



ECOS

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

50 F Street, N.W.
Suite 350
Washington, D.C. 20001

Tel: (202) 266-4920
Email: ecos@ecos.org
Web: www.ecos.org

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Alexandra Dapolito Dunn

Executive Director &
General Counsel

December 11, 2017

Dr. Nancy B. Beck
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Via regulations.gov: Docket ID No. EPA-HQ-OPPT-2016-0597

Subject: ECOS Comments on *Chemical Data Reporting: Requirements for
Inorganic Byproduct Chemical Substances Negotiated Rulemaking*

Dear Dr. Beck:

The Environmental Council of the States (ECOS) was represented in the TSCA Chemical Data Reporting (CDR) Inorganic Byproduct Chemical Substances Reporting Negotiated Rulemaking Process and on the associated Federal Advisory Committee by state environmental agency staff from Minnesota and Massachusetts. These comments communicate to the U.S. Environmental Protection Agency (U.S. EPA) the positions of ECOS as a member of the Federal Advisory Committee and participant in the TSCA CDR Inorganic Byproduct Chemical Substances Reporting Negotiated Rulemaking Committee (Committee). The Committee was formed pursuant to Notice provided by U.S. EPA in 81 FR 90843 (December 15, 2016) and these comments are provided to Docket EPA-HQ-OPPT-2016-0597 pursuant to Notice provided by U.S. EPA in 81 FR 47423 (October 12, 2017).

The objective of the Negotiated Rulemaking Committee was to negotiate a proposed rule that would limit chemical data reporting requirements under section 8(a) of the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, for manufacturers of any inorganic byproduct chemical substances, when such byproduct chemical substances are subsequently recycled, reused, or reprocessed. This Committee objective and the statutory mandate must be viewed in the context of the entire text of section 8(a), including other new language added in the Lautenberg Act revisions of 2016. The Committee objective and statutory mandate must also be viewed in the context of all rules related to section 8(a) reporting. Section 8(a) reporting rules are found primarily but not exclusively in 40 CFR 704, 710, 711, and 712.

TSCA Section 8(a)(6) NEGOTIATED RULEMAKING.—(A) The Administrator shall enter into a negotiated rulemaking pursuant to subchapter III of chapter 5 of title 5, United States Code, to develop and publish, not later than 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, a proposed rule providing for limiting the reporting requirements, under this subsection, for manufacturers of any inorganic byproducts, if the byproducts, whether by the byproduct manufacturer or by any other person, are subsequently recycled, reused, or reprocessed.

(B) Not later than 3 and one-half years after such date of enactment, the Administrator shall publish a final rule resulting from such negotiated rulemaking.

This Negotiated Rulemaking process was not successful, and issues within the scope of

this Congressional directive are also within the scope of Congress's overall mandate to U.S. EPA to re-evaluate all aspects of TSCA Chemical Data Reporting Requirements under the Lautenberg Act Revisions. Therefore, ECOS strongly recommends that no action be taken as a result of this process, and that all potential revisions to CDR inorganic byproduct reporting be addressed under U.S. EPA's overall TSCA/Lautenberg Act revision efforts. Further, on the basis of ECOS representatives' participation in this process, ECOS strongly believes that actions to maintain the current CDR byproduct or non-commercial use reporting exemptions, expand them, or establish new reporting exemptions or other revisions that would reduce data needed for U.S. EPA to effectively implement the Lautenberg Act, are not consistent with the spirit or letter of the law under the Lautenberg Act, which requires U.S. EPA to evaluate all conditions of use including all forms and pathways of use, disposal, combustion, reuse, recycling and reprocessing. All existing reporting exemptions should also be very closely scrutinized in the overall CDR evaluation that U.S. EPA will be undertaking. State representatives noted on more than one occasion that they are deeply concerned about and oppose revisions to CDR that limit the collection and availability of data that U.S. EPA uses to assess toxics and that the state representatives consider to be critical to effective implementation of the Lautenberg Act.

U.S. EPA has indicated that it relies on the data collected on inorganic byproducts to inform Agency decisions. U.S. EPA conducted a crosswalk of byproducts reported under TRI and CDR in order to gauge production volume of byproducts within various metal compound categories. The results showed significant non-overlap between TRI and CDR, indicating that considerable data could be lost if manufacturers do not report on inorganic byproducts through CDR, and that TRI is not capturing activities that are or could be subject to CDR. Due to the state preemption provisions adopted under the Lautenberg Act, a Cooperative Federalism relationship is mandated where states rely on U.S. EPA to collect and assess data on toxic chemicals. States have a deep interest in making sure that U.S. EPA obtains the data it needs to make effective decisions under the Act to protect public health and the environment from toxic chemicals.

In addition to these overall comments, under separate cover, ECOS will be sending to the Designated Federal Official for the Committee a summary of, and state representatives' comments on, the options that were discussed by the Committee.

Thank you for the opportunity to comment. ECOS looks forward to continuing to work with U.S. EPA on the implementation of TSCA including the amendments adopted under the Lautenberg Act.

Sincerely,



Alexandra Dapolito Dunn
ECOS Executive Director

cc: Dr. Michael Dourson, Adviser to the Administrator