Toxic Release Inventory/EPCRA: U.S. Environmental Protection Agency Proposed Rule Addressing Definition of "Parent Company"

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The United States Environmental Protection Agency ("EPA") published a proposed rule in the September 28th Federal Register that would clarify the federal Emergency Planning and Community Right-to-Know Act ("EPCRA") Toxics Release Inventory ("TRI") definition of a "parent company." See 86 Fed. Reg. 53577.

EPA states it is undertaking this action because current guidance on reporting the parent company on a TRI form has resulted in confusion.

EPCRA requires certain facilities to submit reports each year on the amounts of toxic chemicals they release in the environment, either routinely or as a result of accidents. Federal legislation in 1990 extended reporting requirements to waste management and source reduction activities.

EPA implements these laws and compiles information it receives in the TRI.

The TRI is a publicly available database. It is prepared and published by EPA annually. Information contained in the database includes releases of over 650 chemicals and chemical categories from industries including manufacturing, metal and coal mining, electric utilities, and commercial hazardous waste treatment (among others). Such companies that manufacture, process, or otherwise use specified toxic chemicals in amounts above reporting threshold levels must submit TRI reports to EPA and to designated state officials.

EPA is proposing to codify the definition of "parent company" for TRI reporting purposes. Facilities are currently required to report, for purposes of the TRI, their parent companies and identify whether any reportable off-site transfers of chemicals are sent to a facility also owned by that same parent company.

EPA states that the TRI reporting forms and instructions ("RFI") address questions such as what constitutes a "parent company" for TRI reporting purposes. However, the agency states that the RFI does not address all scenarios applicable to a number of TRI facilities.

Cited as examples are:

- Facilities owned by subsidiaries of larger companies
- Facilities with multiple owners (none of whom are a majority owner)
- Joint ventures that are not purely 50/50
- Facilities directory owned by foreign entities
- Publicly-owned facilities

The proposed rule would codify “parent company” for TRI reporting purposes to be the highest-level company with the largest ownership interest in the TRI facility as of December 31 of the reporting year. The agency believes that the proposed rule would, therefore, address the following ownership scenarios:

- A facility is owned by a single company, which is not owned by another company
- A facility is owned by a single company, which is owned by another company
- A facility is owned by multiple companies, including companies that are themselves owned by other entities
- A facility is owned by a joint venture or cooperative
- A facility is owned, or at least in part, by a foreign company; and
- A facility is owned by the federal government, or a state, tribal, or municipal government

The proposed rule would also require that facilities reporting to TRI utilize standardized naming conventions for parent company reporting. These are stated to be provided in the annual TRI RFI and available as a downloadable Excel file.

A copy of the Federal Register Notice can be downloaded here.