January 27, 2017

**By FOIA Online and Email: hq.foia@epa.gov**

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667 FAX (202) 566-2147
E-mail: hq.foia@epa.gov

***Re:*** *Freedom of Information Request for Form Us Submitted Under TSCA CDR Rule for Initial 10 Chemicals Undergoing Risk Evaluations*

Dear Freedom of Information Officer:

This request for records in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, is submitted by Safer Chemicals, Healthy Families, (SCHF), Earthjustice, the Natural Resources Defense Council (NRDC), the Environmental Health Strategy Center and Toxic-Free Future.

**Records Requested.** Pursuant to sections 14(b)(3) and 14(d)(7) of the Toxic Substances Control Act (TSCA) as amended, we seek copies of all Form U's submitted in 2016 (or revised in 2017) under the TSCA Chemical Data Reporting (CDR) rule for the initial 10 chemicals EPA has selected for risk evaluations under section 6(b)(2)(A) of TSCA.

**Background Information.**

a. **Initial 10 Risk Evaluations**.

EPA identified ten chemical substances for initial risk evaluations under TSCA section 6(b)(2)(A) in its Federal Register notice of December 19, 2016, entitled ''Designation of Ten Chemical Substances for Initial Risk Evaluations Under the Toxic Substances Control Act'' (81 FR 91927). The 10 identified chemicals are:

1,4-Dioxane (CASRN 123-91-1)
1-Bromopropane (CASRN 106-94-5)
Asbestos (CASRN 1332-21-4)
Carbon Tetrachloride (CASRN 56-23-5)
Cyclic Aliphatic Bromide Cluster (Hexabromocyclododecane or HBCD) (CASRN 25637-99-4)
N-Methylpyrrolidone (NMP) (CASRN 872-50-4)
Methylene Chloride (also known as Dichloromethane or DCM) (CASRN 75-09-2)
Pigment Violet 29 (Anthra[2,1,9- def:6,5,10-d'e'f]diisoquinoline- 1,3,8,10(2H,9H)-tetrone) (CASRN 81-33-4)
Trichloroethylene (TCE) (CASRN 79-01-6)
Tetrachloroethylene (also known as Perchloroethylene) (CASRN 127-18-4)

**b. CDR Requirements**. The CDR rule (40 CFR part 711) is EPA's primary vehicle for determining basic information about manufacturing processes and use and exposure profiles of commercially significant chemicals (principally those manufactured or imported at a given site in amounts of 25,000 pounds or more per facility in a given reporting year). The quadrennial reporting cycle under this rule was completed last fall, with reports due on October 31, 2016.

Our FOIA request is limited to reports filed during the latest reporting cycle by each primary submitter and any joint submitter for each of the 10 chemical and any revisions to these reports.

**Rationale for Disclosure.** Because it may expedite consideration of our request, we provide below the three-fold basis for disclosing Form U's for the 10 chemicals under FOIA.

First, TSCA section 14(b)(3) defines "information not protected from disclosure" to include:

> "(A) *any general information* describing the manufacturing volumes, expressed as specific aggregated volumes or . . . in ranges; or
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> "(B) *a general description* of a process used in the manufacture or processing and industrial, commercial or consumer functions and uses of a chemical, substance, mixture or article containing a chemical substance or mixture . . . " (Emphasis added).

Significant portions of the Form U's for the 10 chemicals fall within these provisions because they describe processes used in manufacturing and processing in broad terms (i.e. Section II.B and III.A) or characterize uses and related exposures using general categories (i.e. Section III.B), based on commonly accepted descriptors and ranges and percentages rather than specific values. As EPA has concluded, "general use and process information collected under 40 CFR § 711.15(b)(4) of CDR . . .is not the type of specific information referenced in TSCA § 14(c)(2)" and thus should fall under section 14(b)(3).[1]

Second, TSCA section 14(d)(7) provides that the Administrator may disclose information otherwise warranting CBI protection if he or she "determines that disclosure is relevant in a proceeding under this Act." The risk evaluations that EPA is conducting on the 10 chemicals under section 6(b)(2)(A) of TSCA represent a "proceeding" under TSCA. In addition, information submitted by industry on the 10 chemicals under the CDR rule is "relevant" to these evaluations because it will inform how EPA assesses exposures and related risks associated with manufacture, processing and downstream commercial and consumer use.

Indeed, as EPA announced on January 19, it is convening a public meeting on February 14 to obtain public input on the "scoping documents" it is preparing to guide its evaluations of the 10 chemicals. These scoping documents will "describe the scope of information about the chemical substance that the Agency expects to consider in the risk evaluation, including its conditions of use, hazards, and exposures, including to potentially exposed or susceptible subpopulations." (82 FR 6545) CDR reports are among the best and most detailed sources of information on these very topics and it would greatly impede the scoping process for the 10 chemicals if EPA were blocked from disclosing CDR data to the public and stakeholders could not analyze and comment on it as the Agency's risk evaluations progress. For example, the public is very interested in knowing the locations of and activities occurring at the sites of production of these chemicals, in order to comment on scope of

[1] Q&As relating to CBI under amended TSCA posted on EPA Website, response to Q.7., at https://www.epa.gov/tsca-cbi/general-qs-and-relating-cbi-under-tsca-amended-frank-r-lautenberg-chemical-safety-21st . Although the Q&A related to whether CDR reports are the type of "specific" processing and use information for which substantiation of CBI claims is not required under section 14(c)(2), EPA's conclusion that this provision does not apply necessarily means the CDR-reported processing and use information is "general" and thus cannot be withheld from disclosure under section 14(b)(3).

risk evaluation advisable for workers, occupational bystanders, and fence-line community residents in and around those sites.

Third, for any CDR information covered by this request to which these grounds for disclosure may not apply, EPA should expeditiously review and determine the adequacy of the submitter's substantiation of its CBI claims under section 14(g)(1). If no substantiation was provided for particular information items, EPA should immediately require such substantiation under section 14(f)(1)(C), which authorizes this step where EPA concludes that "disclosure would be important to assist the Administrator in conducting risk evaluations . . . under section 6."[2] For example, substantiation is essential to scrutinize the basis for CBI claims made under Part I of the Form U for the parent company name (and name of any joint submitter) in relation to the information submitted, and the site name and location where the chemical is manufactured, imported, or processed by the submitter. This information is vital to characterizing exposure pathways, environmental fate and distribution and identifying potential exposed or susceptible subpopulations and CBI treatment will rarely, if ever, be warranted.

**Fee Waiver Request.** Pursuant to 5 U.S.C. § 552(a)(4(A)(iii), we request a fee waiver on the ground that "disclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." *Id.* As demonstrated above, disclosure of CDR information relates to an important early initiative under TSCA – performing risk evaluations on the initial 10 chemicals designated by the Agency. The additional knowledge of the manufacture, processing and use of these chemicals resulting from disclosure will contribute to public understanding of the risk evaluations and enable the public to provide informed technical and scientific input to the Agency. Disclosure will likely be beneficial to a broad audience of stakeholders and technical experts who are following the development of EPA's risk evaluations and seeking to make them as robust and informative as possible. Finally, the FOIA requestors are non-profit organizations with no commercial interest in any of the 10 chemicals. They have extensive relationships with national, state, and grassroots organizations committed to assuring the safety of chemicals and are well-positioned to make CDR information available to interested members of the public.

**Instructions for Record Delivery.** To the extent that the requested records are available in electronic format, we would prefer to receive the documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records or email them to:

Elizabeth Hitchcock, Legislative Director
lizhitchcock@saferchemicals.org
Safer Chemicals Healthy Families
641 S Street NW, Third Floor
Washington DC 20001

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[2] EPA announced on January 19 that it is now applying section 14(c)(3) to require up-front substantiation of CBI claims at the time information is submitted to the Agency. For previous submissions such the recent round of CDR reporting, EPA is allowing submitters to provide substantiation until September 18, 2017. 82 FR 6522, 24.This does not mean, however, that EPA cannot exercise its authority under section 14(f)(1) to require immediate substantiation for time-sensitive information like CDR data on the 10 chemicals.

January 27, 2017

As FOIA requires, we expect your response within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact SCHF counsel Bob Sussman by email at bobsussman1@comcast.net or by telephone at (202)-716-0118. .

If you claim that any of the requested information is exempt from mandatory disclosure, we respectfully ask that you:

(1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
(2) State the exemption you deem to be applicable to each information request;
(3) State with particularity the reason why such exemption is applicable to each information request;
(4) Examine each information request to determine if reasonably segregable non-exempt information exists which may be released after redacting information deemed to be exempt; and
(5) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding.

In addition, if your complete your review of some portions of the requested information before others, we ask that these materials be provided as soon as possible while the remainder of the review is completed.

Thank you for your assistance in this matter.

Sincerely,

Elizabeth Hitchcock, Legislative Director
Safer Chemicals Healthy Families

Eve Gartner, Staff Attorney
Earthjustice

Mike Belliveau, Executive Director
Environmental Health Strategy Center

Daniel Rosenberg, Senior Attorney
Natural Resources Defense Council

Laurie Valeriano, Executive Director
Toxic-Free Future (formerly Washington Toxics Coalition)

cc: Scott Sherlock, Esq.