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# United States Senate

COMMITTEE ON SMALL BUSINESS  
WASHINGTON, DC 20510-6350

EMILIA DISANTO, STAFF DIRECTOR  
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September 8, 1999

The Honorable Carol M. Browner  
Administrator  
U.S. Environmental Protection Agency  
401 M St., S.W.  
Washington, DC 20460

Dear Administrator Browner:

The purpose of this letter is to express my concern regarding the U.S. Environmental Protection Agency's (EPA/Agency) apparent failure to conduct sufficient outreach to small businesses affected by the Agency's proposal to increase lead reporting to the Toxic Release Inventory (TRI) (64 Fed. Reg. 42222, August 3, 1999). The Red Tape Reduction Act, otherwise known as the Small Business Regulatory Enforcement Fairness Act (SBREFA), exists to ensure agencies such as EPA provide small entities with a meaningful opportunity to participate in the development of rules that may affect them. In this case, EPA may be jeopardizing the fate of many small businesses and forgoing improvements to the environment by conducting an inadequate SBREFA process.

EPA proposes to lower the lead reporting threshold from 25,000 pounds to 10 pounds per year. This change would trigger TRI reporting for the first time for thousands of small businesses that use lead and lead compounds in their manufacturing operations. SBREFA will help EPA determine the true impact of its proposal on affected small businesses. SBREFA provides small businesses an outreach process for genuine dialogue with meaningful engagement and exchange of ideas and information. This process produces alternate, less burdensome regulatory options accomplishing the stated environmental goal and potentially improving environmental protection.

EPA's approach to this rule, however, appears contrary to both SBREFA's intent and EPA's own guidance. EPA's SBREFA guidance for rule writers released March 29, 1999 emphasizes "EPA's success in carrying out its obligations under SBREFA requires early and continuing interaction with small entities throughout the regulatory development process." The guidance goes on to state that "it is important that outreach to small entities occur as early as possible in regulation development. Indeed, it will often be appropriate to start outreach before or concurrently with performance of a preliminary screening analysis [to determine the full extent of the rule's impact on small business]." In spite of these guidelines, EPA's TRI Ombudsman admitted recently to industry representatives that EPA's Office of Prevention, Pesticides and Toxic Substances failed to conduct any outreach to small businesses impacted by the proposed TRI lead rule.

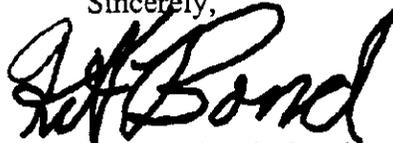
EPA outreach to small businesses on the TRI lead rule would have demonstrated to EPA that the proposed rule affects over two dozen small business sectors which EPA failed to consider. Many small business sectors use lead in their processes in ways a regulator might not recognize on their own. For example, the metal finishing industry does not apply a lead finish to products; but, it does use lead anodes in its finishing process and would fall under the proposed rule. Dentists accumulate lead in the form of used x-ray film backing which they store and then recycle in amounts above the proposed ten pound threshold. EPA failed to list both of these industries as affected sectors. Failure to consider all affected sectors casts doubt on EPA's certification of no significant impact on small businesses.

Additionally, small businesses have indicated that increased regulatory costs resulting from this rule's promulgation could cause plant shut-downs or lay-offs at facilities. Firms in the printed circuit board industry operate on very narrow profit margins and face significant foreign competition. The burden imposed by this rule, while trivial to larger corporations, would have a severe economic impact on this industry due to its competitive nature. This situation suggests also that EPA may have certified incorrectly the rule will have no significant impact on small businesses.

EPA's failure to conduct outreach to small businesses when considering this regulation may also deprive the environment of additional protection. Small businesses have reduced lead usage substantially through innovative and nontraditional means. Many of the industries targeted by the proposed TRI lead rule are phasing lead out of their manufacturing operations voluntarily. The U.S. printed wiring board industry is currently a partner with the Agency in EPA's Design for the Environment Printed Wiring Board Project, which is assessing the alternatives to tin-lead solder as a surface finish on printed wiring boards. Additionally, the industry is working with its member companies to identify alternatives to tin-lead solder as an interconnect medium and operating conditions that would make lead substitution technically feasible. From your Project XL and Common Sense Initiative efforts, I know that you recognize that outreach, participation and partnership with small businesses promote voluntary pollution prevention beneficial to the environment.

Therefore, I urge the Agency to conduct meaningful outreach to small businesses impacted by the TRI lead rule and then to reconsider its SBREFA certification. If the Agency has not already done so, it should extend the rule's comment period to accommodate this need for genuine outreach. Such a course of action by EPA can have only beneficial impacts on the environment, small businesses, and the Agency itself. If you have any questions regarding this matter, please contact Marc Freedman or John Stody at 224-5175.

Sincerely,

A handwritten signature in black ink that reads "Chris Bond". The signature is written in a cursive, flowing style.

Christopher S. Bond  
Chairman

**Lead Industry Groups Not Evaluated for Small Industry Impact by EPA  
But Likely Affected by Proposed Lowering of TRI Threshold**

<b>SIC Code</b>	<b>Classification</b>
091	Commercial Fishing
097	Hunting and Trapping, and Game Propagation
138	Oil and Gas Field Services
162	Heavy Construction, Except Highway and Street Construction
171	Plumbing, Heating (Except electric), and Air Conditioning
172	Painting, Paper Hanging, and Decorating
173	Electrical Work
176	Roofing and Sheet Metal Work
179	Miscellaneous Special Trade Contractors
417	Terminal and Service Facilities for Motor Vehicle Passenger Transportation
423	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation
446	Services Incidental to Water Transportation
505	Metals and Minerals, Except Petroleum
509	Miscellaneous Durable Goods
551	Motor Vehicle Dealers (New and Used)
552	Motor Vehicle Dealers (Used Only)
553	Auto and Home Supply Stores
554	Gasoline Service Stations
555	Boat Dealers
556	Recreational and Utility Trailer Dealers
557	Motorcycle Dealers
559	Automotive Dealers, Not Elsewhere Classified
753	Automotive Repair Shops
762	Electrical Repair Shops
769	Miscellaneous Repair Shops and Related Services
802	Offices of Dentists