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Toxics Release Inventory: The Basics of Reporting

Moderator: Jeffrey L. Hunter, Perkins Coie LLP

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This session will cover:

- The basics of TRI Reporting
- Responding to EPA TRI Requests for Information
- Legal Perspectives

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Parker Emahiser
Farallon Consulting

pemahiser@farallonconsulting.com
(541) 306-1573

Suzanne Gabriele
Geosyntec

SGabriele@Geosyntec.com
(720) 509-8903

Geoff Tichenor
Stoel Rives

geoffrey.tichenor@stoel.com
(503) 294-9389

WHAT IS THE TRI?

The Toxic Release Inventory (TRI)

- Database of TRI-listed chemical releases and pollution prevention activities
- Chemicals are identified in the EPCRA 313 list of chemicals
  - Individual chemicals
  - Chemical categories
  - PFAS chemicals
- TRI data is open to the public

WHO REPORTS FOR TRI?

Must assess reporting if:

- North American Industry Classification Code System (NAICS Code)
  - e.g. 311513 cheese manufacturing, 312130 wineries, 327310 cement manufacturing, etc.

- The number of full time employees
  - 10 full time employees or 20,000 hours worked by employees

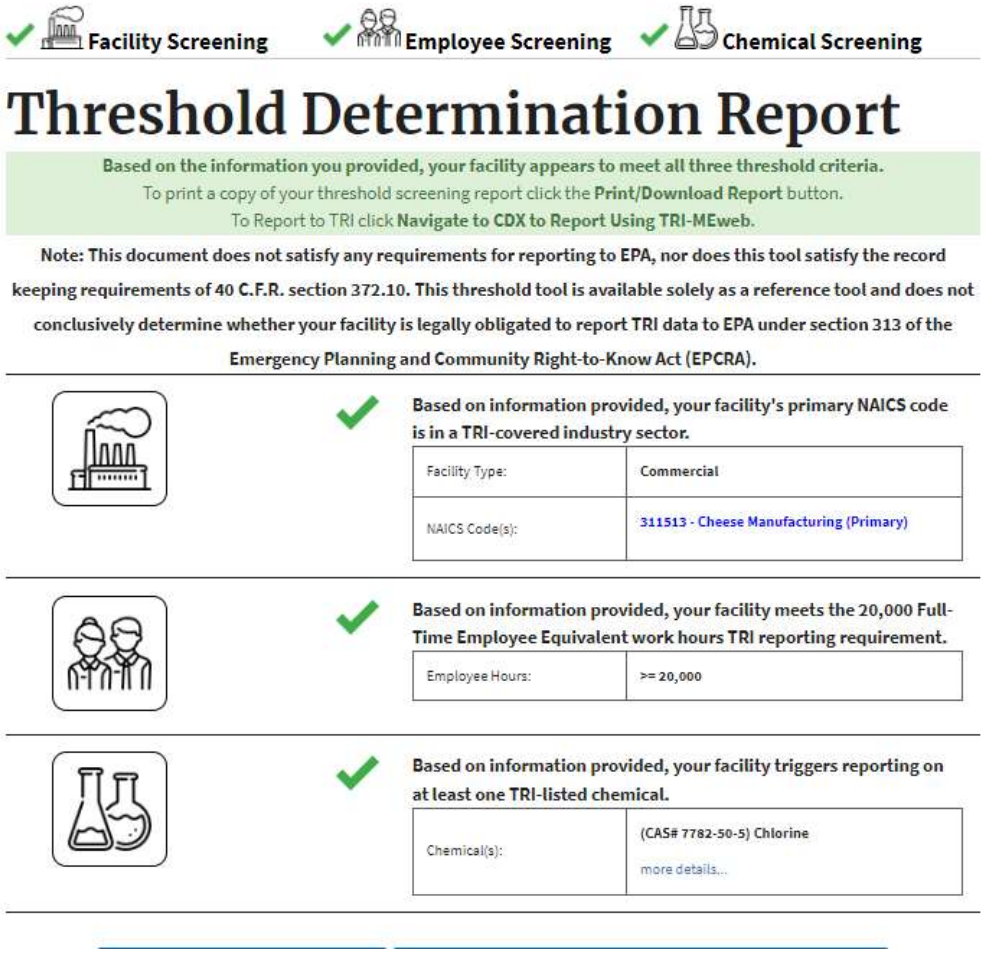
- Manufacture, process, or otherwise use an EPCRA Section 313 chemical (TRI-listed Chemical)

THRESHOLDS

- Manufacture = We produced, prepared, imported, or compound a TRI-listed chemical.
  - Example: We make zinc ingots
- Process = We prepared a TRI-listed chemical after it was manufactured.
  - Example: We dip iron into molten zinc as a protective coating
- Otherwise Use = Any use of a TRI-listed chemical not related to manufacturing or otherwise used.
  - Hydrochloric acid is used to prepare the steels surface before dipping in zinc.

EXAMPLE

- EPA has a screening tool.
- Useful for NACIS and Employee hours
- Not helpful for threshold determinations. Requires math, chemistry, and knowledge of process.



✔ Facility Screening ✔ Employee Screening ✔ Chemical Screening

Threshold Determination Report

Based on the information you provided, your facility appears to meet all three threshold criteria.
To print a copy of your threshold screening report click the **Print/Download Report** button.
To Report to TRI click **Navigate to CDX to Report Using TRI-MEweb.**

Note: This document does not satisfy any requirements for reporting to EPA, nor does this tool satisfy the record keeping requirements of 40 C.F.R. section 372.10. This threshold tool is available solely as a reference tool and does not conclusively determine whether your facility is legally obligated to report TRI data to EPA under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

✔ **Based on information provided, your facility's primary NAICS code is in a TRI-covered industry sector.**

Facility Type:	Commercial
NAICS Code(s):	311513 - Cheese Manufacturing (Primary)

✔ **Based on information provided, your facility meets the 20,000 Full-Time Employee Equivalent work hours TRI reporting requirement.**

Employee Hours:	>= 20,000

✔ **Based on information provided, your facility triggers reporting on at least one TRI-listed chemical.**

Chemical(s):	(CAS# 7782-50-5) Chlorine more details...

FORM R OR FORM A?

One form for each TRI-listed chemical or chemical category

Form A

- Chemical is not a PBT
- You do not exceed 1,000,000 lbs of a listed chemical
- Total annual amount reportable is less than 500 lbs

Form R

- PBT chemicals
- Manufacture, process, or otherwise use 1,000,000 lbs
- Total annual reportable amount is less than 500 lbs (calculated release).

Use of the Form A is rare.

FORM A

Form A Required Information

- Location of facilities
- Demonstration that the chemicals are meeting the manufacturing, processing, or otherwise used thresholds
- Certification that the reportable amounts of chemicals is less than 500lbs.

FORM R

Form R Required Information

- Location of facilities
- Demonstration that the chemicals are meeting the manufacturing, processing, or otherwise used thresholds
- Accounting for on-site releases
- Accounting for off-site transfer of wastes
- Description of on-site waste treatment, energy recovery, and recycling
- Other disposal, source reduction, and recycling activities
- Additional optional pollution prevention information

FORM R

Time consuming data to gather and process:

- Accounting for on-site releases
  - Air emissions
  - Discharges to receiving waters and UICs
  - On-site disposal (i.e. landfills)
  - Land treatment/application

- Accounting for off-site transfer of wastes
  - Discharges to POTWs
  - Waste disposal

SUBMITTAL

- Central Data Exchange
  - Clunky system
  - Helpdesk can support log-in issues (888) 890-1995
  - TRIMe Web application used to fill Forms

- Due Date
  - Due annually on July 1
  - Previous operating years report
  - We will submit Form Rs for 2022 reporting year no later than July 1, 2023.

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RESPONDING TO EPA TRI REQUESTS FOR INFORMATION

Presented by Suzanne Gabriele
Business & The Environment
December 7, 2022

Basics of the RFI

Preparing RFI response

Take aways

BASICS OF THE RFI

Who?

- Operators with TRI NAICS EPA suspects should be reporting

Why?

- Reports are not currently being filed

When?

- 45 to 60 days from RFI receipt

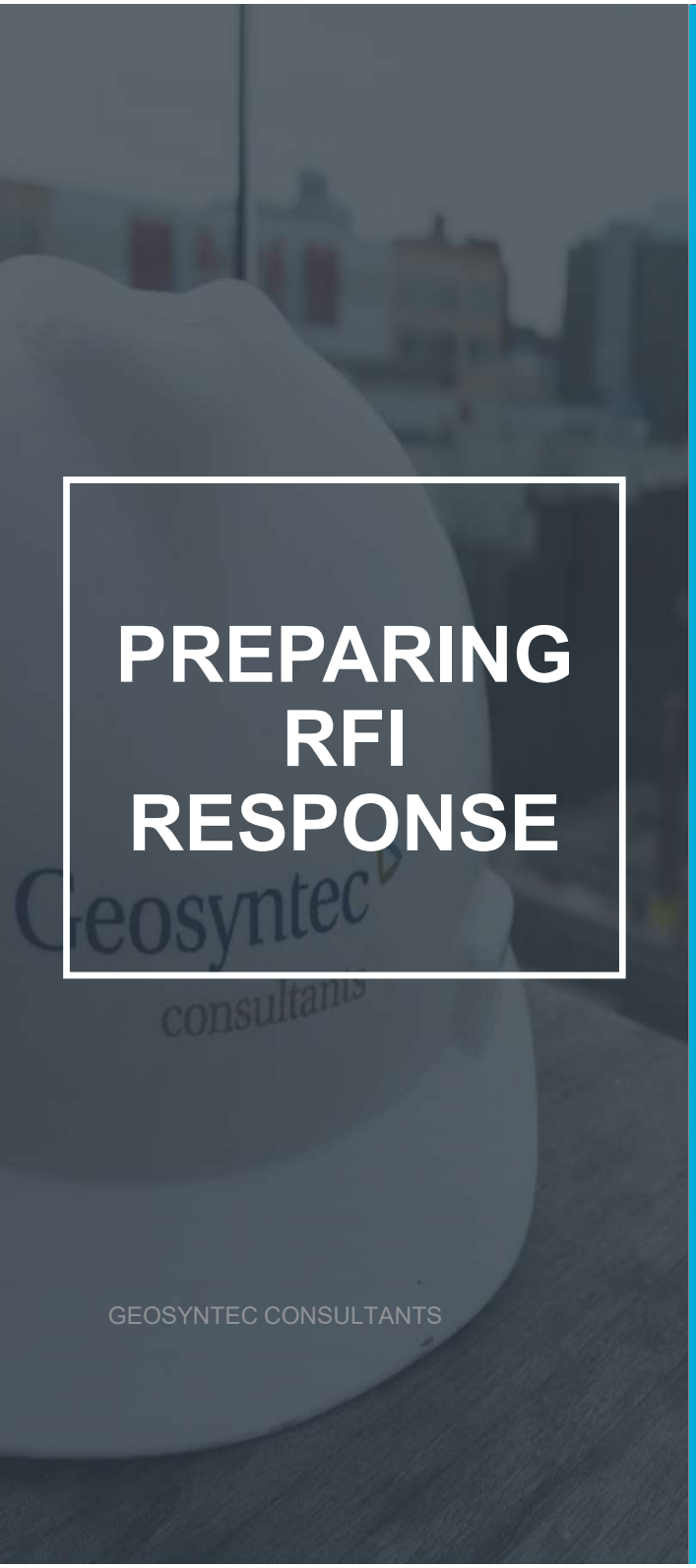
What?

- Description of operations and processes
- Primary NAICS code
- Annotated PFD
- Facility map
- Co-located and adjacent operators
- Parent company sales revenue

BASICS OF THE RFI (CONT.)

What else?

- FTEE threshold determination
- TRI-listed chemicals manufactured, processed, and otherwise used
- SDSs for all raw materials and products used that contain a TRI-listed chemical
- Summary of and back up data and records to support threshold determinations
- Tier II reports and other submittals the agency suspects you may have made to other agencies
- 5 years of records



PREPARING RFI RESPONSE

Consider:

- Counsel
- Technical consultant

Assemble:

- Facility maps
- PFDs
- SDSs
- Purchasing records
- Waste manifests and other transfer records (e.g., recycling, non-hazardous wastes)
- DMRs
- Air emissions inventories

PREPARING RFI RESPONSE (CONT.)

Review past agency submittals:

- Biennial reports
- Air pollution notices / permit applications
- WW and SW permit applications

Cross-reference sources of information

TAKE AWAYS

Are you at risk of a TRI RFI?

Could you be better prepared for a TRI RFI?

What should you do to prepare for a TRI RFI?

TRI: The Basics of Reporting

Legal Perspectives

Presented by Geoff Tichenor
Business & The Environment
December 7, 2022

Information Requests

- Often very broad & requires information in unique formats. For example:

7. A list of all TRI-listed chemicals that are manufactured (either directly or coincidentally), processed, or otherwise used at the Facility during each calendar year. (Information on TRI-listed chemicals can be found at EPA's TRI homepage at http://www.epa.gov/tri).

8. Copies of Safety Data Sheets (SDSs) for all raw materials and products utilized at the Facility that contain a TRI-listed chemical. Please organize the SDSs by the calendar year that it was utilized by the Facility, either by including the calendar year in the file name or on the document.

9. Data tables or spreadsheets of TRI-listed chemical usage. The Facility can utilize a table similar to the one shown below. Two **sample** rows of data are shown:

Product or Trade Name	EPCRA § 313 Chemical Name & CAS #	Weight Percent of EPCRA § 313 Chemical in Product	Product "Manufactured, Processed, or Otherwise Used"	Pounds of Product Used	Pounds of EPCRA § 313 Chemical Used
Blue Paint	Toluene - CAS: 108-88-3	12%	Otherwise Used	9,850	1,182
Stainless Steel A-240	Nickel - CAS: 7440-02-0	9%	Processed	55,000	4,950

- Short response timeline

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Information Requests: Response Strategy

- Negotiate upfront:
  - Play for time
  - Narrow the response content either:
    - In response content (e.g., given facility operations it does not coincidentally manufacture any TRI chemicals, or facility has only had 10 or more FTE's in one year); or
    - By specifically requesting that EPA reformulate or withdraw certain requests
- Get in front of potential issues
  - Strategy holds for auto-generated TRI contractor responses

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EPA TRI Enforcement Process: Typical Anatomy

- Notice of Intent to File Administrative Complaint
- Opportunity for Settlement Discussion
- If Settlement, Consent Agreement & Final Order
- If No Settlement, Administrative Complaint & ALJ or Referral to US DOJ for Civil Complaint

EPA TRI Enforcement Process: Penalties

- 2022 inflation adjusted statutory maximum civil/admin. penalties for reporting violations:
  - $62,689 for violations after 11/2/15

- No specific criminal sanctions but prosecution under 18 USC 1001 a possibility if knowing and willingly make a false statement or conceal a material fact

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EPA TRI Enforcement Process: Penalties Cont'd

- EPA's generally assesses penalties under the EPCRA 313 Enforcement Response Policy

- Penalties are assessed per TRI chemical, per facility, per reporting year (typically assessed as a single vs. continuing per day violation)

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EPA TRI Enforcement Process: Penalties Cont'd

Alleged violations typically include:

- Failure to timely report
- Data quality errors, including mistaken release estimates
- Failure to respond (e.g., to a notice of non-compliance or information request)
- Repeat violations
- Failure to maintain records

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EPA TRI Enforcement Process: Penalties Cont'd

Adjustments under Enforcement Response Policy:

- Upward: for prior violations (can significantly increase penalty)

- Downward: up to 15% each for cooperation and compliance

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EPA TRI Enforcement Process: Strategy

- Typical strategy = push for quick settlement via Consent Agreement & Final Order
  - Maximize potential for 30% downward adjustment
  - Limit allegations (by chemical / to a single facility)
  - Minimize transaction costs

- EPA Region 10's recent enforcement practice is to settle for approx. $30k per TRI chemical per year

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Enforcement Avoidance Strategy: Audit Policy

- Audit Policy:
  - Incentives for Self Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 FR 19,617 (April 11, 2000), Effective May 11, 2000
  - Implemented through EPA's eDisclosure portal

- Purpose: To encourage regulated entities to voluntarily discover, disclose correct and prevent violations of federal environmental requirements.

Enforcement Avoidance Strategy: Audit Policy Cont'd

Applied to EPCRA TRI Violations: Process resolves with automatic issuance of a determination from EPA providing:

- 100% gravity penalty mitigation
- No payment of economic benefit
- No request for audit reports
- No referral for further enforcement or criminal prosecution

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Enforcement Avoidance Strategy: Audit Policy Cont'd

1. Systematic discovery (audit typically for TRI)
2. Voluntary (can't be in response to info. request)
3. Promptly disclosed (within 21 days of discovery)
4. Independent discovery (before EPA likely would have discovered)
5. Correction (within 60 days of discovery)
6. Prevent recurrence
7. Repeats ineligible (3 years at facility; 5 years if pattern across company)
8. No serious harm
9. Cooperation

TRI: Tidbits & Seasonings

- Only required to use best available information (but beware of what should know and of inconsistencies)

- Avoid overreporting (stack vs. fugitive)

  EPCRA has no formal definition of what constitutes a fugitive emission, but the definition from the TRI instructions is emissions that "are not released through stacks, vents, ducts, pipes, or any other confined air stream." See EPA's, Toxic Chemical Release Inventory Reporting Forms and Instructions (Revised 2014 Version), at 44. See also Q&A No. 490: