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## **CHANGING ENVIRONMENTAL BEHAVIOR IN THE UNITED STATES THROUGH THE USE OF PUBLIC DISCLOSURE OF INFORMATION**

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### **SUMMARY**

In the United States, much of the environmental legislation at the state and national level contains elements requiring industry to report on its emissions and stresses the importance of allowing the public complete and open access to this data. Public disclosure of this environmental information is a cornerstone of the regulatory process in the U.S. Experience has shown that the public disclosure of this data has had a major impact on compliance rates and has led to improved environmental management.

In this paper, the following points are highlighted: (1) the regulated community knows that they must provide various state and federal agencies environmental data, and failure to provide this information in a timely manner can result in agency enforcement action; (2) the public has the clear right to have access to virtually all of the self-monitoring data submitted at the state and national level and an agency can face sanctions if it does not live up to these disclosure requirements; (3) the release of environmental data such as that under the Toxics Release Inventory Program, has led to dramatic reductions in emissions and has prompted the regulated community to increase its participation in voluntary emission reduction programs; (4) efforts need to be undertaken to guarantee that the information filed by the regulated community is accurate and quantifiable; stringent action needs to be taken against those who file false or inaccurate data; (5) proactive use of press releases and other forms of publicity when enforcement actions are taken against violators does serve as a deterrent and can lead to improved compliance rates; (6) some statutes in the U.S., such as the Safe Drinking Water Act at the national level, do require public notification when violations do occur and the very fact that violators are required to report to the public on these violations, has led to improved compliance; (7) pollution prevention programs are taking an increased importance in the U.S.; (8) communication of federal enforcement goals is enhanced through meetings with the states, the news media, industry, and non-governmental organizations.

### **1 PUBLIC ACCESS TO COMPLIANCE MONITORING DATA**

In the United States, data furnished by the regulated community is relied upon not only to determine compliance status, i.e., is the source in or out of compliance with applicable regulations, but also to analyze compliance patterns, target compliance inspections and focus enforcement actions at the state and national level. Self-monitoring in some instances is required through legislative action or in some cases, self-monitoring is required under rulemaking authority of the state or national agency. Since there are hundreds of thousands of sources to be regulated in the United States, self-monitoring and the reporting of that data to the responsible agency is the underpinning of this nation's environmental control program. It simply is not possible to have inspectors check each and every facility nor would monitoring by an outside organization be feasible in all cases.

Virtually all of the self-reported information in the United States is available to the media and the public, and the regulated community submitting data is well aware of this. The mere fact that this data can be subjected to public scrutiny in and of itself can act as a powerful motivator. It helps make sure that business and industry files all of the required information and in a growing number of instances acts as an incentive for industry to go beyond mere compliance with the applicable law or

regulation. Business and industry in the U.S. are increasingly concerned about their public image. They want to be perceived as "good neighbors."

Regulatory agencies at the federal and state level undertake proactive programs in order to make sure that the public has access to the data filed by the regulated community.

Under the Clean Water Act, for example, sources holding an EPA permit to discharge into waterways must implement as a permit condition sampling and testing programs. These discharge monitoring reports give detailed data including facts on whether or not the source is in compliance with all of its requirements and, if not, how the source intends to correct the problem. Quarterly non-compliance reports are routinely prepared and sent to individuals and groups on a mailing list. Individuals wishing to receive this data can simply write to EPA and be added to the list. Copies of these reports are also available for public scrutiny at each of the ten EPA Regional Offices.

EPA often is required to file annual reports to the U.S. Congress on certain pieces of data that it collects under the various statutes. The agency routinely releases these reports to the public as well. Many of the states have similar requirements that make public disclosure mandatory.

In many Regions of EPA, press releases are issued, briefings are held and reports released on data submitted by various companies. The key objective is to make sure that the data obtained by a public agency actually reaches the public. Often, however, the data released as part of a proactive effort is cumulative in nature—it gives a general picture of the data from a Regional or national viewpoint—it is not industry-specific.

Many representatives of the public want more specific information that pertains to an individual company or companies in a carefully-defined geographic area. In the U.S., thousands of requests for data of this kind are released to the public under the Freedom of Information Act or a comparable state statute. These laws were established to ensure that the public has total access to regulatory agencies' files.

At the national level, the Freedom of Information Act was passed in 1978 and it is clear from its history that it was intended as a disclosure law, not a withholding law. In our Region, as well as in all of the other parts of EPA, there is a presumption in favor of releasing information. The Clinton Administration, through the Department of Justice, has issued policy guidance that stresses the importance of public disclosure and has tightened requirements on what information can be withheld.

Only a few exemptions are allowed. First, a business or industry can request that certain pieces of data be withheld because it contains trade secrets that would hurt them or help one or more of their competitors. Such a request is not automatically guaranteed. EPA must rule on a case-by-case basis that it contains confidential information that should not be released. If such an exemption is granted, the confidential business information must be handled very differently than other data filed by the regulatory community.

In a region like ours, only a handful of people who have certain security clearances and who have passed a required annual test have access to such information. This group also must sign documents pledging that they will not divulge this confidential information and the penalties for violating that pledge are very serious. This high level of security is necessary in order to make sure that this confidential data is not inadvertently released.

Second, draft documents and working papers are also exempt from public access as are sensitive enforcement information, individual personnel records, matters of national defense or foreign policy, internal agency rules and information exempted under any other statute.

Handling the requests that come in under this act can be extremely resource intensive. In our region, for example, some 2200 requests for various pieces of data were received in 1993.

When the request comes in it must be logged in, assigned a number and input into the computer for tracking purposes. This is critical since under the law, the agency has 10 working days to respond to the request. The request then has to be reviewed by the person in charge of that information as well as by an attorney. In most instances, it is determined that the information can be immediately released. In our region, in about 15 percent of the cases, it is determined that portions, or all of the request must be denied because the information is exempted under the law. EPA must

notify the requestor of that denial and state specifically why that data cannot be released. The requestor does have appeal rights and in some instances the information ends up being released.

Once a positive determination is made, the information must be copied and sent back to the requestor. Often the files are voluminous and it takes a good deal of effort to complete that copying process. Under the law, EPA can charge a requestor a specified amount for that task. The agency must notify the requestor of the estimated cost before the copying gets underway. In many instances, the agency is asked to waive those costs since release of the data would clearly be "in the public interest." Those waivers are granted for the most part except in cases where the requestor is gaining the information for a profit-making venture (such as requests from environmental consulting firms that are trying to get information to augment its business contacts). While the act has worked from a public disclosure standpoint, it is a key resource-intensive program because of the volume of requests received.

## **2 PUBLIC DISCLOSURE OF ENVIRONMENTAL RELEASES**

One telling example of a disclosure law in the United States yielding unexpected benefits, is the Toxics Release Inventory (TRI) program under the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). This law requires manufacturers who discharge/use more than 10,000 pounds of any of 320 chemicals or chemical categories, to record and report to the U.S. Environmental Protection Agency on any releases and off-site transfers. TRI is essentially a reporting and public disclosure instrument.

While the Act has worked from a public disclosure standpoint, it is a big resource intensive program because of the volume of requests received.

Since 1987, EPA has issued an annual public report on the data contained in the Toxics Release Inventory submitted by more than 22,000 facilities all across the United States.

When the first report was issued, U.S. regulators, reporting corporate officials and the general public at large were stunned at the high volume of toxics being released into the environment or being transferred off site. This was the first comprehensive report of its kind and it showed that more than 7 billion pounds of toxics were being released or transferred off site by U.S. facilities. The public was in an uproar and the release of this data had a profound impact on the regulated community.

It should be noted that, under TRI, a company is not required to reduce their emissions, but because of the negative publicity resulting from full disclosure of the TRI data, many U.S. corporations have embarked on aggressive programs to minimize waste, to use smaller amounts of toxic materials, and to substitute less toxic constituents in their processes.

Even where the use and release of toxic chemicals is legally permissible per agency standards and legal requirements, public disclosure of the amounts of these releases by EPA has prompted major action by sources to reduce such use and releases. No facility wants to be identified as a major emitter or user of chemicals even when their actions are completely legal.

The public release of the TRI data is accomplishing its intended goal. Each year there has been an overall decrease in total releases and transfers. For example, there has been a 15 percent decrease in TRI releases and transfers in the last two years. From 1988 to 1991, the last year in which data is available, total releases have decreased thirty-one percent (31%). This represents approximately 1.5 billion pounds.

This simple act of reporting and the public disclosure of self-generated data has had a persuasive and dramatic effect at U.S. facilities that use and release chemicals.

As a direct result of the release of the TRI data, national legislation was enacted in 1990 (the Pollution Prevention Act) that expanded EPA's role in encouraging industrial source reduction and recycling in all of its regulatory and non-regulatory programs by requiring sources to report on what efforts they have underway to reduce, recycle, reuse or treat each chemical reported on a TRI form.

The publication of this data has also produced an avalanche of legislation at the state level requiring more specific information reporting from companies. Approximately 26 states, through

legislation, now variously require sources to report to regulating agencies on how they plan to reduce their emissions, reduce their use of toxic materials, reduce waste streams and prevent pollution.

On August 3, 1993, President Clinton signed the Pollution Prevention Order For Federal Agencies. The Executive Order requires by 1999 that federal facilities reduce by half their fixed emissions and report any releases of toxic pollutants to the public.

Federal facilities that manufacture, process or use toxic chemicals, are also required to publicly report their wastes and releases under the Emergency Planning and Community Right-to-Know Act. Under the Toxic Release Inventory (TRI) requirements of this new law, federal facilities will report their toxic emissions to EPA and to the states where the chemicals are emitted. The public can obtain this information from a national computer data base and from their respective states.

On January 6, 1994, the Administrator of EPA, Carol Browner, announced a proposal to add 313 chemicals to the reporting requirements under TRI. One-hundred and seventy (170) of the new chemicals are active ingredients in pesticides. This would bring the total number of chemicals requiring reporting of releases to 633.

Additional changes proposed in the law would expand its applicability beyond reporting releases from manufacturers to process releases or facilities which otherwise use and release greater than 10,000 lbs. More industries will be announced in future proposed changes in the law in April. This proposal would likely seek to regulate utilities, waste processors, publicly-owned treatment works, service industries and mining.

Another new tool is EPA's 33/50 program. This has gained commitments from 1,199 companies to voluntarily reduce releases of 17 toxic chemicals. As of December 1993, EPA projects a minimum of 354 million pounds in emission reduction through this program by 1995. This would take the 33/50 program more than halfway to its overall goal of 700 million pounds in reduced releases.

The TRI data base is completely computerized and the public has full access to that information. EPA, in many regional offices, has undertaken training programs on how to access the data. In the New England region, for example, training courses for environmental newspaper, radio and television reporters were held. The Region has also trained environmental group leaders and staff members of elected officials. This type of training is critical to ensure wide public dissemination of the material contained in TRI. Under the TRI program, information about the emissions of a single company can be obtained. Emissions of a specific chemical can also be shown. Total emissions in a specific geographic area can also be accessed.

### **3 PUBLIC NOTICE AS AN ENFORCEMENT TOOL**

In many instances, the release of self-generated data can be very useful in returning a violator to compliance or in actually generating a formal enforcement action.

As noted earlier, under the Clean Water Act, summaries of the discharge monitoring reports filed by business and industry are routinely circulated. Citizen groups also review EPA files to determine if any violators of the Clean Water Act have been reported by those holding permits.

As a result, over the years, groups have brought a number of suits against companies for violation of these permits. Approximately 100 cases a year have been brought under the Clean Water Act citizen suit provisions. It is clear then that under the Clean Water Act, a company's own data is being used to generate enforcement action. This certainly acts as an incentive to companies to stay in compliance.

It should be noted that in many instances these citizen suits have been filed because the government at the federal or state level has been unwilling or unable to take enforcement action. In some instances these suits have helped the government improve its compliance rates.

Another form of public disclosure can be found in the Safe Drinking Water Act. Under this law, water suppliers must routinely sample drinking water, typically once a month, obtain independent laboratory certification of contaminant levels, keep records and report compliance status on a monthly

basis to the regulatory agency. Depending on the seriousness of the violations, sources must make a full disclosure to the appropriate regulatory agency within 48 hours.

In addition, if monitoring reveals serious non-compliance, water supply customers must be notified by radio/television broadcast, newspapers and/or by direct mail within specified time frames. Naturally, such disclosure of problems with a water supply can lead to a lot of pressure on the supplier to immediately correct the deficiency. The consumers will demand quick response. Once such contamination is reported, subsequent remediation or corrective action must also be publicly noticed and reported regularly to the agency until water quality is restored.

Water suppliers take extra steps to ensure a safe water supply knowing full well that there will be full public disclosure of any problems.

#### **4 THE POWER OF THE PRESS**

As noted earlier, the press has access to much of the self-generated environmental data required of the regulated community. This can act as an incentive for sources to provide data required by the government in a complete, accurate and timely fashion. Non-reporting in and of itself can be damaging to a company's public image and can lead to civil or criminal liability.

In the U.S., as in many other countries, the fear of adverse publicity acts as a strong deterrent to non-compliance with environmental requirements. Having a positive image in a society of environmentally-concerned citizens/consumers is important to regulated sources. In the U.S., companies want to be known as "green" companies; they do not want to be labelled "polluters." Because public disclosure of non-compliance is damaging, this mechanism is used deliberately as a tool by lawmakers, courts, agencies and environmental groups to obtain compliance.

In the U.S., State and Federal environmental agencies commonly issue press releases about non-compliance by individual sources. Agency records of non-compliance, even when based on source-furnished data, are available to the public and often are publicly disclosed.

In the U.S., EPA's national and regional offices routinely issue press releases and news stories about enforcement actions and penalties assessed against non-complying sources. The same is true of state environmental agencies.

EPA annually issues an Enforcement Accomplishment Report which includes individual case summaries. This is widely disseminated to citizens throughout the country. The agency also reports on its efforts to Congress and this data is also available to the public.

Members of the press and environmental groups commonly review compliance information in agency files that has been supplied by sources. This too can lead to press-related stories and even citizen law suits against non-complying sources.

Corporations in the U.S. fear bad publicity. It is bad for their image. It can hurt their sales and a damaged reputation can sometimes put a company out of business. The fear of a negative image is very real, and therefore, many companies knowing that there will be public disclosure of data they are providing, go out of their way to ensure compliance.

Business and industry also utilize the press. When monitoring and data show improvements or significant reductions in pollution levels, U.S. industry routinely contacts the media to get that message out. Industry has come to recognize that being more open and releasing information on a timely fashion can be to their advantage.

In our region, we have found that the press can be a major ally in helping to improve compliance. Often after publicizing an enforcement case, we will hear from other companies who may be having a problem and want to talk to us about how they can resolve their noncompliance. Companies have often asked us to withhold the issuance of a press release or have asked us if they can review such a release before it is sent out to the press. In our region, we issue a release on every enforcement action. Whether to issue a release or not is nonnegotiable. We do not allow a company to review a press release before it is issued; however, if a facility is cooperating with us and moving quickly to correct the problem, we will give them credit for that activity in our release.

We also have received "tips" about similar compliance problems from people who read or hear about an enforcement action in the press. We send inspectors out to follow up on these complaints. We are the only region (among the ten EPA regions) that issues a release on every action. We certainly feel that making this information available to the media - and therefore the public - helps make business and industry want to comply with the law. The press can be a powerful ally.

It should be noted that efforts are made to promote the practices of business and industry that are undertaking innovative programs to reduce emissions and enhance compliance. It is imperative to recognize good achievements as well as penalize those who do not comply.

## **5 INTEGRITY OF DATA IS KEY**

In order to have full and complete disclosure, EPA as well as state agencies, undertake a number of programs to ensure data integrity.

First and foremost, it is important to make sure that all sources that are required to file self-monitoring data, do exactly that. The agency does take action against those who fail to file the required information and there are stiff monetary penalties for those who refuse to cooperate. For example, under the TRI program, more than \$34 million in penalties for not filing timely reports has been assessed. Tracking is done under the Clean Water Act to make sure that the required discharged monitoring reports are filed. When a report is not filed on a timely basis penalties can be assessed.

Making sure that the data is complete and accurate is also important. EPA relies heavily on data generated by the regulated community. The agency takes a number of steps to make sure that what is being filed is accurate information. Surprise audits of a company's discharge are undertaken for example.

The penalties for filing false or inaccurate data are very severe and can even result in criminal actions. In our region we have initiated criminal actions against several companies we believed filed false data in order to avoid a showing of non-compliance. The agency has shown its willingness to use every enforcement tool at its disposal to guarantee the integrity of its data. In 1994, a major national effort on data integrity enforcement is planned.

## **6 PUBLIC DISCLOSURE HAS LED TO MAJOR POLLUTION PREVENTION EFFORTS**

Having a good environmental record is of primary importance to many U.S. businesses and industry. The regulated community also has come to recognize that a heavy emphasis on enforcement at the state and federal level has made it very costly to go out of compliance.

Businesses are well aware that the data they submit to regulators will be open to public scrutiny. As a result, many corporations, particularly major ones, have begun to implement ambitious pollution prevention programs. Instead of cleaning up pollution at the end of the pipeline, businesses have begun to implement programs to prevent pollution from occurring in the first place. They, therefore, in their report to the regulating agencies, will show progress. Many businesses and industries in order to get full credit for their efforts, issue press releases or progress reports on their efforts. It is the regulated community itself that utilizes public disclosure when there is a good story to tell. Many U.S. corporations have recognized the importance of disclosing environmental success stories and this has led to more awareness that it is necessary to implement pollution prevention programs. EPA and many states have begun to develop awards programs to give recognition to those in the regulated community who are doing more than is required under the law or who have found innovative approaches to solving environmental problems.

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## **7 PUBLIC OUTREACH**

Press conferences are held to announce major enforcement actions and settlements. Often these actions are the combined effort of federal and state enforcement agencies such as the United States Justice Department and State Attorney General. Major local television networks usually attend to provide coverage during prime time news shows.

In our regional office, EPA almost exclusively takes the lead in coordinating press releases and conferences when two or more agencies are involved. A long-term communication plan is developed and includes communication goals, contacts in the public and a draft press release. Each agency involved in the enforcement case is provided opportunity to make a statement in the press release.

Press conferences are coordinated by EPA so that each agency understands what will be announced, when each announcement will be made and who will make the announcement. EPA's central role in coordinating press releases and press conferences provides a point of accountability for these assignments and tasks.

EPA also finds opportunity for outreach in the business trade press, environmental journals and other small journals. These publications have provided good coverage of enforcement policy, initiatives and penalty actions. Most businesses subscribe to at least one trade journal to maintain an awareness of their competition. These publications provide a major enforcement deterrence when used in this manner.

Many of our efforts to communicate enforcement activities to the public include getting out and personally meeting the public. Our regional office holds enforcement seminars in several states for the business community. These seminars include state representatives and provide an opportunity to communicate federal and state environmental enforcement priorities and goals. They also provide an important opportunity to hear how the federal and state environmental programs are perceived and whether we have been effective.

We meet frequently with representatives of the legal profession and the environmental organizations to exchange information and solicit their ideas for improving the federal enforcement programs.

Visits to specific industries by the key agency officers are conducted and the news media is invited to tour the facility. Visits take place at facilities which were subject to federal enforcement action, returned to compliance and invested in pollution prevention projects beyond the requirements of the law. We believe it is beneficial to promote, by communicating through the news media, industry efforts to go beyond the law in reducing the amount of waste they generate. Both the environment and industry benefit, as profit from these pollution prevention activities is often realized within a year.

Other successful means of publicizing our enforcement goals and policies include conducting interviews with newspaper editors, and television and radio news stations. For example, in our region we conducted weekly interviews with the Cable News Network.

Our regional office also conducts seminars on how and when to develop public information material and marketing and distribution techniques.

## **8 CONCLUSION**

Full and open disclosure of virtually all data supplied to the government by the regulated community is a somewhat unique feature of the U.S. regulatory process. While some in the regulated community may not like it, the fact is that disclosure has brought many benefits to environmental management in the U.S. The public has come to expect full and open disclosure as part of the regulatory process.

Communication of federal enforcement programs is enhanced through meetings with states, industry, environmental organizations and the news media.

It can be expected that under the Clinton Administration, aggressive efforts will be undertaken to "open up agency files," to make sure that the "customers" of the government, namely the public, are being served and have access to agency records and agency officials. Customer surveys are being done by every agency to see how they can better serve the needs of the public.