

**Chemical Data Reporting (CDR) Inorganic Byproducts Meeting
Negotiated Rulemaking Committee
September 13-14, 2017
Ronald Reagan Building and International Trade Center
Oceanic Suite, 1300 Pennsylvania Ave NW, Washington, DC 20004**

Meeting Summary (10/10/17 - Approved by Committee)

This document summarizes discussions held during the September 13-14 Chemical Data Reporting (CDR) Inorganic Byproducts Negotiated Rulemaking Committee Meeting. It provides a general summary of key discussion points, but does not attempt to describe specific views of all Committee Members. It also does not attempt to summarize input from previous meetings or describe the details of proposals. See the August 16-17, 2017 summary for initial input on proposals and the handouts for more information, which are available on the [Byproducts Committee website](#) or in the docket ([EPA-HQ-OPPT-2016-0597](#)).

Meeting Objectives

- Present and discuss updated proposals
- Develop a package of recommendations that Committee Members can tentatively agree on which they can take back to their constituents for feedback and approval and finally approve at the October 25-26th Committee Meeting
- Outline next steps and roles and responsibilities of Committee Members to refine draft recommendations and obtain constituent input before the October Committee meeting

Meeting Agenda

September 13, 2017

- Welcome, Introductions and Agenda Review
- Overview of Updated Proposals and Discussion and Background Presentations (see summary of meeting below)
- Caucus Discussions

September 14, 2017

- Caucus Discussions
- Cross-Caucus Package Working Group
- Caucus Discussions
- Caucus Report Out
- Next Steps

Action Items

- Amy D Kyle, representing the Sierra Club and CA Communities Against Toxics, will provide clarification comments on the August 16-17, 2017 meeting summary. The Committee tentatively approved the meeting summary, assuming Amy's comments do not change the content of the summary.
- EPA will review Burn as Fuel guidance, especially related to organic and inorganic mixtures (e.g., page 2-5 of CDR 2016 Instructions for Reporting).
- Committee Members will provide any comments on the September meeting summary by October 4, 2017. If written feedback is not provided, approval is assumed.
- EPA will provide notification through a Federal Register notice that the Committee has completed its deliberations without consensus recommendations. EPA will provide more detailed next steps to the Committee, including how and when to submit any individual Stakeholder Reports to be added to the public docket.
- EPA will begin the process of closing out the FACA Committee by the end of October / early November.

Handouts (The * indicates new materials provided at the meeting and not sent in advance.)

- Agenda
- Meeting Summary from Aug 16-17, 2017 Meeting
- Committee Contact List (slightly updated)
- Form U
- Exemptions Proposal
- Option of Reporting via Categories Proposal
- Modified Processing and Use Reporting (Form U Part III Data) Proposal
- * Slightly updated Part III Table
- Modernize Data System under TSCA
- * Approach E – Limit Reporting for Site-Specific Catalyst Recycling
- * Approach F – Limit Reporting for Reuse of Inorganic Byproducts
- * EPA Data Analysis on Subset of Metal Compounds Reported to TRI and under CDR
- * Small Business Administration Office of Advocacy Presentation
- * Negotiated Rulemaking Mandate from TSCA Section 8(a)(6)
- * Guidance from correspondence between EPA and USWAG that describes how manufacturers and recyclers have to report if they are putting materials into a product (e.g., fly ash byproduct being used in potting soil)

Summary of the Meeting

Agenda Review and Meeting Summary Approval

Amy D Kyle, representing Sierra Club and CA Communities Against Toxics, requested additional time to provide clarification comments on the August 16-17, 2017 meeting summary (dated September 6, 2017). The Committee tentatively approved the meeting summary, assuming Amy's comments do not change the content of the summary. Other issues, including a review of the mandate and scope of the Committee raised in previous meetings, were also discussed.

Review and Refining of Potential Approaches

The Committee reviewed proposals for six topics identified at the August meeting for further development and as potential components of a package agreement. Five of the proposals were discussed among members of Working Groups between the August and September meetings. Working Groups discussed proposals and provided feedback and ideas to lead authors. Working Groups did not strive to come to a consensus on the content of each of the proposals. They recommended that all of them be brought back to the full Committee for its consideration. The proposal to Modernize Data Systems under TSCA was developed by Amy Kyle, representing Sierra Club and CA Communities Against Toxics. The Committee decided that this draft would be distributed to all members for review.

The proposals addressed issues related to:

- Exemptions
- Option of Reporting via Categories
- Modified Reporting of Processing and Use Reporting (Form U Part III Data)
- Approach E - Limit Reporting for Site-Specific Catalyst Recycling
- Approach F - Limit Reporting for Reuse of Inorganic Byproducts
- Modernize Data Systems under TSCA

The Committee discussed questions of clarification and shared initial perspectives on strengths/merits and considerations/concerns on each of the proposals. In some cases, additional ideas or suggestions for modifications were shared. This discussion is captured in the "Presentations on Approaches and Feedback from Committee Members" section below. Note that Approach E was not shared until the night before the Committee

Meeting and Approach F was shared at the meeting, so Members had very limited time to review the proposal prior to its discussion at the Committee Meeting and to consider what changes or refinements might be needed.

Other Background Presentations

EPA provided an overview of its data analysis on a subset of metal compounds reported to both the Toxics Release Inventory (TRI) and CDR and thought to be inorganic byproducts under CDR. The Small Business Administration (SBA) Office of Advocacy presented an overview of Regulatory Flexibility Act processes required if a Proposed Rule would have a significant economic impact on a substantial number of small entities. This discussion is captured in the “Background Presentations” section below.

Caucus Discussions to Review Proposals

Prior to this Committee Meeting, it was clear to Process Working Group Members and the facilitators that Committee Members were not likely to be able to support all of the suggested components of a proposal if they had to agree on them individually. Therefore, Committee Members were encouraged to consider the development of a package agreement in which the sum of a combination of trade-offs on different components of proposals that Committee Members valued differently would adequately satisfy the interests of individual Committee Members, their caucuses and the Committee as a whole. The Process Working Group and the facilitators believed that a package agreement, which included integrative solutions to address the range of Committee Members’ interests, would be more likely to result in a consensus that all could support, or at a minimum, not oppose.

Committee members formed and met in four caucus groups: 1) EPA; 2) states; 3) environmental/public health and tribes; and 4) industry. EPA also provided technical and policy information to the caucus groups, as requested. Each caucus reviewed the proposals and discussed where they agreed with the proposals, where they could agree with modifications, and where they had significant concerns. They also discussed whether they wanted to create a Cross-Caucus Package Working Group, a smaller mixed-interest group composed of representatives from each of the caucuses, to develop and assemble a potential package to be presented back to the Committee as a whole, and if so, who would represent each caucus. The Process Working Group and facilitators recommended this approach, as they believed it would be easier for a small group to negotiate a package, rather than have the Committee do it as a large group.

Proposed Package

All caucuses agreed to participate in a Cross-Caucus Package Working Group. The mandate of this working group was to develop a package that it believed would be acceptable to all Committee Members and their caucuses. It would be brought back to the full Committee for its consideration.

The Cross-Caucus Package Working Group representatives shared what each of the caucuses thought should be included in a package. The Working Group identified potentially common elements. They included:

- **Exemptions** – Maintain and clarify existing exemptions with improved EPA Guidance to address identified concerns and ensure they are being properly applied. For example, EPA could clarify that the “soil enrichment” exemption only applies to “disposal”, reportable under TRI, but does not apply where the inorganic byproduct is incorporated into a product for sale (e.g., potting soil). EPA could clarify the scope of the burning as a fuel exemption, as applied to inorganic byproducts. Since limited information is available, EPA could also require one-time reporting to determine who is currently using the exemptions and under what circumstances or conditions.
- **Option to Report via Categories** – Include this component in the package if it was important to industry. This approach was developed to streamline and simplify reporting and address industry concerns regarding difficulties in precisely identifying chemical constituents in byproducts. Committee Members from the EPA, tribes, states and environmental/ public health were willing to continue to

explore incorporating it. It was not, however, clear that all industry representatives saw value in this option.

- **Modified Reporting of Processing and Use Information (Form U Part III)** – Incorporate the proposal. This option was identified as an approach to limit reporting and reduce reporting burdens by simplifying and reducing the data reported on Form U. Industry recommended removing the “land application” and “burned as a fuel” checkboxes in the directly used section because those uses were exempted. This change would need to be further discussed, as it could eliminate information about practices that are of potential environmental concern and important for tracking inorganic byproducts under TSCA.
- **Address situations in which a chemical reaction occurs to form a different chemical or molecular form of the initial inorganic component chemical** – Explore other methods to address this reporting burden. At the August 16-17 meeting, only industry members were willing to continue to explore Approach B - Expand Commercial Use Exemption, so this option had not been carried forward for further development (see August meeting summary). In addition, Approach B was not raised for further consideration during the Exemptions Working Group meetings. Only industry discussed Approach B in their caucus.

The Cross-Caucus Approach B discussion triggered other ideas to address the burden of reporting. Because these were being discussed for the first time, the members of this Working Group agreed that if they were to be pursued, additional time would be needed to review and respond to concepts. Some of the options considered included:

- One-time reporting by all byproduct manufacturers/recyclers during the next CDR reporting. Industry would only have to report in the future if there was a distinguishable change. Discussion to define “distinguishable change” would be needed. One idea to define “distinguishable change” is a change in the production range, potentially with consolidated ranges. More details would be needed to ensure industry did not have to continuously closely track changes in byproducts, which would limit the impact on reducing the reporting burden. More details are also needed to ensure that there would not be a broad loss of data and substantive changes would be adequately captured.
 - Another option was for industry to separately pursue the processing/use information of ‘low current interest’ partial exemption (711.6.B.2). This is a process that is currently available, where industry petitions EPA to partially exempt their chemical from reporting. EPA must respond within 120 days and then go through a rulemaking process to add chemicals to the partial exemption list. Some groups raised concerns about data loss, especially if any exemptions under this option were not sufficiently limited in scope. Others noted that, for chemicals covered by Approach B, they would expect there to be little reduction in burden because of the limited processing of the byproducts.
- **Limit Reporting for Site-Specific Catalyst Recycling (Approach E)** – Explore this approach for on-site recycling/regeneration of intermediates where there is minimal risk of exposure. EPA and the environmental/ public health representatives were not willing to consider cases in which a catalyst is regenerated at a different site and returned to the site of byproduct manufacture for further use or processing because this scenario would still include additional pathways of exposure during handling and transportation to a different site. Industry raised the point that since manufacturing, transportation and regeneration take place in closed systems; the only potential for exposure would be accidental release. Industry noted that limiting this component to on-site would not significantly reduce the burden of reporting, since less than 5% of catalysts are recycled on-site.

- **Modernize TSCA Data Systems (Approach G)** – Incorporate the proposal. All caucus groups seemed to support this approach describing how EPA should consider how to simplify reporting, make it more efficient and to make data more accessible and user friendly. The Committee acknowledged that the proposal was beyond the specific scope of the Committee’s mandate, but agreed that a statement could still be incorporated.
- **Reuse of Inorganic Byproducts (Approach F)** - Most Working Group Members recommended that this proposal be considered as part of the broader CDR Revisions Rule because it impacts both inorganics and organics. Industry and one state felt that aspects of this option could warrant further discussion in the context of inorganic byproducts, though several issues would need to be addressed. One key issue is how to identify and define, or chemically characterize, isolated intermediaries. Working Group Members identified that this proposal would need the following refinements:
 - Clarity on requirements for how to determine and ensure that byproducts are chemically identical to the original process inputs.
 - Clearer definitions (e.g., closed loop systems and isolation).
 - Requirements for storage and handling (e.g., methods and duration).
 - More detailed examples to enable EPA to conduct its analysis. It might necessary for EPA to be more restrictive at first and then reduce reporting further once staff learn more.

The Cross-Caucus Package Working Group included the following representatives:

- EPA: Lynn Vendinello
- EPA: Susan Sharkey
- States: John Gilkeson
- States: Mark Smith
- Natural Resources Defense Council (NRDC): David Lennett
- WE ACT for Environmental Justice: Adrienne Hollis
- American Chemistry Council (ACC): Karyn Schmidt
- American Fuel and Petrochemical Manufacturers (AFPM): Jim Cooper
- Association Connecting Electronics Industries (IPC): Bret Bruhn
- North American Metals Council (NAMC): Kathleen Roberts

If the Committee agreed on the package developed by the Cross-Caucus Working Group, or the proposed package with additional refinements, its members would be expected to outline and address remaining questions, make appropriate revisions and take it to their constituents for their consideration and input. This input would be used to refine the final package, which would be submitted to and approved by the Committee at its final meeting on October 25-26, 2017. One member suggested that a “final” package should be completed by October 6, 2017 in order for members to provide enough time to obtain feedback from their constituents before the final October meeting.

Caucus Discussions to Determine if/how to Proceed

Following the discussions of the Cross-Caucus Working Group, Committee Members returned to their caucus groups. They reviewed the proposed package and discussed whether their caucuses could support, or, at a minimum “live with”, the package. Committee Members were encouraged to consider their best alternative to a negotiated agreement through the Negotiated Rulemaking process when making this decision.

Determination Whether to Proceed with Negotiations

The full Committee reconvened in a public session and reported out on their caucus discussions. Industry Committee Members reported that they could not support the package proposal because they believed the package “did not sufficiently meet the mandate of reducing burden”. Additionally, the industry Committee Members did not believe that further discussions would help the Committee reach consensus. The environmental/ public health, states, tribes and EPA were willing to continue refining the outlined package developed by the Cross-Caucus Package Working Group, including new proposals identified during its

discussions. They believed that the package did reduce burden for industry, while providing adequate data for EPA and others to identify conditions of use, prioritization, conduct risk assessments and other needed analysis under the Revised TSCA, retained a science-based approach, and addressed state concerns about state pre-emption and access to CBI. EPA acknowledged that while the package did reduce burden, it might not reduce burden to the same extent for all industry members, as there are different needs across sectors. EPA also acknowledged that even though the Committee was unable to come to a consensus agreement, the process was very informative and will support EPA as it determines next steps.

Next Steps Related to Drafting a Committee Report

The industry caucus requested that no Committee Report should be developed or written. The industry caucus argued that a Committee Report should not be developed unless the full Committee agreed that this was appropriate.

Other Committee Members wanted to document the progress the Committee made in a Committee Report with the opportunity for Committee Members to provide Stakeholder Reports as appendices. This would allow the investments made in the discussions to provide some lasting benefit and not be lost. Several members noted that the preparation of a Committee Report had been discussed at length during the early sessions of the Committee. They referred to the following language in the Operating Protocol.

Section 4.3

Following the provisions of the Negotiated Rulemaking Act (f) Report of Committee, "If the committee does not reach a consensus on a proposed rule, the committee may transmit to the agency a report specifying any areas in which the committee reached a consensus. The committee may include in a report any other information, recommendations, or materials that the committee considers appropriate. Any committee member may include as an addendum to the report additional information, recommendations, or materials."

Section 3.3

The Facilitators will draft a Final Committee Report detailing the deliberations of the Committee and its outcomes. The Final Report will be prepared regardless of whether any agreements are reached and will include content requested by Committee Members. The Final Committee Report will be circulated among Committee Members for review, comment and concurrence on language used to describe the outcome of the Committee's deliberations.

Environmental and public health and state members argued that the intent during Operating Protocol discussions was to always have a Committee Report with an opportunity for members to add their perspectives via Stakeholder Reports as appendices, if they chose to do so. They noted that this was the agreed upon approach instead of considering alternative options for decision making such as voting. EPA clarified after the meeting that Section 3.3 is focused on the Facilitator's Final Committee Report, which is different than the Final Committee Report referenced in section 4.3. The facilitators will develop a report for EPA to document the overall process.

The final resolution of this issue at the end of the meeting was that EPA will inform the public via a Federal Register Notice that the Committee's negotiations concluded without a consensus agreement. No formal Committee Report will be shared with the public. However, Committee Members or groups of Committee Members can provide Stakeholder Reports that will be added to the public docket. EPA will send a deadline for receipt of Stakeholder Report, likely by end of October 2017.

Public Comments

No observers requested to make comments during the public comment periods.

Presentations on Approaches and Feedback from Committee Members

This section of the Meeting Summary describes feedback on proposals shared at the August 16-17th, 2017 Committee Meeting (see summary for initial feedback) that were refined by Working Groups and presented to the full Committee at its September meeting. Most updated proposals were shared before the meeting, and are available on the docket ([EPA-HQ-OPPT-2016-0597](#)). This summary does not describe the proposals, but instead describes the discussion at the meeting, including clarification notes and additional strengths/merits and concerns/considerations.

Exemptions Proposal

David Lennett, Natural Resources Defense Council (NRDC), shared the updated proposal. There was considerable discussion and disagreement regarding this issue (see August 16-17 Meeting Summary).

Clarification Notes

Burn as a Fuel

- The Committee discussed whether the “Burn as a Fuel” exemption is being used for inorganic byproducts. Some members believed that industry would only burn inorganic byproducts for disposal purposes via incineration. In this case the inorganic byproduct would not have a commercial purpose and CDR reporting would not be required. Other members noted that inorganic byproducts could be sent to boilers or other applications, and commercial intent could be determined by the BTU value or subsequent commercial use of post combustion byproduct materials.
- Inorganics do not burn. Generally, putting inorganics into a combustion process will cause them to be released into the air, usually increasing likelihood of exposure. Alternately, they may be captured in air pollution control processes.
- The Committee discussed whether the current guidance on organic and inorganic mixtures is sufficient. Guidance in the CDR 2016 Instructions for Reporting page 2-5 states that if manufacturers or recyclers burn organic/ inorganic mixtures and dispose of whatever remains they can take the exemption. If, however, they burn an organic/inorganic mixture as a fuel and reuse the inorganic residuals for a commercial purpose, they must report. The guidance does not address the combustion of inorganic byproducts where the sole purpose of burning the inorganic byproducts (and anything else in the fuel) is to generate power. After further discussion, EPA agreed to look more closely at guidance to determine if disposal and recycling need to be more closely aligned.
- The oil and gas industry uses this exemption. They send sludge to boilers and use this organic and inorganic mixture as a fuel, though the inorganics do not burn.
- The rationale for removing the exemption only for inorganic byproducts is that there is no fuel value for inorganics.
- Other regulations such as the Clean Air Act, or state and local authorities, may require air emission/pollution control devices and emissions monitoring that would control the environmental impacts of such burning. However, the extent to which all the burning is adequately controlled could not be determined without the CDR data. There is no link between the TSCA regulatory reporting exemption for ‘burning as a fuel’ and CAA permit/regulatory information. It is unclear whether all potential air toxics emissions would be addressed or whether all combustion facilities using the material would be adequately regulated.

Disposal as Waste

- EPA provided a copy of relevant guidance that describes how manufacturers and recyclers have to report if they are putting materials into a product (e.g., fly ash byproduct being used in potting soil).
- EPA should be able to use information from TRI reporting to clarify land application issues unless it is used in a product (e.g., potting soil), as TRI does not cover use as a product. Others were concerned that TRI does not provide adequate information; it provides general quantities disposed

of, not those used as “soil enrichment”. Materials reported under TRI as going to ‘land treatment’ or ‘disposal’ are different from TSCA byproducts exempt from reporting that go to ‘enriching soil’. There are significant discrepancies between TRI and TSCA data, it is not clear how many of the facilities and substances included in the CDR are also covered by TRI reporting, and one set of data cannot serve as a proxy for the other.

- There are no inorganics within the Persistent Bioaccumulative Toxic (PBT) chemicals EPA will be moving forward with. However, there are additional PBTs identified in the Great Lakes Binational Toxics Reduction Strategy, Appendix I, including compounds of lead, mercury, cadmium, and tin. Additional ones may be identified in the future. Some members recommended that EPA could incorporate limits on highly problematic inorganics like mercury and lead.
- There is a potential for vegetative uptake in addition to other forms of bioaccumulation of potentially toxic metals when substances are applied to land. To address this requires different metrics from what are used typically to describe bioaccumulation.

Component Extraction by Physical Means

- Two initial options are removing the exemption or utilizing one-time reporting, as outlined in the proposal.
- The recycler who is extracting a component substance would check a check box that says, “source material comes from a byproduct”. (See Part III proposal.)

Strengths/ Merits

- If an exemption does not make sense or is not scientifically defensible then it should be removed. Burning inorganic byproducts could have significant environmental impacts if not done in an appropriate way.
- Under the revised TSCA, EPA should be identifying conditions of use for the inorganic byproduct regardless of how it has been extracted from the original mixture.
- Information should be reported via CDR (and not exempt) if it is not adequately covered by another program.

Concerns/ Considerations

- Maintaining the ‘burn as a fuel’ exemption could cause releases to the air, encourage the combustion of materials with little or no fuel value, or lead to confusion and noncompliance liabilities.
- If exemptions are to be addressed in the future, this could be done via the CDR Revisions Rule or other efforts that are broader than inorganic byproducts. EPA would like to minimize specific regulatory changes for inorganic byproducts if they may impact other areas.
- Manufacturers may choose to dispose of an inorganic byproduct instead of recycling it in order to avoid having to continuously track and assure that they are accurately reported, especially when working with chemicals that are not hazardous. The cost/burden of reporting the substance may be higher than the commercial value of the reused/recycled inorganic byproduct, and there is a potential for enforcement penalties when reporting has unintentionally not been accurate. EPA pointed out that the analysis provided in the May information public meeting demonstrated that a large amount of material was being recycled.

Option of Reporting via Categories Proposal

Susan Sharkey, U.S. Environmental Protection Agency, shared the updated proposal.

Clarification Notes

- The purpose of this proposal is to reduce burden for manufacturers when it is difficult to precisely characterize a byproduct stream. It would allow a company to report without detailing exact components and variations of quantities.
- Manufacturers would have the choice to report information on inorganic byproducts either as listed on the TSCA Inventory or broader categories, to be determined, of inorganic byproducts. The category

approach would only be used for CDR inorganic byproduct reporting, and would not exempt industry from reporting in other parts of TSCA.

- The Working Group recommended using the definitions for “inorganic” from the IUR Regulations and “byproduct” from 40 CFR 704.3, referenced by 40 CFR 711.3. They also clarified the definition of recycled, reprocessed and reused.
- EPA used the periodic table to describe which chemical substances might benefit most from a category reporting approach. They include transition metals in columns 3-12 for which it is more difficult to determine chemical structure because they have multiple valences and variability in bonds and therefore multiple possible compounds within a complex mixture typical for a byproduct. Readily identifiable chemicals/compounds from columns 1-2 are more likely to report via the CAS number because they are easier to identify. Discussion is needed on what categories would be included.
- More discussion is needed on how to evaluate whether a byproduct would meet the reporting threshold. Initial options described in the proposal are to determine the threshold based on: 1) total volume of the byproduct stream and 2) the volume of each category in the byproduct stream.
- Initial ideas for adding/subtracting categories in the future are included in the proposal. More discussion is needed to refine an approach.

Strengths/ Merits

- Category reporting could relieve the burden of having to identify specific components and amounts of a byproduct stream, such as impurities or components that are in small amounts. This is especially the case when reporting on a mixture.
- Category reporting would help address industry concerns regarding the potential for enforcement penalties when reporting has unintentionally not been accurate.

Concerns/ Considerations

- The proposal does not offer burden reduction for reporting UVCBs (which are narrower than the proposed categories). Manufacturers will still need to ensure that future chemicals are properly identified on the TSCA Inventory through Section 5 reporting.
- It is still complicated to determine chemical substances in the byproduct stream, and whether the threshold is met.
- If the threshold is determined by each chemical component then it could lead to more reporting. The overall byproduct production volume may be small enough that reporting is not required, but individual component chemical categories could meet the threshold. It would still be difficult to determine the percentage of each of the category components.

Modified Reporting of Processing and Use Reporting (Form U Part III Data) Proposal

Susan Sharkey, U.S. Environmental Protection Agency, shared the updated proposal.

Clarification Notes

- When determining which reporting elements to keep and remove, EPA considered typical data received and its value. The reporting response for “workers likely to be exposed” is often not known or reasonably ascertainable since this information depends on knowledge of downstream operations and their uses of inorganic byproducts.
- Companies that manufacture a byproduct have to check one of the Part III check boxes. If the substance were used at the same site, the information such as number of workers exposed would likely be the same as in Part II.
- Pulling out copper from a copper compound is an example of when the “consumed in the manufacture of a chemical substance” check box would be used.
- Consumer and commercial are combined within the “directly used and incorporated into a product and other options” because it’s too difficult to separate them. The person reporting may not know how the product will be used downstream. Many products fit both categories (e.g., cleaners can be used both in

residential and commercial settings). If this is the case, EPA could assume that the combined category represents consumer uses for risk prioritization purposes, in the absence of information to the contrary.

- It's unlikely that EPA will be able to eliminate additional reporting elements. However, there may be ways to modify details such as combining sectors.
- The provided sectors are what is currently included in CDR guidance. However, EPA is in the process of considering modifying the sectors to be more aligned with other typical forms of chemical data collection.
- Appendix D: 2016 CDR inorganics with recycle box checked – reporting “processing as a reactant” was included to demonstrate confusion from reporters on how to properly complete this section. EPA expected this to be primarily intermediates and therefore restrictive reporting. The solution is improved guidance.

Strengths/ Merits

- Industry members noted that it is helpful to eliminate the “number of workers” and “number of commercial workers reasonably likely to be exposed”. The quality of the data may be limited for far downstream uses.
- It retains the data needed on consumer uses of products resulting in potential widespread exposures.

Concerns/ Considerations

- The approach still requires tracking of products.
- While it may be true that many products can be used in both commercial and consumer settings, most products can be distinguished as being primarily for one or the other.

Limit Reporting for Site-Specific Catalyst Recycling Proposal (Approach E)

Jim Cooper, American Fuel and Petrochemical Manufacturers (AFPM) provided an updated description of this approach. Approach E limits reporting for catalyst recycling, when as an inorganic byproduct that is recycled, reused, or reprocessed either at the site of byproduct manufacture or at a different site, when returned to the site of byproduct manufacture for further use or processing.

Clarification Notes

- “Spent catalysts” have multiple meanings. For acid catalysts “spent” means the catalyst needs to be regenerated and for metal catalysts it means it can no longer be regenerated. The flow chart was updated to reflect this.
- Catalysts are chemical compounds that are only used to facilitate the production of other compounds. Catalysts are used in a repetitive process.
- The process to regenerate catalysts typically happens within a closed system, including closed storage. The risk profile does not change, even if the catalyst is sent to another site, since the same regeneration process is used.
- The term “closed loop” needs to be defined. Jim Cooper referred to closed loop as a process that occurs in one facility or related facility in a closed system during processing. The only time a catalyst is released is if there is an accident. Other Committee Members noted that processing at another site is not closed loop, nor are there storage restrictions ensuring true closed loop management.
- There were some minor changes to the flow chart presented, based on current CDR processes. If the catalyst is regenerated onsite, the box should read “catalyst and intermediates formed during regeneration exempt under CDR”. If the regeneration of spent catalyst does not cause a chemical change to form a different chemical substance then the box should read “not reportable under CDR”.
- There were some inconsistencies with the text proposal, which raised questions regarding the terms of the proposal. For example, one time reporting is no longer included in the proposal.
- While this proposal may only impact a subset of industry, it reduces reporting burden significantly.

Limit Reporting for Reuse of Inorganic Byproducts Proposal (Approach F)

Jay Willis, Portland Cement Association, provided updated descriptions of this approach. Approach F limits reporting for inorganic byproducts that are isolated from a process and later reintroduced into that same process.

Clarification

- This proposal exempts reporting of an isolated byproduct reintroduced into a manufacturing process to make a final product, if it is chemically indistinguishable from the raw materials or final product. Limited reporting would only be allowed for on-site activities.
- It is estimated that 95% of the byproducts that would be impacted by this proposal are non-isolated within a closed loop. More clarity is needed on how “closed loop” is defined.

Strengths/ Merits

- This approach limits reporting and eliminates double counting, which will result in better information for EPA.

Concerns/ Considerations

- There could be exposures during storage or transport such as air dust, which could be significant due to large volumes of chemical substances. The stored chemical substances could also get mixed with impurities and could create additional exposure pathways.
- Need to clarify what “chemically indistinguishable” means and how this is demonstrated. Byproducts contaminated or enriched with various impurities would not be chemically identical but could be, depending on analytical methods employed, chemically indistinguishable.
- Depending upon how “chemically indistinguishable” is defined, the exemption could apply to intermediates significantly more toxic than the feedstock they are replacing. For example, pollution control residues could be considered “chemically indistinguishable”, even though such residues could contain much higher concentrations of toxic metals than the comparable feedstock materials.
- If the materials are exempt from reporting, CDR would not provide necessary data on the onsite reuses of the chemicals and the potential resulting exposures.

Ideas/ Suggestions Modifications

- Specific examples are needed to more fully understand the applicability of this approach.
- A more detailed review of EPA policies is needed to clarify the differences between isolated and non-isolated intermediates. Additional information may be needed on whether isolated processes could result in greater exposures than non-isolated processes.
- Some Committee Members described that exposures may be quite different and requested exploration of an alternative approach that would provide data to assure that exposures are the same and provide guidance when they are different.
- Consider a reduced reporting requirement rather than a full exemption.
- This approach may be more relevant within the broader CDR Revisions Rule, as it is really about intermediates that could be inorganic or organic.

Statement on Modernizing TSCA Data System

Amy Kyle, representing the Sierra Club and CA Communities Against Toxics, described this recommendation on how to modernize agency data collection and reporting.

Clarification Notes

- The proposed statement goes beyond inorganic byproducts and is relevant for broader TSCA reporting requirements.
- The key points in the proposal are standard practice for creating information systems.
- It helps everyone when data is understandable to all audiences.
- The costs of sharing data are completely different than they were decades ago.

Strengths/ Merits

- Opportunity for more accessible information from EPA data programs.
- Interoperability could be significant to streamline reporting across programs.

Other Background Presentations

Data on Metal Compounds Reported to TRI and CDR as Byproducts

Maria Doa, Director of EPA's Chemical Control Division, presented results of EPA's data analysis. EPA conducted a crosswalk of byproducts reported under TRI and CDR in order to gauge production volume of byproducts within various metal compound categories. This serves as an indicator of information that could be lost if manufacturers do not report on inorganic byproducts that are recycled, reused or reprocessed through CDR. The data demonstrated significant non-overlap between TRI and CDR, indicating that considerable data could be lost if CDR reporting were significantly limited.

Small Business Interests Presentation

Tayyaba Waqar, Assistant Chief Counsel for Environmental Policy, Small Business Administration Office of Advocacy, presented an overview of Regulatory Flexibility Act (RFA) processes that are required if the Proposed Rule would have a "significant economic impact" on a "substantial number of small entities". Under RFA, if EPA determines that there is not a significant impact, it can certify it and no further analysis is required. If there is a projected impact (both positive and negative), SBA's view is that EPA needs to convene a SBREFA panel and conduct a regulatory flexibility analysis to determine what further considerations/steps are required.

The purpose of the presentation was to identify whether small business interests were being represented by Committee Members, and to aid EPA and SBA with any necessary later determination regarding whether negotiated rulemaking process could be used instead of, or as a supplement to, any required actions under RFA. See the presentation slides for more information.

Clarification Notes

- There is no specific definition for "significant economic impact" as it depends on the industry. Some potential approaches are comparing the annual compliance cost to a small business to its revenue and/or considering profits and cash flow. EPA has a chart and guidance for how to determine this.
- EPA has the option to submit a waiver that indicates that the Negotiated Rulemaking considered small business interests. The Committee does include members who represent small businesses, either as an individual company or by association.

Participants

Committee Members

- US Environmental Protection Agency (EPA): Susan Sharkey, Lynn Vendinello and Jonah Richmond (Designated Federal Officer)
- Environmental Council of the States (ECOS): Mark Smith, Massachusetts Department of Environmental Protection (Mass DEP); John Gilkeson, Minnesota Pollution Control Agency (MPCA);
- National Tribal Toxics Council (NTTC): Kristin K'oit, Zender Environmental Health and Research
- Earthworks: Aaron Mintzes (not present day 2 afternoon)
- National Pollution Prevention Roundtable (NPPR): Rick Reibstein (day 1)
- Natural Resources Defense Council (NRDC): David Lennett
- Sierra Club and CA Communities Against Toxics: Amy Kyle
- WE ACT for Environmental Justice: Adrienne Hollis
- American Chemistry Council (ACC): Karyn Schmidt, ACC and Schuyler Pulleyn, The Chemours Company FC, LLC (day 1)
- American Coal Ash Association (ACAA): Danny Gray, Charah, LLC
- American Fuel and Petrochemical (AFPM): Jim Cooper, AFPM and David Dunlap, Koch Companies Public Sector, LLC
- American Petroleum Institute (API): Uni Blake and Derek Swick, API
- Association Connecting Electronics Industries (IPC), Fern Abrams, IPC and Bret Bruhn, TTM Technologies
- Guardian Industries: Mark Duvall, Beveridge & Diamond, PC and James Riley, Guardian Industries Corp.
- Institute of Scrap Recycling Industries (ISRI): David Wagger, ISRI
- North American Metals Council (NAMC): Kathleen Roberts, NAMC (day 2)
- Phibro-Tech, Inc.: Dwight Glover, Phibro-Tech, Inc. (not present day 2 afternoon)
- Portland Cement Association: Jay Willis, Titan America, LLC
- Steel Industry: Joseph Green, Kelley Drye & Warren, LLP
- Utility Solid Waste Activities Group (USWAG): Maggie Fawel, Venable, LLP (day 1)

Facilitators

- Chris Moore, CDR Associates
- Laura Sneeringer, Consensus Building Institute

Speakers and Observers

- American Coal Ash Association (ACAA): Thomas Adams (day 1), Tom Schmaltz (Headwaters Resources/ ACAA Consultant)
- API Consultant: Stephen Bowes
- Bloomberg BNA: Pat Rizzuto (day 2)
- Consumer Specialty Products Association (CSPA): Nicholas Georges
- Eastern Research Group (ERG): Dan-Tam Nguyen (day 1), Sean Layton (day 2)
- EPA: Kent Anapolle, Maria Doa (day 1), Stephanie Griffin, Franklyn Hall (day 1), Niva Kramek, Doyoung Lee (day 1), Tanya Mottley, Laura Nielsen, Barry Parker, Mel Peffers, Tom Smith, James Tyree, Eric Wilber, Kazumi Yamada, Liang Zhang (day 2)
- Inside EPA Insider News: Dave Reynolds (day 2)
- International Precious Metals Institute (IPMI): Michael Riess
- Portland Cement Association: Louis Baer
- Specialty Graphic Imaging Association (SGIA): Allison Lundy
- Small Business Administration-Advocacy: Tayyaba Waqar
- Roland Halstead
- Aisha Samples