c) files six months later and found none. Failure to keep files, level 1, significant; and failure to report, level 1, significant.

$$\$17{,}000 + \$17{,}000 + \frac{180 \times \$17{,}000}{180} = \$51{,}000$$

Failure to maintain a file - $17,000
Failure to report (per day penalty) - $34,000
181 days
Total $51,000

Example 2 - EPA requested a company to submit any allegations of effects attributable to chemical Y. The company reported that no allegations of effects of any kind were made to them. An inspector visited the company 2 years later and found a file for chemical Y which included 3 allegations of bird kills attributed to the chemical. Failure to report, level 1, significant, 3 counts.

$$\left(\$17{,}000 + \frac{364 \times \$17{,}000}{180}\right) \times 3 = \$154{,}134$$

Failure to report - (1 yr. cap) - $154,134

Example 3 - EPA requested a company to submit any allegations of effects attributable to chemical Y. The company reported that no allegations of effects of any kind were made to them. A year later they contacted the Agency and informed us that they just found 4 old allegations of human effects attributable to chemical Y and submitted the allegations within 10 days. Late submission, level 4, significant, 4 counts.

$$\left(\$6{,}000 + \frac{360 \times \$6{,}000}{180}\right) \times 4 = \$72{,}000$$

Late reporting - 361 days x 4 counts - $72,000

Example 4 - An inspector visited a company and asked to see the company's TSCA § 8(c) files. The company informed the inspector that any allegations by workers were kept in the individual workers personnel files. Failure to keep files in a manner prescribed by the rule, level 3, significant, one day assessment, no per day penalty. $10,000

Example 5 - An inspector visits a company and when inspecting their TSCA § 8(c) file discovers that the files are organized by the health effect rather than by the cause of the health effect. The files are otherwise in compliance with the rule. Failure to keep files in a manner prescribed in the rule. Failure to keep files in a manner prescribed in the rule, level 3, significant, one day penalty. $10,000

TSCA § 8(d)

Example 1 - A company submits a list of ongoing studies they are sponsoring but fails to list a study involving humans. EPA discovers the violation. Failure to report, level 1, major.

Discovered after 365 days - $75,556

$$\$25{,}000 + \frac{364 \times \$25{,}000}{180} = \$75{,}556$$

Discovered after 1,095 days - $176,944
Discovered after 2,000 days - $278,333 (5 yr. cap)

Example 2 - A company submits an animal study 365 days after the initial reporting period. Assume the company does not meet the Audit Policy. Non reporting, level 1, significant.

Self disclosure reported to EPA after 365 days - $25,674

$$\$17{,}000 + \frac{364 \times \$17{,}000}{180} = \$51{,}378$$

$51,378 - $25,674 (25% self disclosed + 25% immediately disclosed) = $25,674

Reported to EPA after 1,825 days - $60,161 (3 yr. cap minus 50% for self disclosure)

Example 3 - A company submits a list of 9 ongoing animal studies and two weeks later submits a 10th study. Late reporting (less than 30 days after due date) of one study, level 4, significant, voluntary self disclosure.

Submitted to EPA 14 days after list submitted - $3,217

$$\$6{,}000 + \frac{13 \times \$6{,}000}{180} = \$6{,}433 - (50\% \text{ for self disclosed immediately}) = \$3{,}217$$

Example 4 - A company submits a list of studies known to them but not in their possession. The Agency discovers that the company failed to list a study they had knowledge of. Failure to report a study the manufacturer knows of but is not in his possession, level 2, one day assessment, no per day penalty -

$20,000 - if human study (major)
$13,000 - if animal or aquatic study (significant)
$ 3,000 - if environmental fate (minor)

TSCA § 8(e)

Example 1 - A company learned or obtained information from a spill incident which reasonably supported the conclusion that a substance presents a substantial risk and did not report within the time period prescribed in the policy. EPA discovers the violation. Failure to report, level 1, major, one-time assessment - $25,000

Example 2 - A company failed to report information obtained through a spill incident within the time period prescribed in the policy. The company reports their failure to EPA a year after the spill occurs. Assume the self disclosure does not meet the Audit Policy. Self disclosed failure to report, level 1, major, one-time assessment - $12,500

$25,000 - $12,500 (25% self-disclosed + 25% w/30 days) = $12,500

Example 3 - A company fails to report a study showing human health effects. EPA discovers the violation. Failure to report, level 1, major.

Discovered after 361 days - $325,000

$$\$25{,}000 + \frac{360 \times \$25{,}000}{30} = \$325{,}000$$

Discovered after 1,081 days - $925,000
Discovered after 3,601 days - $3,025,000

Example 4 - A company fails to report a study showing animal effects not previously reported. The company later submits it to the Agency. Assume the self disclosure does not meet the Audit Policy. Self disclosed failure to report, level 1, significant.

Reported after 361 days - $110,500

$$\$17,000 + \frac{360 \times \$17,000}{30} = \$221,000$$

$221,000 - $110,500 (25% self disclosed + 25% w/in 30 days) = $110,500

Reported after 1,081 days - $314,500
Reported after 3,601 days - $1,028,500

Example 5 - A company submits a study to EPA showing new animal effects. An inspector conducting an inspection of the company later discovers reportable information which was omitted from the study. False reporting, level 1, significant.

Discovered after 1,825 days - $1,050,600

$$\$17,000 + \frac{1,824 \times \$17,000}{30} = \$1,050,600$$

Discovered after 365 days - $223,267
Discovered after 3,650 days - $2,084,767

TSCA § 12(b)

Example 1 - EPA learns through an inspection that an exporter exports 1 chemical to 30 countries with no § 12(b) notifications. Failure to notify. Level 4, significant. -$6,000 per count.

$6,000 x 30 = $180,000.

Example 2 - An exporter exports one chemical to one country 30 times during one calendar year with no § 12(b) notifications. A competitor to the exporter informs the EPA which investigates and finds a violation. Failure to notify, level 4, significant. - $6,000.

Example 3 - An exporter exports one chemical to one country 30 times during one calendar year, notifying EPA that 5 shipments had already occurred. Failure to notify, level 4, significant, voluntary disclosure, more than 30 days since discovery, 25% reduction. - $4,500

Example 4 - An exporter exports a chemical with §4 requirements to one country on 30 separate occasions over 3 years with no § 12(b) notifications. Failure to notify, 1 count, level 4, significant. - $6,000. Section 4 chemicals only require 1 report.

Example 5 - An exporter exports 3 separate chemicals with § 4 requirements to each of 30 countries (total of 90 separate shipments) within the same year with no § 12(b) notifications. Failure to notify, 90 counts, level 4, significant. - $540,000

TSCA § 13

(NOTE**:** For those § 13 examples below which are dependent on §5 penalty calculations, the July 1, 1993 §5 Penalty Policy was used.**)**

Example 1 - An importer imports a chemical with no certification and which is otherwise in compliance with TSCA. Failure to certify, level 6, significant: 1 count, $1,300.

Example 2 -An importer imports a chemical into 2 different ports on the same day (e.g. New York and Philadelphia each receive separate shipments) with no certification and which is otherwise in compliance with TSCA. Failure to certify, level 6, significant, 1 count, $1,300.

Example 3 - An importer imports a chemical in 3 separate shipments in the same day to the same port with no certification and which is otherwise in compliance with TSCA. Failure to certify, level 6, significant, 1 count - $1,300

** if the 1 chemical was imported on shipments arriving on 3 separate days, - 3 counts - $3,900

** if 5 chemicals were imported on 1 shipment, - 1 count - $1,300

** if 5 chemicals per shipment were imported on 10 separate days, - 10 counts - $13,000

Example 4 -An importer imports and further distributes 1000 lbs. of a chemical substance on three (3) separate days, through a single port of entry either without a TSCA § 13 certification or with an incorrect certification. The chemical substance is not on the TSCA Inventory and a TSCA §5 Premanufacture Notice had not been submitted to EPA. The chemical substance is not otherwise subject to §5(e) or §5(f) and is not a polymer that would qualify under the polymer exemption (40 C.F.R. 723.250). Since the TSCA §5 violations will be assessed at a Circumstance Level 3 and Significant

Extent, the §13 violations will be assessed at the same Extent and Circumstance Level; in this case, 3 counts @ Circumstance Level 3 and Significant Extent.

§5 PMN level 3, significant	$10,000 x 3 =	$30,000
		+
§13 Cert. level 3, significant	$10,000 x 3 =	$30,000
	Total penalty	$60,000

Example 5 - An importer imports and further distributes 1,000 lbs. of a chemical through one port of entry and 7000lbs. of the same chemical through a second port of entry on the same day either without a TSCA § 13 certification or with an incorrect certification. The chemical substance is not on the TSCA Inventory and a TSCA §5 Premanufacture Notice had not been submitted to EPA. The TSCA § 5 violation will be assessed as one count, Level 3, Major Extent (See the August 5, 1988 TSCA § 5 ERP). The § 13 violation will be assessed as one count, Level 3, Significant Extent -$10,000. In this case the §13 violation is assessed at the same circumstance level (level 3) as the § 5 violation, but its extent category is limited to significant, even though the § 5 penalty is major in extent.

§5 PMN (8,000 lbs total one day) level 3, major	$15,000
§13 Certification limited to level 3, significant	$10,000
Total penalty	$25,000

Example 6 -An importer imports and further distributes a chemical product that coitions six chemical substances on one day in six separate shipments of 600 lbs. each either without a TSCA § 13 certification or with an incorrect certification. None of the six chemical substances are on the TSCA Inventory and no TSCA §5 Premanufacture Notices had been submitted to EPA for these chemical substances. The chemicals are all present at equal concentration in the product. Three of the chemicals substances are not otherwise subject to §5(e) or §5(f), but three would have been subject to §5(e) if PMNs had been submitted. None of the chemicals are polymers that would qualify under the polymer exemption (40 C.F.R. 723.250). In this case, six TSCA §5 violations will be assessed, three at Circumstance Level 1, Minor Extent and three at Circumstance Level 3, Minor Extent. Since there were six separate shipments, six §13 violations can be assessed, one for each of the chemical substances in a separate shipment. In this case the Circumstance Level and Extent Category for the §13 violations would be the same as the corresponding §5 violations.

Identical calculation for § 13 as for §5 PMN		
3 chemicals at Level 1, minor	$5,000 x 3 =	$15,000
		+
3 chemicals at Level 3, minor	$1,500 x 3 =	$ 4,500
	§5 PMN =	$19,500 +
(Repeat above calculation for § 13)	§13 Cert. =	$19,500
	Total penalty :	$39,000

APPENDIX 3

Penalty Calculation Worksheet

Penalty Calculation Worksheet

Statutory factors taken into account with respect to the violation:

1) Nature: All TSCA §§ 8, 12, & 13 violations are for record keeping and reporting. Therefore, for 8, 12, & 13 penalty calculations, "nature" is always a constant - "Hazard/Risk Assessment", Thus, the statutory factor of taking into account the "nature" of the violation has been built into the "record keeping and reporting" policy.

2) Circumstances: From ERP enter Level 1 thru 6 . . . . . ._____

3) Extent: From ERP enter "Major", "Significant", "Minor" . . . . . ._____

4) Gravity: Gravity is taken into account through the evaluation of "Nature", "Circumstances"& "Extent". Through the matrix in this Policy (Nature), the circumstance level and Extent level arrive at a Gravity based penalty (GBP) . . . $ _____
Reduction for Voluntary Self-Disclosure

(i) 25% reduction for Voluntary Self-Disclosure . . . . . .%_____
(ii) 25% additional reduction if (i) occurs w/in 30 days . . . . . %_____

Statutory factors taken into account with respect to the violator's conduct:

a. Degree of Culpability (if willful, adjust upward; if lacked control, adjust downward) . . . . %_____
b. History of prior such violations . . . . . %_____

5) Add the percentages of lines (i) & (ii) & a. & b. then multiply total percentage with GBP from item 4 to determine the adjustment upward or downward:
(i _____+ ii_____ (+/-) a_____ (-) b____)% X GBP_____ = Adjustment $_____

---

6) **Adjusted Gravity Based Penalty** . . . . . .$_____
(Add/Subtract line 5 to/from line 4.)

---

7) Reasonable estimations based on information available at time of calculation:

✓ Economic benefit from violation(s). $ _____
(Assure that line 6 captures the economic benefit.)
✓ Violator able to pay & stay in business
✓ Other matters as justice may require

8) Statutory Maximum penalty for violation(s). $_____
(Total penalty must not exceed statutory maximum)

****** **Final Proposed Penalty** $_____

U.S. Environmental Protection Agency
Office of Regulatory Enforcement

Supplemental Environmental Project (SEP) National Database

Select the criteria for your search from the pull-down menus below. Not every field needs to contain a value. The system will match cases only with the criteria that you specify. After identifying your criteria, click on the *submit search* button.

Environmental Statute: | **Statute Section:** not applicable

Environmental Media:

Industrial Sector of Violation:

Pollutant Addressed in SEP:

SEP Category:

Cost of SEP:

Case Name (can be partial):

Additional Search Criteria:
(e.g., for SEPs in a State or EPA region, enter the State abbreviation or "region" and number)

SEP Home

Database Last Updated: February 1999
URL: http://www.envirosense.com/oeca/sep/searchsep.html

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pdf version (787K 12pp)

United States Environmental Protection Agency | Office of Reinvention (1801) | EPA 100-R-98-007 August 1998 www.epa.gov/reinvent

Harnessing the Power of the Internet:

EPA Responds to the Rising Public Demand for Environmental Information

Note: The graphics in the html version of this report have been adapted for on-line viewing and differ slightly from the printed and pdf versions. The content of the text is unchanged.

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National Sector-based Information

Introduction

This site serves as a repository of sector-based information on each of the 15 sectors identified in the sector action plan, including historical information on CSI sponsored projects as well as other Agency-wide voluntary, regulatory, and reinvention efforts within each sector. Available information is presented in two categories: Regulations and Compliance, and Reinvention Activities and Publications. Furthermore, an asterisk indicates that the activity is part of an EPA Partnership Program.

- Agriculture
  - Food Processing
- Automotive Manufacturing
- Chemicals
- Computers/Electronics
  - Printed Wiring Boards
  - Semiconductors
  - Cathode Ray Tubes
- Dry Cleaning
- Iron & Steel
- Local Government
- Metal Finishing
- Mining
- Petroleum Refining
- Pharmaceuticals
- Printing
- Service Industry
- Utilities

This page last updated October 1, 1999
URL: http://www.epa.gov/sector/national.htm
Contact: Kate Sijthoff

Aiming for Excellence

Actions to Encourage Stewardship and Accelerate Environmental Progress

Report of the EPA Innovations Task Force

Reinvention at EPA

Shortly after taking office, Vice President Gore took charge of a new National Partnership for Reinventing Government to radically change the way our government performs. The challenge given to all agencies was to be more efficient, less bureaucratic, and to provide better service to the American people. At the U.S. Environmental Protection Agency (EPA), that challenge led us to rethink how we go about achieving environmental and public health protection goals.

In March 1995, we launched a small set of high-priority projects that quickly evolved into a broader reinvention agenda for the Agency. Today, we have numerous reinvention efforts under way. Many focus on improving well-established programs, such as permitting and compliance assurance. The emphasis is on streamlining regulatory processes and introducing innovations that can make these programs more efficient and effective. Others focus on finding fundamentally new approaches for the future. Our reinvention initiatives are designed to address environmental problems that have yet to be solved through the current system.

"Our reinvention initiatives are designed to address environmental problems that have yet to be solved through the current system."

We'd like to tell you about all of our reinvention efforts, but for this brief overview, we'll focus on a few programs we think are especially significant. For starters, we've slashed obsolete or unnecessary requirements—representing nearly 27 million hours of paperwork a year—without sacrificing protection capabilities. We've dramatically increased public access to environmental information, enabling citizens to go online and find out about environmental conditions and issues that affect their community. We're providing flexibility to meet new pollution reduction targets in cost-effective ways, using emissions averaging, trading, and other alternative compliance options. We're collaborating with others to make environmental progress; a recent agreement we helped negotiate between the automobile industry, state governments, and other stakeholders, which should reduce emissions from new cars by 70 percent, is just one example. We've launched special programs, such as the Common Sense Initiative and Project XL (which stands for excellence and leadership), to test innovative environmental management strategies that work more effectively for businesses, their customers, and the people who live and work around them. We're involving stakeholders earlier in the rulemaking process and we're developing new compliance assistance tools to help people understand environmental requirements and comply more easily.

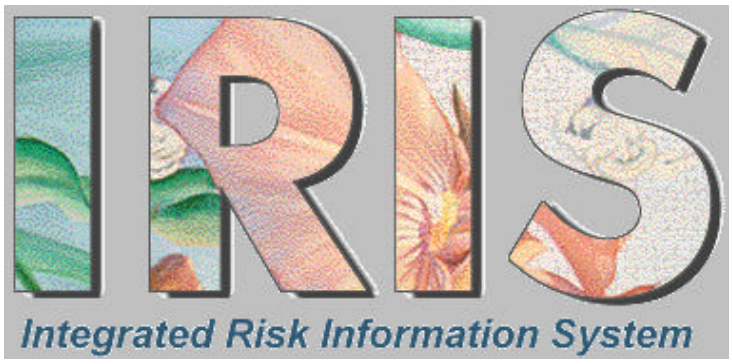
Recent actions within the Agency prepare us to do more. We're in the midst of setting up a new office to significantly improve the way we collect, manage, and report environmental data. We're applying what we've learned from working with industry to improve the effectiveness of EPA programs and policies. And through agreements that clarify how we will work together to foster innovation and increase environmental results, we're building stronger relationships with state governments.

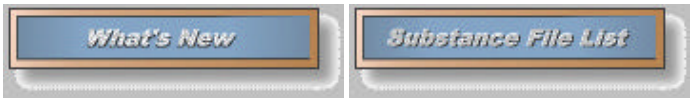
If you'd like to learn more about any of these efforts, we invite you to look at EPA's 1998 annual report on reinvention.[1] Or take a look at the annual report highlights, presented in Appendix 1. These materials provide helpful background for the report that follows on the additional reinvention actions we will carry out in the next 12 to 18 months as our ongoing reinvention efforts proceed.

[1]U.S. EPA. 1999. Reinventing Environmental Protection. U.S. Environmental Protection Agency. EPA100-R-99-002. March. Available at www.epa.gov/reinvent.

U.S. EPA Office of Reinvention
URL: http://www.epa.gov/reinvent
Last Updated: August 13, 1999

Next





Welcome to the IRIS home page, brought to you by the U.S. Environmental Protection Agency (EPA) and its Office of Research and Development, National Center for Environmental Assessment. IRIS is a database of human health effects that may result from exposure to various substances found in the environment. **Click on the Substance File List button to go to a list of the available substance files; then click on any file name on the list to open that file.** For more information about IRIS, read this **Introduction**.

Click here for What's New on IRIS, which highlights the most recent changes to IRIS files.

See the Glossary of Risk Assessment-Related Terms and the list of Acronyms and Abbreviations for more information explaining terms used in IRIS files.

A List of Available Toxicological Reviews and Other Support Documents are available online. They are provided in the Adobe Acrobat Portable Document Format* (PDF).

Background Information on methods used by EPA for deriving values in IRIS is available here. Information on Limitations to the Use of IRIS is here. For information on downloading IRIS, see the Stand Alone (Downloadable) IRIS Database page.

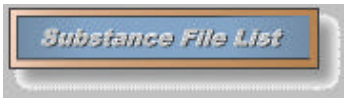
Here are some links to other sources of environmental health information.

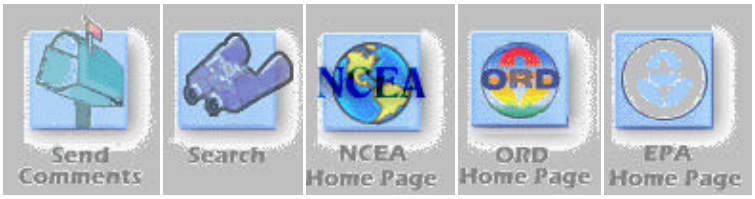
EPA is continuously seeking to improve the IRIS home page and the scientific content of IRIS. We welcome your comments and suggestions for improvements. Send comments to the IRIS webmaster by email to Iris.Webmaster@epa.gov

For technical questions about the scientific information content in IRIS, please call the U.S. EPA Risk Information Hotline at telephone 1-513-569-7254, or fax to 1-513-569-7159, or email to RIH.IRIS@epamail.epa.gov.

Navigation hints:
From the opening list of substances, you can click on individual substance names, or the list can be searched with your web browser, such as Netscape or Internet Explorer, by typing the name or Chemical Abstracts Service (CAS) Registry Number at the "**Find**" command. At any place in an IRIS substance file, use the "**Back**" command to return to the substance list.

To contact the IRIS Webmaster send E-mail to: Iris.Webmaster@epa.gov





Visits Since March 11, 1997.

Last updated: **5 October 1998**
URL: http://www.epa.gov/iris/index.html

FOIA Update, Fall 1996

Congress Enacts FOIA Amendments

In an action that culminates several years of legislative and administrative consideration of electronic record FOIA issues, Congress has enacted amendments to the Freedom of Information Act that address those issues and other procedural aspects of FOIA administration.

On September 17 and 18, respectively, the House of Representatives and the Senate passed H.R. 3802, a slightly modified version of a bill that was developed by the House Subcommittee on Government Management, Information, and Technology, chaired by Rep. Stephen Horn (R. Cal.). The bill received bipartisan support both in the House and in the Senate, where its principal sponsor was Sen. Patrick Leahy (D. Vt.).

Entitled the "Electronic Freedom of Information Act Amendments of 1996," the bill was signed into law by President Clinton on October 2, with the observation that it "reforges an important link between the United States Government and the American people." (See page 9 of this issue of FOIA Update for the text of President Clinton's signing statement.)

The amendments made to the Act by this new law address the subject of electronic records for the first time ever in the text of the statute. They also address the subject area of time limits and agency backlogs of FOIA requests, among other procedural provisions.

Many of the amendments will take effect after a 180-day period, but the time limit and backlog-related provisions will take effect after one year, and some other provisions have specific other effective dates for implementation. (See chart at the end of this section.) For purposes of agency implementation, the amendments can be considered within several distinct subject areas.

Electronic Reading Rooms

A major change made by the FOIA amendments involves the maintenance of agency reading rooms under subsection (a)(2) of the Act. Under that part of the FOIA, agencies are required to make three categories of records--final opinions rendered in the adjudication of administrative cases, specific agency policy statements, and administrative staff manuals that affect the public--routinely available for public inspection and copying. See FOIA Update, Summer 1992, at 4. (This obligation does not apply to any records that "are promptly published and [are] offered for sale." 5 U.S.C. § 552(a)(2).) The new amendments both add to those categories of reading room records and establish a requirement for electronic availability of reading room records, most efficiently through on-line access, in what can be regarded as "electronic reading rooms."

First, the amendments create a new category of records that will be required to receive "reading room" treatment--a category consisting of any records processed and disclosed in response to a FOIA request that "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." 5 U.S.C. § 552(a)(2)(D) (as amended, effective Mar. 31, 1997). Under this provision, when records are disclosed in response to a FOIA request, an agency will be required to determine if they have already become the subject of subsequent FOIA requests or, in the agency's best judgment based upon the nature of the records and the types of requests regularly received, are likely to be the subject of multiple requests in the future. If either is the case, then those records in their FOIA-processed form (but not, of course, any information about a first-party requester that would not be disclosed to any other FOIA requester) will become "reading room" records to be made automatically available to potential FOIA requesters. Ideally, that availability will satisfy much of the future public demand for those processed records, in a more efficient fashion, but any FOIA request received for the records will have to be responded to in a regular fashion as well.

Second, the amendments will require agencies to use electronic information technology to enhance the availability of their reading room records. They specify that for any newly created reading room records (i.e., "records created on or after November 1, 1996"), an agency must make them available to the public by "electronic means." 5 U.S.C. § 552(a)(2). The amendments embody a strong statutory preference that this new electronic availability be provided by agencies in the form of on-line access, which can be most efficient for both agencies and the public alike, and they allow until November 1, 1997 for it to be provided. To meet this new requirement through on-line access, agencies should have Internet or World Wide Web sites prepared to serve this "electronic reading room" function by no later than that date.

This means that as of mid-1997, agencies will begin to maintain both conventional reading rooms and "electronic reading rooms" in order to meet their FOIA subsection (a)(2) responsibilities. As of March 31, the basic effective date of the amendments, they must begin to place in their reading rooms copies of any FOIA-processed records determined to fall within the new fourth subsection (a)(2) category, just as they regularly place their other subsection (a)(2) records there. Additionally, they must identify any of their reading room records that were created on or after the November 1, 1996 cut-off date and then make those records available (by no later than the November 1, 1997 electronic access deadline) through their electronic sites as well.

For traditional subsection (a)(2) records such as administrative staff manuals, for example, virtually everything that an agency places in its reading room, in time, will be newly created and therefore will be required to be made available electronically also. (Where only part of a manual is updated, it would be advisable for the agency to place the entire manual on its electronic site, in order to avoid confusion.) In the case of FOIA-processed records, on the other hand, a very large proportion of those records will have been created prior to the 1996 cut-off date, at least as of the outset of the new law's implementation, and therefore will not be subject to the electronic availability requirement.

Accordingly, agencies will have to make it clear to the users of their electronic reading rooms that while all of their subsection (a)(2) records are available in their conventional reading rooms, only the newly created ones are available through their electronic sites. Agencies should utilize indices to facilitate use of both types of reading rooms. They are required by the amendments to maintain an index of their FOIA-processed records and to make it available on-line by December 31, 1999.

Electronic Records

The amendments contain several provisions that pertain to the processing of FOIA requests for records in electronic form. First, they define the term "record" simply as including "any information that would be an agency record subject to the requirements of [the FOIA] when maintained by an agency in any format, including an electronic format." 5 U.S.C. § 552(f)(2) (as amended, effective Mar. 31, 1997). This definition appears to confirm existing general practices of treating information maintained in electronic forms as subject to the FOIA and, while it references no particular electronic item such as computer software, seems to broadly encompass information maintained in electronic form.

Second, they address the form or format in which a requested record is disclosed under the FOIA, requiring that "an agency shall provide the record in any form or format requested . . . if the record is readily reproducible by the agency in that form or format." 5 U.S.C. § 552(a)(3)(B) (as amended, effective Mar. 31, 1997). Additionally, this new subsection of the Act provides that an agency "shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of the [FOIA]." Id. Taken together, these two provisions will require agencies to honor a requester's specified choice among existing forms of a requested record (assuming no exceptional difficulty in reproducing an existing record form) and to make "reasonable efforts" to disclose a record in a different form or format when that is requested and the record is "readily reproducible" in that new form or format.

The first of these two aspects is relatively straightforward. The requester, not the agency, ordinarily will be entitled to choose the form of disclosure when multiple forms of a record already exist; the amendments thus overrule any precedent such as Dismukes v. Department of the Interior, 603 F. Supp. 760, 763 (D.D.C. 1984), which holds to the contrary. Any further request for a record to be disclosed in a new form or format will have to be considered by an agency, on a case-by-case basis, to determine whether the records are "readily reproducible" in that form or format with "reasonable efforts" on the part of the agency. Under a separate provision of the amendments, an agency's determination regarding "reproducibility" is entitled to special deference if challenged in court. 5 U.S.C. § 552(a)(4)(B) (as amended, effective Mar. 31, 1997).

The amendments likewise apply a general "reasonable efforts" standard to the matter of an agency's search obligation in connection with electronic records. They provide that "an agency shall make reasonable efforts to search for [such] records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system." 5 U.S.C. § 552(a)(3)(C) (as amended, effective Mar. 31, 1997). This provision promotes electronic database searches and encourages agencies to expend new efforts in order to comply with the electronic search requirements of particular FOIA requests. It will necessarily require an agency to determine, in any case in which a requested database search would involve new programming and database-retrieval efforts, whether those efforts are "reasonable" under the particular circumstances involved. Additionally, this amendment provides that an agency would not be required to undertake any such efforts in any exceptional case in which the implementation of a data-retrieval program for a requested FOIA search would "significantly interfere" with its computer systems' operations.

Time Limits and Backlogs

The amendments contain several different provisions pertaining to the timing of agency responses to FOIA requests, all of which take effect after one year. First, they increase the Act's basic time limit for agency responses to FOIA requests, lengthening it from ten to twenty working days. For agencies that can regularly act on their FOIA requests within the existing ten-day time limit, this change should not affect their administration of the Act.

Second, the amendments encourage agencies that experience difficulties in meeting the Act's time limits to promulgate regulations providing for "multitrack processing" of their FOIA requests, "based on the amount of work or time (or both)" that is involved in processing them. 5 U.S.C. § 552(a)(6)(D) (as amended, effective Oct. 2, 1997). An agency or component of an agency that maintains two or more processing tracks must handle its requests on a first-in, first-out basis within each track, but will have the flexibility to respond to relatively simple FOIA requests more quickly through its multitrack system. It also can provide requesters with an opportunity limit their requests in order to obtain faster processing. Agencies that handle their FOIA requests on a decentralized basis through separate agency components should allow multitrack processing systems to be maintained according to the individual circumstances of each component.

Third, a closely related amendment supplements the provision in the Act by which an agency may take additional time for responding to a request based upon "unusual circumstances" involved in the request--such as the volume of records sought. 5 U.S.C. § 552(a)(6)(B) (as amended, effective Oct. 2, 1997). Under existing law, an agency may take only an additional ten working days based upon such "unusual circumstances." Under the amendments, however, an agency notifying a requester of "unusual circumstances" may specify that additional time is required and offer the requester the opportunity "to limit the scope of the request" and/or "to arrange with the agency an alternative time frame for processing the request or a modified request." 5 U.S.C. § 552(a)(6)(B)(i), (ii). This provides a basis for agencies and FOIA requesters to reach agreement on the timing of agency responses in cases in which the circumstances of the particular request, rather than a more general agency backlog, cause difficulty in meeting the Act's time limits.

Fourth, the amendments address the subject of general agency backlogs by limiting the conditions under which the Act's "exceptional circumstances" provision may apply. They specify that such circumstances will "not include a delay that results from a predictable agency workload of [FOIA requests], unless the agency demonstrates reasonable progress in reducing its backlog of pending requests." 5 U.S.C. § 552(a)(6)(C)(ii) (as amended, effective Oct. 2, 1997). This amendment will limit the ability of an agency with a heavy FOIA backlog to obtain a stay of judicial proceedings on the basis of that backlog, under the precedent of Open America v. Watergate Special Prosecution Force, 547 F.2d 605 (D.C. Cir. 1976), if a delayed FOIA request proceeds to litigation. Such a stay may be granted when an agency can demonstrate "reasonable progress" in its backlog-reduction efforts. It also could be granted where a requester refuses "to reasonably modify the scope of a request or arrange an alternative time frame for processing" it; two separate amendment provisions specify that this "shall be considered as a factor in determining whether exceptional circumstances exist." 5 U.S.C. § 552(a)(6)(B)(ii), (a)(6)(C)(iii) (as amended, effective Oct. 2, 1997).

A fifth time limit-related amendment addresses requests for "expedited processing" under the Act. The amendments require all agencies to promulgate regulations under which they will consider such requests and grant them whenever a "compelling need" is shown. The term "compelling need" is defined as (1) involving "an imminent threat to the life or physical safety of an individual," or (2) in the case of a request made by "a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E) (as amended, effective Oct. 2, 1997).

Under this provision, a FOIA requester may make a request for expedited processing with a certification of "compelling need." 5 U.S.C. § 552(a)(6)(E)(vi). Then "within 10 days after the date of the request" (which as a practical matter may be determined by a postmark in some cases), the agency will be required to decide whether to grant expedited processing and to notify the requester of its decision. 5 U.S.C. § 552(a)(6)(E)(ii)(I). If expedited processing is granted, the agency must give priority to that FOIA requester and process the requested records for disclosure "as soon as practicable." 5 U.S.C. § 552(a)(6)(E)(iii). If expedited processing is not granted, the agency must likewise give "expeditious consideration" to any administrative appeal of that denial. 5 U.S.C. § 552(a)(6)(E)(ii)(II). Any judicial review of a denial of expedited processing will be based on the administrative record of the correspondence between the requester and the agency. 5 U.S.C. § 552(a)(6)(E)(iii).

Denial Specification

The amendments contain two provisions that deal with an agency's obligation to specify to a FOIA requester information that is denied in response to a request. First, in the situation in which information is deleted from a record that is disclosed in part, the amendments require that "[t]he amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the [applicable] exemption." 5 U.S.C. § 552(b) (as amended, effective Mar. 31, 1997). This provision was enacted under a bill section entitled "Computer Redaction," and accordingly it further provides that "[i]f technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made." Id. However, its terms are not limited to information maintained in electronic form, so it also codifies the sound administrative practice of marking records to show all deletions when records are disclosed in conventional paper form.

A second such provision deals with the situation in which entire records, or entire pages of them, are withheld. This amendment requires an agency to "make a reasonable effort to estimate the volume" of what is withheld and "to provide any such estimate to the person making the request." 5 U.S.C. § 552(a)(6)(F) (as amended, effective Oct. 2, 1997). Ordinarily, agencies will meet this requirement by specifying in their denial letters the volume of what is withheld in numbers of entire pages, documents, or some other applicable form of measurement. Like the deletion provision above, this provision does not apply in the exceptional situation (e.g., a "neither confirm nor deny" case) in which disclosing the volume of records withheld would be harmful. This amendment carries the same effective date as the time limit and backlog-related amendments because it was contained in the same section of the bill.

Annual Reports and Reference Guides

The amendments also address the process by which agencies provide information about their administration of the FOIA, both through their annual reports to Congress and in the basic reference information that they make available to the public. First, the amendments make extensive revisions to the annual report subsection of the Act, subsection (e), modifying the content, timetable, and procedure for the filing of those reports. The statistics to be contained in annual reports under this new system will include the number of requests received, the number of requests processed, the number of requests pending as of the end of the reporting year, and the median number of days that those requests were pending. Agencies also will be required to specify the resources devoted by them to the processing of their requests, in terms of both dollars and full-time staff, and to include information about the Exemption 3 statutes upon which they rely to withhold information.

Under the amendments, the annual reporting period will change from a calendar year to a fiscal year, as of the beginning of fiscal year 1998 on October 1, 1997. Prior to that date, the Department of Justice will develop annual report guidelines for all agencies, in consultation with the Office of Management and Budget, for the compilation of fiscal year 1998 statistics and the preparation of a uniform new type of annual report. (This timetable conversion will leave a nine-month reporting period for calendar year 1997 reports to be filed under the current system.) The new annual reports will be due to be completed by February 1 of each year, in electronic form, and will be submitted to the Attorney General so that they can be made available to the public through a single World Wide Web site. Each agency also should make its annual report available for public reference in its reading room as well as through its own electronic site.

Additionally, the amendments require each agency to maintain "reference material or a guide for requesting records or information from the agency," which an agency should make publicly available in its reading room and through an electronic site, as well as upon any request. 5 U.S.C. § 552(g) (as amended, effective Mar. 31, 1997). Under new subsection (g) of the Act, this reference guide for potential FOIA requesters must include "an index of all major information systems of the agency" (except in any instance in which such system identification would cause exemption harm), "a description of [its] major information and record locator systems," and "a handbook for obtaining various types and categories of public information from the agency" both through FOIA requests and through non-FOIA means. Id.

This reference guide should aid potential requesters in making specific requests for agency records or in learning about records and information that is readily available from the agency without the necessity of a FOIA request, including through electronic access. It should give a clear picture of the types of records maintained by the agency; the process by which FOIA requests are handled by it (including references to its FOIA regulations and any forms required to be submitted by requesters); the FOIA requester's rights to administrative appeal and judicial review; the types of FOIA litigation cases brought against the agency; and the availability of agency information through means other than the FOIA. In preparing these guides, agencies should also consult the House Report accompanying the legislation, H.R. Rep. No. 795, 104th Cong., 2d Sess. (1996).

Effective Dates and Timetable for FOIA Amendments

March 31, 1997	• General effective date for many amendment provisions.
October 1, 1997	• Due date for Justice Department annual reporting guidelines; statistical compilation for new form of annual report begins.
October 2, 1997	• Effective date for provisions regarding time limits, multitrack processing, unusual circumstances, exceptional circumstances, expedited processing, and volume estimation.
November 1, 1997	• Deadline for making available electronically all reading room records created on or after November 1, 1996.
February 1, 1999	• Due date for first annual report using new form and new fiscal year timetable (report for fiscal year 1998).
December 31, 1999	• Deadline for making available on-line agency's index of selected FOIA-disclosed records.

The Center pages of this isuue of FOIA Update contain the text of the Freedom of Information Act in its amended form.

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Frequently Asked Questions

Search by Zipcode

Publications

Hotlines

Center for Environmental Information & Statistics

Sala de Lecturas en Español

EPA United States Environmental Protection Agency

Concerned Citizens

Environmental Violations

Are you concerned about an environmental situation within your community but don't know where to go for answers? Here is a list of numbers to call to report any type of activity you suspect may not be in compliance with federal environmental regulations. Information is also provided on the difference between environmental violations and environmental emergencies.

What types of activities might be considered environmental violations?

An environmental violation occurs when an activity or an existing condition does not comply with an environmental law or regulation. Environmental violations can include (but are not limited to):

- Smoke or other emissions from local industrial facilities;
- Tampering with emission control or air conditioning systems in automobiles;
- Improper treatment, storage, or disposal of hazardous wastes;
- Exceedances of pollutant limits at publicly-owned wastewater treatment plants;
- Unpermitted dredging or filling of waters and wetlands;
- Any unpermitted industrial activity;
- Late night dumping or any criminal activity including falsifying reports or other documents.

What is the difference between environmental violations and environmental emergencies?

An environmental violation is a situation which does not comply with an existing environmental law or regulation. An environmental emergency is a *sudden threat* to the public health, or the well-being of the environment, arising from the release or potential release of oil, radioactive materials, or hazardous chemicals into the air, land, or water.

Examples of environmental emergencies include:

- Oil and chemical spills
- Radiological and biological discharges
- Accidents causing releases of pollutants

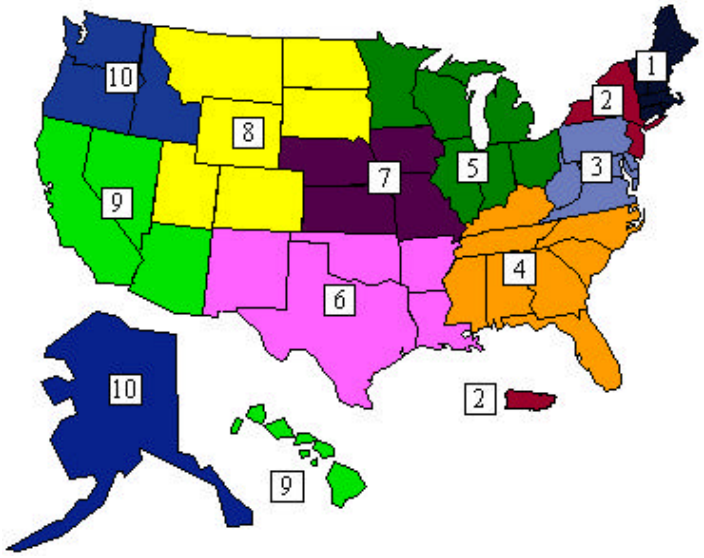
If you are involved in or witness an environmental emergency, you must call the **National Response Center** at: **1-800-424-8802**. For more information, see the Concerned Citizens page on Environmental Emergencies.

Where do I report a suspected violation?

Many issues are handled at the local level. You may first want to try contacting your local government office for concerns about trash, litter, strange odors, recycling pickup, and household chemical disposal, including paints, pesticides, oil, antifreeze, etc. You can find information about your local government in the blue pages of your telephone book or by contacting your public library.

For concerns that may not be handled at the local level, the next step is to contact your state environmental agency. Information about state agencies can be found in the blue pages of your telephone book as well.

If you need to contact EPA regarding a suspected violation of an environmental regulation, select the region where the activity is occurring by clicking within the area of the map covered by the region, or use the links located below the map to go directly to a region.



Region 1 - **(888) 372-8477**
Call this number to report suspected violations within the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island,

Connecticut.

Region 2 - **(212) 637-5000**
Call this number to report suspected violations within the states of New York and New Jersey. In Puerto Rico or US Virgin Islands, call (787) 729-6951.

Region 3 - **(800) 438-2474**
Call this number to report suspected violations within the states of Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia.

Region 4 - **1 (800) 241-1754**
Call this number to report suspected violations within the states of Mississippi, Tennessee, Alabama, Georgia, Florida, Kentucky, South Carolina, North Carolina.

Region 5 - **(312) 621-8430 or (800) 621-8431**
Call this number to report suspected violations within the states of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region 6 - **(214) 665-2210** or **(800) 887-6063 (Region 6 states only)**
Call this number to report suspected violations within the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region 7 - **(800) 223-0425**
Call this number to report suspected violations within the states of Iowa, Kansas, Missouri, and Nebraska.

Region 8 - **(800) 227-8917 (Region 8 states only)**
Call this number to report suspected violations within the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 9 - **(415) 744-1500**
Call this number to report suspected violations within the states of Arizona, California, Hawaii, Nevada, and the territories of Guam and American Samoa.

Region 10 - **(206) 553-4973 or (800) 424-4372**
Call this number to report suspected violations within the states of Alaska, Idaho, Oregon, and Washington.

Additional Concerned Citizens Web Resources
Water | Prevention, Pesticides & Toxics | Pesticides | Solid Waste |
Chemical Emergency | Superfund | Enforcement
Region 1: New England States | Region 2: NJ, NY, PR, VI |
Region 6: AR, LA, NM, OK, TX | Region 8: Northern/Mountain States

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Community Right To Know | At Home | Transportation | Thinking Globally | Acting Locally | At the Workplace
Protecting Our Children | Resources for Non-Profits | Environmental Violations | Environmental Emergencies

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URL: http://www.epa.gov/epahome/violations.html
This page last modified: Sep 23 19:21:36 1999
About PDF files
EPA Server Information

United States Environmental Protection Agency

Information About Applying for EPA Grants:

There are two primary procedures for applying for grant monies from the U.S. EPA. The forms listed below are used in the grants process:

- Grant Application and instructions - Federal Standard Form 424 (SF424) [pdf version] EXIT EPA
- A Guide to OMB's Grants Management Circulars and Related Documents EXIT EPA
- Fellowship Application (EPA Form 5770-2) [pdf format]

EPA Home Page | OGD Home Page | EPA Grants Page | Comments | Search

Webmaster, EPA OARM/OGD
Revised July 7, 1999
URL: http://www.epa.gov/ogd/appkit.htm

EPA United States Environmental Protection Agency

Water Discharge Permits Query Form

Search the PCS Database

The Water Discharge Permits Query Form allows you to retrieve selected data from the Permit Compliance System (PCS) database in Envirofacts regarding facilities holding National Pollutant Discharge Elimination System (NPDES) permits. Specify the facilities by using any combination of facility name, geographic location, standard industrial classification, and chemicals. You may also select an output option.

User's Guide

Facility Selection

Facility Identification: Facility Name (Enter a partial or complete Facility Name)

Facility Identification Option Value:

Beginning With Exact Match Containing

Geography Search

Enter a partial value for any geography option except for the state value. We strongly recommend that you enter a small geographical area to begin the search since Envirofacts contains a large number of facilities.

ZIP Code:

Address:

Beginning With Exact Match Containing

City:

County:

State:

EPA Region:

Standard Industrial Classification (SIC) Search

Enter the Standard Industrial Classification or lookup the appropriate SIC code by pressing the "Lookup SIC Code" button. If both SIC Code and SIC Code Description are entered, only SIC Code will be used in the search.

Standard Industrial Classification (SIC):

Standard Industrial Classification Code:

Use FII SIC Code Values Use PCS SIC Code Values

Parameter (Chemical) Name Search:

Enter the Parameter (Chemical) Name or lookup the appropriate Parameter Code by clicking on the "Lookup Parameter Code" button.

Parameter Code Name:

Beginning With Exact Match Containing

Parameter Code:

Permit Expired Date Search:

Enter a Permit Expired Date range. The format is *MMDDYYYY* , where *MM* indicates month, *DD* indicates day, and *YYYY* indicates year (e.g., month = 06, day = 21, year =1995).

	Month	Day	Year		Month	Day	Year
From:				**To:**			

Permit Issued Date Search:
Enter a Permit Issued Date range. The format is *MMDDYYYY* , where *MM* indicates month, *DD* indicates day, and *YYYY* indicates year (e.g., month = 06, day = 21, year =1995).

	Month	Day	Year		Month	Day	Year
From:				**To:**			

☐ **Major Dischargers Only**

Search Values

- (•) Use Multisystem facility information to perform facility search
- ( ) Use PCS facility information only to perform facility search

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Output Selection

- (•) Basic Facility Information
- ( ) Permitted Discharges Information

Search Clear

This page was updated July 22, 1998.

Status & History
Data Access
SFIP Indicators
Acronyms
Other Links
Comments

EPA United States Environmental Protection Agency — Office of Enforcement and Compliance Assurance

SECTOR FACILITY INDEXING PROJECT

Sector Facility Indexing Project Home Page

Welcome to the **Sector Facility Indexing Project** (SFIP) home page. SFIP brings together environmental and other information from a number of data systems to produce facility-level profiles for five industry sectors (petroleum refining, iron and steel production, primary nonferrous metal refining and smelting, pulp manufacturing, and automobile assembly). SFIP information relates to compliance and inspection history, chemical releases and spills, demographics of the surrounding population and production. You can click on "Show Me More" to read a more detailed introduction and overview of SFIP. The website is organized into the following pages, which can be accessed by clicking on the buttons on the left of your screen:

Status & History

This page includes documents related to recent activities and the development of SFIP:

- EPA's announcement of the SFIP launch
- a fact sheet on the project
- frequently asked questions
- a description of the public comment and review process
- a summary of the data quality assurance review and
- a historical archive of materials prepared during the development of the project.

Data Access

This page provides users with access to the detailed information by industry, as well as individual facilities. Users can access standardized reports, construct customized queries on-line, and download datasets for subsequent use.

SFIP Indicators

This page provides users with definitions of each of the SFIP data elements, referred to as "indicators," with guidance on their use.

Acronyms

This page provides users with a glossary of acronyms used in SFIP.

Other Links

This page provides users with easy Internet links to related websites both inside and outside of the U.S. Environmental Protection Agency.

Comments

This page allows users to submit comments about SFIP and the website directly to EPA. Those interested in commenting on specific data are referred to the SFIP Hotline.

[Status & History || Data Access || SFIP Indicators]
[Acronyms || Other Links || Comments || SFIP Statistics]

Search Map/Index Feedback OECA Home Enviroene EPA Home

Last Updated: 17 September 1999
URL: http://es.epa.gov/oeca/sfi/index.html

National Maps, Factsheets, & Data Documentation and Download

This page provides links to the national maps for IWI, the national data downloads for IWI, national difference maps, maps that show the difference between the first release of the IWI and this release, and regional maps where they are available. The data documentation and download links includes a data profile about each indicator which describes how the data was obtained and used. (After making the link look for download in the left hand column.) The symbols on the right side of this page describe the quality of data for each indicator based on a national basis. If you wish to see individual watershed information you will need to select view detailed data at the watershed level. The password review provides access to updated data before public publication of the information.

Overall Watershed Characterization

The Index of Watershed Indicators characterizes the condition and vulnerability of aquatic systems in each of the 2,262 watersheds in the 50 states and Puerto Rico. This involves an assessment of condition, vulnerability, and data sufficiency. The approach is simple. First, indicators of the condition of the watershed are scored and assigned to one of three categories: better water quality, water quality with less serious problems, and water quality with more serious problems. Second, indicators of vulnerability are scored to create two characterizations of vulnerability: high and low. These two sets of indicators are then combined. This indicator reflects a summary of the indicator values that follow. *Why was this Indicator chosen?*

- National Map and Factsheet Sept 1999 release, April 1999 release, 1998, 1997
- Regional Maps:

1999 Region 1 - Sept	1999 Region 1 - April	1998 Region 1
1999 Region 2 - Sept	1999 Region 2 - April	1998 Region 2
1999 Region 3 - Sept	1999 Region 3 - April	1998 Region 3
1999 Region 4 - Sept	1999 Region 4 - April	1998 Region 4
1999 Region 5 - Sept	1999 Region 5 - April	1998 Region 5
1999 Region 6 - Sept	1999 Region 6 - April	1998 Region 6
1999 Region 7 - Sept	1999 Region 7 - April	1998 Region 7
1999 Region 8 - Sept	1999 Region 8 - April	1998 Region 8
1999 Region 9 - Sept	1999 Region 9 - April	1998 Region 9
1999 Region 10 - Sept	1999 Region 10 - April	1998 Region 10

- National Data Documentation and Download (Sept 1999 release, April 1999 release, Oct 1998 release, Oct 1997 release)
- National Difference Map (Sept 1999 release, April 1999 release, 1998)

1. Assessed Rivers, Lakes, and Estuaries Meeting All Designated Uses

Information reported by Tribes and States on the percentage of waters within the watershed that meet all uses established for those waters as reported in 1994 or 1996 reports to EPA under the Clean Water Act section 305(b). *Why was this Indicator chosen?*

- National Map and Factsheet (1994/1996 (rivers, lakes, estuaries), 1994/1996 (rivers), 1994/1996)
- Regional Maps:

1994/1996 Region 1	1994/1996 Region 1
1994/1996 Region 2	1994/1996 Region 2
1994/1996 Region 3	1994/1996 Region 3
1994/1996 Region 4	1994/1996 Region 4
1994/1996 Region 5	1994/1996 Region 5
1994/1996 Region 6	1994/1996 Region 6
1994/1996 Region 7	1994/1996 Region 7
1994/1996 Region 8	1994/1996 Region 8
1994/1996 Region 9	1994/1996 Region 9
1994/1996 Region 10	1994/1996 Region 10

Nationwide
Data Somewhat Consistent.
Additional Data Needed.

- National Data Documentation and Download (1994/1996, 1994/1996, 1994/1996)
- National Difference Map (1994/1996, 1994/1996)

2. Fish Consumption Advisories

Recommendations by Tribes or States to restrict consumption of locally harvested fish or game due to the presence of contaminants. *Why was this Indicator chosen?*

- National Map and Factsheet (1998, 1997*,1997, 1995)
- Regional Maps:

1998 Region 1	1997 Region 1	1997 Region 1
1998 Region 2	1997 Region 2	1997 Region 2
1998 Region 3	1997 Region 3	1997 Region 3
1998 Region 4	1997 Region 4	1997 Region 4
1998 Region 5	1997 Region 5	1997 Region 5
1998 Region 6	1997 Region 6	1997 Region 6
1998 Region 7	1997 Region 7	1997 Region 7
1998 Region 8	1997 Region 8	1997 Region 8
1998 Region 9	1997 Region 9	1997 Region 9
1998 Region 10	1997 Region 10	1997 Region 10

Nationwide
Data Somewhat Consistent.
Additional Data Needed.

- National Data Documentation and Download (1998, 1997, 1995)
- National Difference Map: 1998, 1997

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

3. Indicators of Source Water Condition

A composite index to provide a partial indicator of the condition of waters in the watershed used as water supply sources by Community Water Systems (CWS). Source waters are defined here to include ground water and surface water and sources before they are treated and purified by water systems for drinking water use. This indicator characterizes the condition of the ambient ground water and surface water resources in the watershed, not neccessarily the actual source water drawn by the water system. *Why was this Indicator chosen?*

- National Map and Factsheet - (1990-1999, a,b,c, 1990-1998, a,b,c, 1990-1997, a,b,c, 1990-1996, a, b, c)
- Regional Maps:

1990-1999, a, b, c - Region 1	1990-1998, a, b, c - Region 1	1990-1997, a, b, c - Region 1
1990-1999, a, b, c - Region 2	1990-1998, a, b, c - Region 2	1990-1997, a, b, c - Region 2
1990-1999, a, b, c - Region 3	1990-1998, a, b, c - Region 3	1990-1997, a, b, c - Region 3
1990-1999, a, b, c - Region 4	1990-1998, a, b, c - Region 4	1990-1997, a, b, c - Region 4
1990-1999, a, b, c - Region 5	1990-1998, a, b, c - Region 5	1990-1997, a, b, c - Region 5
1990-1999, a, b, c - Region 6	1990-1998, a, b, c - Region 6	1990-1997, a, b, c - Region 6
1990-1999, a, b, c - Region 7	1990-1998, a, b, c - Region 7	1990-1997, a, b, c - Region 7
1990-1999, a, b, c - Region 8	1990-1998, a, b, c - Region 8	1990-1997, a, b, c - Region 8
1990-1999, a, b, c - Region 9	1990-1998, a, b, c - Region 9	1990-1997, a, b, c - Region 9
1990-1999, a, b, c - Region 10	1990-1998, a, b, c - Region 10	1990-1997, a, b, c - Region 10

Nationwide
Data Somewhat Consistent.
Additional Data Needed.

- Documentation and Download (1990-1999 : a, b, c, 1990-1998 : a, b, c, 1990-1997 : a, b, c, 1990-1996: a, b, c)
- National Difference Map (1990-1999: a, b, c, 1990-1998: a, b, c, 1990-1997: a, b, c)

4. Contaminated Sediments

The level of potential risk to human health and the environment from sediment chemical analysis, sediment toxicity data, and fish tissue residue data. *Why was this Indicator chosen?*

- National Map and Factsheet (1980-1993* (latest information available), 1980-1993)
- Regional Maps:

1980-1993 Region 1
1980-1993 Region 2
1980-1993 Region 3
1980-1993 Region 4
1980-1993 Region 5
1980-1993 Region 6
1980-1993 Region 7
1980-1993 Region 8
1980-1993 Region 9
1980-1993 Region 10

Nationwide
Data Somewhat Consistent.
Additional Data Needed.

- National Data Documentation and Download (1980-1993)

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

5. Ambient Water Quality (Toxics)

Ambient water quality data showing percent exceedences of national criteria levels, over a six year period (1990-1996), of copper, chromium (hexavalent), nickel, and zinc. *Why was this Indicator chosen?*

- National Map and Factsheet (1990-1998, 1990-1997, 1990-1995)
- Regional Maps:

1990-1998 Region 1	1990-1997 Region 1
1990-1998 Region 2	1990-1997 Region 2
1990-1998 Region 3	1990-1997 Region 3
1990-1998 Region 4	1990-1997 Region 4
1990-1998 Region 5	1990-1997 Region 5
1990-1998 Region 6	1990-1997 Region 6
1990-1998 Region 7	1990-1997 Region 7
1990-1998 Region 8	1990-1997 Region 8
1990-1998 Region 9	1990-1997 Region 9
1990-1998 Region 10	1990-1997 Region 10

Nationwide
Data Needs to be Much More Consistent. Much Additional Data Needed.

- National Data Documentation and Download (1990-1998, 1990-1997 , 1990-1995)
- National Difference Map (1990-1998, 1990-1997)

6. Ambient Water Quality (Conventional)

Ambient water quality data showing percent exceedences of national reference levels, over a six year period (1990-1996) *Why was this Indicator chosen?*

- National Map and Factsheet (1990-1998, 1990-1997, 1990-1995)
- Regional Maps:

1990-1998 Region 1	1990-1997 Region 1
1990-1998 Region 2	1990-1997 Region 2
1990-1998 Region 3	1990-1997 Region 3
1990-1998 Region 4	1990-1997 Region 4
1990-1998 Region 5	1990-1997 Region 5
1990-1998 Region 6	1990-1997 Region 6
1990-1998 Region 7	1990-1997 Region 7
1990-1998 Region 8	1990-1997 Region 8
1990-1998 Region 9	1990-1997 Region 9
1990-1998 Region 10	1990-1997 Region 10

Nationwide
Data Needs to be Much More Consistent. Much Additional Data Needed.

- National Data Documentation and Download (1990-1998, 1990-1997 , 1990-1995)
- National Difference Map (1990-1998, 1990-1997)

7. Wetland Loss Index

Percentage losses of wetlands over a more recent period ***a)*** *(1982-1992) and more historic* ***b)*** *(1870-1980).* *Why was this Indicator chosen?*

- National Map and Factsheet-(1780s-1990s*, a, b, 1780s-1990s, a, b)
- Regional Maps:

1780's-1990's, a, b Region 1
1780's-1990's, a, b Region 2
1780's-1990's, a, b Region 3
1780's-1990's, a, b Region 4
1780's-1990's, a, b Region 5
1780's-1990's, a, b Region 6
1780's-1990's, a, b Region 7
1780's-1990's, a, b Region 8
1780's-1990's, a, b Region 9
1780's-1990's, a, b Region 10

Nationwide
Data Needs to be Much More Consistent. Much Additional Data Needed.

- National Data Documentation and Download (1780s-1980 s, 1982-1992 , 1780s-1990 s)
- Wetland Loss By State

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

8. Aquatic/Wetland Species at Risk

Assessing the conservation of plants and animals at the greatest risk of extinction. *Why was this Indicator chosen?*

- National Map and Factsheet (1996*, 1996)
- Regional Maps:

1996 Region 1
1996 Region 2
1996 Region 3
1996 Region 4
1996 Region 5
1996 Region 6
1996 Region 7
1996 Region 8
1996 Region 9
1996 Region 10

Nationwide
Data Somewhat Consistent. Additional Data Needed.

- National Data Documentation and Download (1996)

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

9. Toxic Loads Over Permit Limits

Discharges over a one year period for toxic pollutants are combined and expressed as a percentage above or below the total discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permitted amount. *Why was this Indicator chosen?*

- National Map and Factsheet (1999, 1998, 1997, 1996, 1995)
- Regional Maps:

1999 Region 1	1998 Region 1	1997 Region 1	1996 Region 1
1999 Region 2	1998 Region 2	1997 Region 2	1996 Region 2
1999 Region 3	1998 Region 3	1997 Region 3	1996 Region 3
1999 Region 4	1998 Region 4	1997 Region 4	1996 Region 4
1999 Region 5	1998 Region 5	1997 Region 5	1996 Region 5
1999 Region 6	1998 Region 6	1997 Region 6	1996 Region 6
1999 Region 7	1998 Region 7	1997 Region 7	1996 Region 7
1999 Region 8	1998 Region 8	1997 Region 8	1996 Region 8
1999 Region 9	1998 Region 9	1997 Region 9	1996 Region 9
1999 Region 10	1998 Region 10	1997 Region 10	1996 Region 10

Nationwide
Data Consistent. Sufficient Data Collected.

- National Data Documentation and Download (1999, 1998, 1997, 1996, 1995)
- National Difference Map (1999, 1998, 1997)

10. Conventional Loads Over Permit Limits

Discharges over a one year period for conventional pollutants are combined and expressed as a percentage above or below the total discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permitted amount. *Why was this Indicator chosen?*

- National Map and Factsheet (1999, 1998, 1997, 1996, 1995)
- Regional Maps:

1999 Region 1	1998 Region 1	1997 Region 1	1996 Region 1
1999 Region 2	1998 Region 2	1997 Region 2	1996 Region 2
1999 Region 3	1998 Region 3	1997 Region 3	1996 Region 3
1999 Region 4	1998 Region 4	1997 Region 4	1996 Region 4
1999 Region 5	1998 Region 5	1997 Region 5	1996 Region 5
1999 Region 6	1998 Region 6	1997 Region 6	1996 Region 6
1999 Region 7	1998 Region 7	1997 Region 7	1996 Region 7
1999 Region 8	1998 Region 8	1997 Region 8	1996 Region 8
1999 Region 9	1998 Region 9	1997 Region 9	1996 Region 9
1999 Region 10	1998 Region 10	1997 Region 10	1996 Region 10

Nationwide
Data Consistent. Sufficient Data Collected.

- National Data Documentation and Download (1999, 1998, 1997, 1996, 1995)
- National Difference Map (1999, 1998, 1997)

11. Urban Runoff Potential

The potential for urban runoff impacts is estimated based on the percentage of impervious surface in the watershed (roads, paved parking, roofs, etc.) *Why was this Indicator chosen?*

- National Map and Factsheet (1990*, 1990)
- Regional Maps:

1990 Region 1
1990 Region 2
1990 Region 3
1990 Region 4
1990 Region 5
1990 Region 6
1990 Region 7
1990 Region 8
1990 Region 9
1990 Region 10

Nationwide
Data Somewhat Consistent.
Additional Data Needed.

- National Data Documentation and Download (1990)

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

12. Agricultural Runoff Potential

A composite index comprised of ***a)*** *a nitrogen runoff potential index,* ***b)*** *modeled sediment delivery to rivers and streams,* ***c)*** *a pesticide runoff.* *Why was this Indicator chosen?*

- National Map and Factsheet - (1990-1995*: a, b, c, 1990-1995: a,b,c)
- Regional Maps:

1990-1995, a, b, c - Region 1
1990-1995, a, b, c - Region 2
1990-1995, a, b, c - Region 3
1990-1995, a, b, c - Region 4
1990-1995, a, b, c - Region 5
1990-1995, a, b, c - Region 6
1990-1995, a, b, c - Region 7
1990-1995, a, b, c - Region 8
1990-1995, a, b, c - Region 9
1990-1995, a, b, c - Region 10

Nationwide
Data Somewhat Consistent.
Additional Data Needed.

- Archive National Maps & Factsheets
- National Data Documentation and Download (1990-1995 , a, b, c)

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

13. Population Change

Population growth rate as a surrogate of many stress-producing activities from urbanization. *Why was this Indicator chosen?*

- National Map and Factsheet (1980-1990*, 1980-1990)
- Regional Maps:

1980-1990 Region 1
1980-1990 Region 2
1980-1990 Region 3
1980-1990 Region 4
1980-1990 Region 5
1980-1990 Region 6
1980-1990 Region 7
1980-1990 Region 8
1980-1990 Region 9
1980-1990 Region 10

Nationwide
Data Consistent. Sufficient
Data Collected.

- National Data Documentation and Download (1980-1990)

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

14. Hydrologic Modification from Dams

This index shows relative reservoir impoundment volume in the watershed. The process of impounding streams changes their characteristics and the reservoirs and lakes formed in the process can be more susceptible to pollution stress. *Why was this Indicator chosen?*

- National Map and Factsheet (1995-1996*, 1995-1996)
- Regional Maps:

1995-1996 Region 1
1995-1996 Region 2
1995-1996 Region 3
1995-1996 Region 4
1995-1996 Region 5
1995-1996 Region 6
1995-1996 Region 7
1995-1996 Region 8
1995-1996 Region 9
1995-1996 Region 10

Nationwide
Data Somewhat Consistent. Additional Data Needed.

- National Data Documentation and Download (1995-1996)

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

15. Estuarine Pollution Susceptibility Index

This measures an estuary's susceptibility to pollution based on its physical characteristics and the propensity to concentrate pollutants. *Why was this Indicator chosen?*

- National Map and Factsheet (1989-1991*, 1989-1991)
- Regional Maps:

1989-1991 Region 1
1989-1991 Region 2
1989-1991 Region 3
1989-1991 Region 4
1989-1991 Region 5
1989-1991 Region 6
1989-1991 Region 7
1989-1991 Region 8
1989-1991 Region 9
1989-1991 Region 10

Nationwide
This Information is Not Available at this Time.

Watershed
This Information is Not Available at this Time.

- National Data Documentation and Download (1989-1991)

* - Indicates that the data within the map has not changed from the previous version, but the color representation has.

17. Atmospheric Deposition

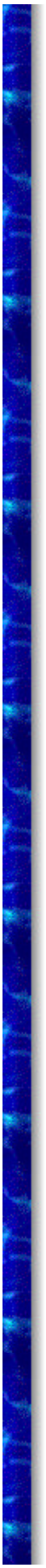
Information from the National Atmospheric Deposition Program/ National Trends Network depicting nitrogen (N03 and NH4) deposition estimates. *Why was this Indicator chosen?*

- National Map and Factsheet (1996)
- Regional Maps:

1996 Region 1
1996 Region 2
1996 Region 3
1996 Region 4
1996 Region 5
1996 Region 6
1996 Region 7
1996 Region 8
1996 Region 9
1996 Region 10

Nationwide
Data Somewhat Consistent. Additional Data Needed.

- National Data Documentation and Download 1996



National data

EPA United States Environmental Protection Agency

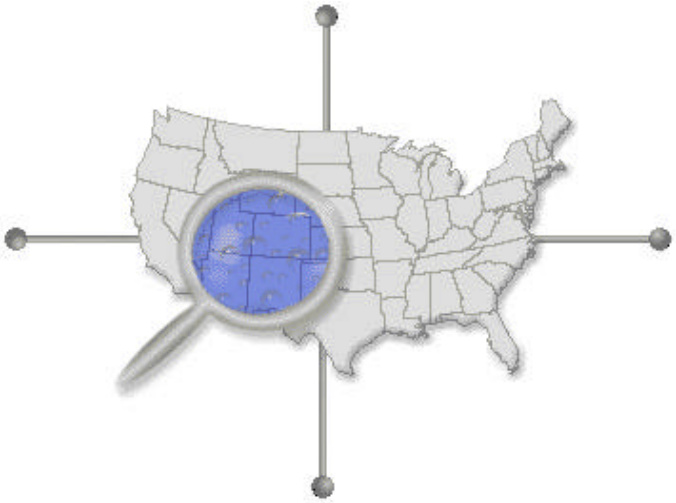
Surf Your Watershed

Locate Your Watershed
JOIN DISCUSSIONS
ADD INFORMATION
SEARCH INFORMATION
Atlas

Locate Your Watershed

Watersheds are those land areas that catch rain or snow and drain to specific marshes, streams, rivers, lakes, or to ground water. Choose from the options below to Locate Your Watershed. Additional Watershed Views: county, metropolitan area, etc.

Search By Map
Use clickable state maps to locate your watershed



QuickNAV

Search all the geographic navigation tables in Surf Your Watershed and school names. Insert the name of your city, river, school, county, or state (*example*)

Places

Use USGS's Geographic Names Information System to locate your watershed by querying on lakes, airports, rivers, parks, schools and more.

Locate by geographic unit by entering in your zip code, state,county, tribal nation, watershed number or stream name.

Zip Code (5 digit number)

Your Entry:

Additional Watershed Views available in Surf Your Watershed

Tribal Information
County
Metropolitan Area
American Heritage Rivers
Where Does My Drinking Water Come From?

Last Revised: September 3, 1998
URL: http://www.epa.gov/surf3/locate/index.html

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EPA United States Environmental Protection Agency

CUMULATIVE EXPOSURE PROJECT

AIR

The air toxics component of the Cumulative Exposure Project is an assessment of estimated 1990 outdoor concentrations of air toxics across the continental United States. Air toxics, also known as hazardous air pollutants (HAPs), have been associated with a variety of adverse health outcomes, including cancer, neurological effects, and reproductive and developmental effects. HAPs include such chemicals as benzene, formaldehyde, tetrachloroethylene, and cadmium. HAPs are emitted from a variety of sources, such as manufacturing facilities, waste combusters, coatings application, and consumer products, as well as from cars, trucks, and buses.

The estimates were developed through a national modeling study of the average 1990 concentrations of 148 HAPs in each census tract in the continental United States. Because there is very little actual monitoring data available for air toxics, these modeling estimates provide a greatly expanded understanding of the distribution of these pollutants in outdoor air in 1990.

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Modeling Methods
How Accurate Is the Model?
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Uncertainty Analysis
Related Projects
CEP Resources: Reports, Papers, etc.
Links to State Air Toxics Web Sites
Plans for Updating The Estimates

[Cumulative Exposure Project Home | EPA Home | Search | What's new]
http://www.epa.gov/CumulativeExposure/air/air.htm
last updated 4/19/99
Please send comments about this page to axelrad.daniel@epa.gov

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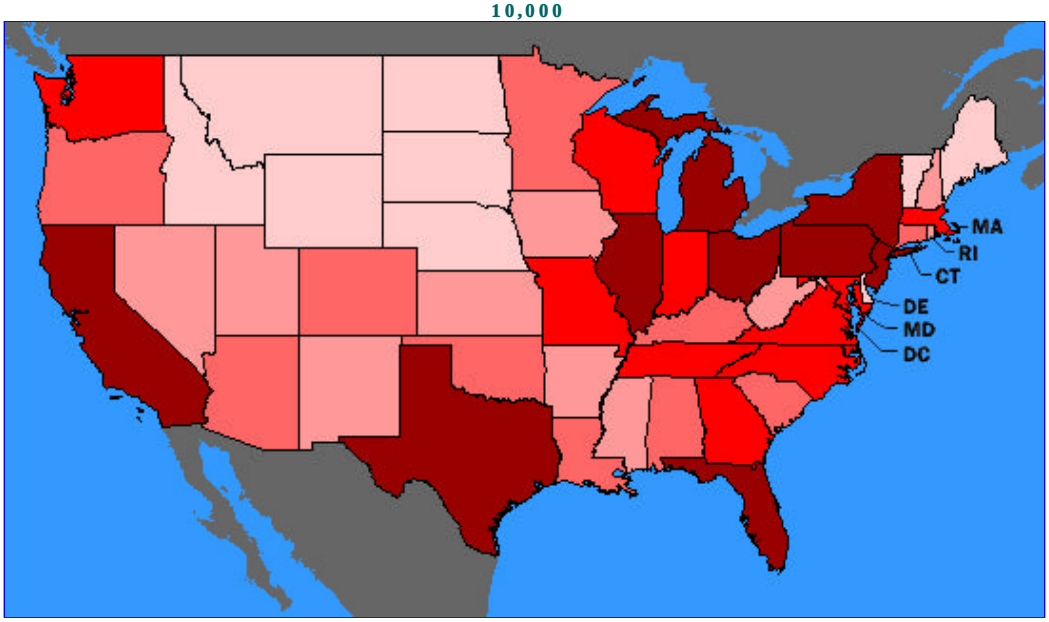
What's New
Setting Priorities
Pollution Locator
Pollution Rankings
About the Chemicals
Health Effects
Regulatory Controls
Discussion Forums
FAQs
Personalize Scorecard
Glossary
About the Scorecard
Search Scorecard
Go
Search Tips

Scorecard
Environmental Defense Fund

POLLUTION LOCATOR | Hazardous Air Pollutants

There are 188 hazardous air pollutants (HAPs), including chemicals that are associated with cancer, neurological, respiratory, reproductive and developmental effects and other adverse effects on human health. Very little monitoring for hazardous air pollutants takes place in the U.S., much less than for criteria air pollutants. However, new estimates by U.S. EPA, using emissions data from 1990 and extensive modeling, show the concentration of HAPs in every locality in the U.S. (over sixty thousand census tracts). Scorecard combines these EPA estimates with data on chemical toxicity to present a screening-level characterization of the cancer and noncancer risks posed by HAPs, locality by locality. See Scorecard's overview of hazardous air pollution problems and the caveats about this 1990 data.

United States
Number of People Living in Areas where the Estimated Cancer Risk from HAPs is Greater than 1 in 10,000



Map Legend:
Number of People Living in Areas where the Estimated Cancer Risk from HAPs is Greater than 1 in 10,000

- highest 20% of states
- second highest 20% of states
- middle 20% of states
- second lowest 20% of states
- lowest 20% of states

Hazardous Air Pollutant Reports Available at This Level

- View National Report

IMPORTANT NOTE: EPA exposure estimates based on 1990 data are generally consistent with more recent air monitoring data, but there are important uncertainties associated with exposure estimates based on 1990 emissions data. EPA exposure estimates, and the Scorecard risk estimates that are based on them, provide a screening-level guide to the extent of hazardous air pollution problems and the sources of these problems. However, they should not be interpreted as a definitive

evaluation of current health risks from HAPs in a particular locale.

Bill_Pease@edf.org

Environmental Indicators

Strengths & Limitations
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EPA United States Environmental Protection Agency

Office of Pollution Prevention and Toxics

Risk-Screening Environmental Indicators Project

The Office of Pollution Prevention and Toxics (OPPT) has developed the Risk-Screening Environmental Indicators, a computer-based (Windows 3.1/95/98) model that permits screening-level analysis of risk-related impacts of toxic chemical releases and transfers in the U.S. This model currently relies on data from the Toxics Release Inventory (TRI), but will incorporate data from other sources in the future. The model provide s a quick and inexpensive risk-screening tool. For further information about the model or how to acquire it, see Ordering/Technical Questions.

The Chronic Human Health Indicator (referred to as "the Indicator") is the first of four indicators to be developed. This Indicator addresses both chronic effects and chronic exposures and takes into account the toxicity of chemicals, the quantity to which people are exposed, and the size of the population exposed to those chemicals. Three other indicators are planned: acute human health impacts and chronic and acute ecological impacts.

In general, the Indicators Model works as follows. An 'Indicator Element' is calculated for each chemical released by a given facility to a given medium. There are currently ten years of TRI data, representing emissions from more than 38,000 facilities historically reporting to TRI. In 1997, more than 21,000 facilities reported to TRI. Each Indicator Element reflects a surrogate dose, based on fate and transport modeling and standard exposure assumptions, which is weighted by toxicity and the size of the exposed population. An 'Indicator Value' is the sum of many Indicator Elements, which can be combined in a variety of ways to provide additional analytical capabilities. For example, the Indicator Value can be viewed by year, medium (air, water, or land), chemical, geographic area (EPA Region, state, county, city, or zip code), industry sector, or facility. Rankings based on these variables can be performed by simply comparing Indicator Values. These comparisons are useful for targeting and pollution prevention purposes. By comparing Indicator Values over consecutive years, one can obtain a risk-related perspective of trends in environmental well-being as a function of chronic human health. *The current version of the model is the "air-only" version, which provides full risk-related modeling for only air releases; for releases to other media which are modeled, no surrogate dose is calculated, but the pounds can be weighted by toxicity and population.* See Model to learn more about how the Indicators model works.

OPPT is modifying the Indicators model to perform disparate impact analyses on the socioeconomic aspects of various subpopulations from a risk-related perspective. The Indicators model will evaluate the aggregate impacts associated with both TRI and non-TRI chemicals and/or emission sources that affect a given geographic location. Combined with additional demographic information on affected populations (such as race, income, educational level, or age), the Indicators model can be used to investigate the distribution of environmental impacts across segments of the population in user-selected geographic areas.

The Risk-Screening Environmental Indicators Fact Sheet offers a more complete summary of the project. Read on about the Strengths and Limitations of the Indicators Model.

View the Metadata Record

[OPPT Home | OPPTS Home | EPA Home | Search | Comments]

Last updated on September 30, 1999
http://www.epa.gov/opptintr/env_ind/index.html

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EPA United States Environmental Protection Agency

Environmental Monitoring for Public Access and Community Tracking

EMPACT

Real Time Environmental Information for Cities Across the Nation

NPDES Environmental Noncompliance Notification Project

Project Highlights

This project will provide information on wastewater noncompliance events that is:

- *Available in near real-time*
- *Accurate and understandable*
- *Useful in decision making on environmental quality and public health*
- *Specific to the local metropolitan area*

In 1998, EMPACT initiated a number of projects that, working with communities, will provide environmental information to the public via the latest monitoring, information management, and communications technologies. EPA's NPDES Environmental Noncompliance Notification Project, described below, is one EMPACT project.

Project Objectives
The objective of NPDES Environmental Noncompliance Notification Project is to notify the public of any 24-hour noncompliance with the National Pollutant Discharge Elimination System (NPDES) permitting program of the Clean Water Act and explain the environmental and heath significance of this noncompliance so that community residents can make educated decisions on the use of local water resources.

Project Description
This project will seek to automate the noncompliance reporting process so that regulators and the public receive information more quickly. A pilot project in Houston will integrate rapid noncompliance reporting to regulators with assessment and communication to the public of any public health or environmental effects. In this pilot project, the United States Geological Survey will be responsible for monitoring ambient water quality in affected stream segments. A simple ranking system, similar to ozone alerts, will be developed to help the public understand the significance of noncompliance events. Finally, a stakeholder workgroup will be crucial to designing the noncompliance public notification product and evaluating its usefulness.

Project Benefits
This project will empower communities and the public with time-relevant information that will support their day-to-day decision-making. With this information, the public can make educated assessments of how to use local waterways for drinking, fishing, and recreational activities.

For more information on this project, contact: Trish McKenzie (202) 564-1076.

What is EMPACT? The Environmental Monitoring for Public Access and Community Tracking (EMPACT) program is a new approach to working with communities to make timely, accurate, and understandable environmental information available in the largest US metropolitan areas. This information will better enable communities and individuals to make informed, day-to-day decisions about their lives. For More Information, contact: Denice Shaw (202) 564-3234.

Website: www.epa.gov/EMPACT

EPA Home | Search | Comments

Back to EMPACT Home
Revised: September 21, 1999
URL: http://www.epa.gov/empact/factsheet/npdestx.htm

EnviroMapper

About EnviroMapper | Atlas | CEIS Home

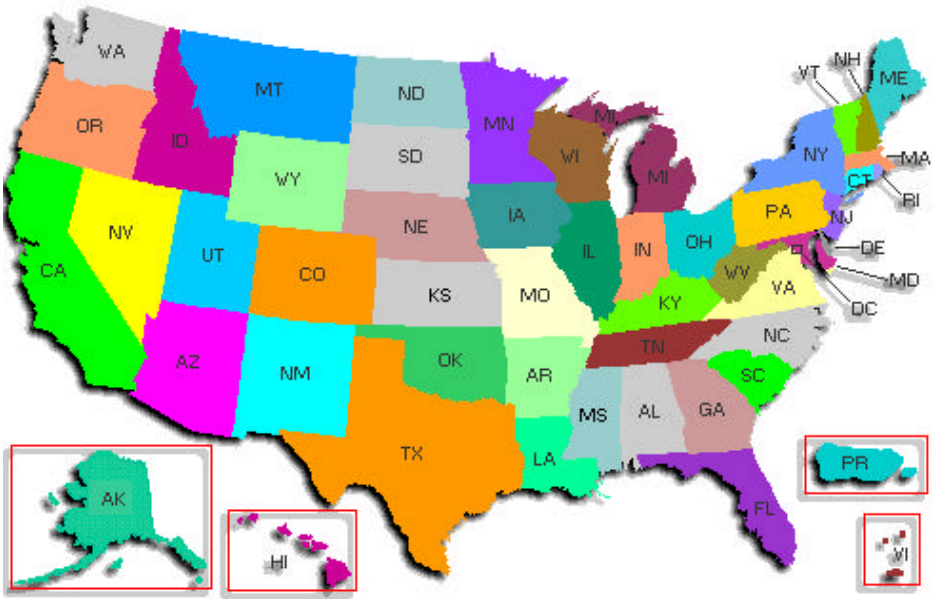
Welcome to EnviroMapper, a dynamic way to use maps to see environmental information on the World Wide Web. With the EnviroMapper, you can select an area (state, county, or ZIP code) anywhere in the United States.

To select an area by ZIP code, enter your ZIP code: go!

Select state or county from the map

To select an area by state or county, you can click on the following map. Before you choose a county, you need first to select a state in which the county is located. A map of the counties for the chosen state will be shown on the next screen. You can also make a selection from the scroll list.

(•) By State ( ) By County



Select state or county from the list

To select a state or county, click on the toggle button (circle) next to the selection, then select the appropriate state from the scroll list. A scroll list of the counties for the chosen state will be shown on the next screen. You can also make a selection by clicking on the map.

By State By County

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida

Office of Regulatory Enforcement

EPA United States Environmental Protection Agency

"Enforcement Alert"


EPA Enforcement Alert
COMPLIANCE WITH PERMITTING CRITICAL TO CLEAN AIR ACT GOALS

Welcome to "*Enforcement Alert* ," a new informational newsletter ublished by the Office of Regulatory Enforcement. The nforcement Alert" is intended to inform and educate the public and gulated community of important environmental enforcement sues, recent trends and significant enforcement actions. The formation contained in each issue should help the regulated mmunity anticipate and prevent violations of federal nvironmental laws and applicable regulations that could otherwise ad to enforcement action.

addition to highlighting important issues, trends and enforcement ctions, each issue provides the reader with useful EPA and levant Websites to learn more about the issue, laws and gulations addressed. We hope you will find the "Enforcement lert" informative and useful, and we welcome your comments ueno.virginia@epamail.epa.gov).

For he following documents have been provided in HTML and PDF where vailable. For a free reader and instructions on the use of Portable Document

- EPA Takes Enforcement Actions Against Violators Who Ditch Wetlands and Channelize Streams - (HTML version), (PDF version)
- EPA Promotes Corporate-Wide Audits Through Voluntary Agreements - (HTML version), (PDF version)
- Facilities Urged to Review Systems for Risk of Check or Butterfly Valves Safety Hazards - (HTML version), (PDF version)
- Y2K: Is Your Facility Ready? Regulated Entities Have an Obligation to Prevent Hazardous Releases - (HTML version), (PDF version)
- Aquarium and Pond Chemicals May Require Federal Registration, Labeling as Pesticides - (HTML version), (PDF version)
- EPA Settles First SDWA Penalty Case Against Federal Facility for $900,000 - (HTML version), (PDF version)
- Petroleum Refineries: Compliance with RCRA Requirements Critical to Protecting Public Health, Environment - (HTML version), (PDF version)
- Compliance with Permitting Critical to Clean Air Act Goals - (HTML version), (PDF version)

- Enforcement Alert Archive

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