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INTEROFFICE
MEMORANDUM

Subject TOXIC SUBSTANCES MANAGEMENT MEMO

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From C. E. Blades

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Enclosed for your information is the Aug. 25, 1977 issue of
TOXIC SUBSTANCES MANAGEMENT MEMO.

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Toxic Substances Management Memo

Aug. 25, 1977

REPROPOSED REPORTING REQUIREMENTS NOT COST EFFECTIVE, MCA TELLS EPA

The proposed expansion of reporting requirements under the Toxic Substances Control Act will not be cost effective and probably will be counterproductive, MCA has told the Environmental Protection Agency. In a statement presented at an EPA public meeting August 24, the Association pointed out that costs will accrue not only to chemical manufacturers, importers and others, but also to EPA as it handles the data and tries to protect confidential aspects.

MCA asked the Agency to reconsider its expanded reporting requirements of August 2 and return to the original March 9 proposal. No convincing case has been made that information on manufacturing sites and quantities would be essential to EPA in meeting its initial responsibilities under the Act., MCA said. If such information is needed, MCA noted that it could be requested later by the EPA Administrator on a selective and sequential basis, as provided by the Act.

The Association also commented on a number of other issues raised in the repropoed regulations, including:

Significant New Uses

MCA believes that discussion of significant new uses in the August 2 proposal is premature. A proposal for new uses should follow the rule-making procedure set forth in the Act. Furthermore, the Association believes the classification as "new use" should not follow automatically on going beyond single plant operation.

Applicability of the Reporting Obligation

EPA should clarify the relationship between inventory reporting and pre-manufacturing notification. MCA suggests that EPA emphasize that manufacturers outside SIC 28 and 2911 are still subject to

For additional information about subjects mentioned in this memo, contact Jim Turner at MCA. His number is (202) 483-6126.

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the pre-manufacturing notification requirements if a substance is not reported for the inventory.

How to Report

Of the possibilities listed in the August 2 repropoed rules, MCA recommends that production be reported by ranges graduated in powers of 10: 1,000 lbs. to 10,000 lbs.; 10,000 lbs. to 100,000 lbs., etc. This accuracy is sufficient for EPA's needs. The information is needed only to determine exposure. The public and EPA should know whether production was closer to 1,000 or to 1,000,000,000 pounds, but it is not important whether the production was, for example, 132,000,000 or 312,000,000 pounds.

This plan is simpler for companies to report information and for EPA to receive it. This will avoid many assertions of confidentiality. Most companies would consider precise production figures confidential but not such a broad range. Also, the production range is much less likely to change from year to year, decreasing the need for re-reporting.

Who May Report After Publication of the Inventory

Like the processor, the manufacturer who acquires his raw material from others should have the option to list chemical substances in the inventory during the 120-day period after the first publication of the inventory. Also, EPA should allow manufacturers to report substances for inclusion in the inventory where good cause for failure to report can be demonstrated.

Who Is Required to Report

The statement "aside from importers, under this proposal only establishments in SIC groups 28 and 2911 would be required to report the chemical substances they have manufactured since Jan. 1, 1977" may lead those outside these SIC groups to the false assumption they have no responsibility under the inventory.

For consistency, the following statement should be added: "Persons subject to TSCA, but outside SIC groups 28 and 2911, are responsible for either assuring that materials they manufacture under TSCA are placed on the inventory by others or themselves or else making pre-manufacturing notification for items not on the inventory."

Definitions

The portion of the preamble section describing the definitions to be included in Section 710.2 is unclear. There is a suggestion that EPA will be addressing revisions of the March 9 definitions in the final rule, as opposed to this reproposal. MCA believes that discussion of all changes made since March 9 should be available for comment at this time.

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Intermediates of Pesticides and FDA-Regulated Materials

MCA believes these substances are exempt from TSCA regulation. If EPA has developed a contrary position from comments on the March 9 proposal, an opportunity for comment should be provided before a final rule is promulgated.

Manufacturers of Mixtures vs Chemical Processors

The new proposal does not clarify the distinction between these two types of activities. Since the new reporting strategy places great emphasis on the distinction between these activities, MCA believes it critically important to carefully define these terms.

Reporting Forms

EPA has not described the modifications made in Forms A and B which manufacturers will use to report nor whether reporting on computer tape will be permitted. Before promulgating rules, EPA should make forms and the computer format available for evaluation and comment.

Definition of Small Manufacturers

MCA has reviewed the definitions of "small manufacturer" presented in the August 2 reproposal and finds neither option acceptable. In examining other possibilities, MCA contacted other interested segments of the chemical industry and fashioned this more suitable definition:



"A firm will be considered a small manufacturer, for purposes of initial inventory reporting, if (1) its sales are less than \$30 million in the last fiscal year, or (2) it has less than 300 employees, or (3) it has less than \$15 million in assets."

Aside from the annual reporting requirement, the EPA Administrator can reach small manufacturers, however defined, on a showing of unreasonable risk.

Confidentiality

Expansion of the inventory to include production volume and site information will create substantial problems with confidentiality. Trade secrets are of utmost importance to large and small business ventures. Their protection is vital to the development of existing and new businesses. Although EPA has presented a number of options for handling confidentiality claims on the narrow issue of chemical identity, the broader questions dealing with other sensitive information remain.

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MCA would like assurance that EPA appreciates the responsibility of accepting all confidential information and will provide maximum security. At a minimum, MCA believes that information submitted to the computer be coded to ensure that justified access to some data points will not provide a printout of a complete profile on a substance. The Association also considers it essential for the Agency to consult with experts in the computer-security field, both in and out of government. MCA offered EPA the services of a team of its member-company representatives who could help develop a workable system.

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