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EPA Petitioned to Require Disclosure of Toxic Chemical Releases from the Oil and Gas Extraction and Production Industry

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Yesterday, a coalition of environmental groups, led by the Environmental Integrity Project, filed a petition for rulemaking with EPA under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Administrative Procedure Act to add the "Oil and Gas Extraction Industry" to the list of industries required to report releases of certain "toxic chemicals" under EPCRA's Toxics Release Inventory. Unlike previous efforts to force disclosure of the contents of fracking fluids, which have focused on oilfield service companies like Halliburton and Schlumberger, this petition encompasses the entire oil and gas extraction sector, from well exploration to the point that the oil and/or gas enters the pipeline. Based on our experience with TRI compliance and EPA enforcement of TRI requirements for other industries, we believe that the addition of the "Oil and Gas Extraction Industry" to the TRI program would have enormous direct and indirect repercussions for the industry beyond disclosure of fracking fluid content.

The TRI provisions require facilities within listed industry sectors to provide detailed reports to EPA of releases to land (including surface impoundments), air (including fugitive emissions), and water for those listed "toxic chemicals" that the facility either manufactures, processes, or otherwise uses in amounts exceeding certain thresholds. EPA also regularly inspects facilities for compliance with TRI reporting as part of its enforcement initiatives.

Based on our TRI experience with the metal mining industry, the annual reporting is complicated, resource-intensive, and extremely time consuming. EPA also regularly inspects facilities for compliance with TRI reporting as part of its enforcement initiatives. Furthermore, once a sector is reporting under the TRI, EPA uses TRI data to inform regulatory decisions and enforcement priorities under other statutes. Both NGOs and EPA, for example, reference the large release numbers for naturally-occurring metals at metal mining facilities as support for tighter air regulations and financial assurance requirements.

EPA considered adding the oil-and-gas sector to the TRI in 1996, but ultimately decided against doing so, in large part because of the difficulty of defining the scope of a "facility" for reporting purposes. Indeed, the scope of the definition of "facility" is a critical threshold question because the broader the definition of "facility," the more likely the reporting thresholds will be triggered for various chemicals. Not surprisingly, the petition argues that the facility should be broadly defined to include concentrated groups of wells sites and related structures.

EPA already is slated to begin a rulemaking in 2013 to consider adding to the TRI program other industry sectors, including phosphate mining and iron ore mining, and EPA easily could add the oil-and-gas sector to the list of industries under consideration. If the industry ultimately is listed, it would result in substantial regulatory and compliance costs and would have serious long-term impacts on regulation of the entire industry under various other environmental statutes.

For questions regarding this update, please contact:

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